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WHO: Sponsored by the Office of the Federal Register.

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3. The important elements of typical Federal Register documents.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, April 10, 2012
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 77, No. 54

Tuesday, March 20, 2012

Administrative Conference of the United States
NOTICES
Meetings:
Various Committees, 16203

Agriculture Department
See Rural Housing Service

Air Force Department
NOTICES
Meetings:
Air University Board of Visitors, 16213–16214

Centers for Disease Control and Prevention
NOTICES
Charter Renewals:
Advisory Committee to Director, 16232
Meetings:
Advisory Committee on Breast Cancer in Young Women, 16232
Pilot Surveillance for High Impact/Low Prevalence Congenital and Inherited Conditions, FOA DD12–002, 16232

Coast Guard
RULES
Application for Foreign Rebuilding Determination, 16172–16174
Safety Zones:
Recurring Events in Captain of Port New York Zone, 16170–16171
PROPOSED RULES
Safety and Security Zones:
OPSAIL 2012 Connecticut, Thames River, New London, CT, 16198–16202

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16204–16205

Corporation for National and Community Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16213

Defense Department
See Air Force Department

Drug Enforcement Administration
NOTICES
Importers of Controlled Substances; Applications:
Capricorn Pharma Inc., 16262
Cerilliant Corp., 16261
Mylan Technologies, Inc., 16261–16262
Importers of Controlled Substances; Registrations:
Johnson Matthey, Inc., Pharmaceutical Materials, 16262–16263
Manufacturers of Controlled Substances; Applications:
Cayman Chemical Co., 16263
Cody Laboratories, Inc., 16263
Manufacturers of Controlled Substances; Registrations:
Halo Pharmaceutical, Inc., 16264–16265
Johnson Matthey Inc., 16263–16264
Johnson Matthey Pharmaceutical Materials, Inc., 16264
Noramco, Inc. (GA), 16264

Employment and Training Administration
RULES
Labor Certification Process for Temporary Non-Agricultural Employment of H–2B Aliens in United States:
Transition Period; Guidance, 16157–16158

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program:
Data Collection and Comparison with Forecasted Unit Sales of Five Lamp Types, 16183–16186

Environmental Protection Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Generator Standards Applicable to Laboratories Owned by Eligible Academic Entities, 16222–16223

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness Directives:
Boeing Co. Airplanes, 16143–16145, 16147–16151
Bombardier, Inc., 16145–16147
Bombardier, Inc. Airplanes, 16151–16155
Empresa Brasileira de Aeronautica S.A. (EMBRAER) Airplanes, 16155–16157
Eurocopter France Model Helicopters, 16137–16139
Mooney Aviation Co., Inc. (Mooney) Airplanes, 16135–16137
Pratt and Whitney (PW) Turbofan Engines, 16139–16143
PROPOSED RULES
Airworthiness Directives:
Boeing Co. Airplanes, 16188–16191
Bombardier Inc. Airplanes, 16191–16193
Bombardier, Inc. Airplanes, 16193–16196
Dassault Aviation Airplanes, 16186–16188

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16214–16216
Applications:
LockPlus Hydro Friends Fund XLVI, LLC, 16216–16217
LockPlus Hydro Friends Fund XXXIX, LLC, 16217
Combined Filings, 16217–16218
Petitions for Declaratory Orders:
PJM Interconnection, LLC, 16218–16219
Preliminary Permit Applications:
Cortez Pumped Storage Project, 16219
Mayville Pumped Storage, LLC, 16219–16220

Spartanburg Water System, 16220
Staff Attendance, 16221

Federal Highway Administration
NOTICES
Environmental Assessments; Availability, etc.:
Jessamine County and Madison County, KY, 16318–16319

Federal Reserve System
NOTICES
Changes in Bank Control:
Acquisitions of Shares of Bank or Bank Holding Company, 16223
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 16223–16224

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 16224

Federal Trade Commission
NOTICES
Proposed Consent Agreements:
Billion Auto, Inc., 16224–16225
Frank Myers AutoMaxx, LLC, 16227–16228
Key Hyundai of Manchester, LLC, 16228–16229
Ramey Motors, Inc., 16225–16227

Financial Crimes Enforcement Network
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Anti-Money Laundering Programs for Various Financial Institutions, 16319–16321

Fiscal Service
RULES
United States Savings Bonds and Notes; Payments, 16165–16170

Fish and Wildlife Service
RULES
Endangered and Threatened Wildlife and Plants:
Listing and Designation of Critical Habitat for the Chiricahua Leopard Frog, 16324–16424
NOTICES
Endangered and Threatened Wildlife and Plants:
Recovery Permit Applications, 16252–16255
Endangered Species Permits; Applications, 16255–16256
Meetings:
Aquatic Nuisance Species Task Force, 16256

Food and Drug Administration
RULES
Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs:
Revision of Certain Labeling Controls, 16158–16163
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Guidance for Industry on Formal Dispute Resolution; Appeals Above Division Level, 16237–16239
Guidance for Industry on Formal Meetings with Sponsors and Applicants for Prescription Drug User Fee Act Products, 16235–16237
Postmarketing Adverse Drug Experience Reporting, 16232–16234
Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products, 16234–16235
Meetings:
Medical Device User Fee Act, 16239–16244

Foreign Assets Control Office
RULES
Iranian Transactions Regulations, 16170

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
2012 Assistant Secretary for Preparedness and Response Challenges:
Now Trending – Health in My Community; Requirements and Registration, 16229–16232

Health Resources and Services Administration
NOTICES
Scholarships for Disadvantaged Students Program; Update, 16244–16246

Homeland Security Department
See Coast Guard
See U.S. Customs and Border Protection

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Office of Native American Programs Training and Technical Assistance Funding Availability, 16250–16251
Funding Awards:
HOPE VI Revitalization Grant Program, Fiscal Year 2010, 16251–16252

Industry and Security Bureau
NOTICES
National Defense Stockpile Market Impact Committee Request for Public Comments:
Potential Market Impact of Proposed Supplement to FY 2012 Annual Materials Plan, 16205–16207
Reportings for Calendar Year 2011:
Offsets Agreements Related to Sales of Defense Articles or Defense Services to Foreign Countries or Foreign Firms, 16207

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Ocean Energy Management Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping Duty Orders; Final Results of Expedited Third Sunset Reviews:
Stainless Steel Bar from Brazil, India, Japan, and Spain, 16207–16208

International Trade Commission
NOTICES
Meetings; Sunshine Act, 16260–16261

Justice Department
See Drug Enforcement Administration
RULES
Nondiscrimination on Basis of Disability by Public Accommodations and in Commercial Facilities:
Swimming Pools, 16163–16165
PROPOSED RULES
Implementing Titles II and III of Americans with Disabilities Act:
Delaying Compliance Date for Certain Requirements, 16196–16198

Labor Department
See Employment and Training Administration
See Workers Compensation Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Job Openings and Labor Turnover Survey, 16265–16266
Permit–Required Confined Spaces Standard, 16265

Land Management Bureau
NOTICES
Alaska Native Claims Selection:
Decision Approving Lands for Conveyance, 16256–16257
Meetings:
John Day–Snake Resource Advisory Council, 16257–16258
Northeastern Great Basin Resource Advisory Council, Nevada, 16257

National Credit Union Administration
NOTICES
Funding Opportunities:
Community Development Revolving Loan Fund Access for Credit Unions, 16267–16270

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 16246–16248
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 16247
National Heart, Lung, and Blood Institute, 16246
National Institute of Allergy and Infectious Diseases, 16247
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 16246
National Institute of General Medical Sciences, 16248
National Institute of Mental Health, 16249
National Institute on Alcohol Abuse and Alcoholism, 16246
Office of AIDS Research Advisory Council, 16248–16249

National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Permitting, Vessel Identification, and Reporting Requirements for Pelagic Squid Jig Fishery in Western Pacific Region, 16209–16210
Tilefish Individual Fishing Quota Program, 16209–16211
Meetings:
New England Fishery Management Council, 16211
Requests for Applications; Availability of Seats:
Channel Islands National Marine Sanctuary Advisory Council, 16212
Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, 16211–16212

Nuclear Regulatory Commission
PROPOSED RULES
Station Blackout, 16175–16183
NOTICES
Draft Guidance; Availability:
Updated Aging Management Criteria for Reactor Vessel Internal Components of Pressurized Water Reactors, 16270–16271
Facility Operating Licenses:
Applications and Amendments Involving No Significant Hazards Considerations, 16271–16278
License Renewal Applications:
Entergy Nuclear Operations, Inc.; Indian Point Nuclear Generating Units 2 and 3, 16278
Meetings:
Advisory Committee on Reactor Safeguards, 16278–16280
Meetings; Sunshine Act, 16280

Ocean Energy Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Proposed Outer Continental Shelf Gulf of Mexico Eastern Planning Area Oil and Gas Lease Sales 225 and 226, 16258–16259

Presidential Documents
EXECUTIVE ORDERS
Committees; Establishment, Renewal, Termination, etc.:
Strong Cities, Strong Communities, White House Council on; Establishment (EO 13602), 16131–16134

Public Debt Bureau
See Fiscal Service

Rural Housing Service
NOTICES
Meetings:
Section 538 Guaranteed Rural Rental Housing Program 2012 Industry Forums, 16203–16204

Securities and Exchange Commission
NOTICES
Applications:
Capital Research and Management Co., et al., 16280–16281
Columbia Funds Master Investment Trust, LLC, et al., 16282–16283
Meetings; Sunshine Act, 16283
Self-Regulatory Organizations; Proposed Rule Changes:
International Securities Exchange, LLC, 16287–16288, 16290–16298, 16304–16307, 16311–16313
NASDAQ OMX BX, Inc., 16288–16290
NASDAQ OMX PHLX LLC, 16283–16287, 16307–16309
NASDAQ Stock Market LLC, 16309–16311
New York Stock Exchange LLC, 16298–16302
NYSE Amex LLC, 16302–16304

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16313
Disaster Declarations:
Alaska, 16314
Kansas, 16314–16315
North Carolina, 16313–16314
Ohio, 16315
Major Disaster Declarations:
Indiana, 16315–16316

Kentucky; Amendment 1, 16316
Kentucky; Amendment 2, 16316
Kentucky; Amendment 3, 16315

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 16316–16317

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16259–16260

Surface Transportation Board
NOTICES
Amtrak's Petition for Determination of PRIIA Section 209 Cost Methodology, 16319

Susquehanna River Basin Commission
NOTICES
Projects Approved for Consumptive Uses of Water, 16317–16318

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Surface Transportation Board

Treasury Department
See Financial Crimes Enforcement Network
See Fiscal Service
See Foreign Assets Control Office

U.S. Customs and Border Protection
NOTICES
Cancellations of Customs Broker Licenses, 16249
Customs Broker Licenses:
Cancellations Due to Death of License Holders, 16249–16250

Workers Compensation Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Division of Longshore and Harbor Workers' Compensation, 16266–16267

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 16324–16424

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

13602.....16131

10 CFR

Proposed Rules:

50.....16175
430.....16183

14 CFR

39 (8 documents) 16135, 16137, 16139, 16143, 16145, 16147, 16151, 16155

Proposed Rules:

39 (4 documents) 16186, 16188, 16191, 16193

20 CFR

655.....16157

21 CFR

211.....16158

28 CFR

35.....16163
36.....16163

Proposed Rules:

35.....16196
36.....16196

31 CFR

321.....16165
330.....16165
560.....16170

33 CFR

165.....16170

Proposed Rules:

165.....16198

46 CFR

67.....16172

50 CFR

17.....16324

Federal Register
Vol. 77, No. 54
Tuesday, March 20, 2012

Presidential Documents

Title 3—

The President

Executive Order 13602 of March 15, 2012

Establishing a White House Council on Strong Cities, Strong Communities

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to forge a partnership with local communities to provide them with comprehensive technical assistance to use and compete for Federal resources more effectively and efficiently, which will enable them to develop and implement economic strategies to become more competitive, sustainable, and inclusive, it is hereby ordered as follows:

Section 1. *Policy.* Cities, towns, and regions across our Nation continue to face difficult economic challenges. Enhancing current Federal assistance is helping to lift communities out of distress. To allow the Federal Government to better partner with these local communities to build local capacity to address economic issues, and to support comprehensive planning and regional collaboration, my Administration established the Strong Cities, Strong Communities (SC2) pilot initiative. By partnering with cities and regions to augment their vision for stability and economic growth, the SC2 was designed to help communities strengthen their capacity to create jobs and more competitive business climates, and implement locally driven community and regional planning approaches that lead to sustained economic growth, as well as ensure that Federal assistance is more efficiently provided and used.

This order improves the way the Federal Government engages with and supports local communities by better aligning resources and coordinating efforts across executive departments and agencies (agencies) so that communities across the country have access to comprehensive, localized technical assistance and planning resources to develop and implement their economic vision and strategies.

Sec. 2. *White House Council on Strong Cities, Strong Communities.* There is established a White House Council on Strong Cities, Strong Communities (Council) within the Department of Housing and Urban Development, to be chaired by the Secretary of Housing and Urban Development and the Assistant to the President for Domestic Policy (Co-Chairs).

(a) *Membership.* In addition to the Co-Chairs, the Council shall consist of the following members:

(i) the Secretary of the Treasury;

(ii) the Secretary of Defense;

(iii) the Attorney General;

(iv) the Secretary of the Interior;

(v) the Secretary of Agriculture;

(vi) the Secretary of Commerce;

(vii) the Secretary of Labor;

(viii) the Secretary of Health and Human Services;

(ix) the Secretary of Transportation;

(x) the Secretary of Energy;

(xi) the Secretary of Education;

(xii) the Secretary of Veterans Affairs;

(xiii) the Secretary of Homeland Security;

(xiv) the Chair of the Council of Economic Advisers;

(xv) the Administrator of the Environmental Protection Agency;

(xvi) the Director of the Office of Management and Budget;

(xvii) the Administrator of General Services;

(xviii) the Administrator of the Small Business Administration;

(xix) the Chief Executive Officer of the Corporation for National and Community Service;

(xx) the Chairperson of the National Endowment for the Arts;

(xxi) the Senior Advisor and Assistant to the President for Intergovernmental Affairs and Public Engagement;

(xxii) the Assistant to the President and Cabinet Secretary;

(xxiii) the Assistant to the President for Economic Policy;

(xxiv) the Chair of the Council on Environmental Quality;

(xxv) the Director of the Office of Science and Technology Policy; and

(xxvi) the heads of such other agencies and offices as the President may, from time to time, designate.

A member of the Council may designate, to perform the Council functions of the member, a senior-level official who is a part of the member's agency or office, and who is a full-time officer or employee of the Federal Government.

(b) *Administration.* The Co-Chairs shall convene regular meetings of the Council, determine its agenda, and direct its work. The Secretary of Housing and Urban Development shall appoint an Executive Director of the Council to coordinate the Council's activities. At the direction of the Co-Chairs, the Council may establish subgroups consisting exclusively of Council members or their designees, as appropriate. Agencies may detail staff to the Council to support its coordination and implementation efforts.

Sec. 3. *Mission and Function of the Council.* The Council shall, to the extent permitted by law, work across agencies and offices to:

(a) coordinate the development and implementation of the various components of the SC2, as determined by the Co-Chairs;

(b) coordinate agency efforts to ensure communities have access to comprehensive, localized technical assistance and planning resources to develop and execute their economic vision and strategies (including, where appropriate, efforts of existing committees or taskforces related to providing technical assistance to local governments and improving their capacity to address economic issues);

(c) ensure that members of the Council incorporate SC2 implementation efforts into their agency annual performance plans and those efforts' outcomes into their annual performance results;

(d) provide recommendations to the President, through the Co-Chairs on:

(i) policies for building local expertise in strengthening local economies;

(ii) changes to Federal policies and programs to address issues of special importance to cities and local governments that pertain to local capacity and economic growth;

(iii) implementing best practices from the SC2 initiative Government-wide to better support cities and local governments; and

(iv) opportunities to increase the flexible utilization of existing Federal program resources across agencies to enable more performance and outcome-based funding;

(e) encourage the development of technical assistance, planning, and financing tools and implementation strategies that can be coordinated or aligned across agencies to assist communities in building local capacity to address economic issues, engaging in comprehensive planning, and advancing regional collaboration; and

(f) facilitate the exchange of ideas and strategies to help communities address economic challenges and create sustained economic opportunity.

Sec. 4. *Outreach.* Consistent with the objectives set forth in this order, the Council, in accordance with applicable law, shall conduct outreach to representatives of nonprofit organizations, businesses, labor organizations, State and local government agencies, school districts, elected officials, faith and other community-based organizations, philanthropies, other institutions of local importance, and other interested persons with relevant expertise in the expansion and improvement of efforts to build local capacity to address economic issues in cities and communities. The Council will convene an annual meeting of interested parties—including mayors and city employees—to share key findings and progress, offer best practices, and promote strategies that have worked in communities participating in the initiative.

Sec. 5. *Reports.* Within 1 year of the date of this order, and annually thereafter, the Executive Director shall provide a report to the Co-Chairs on the work of the Council and its achievements during the year, including demonstrable changes in the capacity of local communities to implement their economic development goals and efforts to achieve more efficient and effective use of Federal resources.

Sec. 6. *General Provisions.* (a) The heads of agencies shall assist and provide information to the Council, consistent with applicable law, as may be necessary to implement this order. Each agency shall bear its own expense for participating in the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

(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,
March 15, 2012.

[FR Doc. 2012–6797
Filed 3–19–12; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

Federal Register
Vol. 77, No. 54
Tuesday, March 20, 2012

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0275; Directorate Identifier 2012–CE–009–AD; Amendment 39–16981; AD 2012–05–09]

RIN 2120–AA64

Airworthiness Directives; Mooney Aviation Company, Inc. (Mooney) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are issuing an airworthiness directive (AD) for all Mooney Aviation Company, Inc. (Mooney) Models M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, M20R, M20S, and M20TN airplanes that supersedes an existing AD that is applicable to certain Model M20R and M20TN airplanes. The existing AD currently requires inspecting the tail pitch trim assembly for correct positioning and proper attachment and inspecting the Huck Bolt fasteners for proper security with repair as necessary for certain Models M20R and M20TN. That AD also requires sending the inspection results to the FAA and Mooney. This AD retains all of the actions, except the reporting requirement from the previous AD and adds airplane models to the applicability. This AD was prompted by a report of an incident on a Mooney Model M20TN airplane regarding failure of the tail pitch trim assembly, which could result in loss of control. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective March 20, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 20, 2012.

We must receive any comments on this AD by May 4, 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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Mooney Aviation Company, Inc., 165 Al Mooney Road North, Kerrville, Texas 78028; telephone: (830) 896–6000; email: *technicalsupport@mooney.com; Internet: www.mooney.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, 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 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: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On February 16, 2012, we issued AD 2012–03–52, amendment 39–16958 (77 FR 12179, February 29, 2012), for certain Mooney Aviation Company, Inc. (Mooney) Models M20R and M20TN airplanes. That AD requires inspecting the tail pitch trim assembly for correct positioning and proper attachment and inspecting the Huck Bolt fasteners for proper security with repair as necessary. That AD also requires sending the inspection results to the FAA and Mooney. That AD resulted from a report of an incident on a Mooney Model M20TN airplane regarding failure of the tail pitch trim assembly, which could result in loss of control. We issued that AD to detect incorrect positioning and improper attachment of the trim fitting, hinge, and filler plate of the tail pitch trim assembly and to verify security of the attaching Huck Bolt fasteners, which could lead to failure of the tail pitch trim assembly with consequent loss of pitch control.

Actions Since AD Was Issued

Since we issued AD 2012–03–52 (77 FR 12179, February 29, 2012), we received a report from an owner/operator of a Model M20J airplane who had the airplane inspected and found the same unsafe condition. Since the Models M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, and M20S airplanes have the same type design as the Models M20R and M20TN airplanes, we determined that these airplanes should be added to the applicability of the AD to ensure that the unsafe condition is addressed on all airplanes of the type design.

Also, Mooney published new service information that includes the expanded airplane applicability and instructions for installing replacement fasteners, if necessary.

Relevant Service Information

We reviewed Mooney Aviation Company, Inc. Service Bulletin No. M20–313A, dated February 29, 2012; and Service Bulletin No. M20–314A, dated February 29, 2012. The service information describes procedures for inspecting the tail pitch trim assembly for correct positioning and proper attachment, inspecting the Huck Bolt fasteners for proper security, and installing replacement fasteners, if necessary.

FAA's Determination

We are issuing 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.

AD Requirements

This AD requires inspecting the trim fitting, hinge, and filler plate of the tail pitch trim assembly for correct positioning and proper attachment, and inspecting the Huck Bolt fasteners for proper security on all Mooney Models M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, M20R, M20S, and M20TN airplanes. If incorrect positioning or improper/loose attachment is found, this AD requires installing replacement parts and fasteners. These are the same actions currently required by AD 2012–03–52 for certain Mooney Models M20R and M20TN airplanes, except the reporting requirement is no longer required.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure of the tail pitch trim assembly could result in loss of control. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2012–0275 and directorate identifier 2012–CE–009–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

Costs of Compliance

We estimate that this AD affects 6,630 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the trim fitting, hinge, and filler plate of the tail pitch trim assembly, and security of the Huck Bolt fasteners.	1 work-hour × $85 per hour = $85	Not applicable	$85	$563,550

We estimate the following costs to do any necessary replacement of the parts and Huck Bolt fasteners that will be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Installation of replacement parts and fasteners, including repair of an incorrectly positioned and/or improperly attached tail pitch trim assembly.	16 work-hours × $85 per hour = $1,360	$302	$1,662

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

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

This AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

(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),

(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.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (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) 2012–03–52, Amendment 39–16958 (77 FR 12179, February 29, 2012) and adding the following new AD:

2012–05–09 Mooney Aviation Company, Inc. (Mooney): Amendment 39–16981; Docket No. FAA–2012–0275; Directorate Identifier 2012–CE–009–AD.

(a) Effective Date

This AD is effective March 20, 2012.

(b) Affected ADs

This AD supersedes AD 2012–03–52, Amendment 39–16958 (77 FR 12179, February 29, 2012).

(c) Applicability

This AD applies to Mooney Aviation Company, Inc. (Mooney) Models M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, M20R, M20S, and M20TN airplanes, all serial numbers, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of an incident on a Mooney Model M20TN airplane regarding failure of the tail pitch trim assembly and the potential for this condition to exist on other airplane models, which could result in loss of control. We are issuing 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) Inspection

Within the next 10 hours time-in-service March 20, 2012 (after the effective date of this AD), inspect the trim fitting, hinge, and filler plate of the tail pitch trim assembly for correct positioning and proper attachment; and also inspect that the Huck Bolt fasteners are properly secured following Mooney Aviation Company, Inc. Service Bulletin No. M20–313A, dated February 29, 2012.

(h) Corrective Action

If during the inspection required in paragraph (g) of this AD you find incorrect positioning or improper attachment of the trim fitting, hinge, and filler plate of the tail pitch trim assembly; and/or you find loose or improperly installed Huck Bolt fasteners, before further flight, repair and correct the discrepancies following Mooney Aviation Company, Inc. Service Bulletin No. M20–314A, dated February 29, 2012.

(i) Credit for Actions Accomplished in Accordance With Previous Service Information

(1) This paragraph provides credit for inspections required in paragraph (g) of this AD if already done before March 20, 2012 (the effective date of this AD) following Mooney Aviation Company, Inc. Service Bulletin No. M20–313, dated February 7, 2012.

(2) This paragraph provides credit for repairs required in paragraph (h) of this AD if already done before March 20, 2012 (the effective date of this AD) following Mooney Aviation Company, Inc. Service Bulletin No. M20–314, dated February 10, 2012.

(j) Special Flight Permit

Special flight permits are prohibited for this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth 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.

(l) Related Information

For more information about this AD, contact Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

(m) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51: (i) Mooney Aviation Company, Inc. Service Bulletin No. M20–313A, dated February 29, 2012; and

(ii) Mooney Aviation Company, Inc. Service Bulletin No. M20–314A, dated February 29, 2012.

(2) For service information identified in this AD, contact Mooney Aviation Company, Inc., 165 Al Mooney Road North, Kerrville, Texas 78028; telephone: (830) 896–6000; email: *technicalsupport@mooney.com;* Internet: *www.mooney.com.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr_locations.html.*

Issued in Kansas City, Missouri, on March 13, 2012.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6521 Filed 3–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0454; Directorate Identifier 2009–SW–54–AD; Amendment 39–16973; AD 2012–05–01]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the Eurocopter France (ECF) Model SA–365C, SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters. This AD was prompted by some reports of deterioration and two reports of failure of Starflex star arm ends. The actions are intended to modify the main rotor frequency adapters to reduce the temperature in the area, to prevent failure of the star arm end, severe vibration, and subsequent loss of control of the helicopter.

DATES: This AD is effective on April 24, 2012.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of April 24, 2012.

ADDRESSES: For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (800) 232–0323, fax (972)

641–3710 or at *http://www.eurocopter.com.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

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 AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gary Roach, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961, email *gary.b.roach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On May 13, 2011, at 76 FR 27954, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to ECF Model SA–365C, SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters, certificated in any category. The proposed requirements were intended to modify the main rotor frequency adapters to reduce the temperature in the area, to prevent failure of the star arm end, severe vibration, and subsequent loss of control of the helicopter.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD (EAD) No. 2006–0362–E, dated November 30, 2006, to correct an unsafe condition for the specified Eurocopter model helicopters. EASA advises that this EAD is issued following some reports of deterioration and two reports of failure of Starflex star arm ends. EASA states that these deteriorations ''generated high-amplitude vibrations in flight, compelling the pilot to carry out a precautionary landing, in each of these cases. The failure of the Starflex star arm end could make it impossible to control the helicopter. These deteriorations are due to the strong effect of temperature on the strength of the bush-to-Starflex star arm end attachment.'' As a result, EASA issued its EAD to require modification (MOD 0762C39) of the frequency adapters and the frequency adapter bushes to improve the ventilation in the area on the star arm end on ''helicopters operated in hot climatic conditions and/or tropical and damp atmosphere.''

Comments

We gave the public an opportunity to participate in developing this AD, but we did not receive any comments on the NPRM.

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed except for minor editorial and formatting changes. These minor editorial changes are consistent with the intent of the proposals in the NPRM and will not increase the economic burden on any operator nor increase the scope of this AD.

Differences Between This AD and the EASA AD

This AD differs from the EASA AD as follows:

- We refer to flight hours as hours time-in-service.
- We refer to a check as an inspection because it is an action performed by maintenance personnel rather than a pilot.
- We omit the phrase ''hot climatic conditions and/or in tropical and damp atmosphere'' because it is unenforceable.

Related Service Information

ECF has issued one Emergency Alert Service Bulletin, dated November 23, 2006, with four different numbers: No. 62.00.24 is for the civil Model SA–365 N, AS–365N1, AS–365N2, and AS 365 N3; No. 62.14 is for the civil Model SA–366G1; No. 65.45 is for the Model SA–365C, C1, and C2; and No. 62.00.10 is for the non-FAA type certificated military Model 565 helicopters. The actions described in the EASA AD are intended to correct the same unsafe condition as that identified in the service information.

Costs of Compliance

We estimate that this AD will affect about 37 helicopters of U.S. registry. We estimate that operators may incur the following costs in order to comply with this AD:

- $1,020 assuming 12 work-hours per helicopter to modify the frequency adapters and bushes at an average labor rate of $85 per work-hour, and
- $960 per helicopter for required parts.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $73,260.

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 helicopters identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

(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),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; 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 an economic evaluation of the estimated costs to comply with this 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–05–01 Eurocopter France: Amendment 39–16973; Docket No. FAA–2011–0454; Directorate Identifier 2009–SW–54–AD.

(a) Applicability

This AD applies to Model SA–365C, SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as deterioration and failure of Starflex star arm ends. These deteriorations generated high-amplitude vibrations in flight requiring precautionary landings. These deteriorations are due to the strong effect of temperature on the strength of the bush-to-Starflex star arm end attachment and require modification of the frequency adapters and the frequency adapter bushes to improve the ventilation in the area on the star arm end. This condition could result in failure of the star arm end, severe vibration, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective April 24, 2012.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) For a main rotor head frequency adapter, pre MOD 0762C39, within 110 hours time-in-service (TIS), remove the main rotor blades, modify the frequency adapters and bushes, and change the part number of the frequency adapter as shown in Figures 1 through 5 and by following the Accomplishment Instructions, paragraph 2.B.2., of Eurocopter Emergency Alert Service Bulletin (EASB) No. 62.00.24 for the Model SA–365N, N1, AS–365N2, and AS 365 N3; No. 62.14 for the Model SA–366G1; and No. 65.45 for the Model SA–365C, C1, and C2 helicopters; all dated November 23, 2006. This modification is MOD 0762C39.

(2) For each main rotor head frequency adapter modified per MOD 0762C39, within 10 hours TIS, unless accomplished previously, and thereafter at intervals not to exceed 10 hours TIS, inspect to determine whether the safety wire is in place on the trailing edge of the frequency adapter and whether the holes in the frequency adapters and the frequency adapter bushes, as shown in Figure 5 of the EASB for your model helicopter, are blocked.

(i) If the lockwire is missing from the trailing edge of the frequency adapter, before further flight, reposition the bush if it has turned and install more safety wire.

(ii) If a hole is blocked, before further flight, unblock the hole.

(3) Before installing a frequency adapter or bush, modify the frequency adapter or bush and change the part number in accordance with paragraph (e)(1) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, DOT/FAA Southwest Region, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961, email *gary.b.roach@faa.gov.*

(2) For operations conducted under a Part 119 operating certificate or under Part 91, Subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) The Eurocopter EASB contains four different EASB numbers; three (Nos. 62.00.24, 62.14, and 65.45) apply to different civil Eurocopter model helicopters; and one (No. 62.00.10) only applies to non-FAA type-certificated military Model 565 helicopters and is not incorporated by reference. You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency Emergency AD No. 2006–0362–E, dated November 30, 2006.

(h) Subject

Joint Aircraft System/Component (JASC) Code 5311: Main Rotor Head.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise.

(i) Eurocopter Emergency Alert Service Bulletin (EASB) No. 62.00.24 (for the civil Model SA–365 N, AS–365N1, AS–365N2, and AS 365 N3), Revision 0, dated November 23, 2006

(ii) Eurocopter EASB No. 62.14 (for the civil Model SA–366G1), Revision 0, dated November 23, 2006

(iii) Eurocopter EASB No. 65.45 (for the Model SA–365C, C1, and C2), Revision 0, dated November 23, 2006

Note to paragraph (i)(2): These service bulletins were issued together as one document along with Eurocopter EASB No. 62.00.10 (for the non-FAA type certificated military Model 565 helicopters), which is not incorporated by reference.

(3) For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (800) 232–0323, fax (972) 641–3710 or at *http://www.eurocopter.com.*

(4) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Fort Worth, Texas, on February 24, 2012.

Lance T. Gant,

Acting Manger, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–5622 Filed 3–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1095; Directorate Identifier 2008–NE–34–AD; Amendment 39–16924; AD 2012–02–01]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney (PW) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Pratt & Whitney (PW) PW2037, PW2037(M), and PW2040 turbofan engines with certain fan blades with a cutback leading edge, installed. This AD was prompted by reports from PW that fan blade leading edge erosion can result in a fan thrust deterioration mode (FTDM) condition, a condition that cannot be detected by the crew, and that reduces the engine's capability of producing required thrust. This AD requires initial and repetitive maintenance to the leading edge of cutback fan blades or applying performance decrements as specified in the Airplane Flight Manual.

We are issuing this AD to correct undetectable fan thrust deterioration on these PW products.

DATES: This AD is effective April 24, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 24, 2012.

ADDRESSES: For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: (860) 565–8770; fax: (860) 565–4503 or Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: (206) 544–5000, extension 1; fax: (206) 766–5680; email: *me.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7178; fax: (781) 238–7199; email: *ian.dargin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on March 25, 2010 (75 FR 14377). That NPRM proposed to require initial and repetitive maintenance to restore the leading edge contour of PW2000 fan blade part numbers (P/Ns) 1B6531, 1B6231–001, or 1A9031–001 (fan blade set P/Ns 1B6521, 1B6221–001, and 1A9721–001).

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on our proposal and the FAA's response to each comment.

Request for Additional Alternative Methods of Compliance (AMOCs)

Three commenters, UPS, Cheshire Engine Center, and Delta Tech Ops, asked us to include Engine Manual, 1A6231, Chapter/Section 72–31–12, Repair-18, and PW Service Bulletin (SB) PW2000 72–513, Revision 4, dated August 20, 1997, as an AMOC to the AD. The commenters stated that Repair-18 is a bench repair that removes erosion damage and restores the leading edge contour on fan blades with cutback leading edges. The commenters stated that Repair-18 results in a restored leading edge similar to Repair-14, which is already included in the proposed rule as an AMOC. The commenters stated that Repair-14 is a patch weld repair used to restore the cutback leading edge.

We agree that Repair-18 and PW SB PW2000 72–513, Revision 4, dated August 20, 1997 are acceptable methods of resolving the fan thrust deterioration. We changed paragraph (f) of the AD to include Pratt & Whitney PW2037, PW2040, PW2240, PW2337 Turbofan Engine Manual, Part No. 1A6231, Chapter/Section 72–31–12, Repair-14 and Repair-18, and PW SB PW2000 72–513, Revision 4, dated August 20, 1997, as additional methods with which to comply with this AD.

One commenter, The Boeing Company (Boeing), asked us to add Airplane Flight Manual (AFM) D631N007, Section 1, page 11, Code 0P00 (Operation with Cutback Fan Blades) to the AMOC already published in the NPRM. The commenter stated that the performance adjustments for the PW2000 series engines that are installed on 757–300 airplanes are not in AFM D631N002, Appendix 24. They are in AFM D631N007, Section 1, Code 0P00.

We partially agree. We changed paragraph (f) of this AD to include ''Boeing 757 Airplane Flight Manual (AFM), Document D631N002'' and ''Boeing 757 Airplane Flight Manual, Document D631N007'' as additional methods with which to comply with this AD. We also changed paragraphs (f)(1)(vi) and (f)(1)(vii) of this AD to clarify that the method of compliance with those paragraphs is to revise the AFM. In addition, we changed paragraph (f)(3) of this AD to provide for removing certain information from the AFM when that information is included in the general revisions of the AFM. We coordinated all changes to the AFM with the FAA Transport Airplane Directorate.

One commenter, Delta Tech Ops, asked us to include PW SB PW2000 72–737 in the Alternative Methods of Compliance section. The commenter stated that PW SB PW2000 72–737 modifies the cutback fan blades affected by the AD to the non-cutback configuration.

We disagree. If the cutback fan blades affected by the AD are modified to return them to the non-cutback configuration, they are no longer affected by this AD. This AD only applies to fan blade, P/Ns 1B6531, 1B6231–001, or 1A9031–001 (fan blade set P/Ns 1B6521, 1B6221–001, and 1A9721–001), with a cutback leading edge. We didn't change the AD.

Request To Clarify Compliance Time

Two commenters, United Airlines and Delta Tech Ops, asked us to clarify that the AD repair doesn't have to be performed immediately if the blade leading edge has recently been cutback or restored. The commenters made this request to recognize that some blade leading edges have been recently cutback using PW SB PW2000 72–513 or restored using engine manual Repair-14 or Repair-18.

We agree. This AD is to ensure that cutback blades are repaired within 1,000 cycles-in-service after the last leading edge restoration. We changed paragraph (f) to ''Within 500 cycles-in-service (CIS) after the effective date of this AD or within 1,000 CIS after the last leading edge restoration, whichever occurs later, do one of the following.''

Request To Allow Additional Cycles for the PW2037 and PW2037(M) Engines

One commenter, United Airlines, asked us to match the compliance time in the AD with PW ASB PW2000 A72–729 to allow an additional 500 CIS for the PW2037 and PW2037(M) engines as compared to the compliance time for the PW2040 engines.

We disagree. The additional 500 CIS allowed for PW2037 and PW2037(M) engines was applicable when the alert service bulletin was first published in June 2008. This AD is to ensure cutback blades are repaired within 1,000 CIS after the last leading edge restoration. We didn't change the AD.

Request To Address Consequence of Performing the Cutback Leading Edge Repair on a Non-Cutback Blade

One commenter, United Airlines, asked us to address the consequence of the cutback blade leading edge repair being mistakenly performed on a non-

cutback blade. The commenter felt that because of overlap in dimensional requirements, discerning a cutback blade from a non-cutback blade either visually or by measuring the chord length, is difficult. The commenter also stated that the ''cb'' marking for a cutback blade may become illegible after engine operation and that the cutback blade tooling can fit on non-cutback blades and cause damage.

We disagree. Each operator must ensure that their personnel are properly trained and certificated to perform this maintenance. We didn't change the AD.

Eratta

During review of the comments we received, we discovered that we had referred to additional methods of compliance in the NPRM as *Alternative Methods of Compliance (AMOCs).* AMOC, in the aviation industry, has a specific and unique meaning. We changed the compliance section of this AD to indicate that operators may choose from several corrective action(s), which are additional methods of compliance, to resolve the unsafe condition. We also emphasized that operators must choose one method and then they must use the complete method. We did not add or remove any requirements when we made this correction.

We also rephrased the unsafe condition statement to clearly indicate the unsafe condition this AD addresses.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 480 engines installed on airplanes of U.S. registry. We also estimate that it will take about 12 work-hours per engine to perform the actions, and that the average labor rate is $85 per work-hour. No parts are required. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $489,600 per year.

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

This AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

(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),

(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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–02–01 Pratt & Whitney: Amendment 39–16924; Docket No. FAA–2008–1095; Directorate Identifier 2008–NE–34–AD.

(a) Effective Date

This AD is effective April 24, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney (PW) PW2037, PW2037(M), and PW2040 turbofan engines with six or more fan blades, part numbers (P/Ns) 1B6531, 1B6231–001, or 1A9031–001 (fan blade set P/Ns 1B6521, 1B6221–001, and 1A9721–001), with a cutback leading edge, installed.

(d) Unsafe Condition

This AD was prompted by reports from PW that fan blade leading edge erosion can result in a fan thrust deterioration mode (FTDM) condition, a condition that cannot be detected by the crew, and that reduces the engine's capability of producing required thrust. We are issuing this AD to correct undetectable fan thrust deterioration on these PW products.

(e) 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.

(f) Restoration of the Fan Blade Leading Edge Contour

(1) Within 500 cycles-in-service (CIS) after the effective date of this AD or within 1,000 CIS after the last leading edge restoration, whichever occurs later, do one of the following. Whichever method you choose, you must implement the method in full.

(i) For engines installed on the airplane, perform the initial restoration using Accomplishment Instructions For Engines Installed on Aircraft, paragraphs 1. through 1.T. of PW Alert Service Bulletin (ASB) PW2000 A72–729, Revision 2, dated October 13, 2010.

(ii) For engines that are not installed on the airplane, perform the initial restoration using Accomplishment Instructions For Engines Not Installed on Aircraft, paragraphs 1. through 1.S. of PW ASB PW2000 A72–729, Revision 2, dated October 13, 2010.

(iii) Perform Repair-14, dated February 1, 2006, from a Pratt & Whitney PW2037, PW2040, PW2240, PW2337 Turbofan Engine Manual, Part No. 1A6231, Chapter/Section 72–31–12.

(iv) Perform Repair-18, dated February 1, 2004, from a Pratt & Whitney PW2037, PW2040, PW2240, PW2337 Turbofan Engine Manual, Part No. 1A6231, Chapter/Section 72–31–12.

(v) Perform PW Service Bulletin PW2000 72–513, Revision 4, dated August 20, 1997.

(vi) Revise the Limitations Section of the Boeing 757 Airplane Flight Manual (AFM), Document D631N002, to include the following limitation. This may be done by inserting a copy of this AD into the AFM.

OPERATION WITH CUTBACK FAN BLADES

Pratt & Whitney 2000 series engines with 3 or more pairs of Cutback Fan Blades that have accumulated greater than 1,000 cycles since new, or since fan blade leading edge contour restoration refurbishment was performed per Pratt & Whitney Alert Service Bulletin PW2000 A72-729, must use the performance decrements specified in Appendix 24, Performance for Operation of PW2000 Series Engines with Cutback Fan Blades Installed 757-200, of the Boeing 757 Airplane Flight Manual, Document D631N002.

(vii) Revise the Limitations Section of the Boeing 757 Airplane Flight Manual, Document D631N007, to include the following limitation. This may be done by inserting a copy of this AD into the AFM.

OPERATION WITH CUTBACK FAN BLADES

Pratt & Whitney 2000 series engines with 3 or more pairs of Cutback Fan Blades that have accumulated greater than 1,000 cycles since new, or since fan blade leading edge contour restoration refurbishment was performed per Pratt & Whitney Alert Service Bulletin PW2000 A72-729, must use the performance decrements specified in Flight Crew Operations Manual Bulletin, Document NWA-67, Performance Adjustments for Thrust Shortfall of PW2000 Series Powered Airplanes with Cutback Fan Blades Installed."

(2) If you chose one of the methods in paragraphs (f)(1)(i) through (f)(1)(v) of this AD, thereafter, within 1,000 CIS, repeat one of the methods in paragraphs (f)(1)(i) through (f)(1)(v) of this AD. Whichever method you choose, you must implement the method in full.

(3) If you chose one of the methods in paragraphs (f)(1)(vi) or (f)(1)(vii) of this AD, you have fully complied with the requirements of this AD and no further action is required. When a statement identical to that in paragraph (f)(1)(vi) or (f)(1)(vii) of this AD has been included in the Limitations Section of the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(g) Alternative Methods of Compliance

The certification office specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(1) For paragraphs (f)(1)(vi) and (f)(1)(vii) of this AD: The Manager, Seattle Aircraft Certification Office (ACO), FAA. Send information to ATTN: Chris R. Parker, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6496; fax: 425–917–6590. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) For requirements of paragraphs of this AD other than those identified in paragraph (g)(1) of this AD: The Manager, Engine Certification Office (ECO), FAA. Send information to ATTN: Ian Dargin, Aerospace Engineer, FAA, ECO, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7178; fax: (781) 238–7199.

(h) Related Information

(i) The Boeing 757 Airplane Flight Manual, Document D631N002, and the Boeing 757 Airplane Flight Manual, Document D631N007 pertain to the subject of this AD. Contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: (206) 544–5000, extension 1; fax: (206) 766–5680; email: *me.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com,* for a copy of this service information.

(ii) For more information about this AD, contact Ian Dargin, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7178; fax: (781) 238–7199; email: *ian.dargin@faa.gov.*

(i) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51 on the date specified:

(i) Pratt & Whitney Alert Service Bulletin PW2000 A72–729, Revision 2, dated October 13, 2010, approved for IBR April 24, 2012.

(ii) Pratt & Whitney Service Bulletin PW2000 A72–513, Revision 4, dated August 20, 1997, approved for IBR April 24, 2012.

(iii) LPC First Stage Blade Assembly Repair-14, dated February 1, 2006, of the Pratt & Whitney PW2037, PW2040, PW2240, PW2337 Turbofan Engine Manual (''PW2000 Series Engine Manual''), Part No. 1A6231, revision 102, dated February 1, 2012, approved for IBR April 24, 2012.

(iv) LPC First Stage Blade Assembly Repair-18, dated February 1, 2004, of the Pratt & Whitney PW2037, PW2040, PW2240, PW2337 Turbofan Engine Manual (''PW2000 Series Engine Manual''), Part No. 1A6231, revision 102, dated February 1, 2012, approved for IBR April 24, 2012.

(2) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: (860) 565–8770; fax: (860) 565–4503.

(3) You may review copies of the service information at the FAA, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Burlington, Massachusetts, on January 13, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6500 Filed 3–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0566; Directorate Identifier 2010–NM–271–AD; Amendment 39–16975; AD 2012–05–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. This AD was prompted by a design review following a ground fire incident and reports of flammable fluid leaks from the wing leading edge area onto the engine exhaust area. This AD requires modifying the fluid drain path in the leading edge area of the wing. We are issuing this AD to prevent flammable fluid from leaking onto the engine exhaust nozzle, which could result in a fire.

DATES: This AD is effective April 24, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 24, 2012.

ADDRESSES: 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; phone: 206–544–5000, extension 1; fax: 206–766–5680; email: *me.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6505; fax: 425–917–6590; email: *Tung.Tran@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on June 14, 2011 (76 FR 34625). That NPRM proposed to require modifying the fluid drain path in the leading edge area of the wing.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (76 FR 34625, June 14, 2011) and the FAA's response to each comment.

Request To Withdraw NPRM (76 FR 34625, June 14, 2011)

KLM Royal Dutch Airlines (KLM) requested we reassess the necessity for Boeing Special Attention Service Bulletin 747–57–2332, dated November 9, 2010; the NPRM (76 FR 34625, June 14, 2011); and the future AD. KLM stated the Model 747–400 world fleet (as reported by Boeing), as well as the KLM fleet, has had no problems with the issue described by the NPRM; and Model 747–400 airplanes have no slat cans or comparable mechanical construction and are therefore not subject to the unsafe condition. KLM also stated that modifying the drain path away from the pylon on the outboard side of the pylon will not result in an improvement, since the wing leading edge is installed at an angle, so the fuel still can flow towards the engine by gravity after it exits the drain hole (during ground time). KLM also stated that the costs, manpower, and additional downtime associated with the actions in the NPRM are too high for KLM, and it is not convinced the actions will contribute to any additional safety.

We infer the commenter wants the NPRM (76 FR 34625, June 14, 2011) withdrawn. We disagree. The NPRM

addresses drain holes of the wing leading edge that are located close to the engine nozzle such that a fuel leak from any cause, not just from a slat housing leak, is drained directly on the engine exhaust nozzle, which could cause a fuel fire. Therefore, we consider that a risk for a fire exists even on the airplane models that do not have the slat cans. We also disagree with the commenter that the modification does not provide an improvement to the fuel drainage system. The service information provides instructions to modify and redirect the leading edge drainage away from the drain hole that directly impinges on the engine exhaust nozzle, which reduces the risk of a fire during a fuel leak event. We have taken the cost of labor and parts into consideration and have found that the actions required by this final rule are needed to address the unsafe condition. We have not changed the final rule in this regard.

Request To Include Service Information Revision

Boeing requested the NPRM (76 FR 34625, June 14, 2011) include Boeing Special Attention Service Bulletin 747–57–2332, Revision 1, dated July 25, 2011, as an option to Boeing Special Attention Service Bulletin 747–57–2332, dated November 9, 2010 (which was referenced in the proposed AD as the appropriate source of service information for the modification). Boeing justified its request by stating that Revision 1 of this service information adds clarification, but has no new requirements.

We agree. Since the NPRM (76 FR 34625, June 14, 2011) was issued, Boeing has issued Boeing Special Attention Service Bulletin 747–57–2332, Revision 1, dated July 25, 2011, which clarifies certain information and provides optional materials. We have changed paragraphs (c) and (g) of this AD to refer to Boeing Special Attention Service Bulletin 747–57–2332, Revision 1, dated July 25, 2011; added paragraph (h) of the AD to give credit for actions already accomplished in accordance with Boeing Special Attention Service Bulletin 747–57–2332, dated November 9, 2010; and revised subsequent paragraph lettering.

Request To Delegate Approval of Structures-Related Alternative Methods of Compliance (AMOCs)

Boeing requested the final rule be changed to allow Boeing authority to approve AMOCs under Boeing Commercial Airplanes Organization Designation Authorization (ODA). Boeing stated it anticipates repairs will be required to panels and ribs, etc., and that when the service information is embodied, it would be beneficial if the Boeing ODA was authorized to approve these repairs.

We agree with the request to delegate structural AMOC approval to the Boeing ODA because using the Boeing ODA is an appropriate process for making those findings. Accordingly, we have added paragraph (i)(3) to this final rule.

Additional Change Made to This Final Rule

We have revised the heading and marking of paragraph (h) of this AD. This change has not changed the intent of the paragraph.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 34625, June 14, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 34625, June 14, 2011).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 258 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Fluid drainage modification (Groups 1–6) (143 airplanes).	95 work-hours × $85 per hour = $8,075	$33,609	$41,684	$5,960,812
Fluid drainage modification (Groups 7–10) (115 airplanes).	90 work-hours × $85 per hour = $7,650	29,304	36,954	4,249,710

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

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

This AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

(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),

(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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–05–03 The Boeing Company: Amendment 39–16975; Docket No. FAA–2011–0566; Directorate Identifier 2010–NM–271–AD.

(a) Effective Date

This AD is effective April 24, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747–57–2332, Revision 1, dated July 25, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a design review following a ground fire incident and reports of flammable fluid leaks from the wing leading edge area onto the engine exhaust area. We are issuing this AD to prevent flammable fluid from leaking onto the engine exhaust nozzle, which could result in a fire.

(f) Compliance

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

(g) Leading Edge Installation

Within 60 months after the effective date of this AD, modify the fluid drain path in the leading edge area of the wing, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–57–2332, Revision 1, dated July 25, 2011.

(h) Credit for Previous Actions

This paragraph provides credit for modifications of the fluid drain path required by paragraph (g) of this AD, if the modification was performed before the effective date of this AD, using Boeing Special Attention Service Bulletin 747–57–2332, dated November 9, 2010.

(i) 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 structural repairs 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.

(j) Related Information

For more information about this AD, contact Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6505; fax: 425–917–6590; email: *Tung.Tran@faa.gov*.

(k) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Boeing Special Attention Service Bulletin 747–57–2332, Revision 1, dated July 25, 2011.

(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; phone: 206–544–5000, extension 1; fax: 206–766–5680; email: *me.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com*.

(3) 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on February 27, 2012.

Jeffrey E. Duven,

Acting Manager. Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6116 Filed 3–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0190; Directorate Identifier 2012–NM–033–AD; Amendment 39–16979; AD 2012–05–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–102, –103, and –106 airplanes. This AD requires a general visual inspection for chamfer of the upper edge of each leaf spring, and rework if necessary. This AD also requires installing a new friction brake nut. This AD was prompted by reports that it was possible to inadvertently move the power levers through the flight idle gate into the beta range due to an un-chamfered leaf spring in the friction brake that may contact the power lever latch when the friction adjusting knob is fully loosened. We are issuing this AD to detect and correct an unsafe condition where both engines can inadvertently be operated in beta mode during flight and consequently reduce controllability of the airplane.

DATES: This AD becomes effective April 4, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 4, 2012.

We must receive comments on this AD by May 4, 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.

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 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: Mazdak Hobbi, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue Suite 410, Westbury, NY 11590; telephone (516) 228–7330; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA) which is the aviation authority for Canada, has issued Canadian Emergency Airworthiness Directive CF–2012–08, dated January 30, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During maintenance, it was discovered that it was possible to inadvertently move the power levers through the flight idle gate into the beta range. An investigation revealed that an un-chamfered leaf spring in the friction brake may contact the power lever latch when the friction adjusting knob is fully loosened. This can result in the lifting of the power lever latch and allow the power levers to pass through the flight idle gate without lifting the triggers.
>
> Further investigation also determined that an un-chamfered spring installation with a pre-Service Bulletin (SB) 8–76–2 (Modification 8/0443) friction brake nut can further increase the possibility of allowing power levers to pass through the flight idle gate without lifting the triggers, when the friction adjusting knob is fully loosened.
>
> The above discrepancies, if not corrected, may result in an unsafe condition where both engines can inadvertently be operated in beta mode during flight.
>
> In order to address this potentially unsafe condition, Bombardier has issued:
>
> - Alert Service Bulletin (ASB) A8–76–32 requiring operators to inspect [general visual inspection] the springs and chamfer [rework] the springs as applicable, and
> - SB 8–76–02 Rev. A to replace the pre-SB 8–76–2 (Mod 8/0443) original friction brake nut with a new friction brake nut with larger shoulders.
>
> This [TCCA] Airworthiness Directive (AD) is being issued to mandate compliance with Bombardier ASB A8–76–32 and SB 8–76–02 Rev. A requirements on the affected aeroplanes.

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

Relevant Service Information

Bombardier has issued the following service bulletins:

- Alert Service Bulletin A8–76–32, dated January 27, 2012.
- Service Bulletin 8–76–02, Revision ''A,'' dated January 25, 2012.

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 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because there have been reports that it was possible to inadvertently move the power levers through the flight idle gate into the beta range due to an un-chamfered leaf spring in the friction brake that may contact the power lever latch when the friction adjusting knob is fully loosened. This can result in the lifting of the power lever latch and allow the power levers to pass through the flight idle gate without lifting the triggers. Also, a certain un-chamfered spring installation with a friction brake nut can further increase the possibility of allowing power levers to pass through the flight idle gate without lifting the triggers, when the friction adjusting knob is fully loosened. These conditions, if not corrected, may result in an unsafe condition where both engines can inadvertently be operated in beta mode during flight and consequently reduce controllability of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0190; Directorate Identifier 2012–NM–033–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 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 determined that this AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

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 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.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

2012–05–07 Bombardier, Inc.: Amendment 39–16979. Docket No. FAA–2012–0190; Directorate Identifier 2012–NM–033–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 4, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–102, –103, and –106 airplanes, certificated in any category, serial numbers 003 through 039 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 76: Engine Controls.

(e) Reason

This AD was prompted by reports that it was possible to inadvertently move the power levers through the flight idle gate into the beta range due to an un-chamfered leaf spring in the friction brake that may contact the power lever latch when the friction adjusting knob is fully loosened. We are issuing this AD to detect and correct an unsafe condition where both engines can inadvertently be operated in beta mode during flight and consequently reduce controllability of the airplane.

(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) Actions

Within 50 flight hours or 10 days, whichever occurs first, after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Do a general visual inspection of the upper edge of each leaf spring for chamfer, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–76–32, dated January 27, 2012. Do all applicable rework before further flight, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–76–32, dated January 27, 2012.

(2) Install a new friction brake nut, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–76–02, Revision 'A,' dated January 25, 2012.

(h) 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.

(i) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2012–08, dated January 30, 2012; Bombardier Alert Service Bulletin A8–76–32, dated January 27, 2012; and Bombardier Service Bulletin 8–76–02, Revision 'A,' dated January 25, 2012; for related information.

(j) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Bombardier Alert Service Bulletin A8–76–32, dated January 27, 2012.

(ii) Bombardier Service Bulletin 8–76–02, Revision ''A,'' dated January 25, 2012.

(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.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 2, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6439 Filed 3–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27223; Directorate Identifier 2006–NM–224–AD; Amendment 39–16976; AD 2012–05–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 767 airplanes. This AD requires an inspection of the number 2 windows to

determine whether the link arms are in the over-center position, and modifying the link arms of the number 2 windows in the flight compartment if necessary. This AD also requires the inspection, and modification if necessary, for airplanes that replace a modified assembly with an unmodified assembly. This AD results from reports of the number 2 windows opening during takeoff roll, which has resulted in aborted takeoffs. We are issuing this AD to prevent the opening of the number 2 windows during takeoff roll, which could adversely affect the flightcrew's ability to perform critical takeoff communication and result in an aborted takeoff or an unscheduled landing.

DATES: This AD becomes effective April 24, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 24, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Emerson Hevia, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6414; fax: 425–917–6590; email: *emerson.hevia@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 767 airplanes. That supplemental NPRM was published in the **Federal Register** on November 21, 2008 (73 FR 70608). That supplemental NPRM proposed to require inspecting the number 2 windows to determine whether the link arms are in the over-center position, which would determine the need to modify the link arms of the number 2 windows in the flight compartment; and doing the inspection and corrective actions following any rigging change or replacement of any number 2 window assembly.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received on the supplemental NPRM (73 FR 70608, November 21, 2008).

Support for the Supplemental NPRM (73 FR 70608, November 21, 2008)

Continental Airlines (CAL) concurred with the proposed inspection and follow-on corrective action. The Air Line Pilots Association, International and UPS agreed with the supplemental NPRM (73 FR 70608, November 21, 2008).

Request To Refer to Structural Repair Manual (SRM) in the Service Information

CAL stated that note (f) of Figures 10 and 24 of Boeing Alert Service Bulletin 767–56A0010, Revision 1, dated January 24, 2008, needs to reference the Boeing 767–400 SRM.

We referred to Boeing Alert Service Bulletin 767–56A0010, Revision 1, dated January 24, 2008, as the appropriate source of service information in the supplemental NPRM (73 FR 70608, November 21, 2008). We agree that note (f) of Figures 10 and 24 of Boeing Alert Service Bulletin 767–56A0010, Revision 1, should identify the Boeing 767–400 SRM. However, since we issued the supplemental NPRM (73 FR 70608, November 21, 2008), Boeing has issued Revision 2, dated June 18, 2009, of Boeing Service Bulletin 767–56A0010 to clarify airplane/window assembly configurations that do not require on-going link arm inspections, and correct and/or clarify part numbers, part identifications, and other data given in the service bulletin figures. The Boeing 767–400 SRM is identified in Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011. We have revised paragraphs (c) and (g) of this AD to refer to Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011. We have also revised this AD to add new paragraph (h) of this AD to give credit to operators for actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–56A0010, Revision 1, dated January 24, 2008; and Boeing Service Bulletin 767–56A0010, Revision 2, dated June 18, 2009; and have re-identified subsequent paragraphs accordingly.

Request To Designate Airplane Maintenance Manual (AMM) Task as Alternative Method of Compliance (AMOC) for Repeat Inspections

CAL requested that, for any subsequent inspection of the number 2 window link arm after the initial inspection (and modification), we designate Boeing 767 AMM Task 56–11–02–825–122 within Boeing 767 AMM 56–11–02/501 as an AMOC to the repeat inspection requirement of the supplemental NPRM (73 FR 70608, November 21, 2008). CAL stated that the over-center position inspection of the link arm specified in the AMM task is part of a comprehensive inspection/check. This task is utilized by the maintenance personnel any time the number 2 window is replaced or adjusted.

We partially agree. Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, addresses CAL's AMM suggestion. However, Revision 3 has no repetitive inspection. The inspection is done one time only, to inspect newly unmodified assemblies, as specified in new paragraph (i) of this AD. No further change to the AD is necessary in this regard.

Request To Remove Certain Airplanes From the Proposed Applicability

Boeing stated that subsequent to modification done in accordance with Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, the installation of window assembly part numbers that have been installed in production on airplanes after line number 929 should be considered terminating action.

From this statement, we infer that Boeing requested that airplanes having line numbers 930 and subsequent be excluded from the applicability of the supplemental NPRM (73 FR 70608, November 21, 2008). We agree that airplanes having line numbers 930 and subsequent are not affected by this AD for the reason stated by Boeing. These airplanes are not listed in the Effectivity of Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011. As stated previously, we have revised the applicability to refer to Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011.

Request To Clarify Paragraph (f) of the Supplemental NPRM (73 FR 70608, November 21, 2008) Regarding Terminating Actions

Boeing and American Airlines (AAL) stated that modifications done in accordance with Boeing Alert Service Bulletin 767–56A0010, Revision 1, dated January 24, 2008, should be considered a terminating action. Boeing added that installing a window having a part number listed in paragraph 2.C.3. of Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, should be considered a terminating action.

We infer that the commenters requested that we revise paragraph (f) of the supplemental NPRM (73 FR 70608, November 21, 2008) to clarify that doing the modification terminates the one-time inspection. We agree that clarification is needed. We have determined that either doing the modification specified in Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, or replacing the window assembly with an assembly that has the new part number specified in paragraph 2.C.3. of Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, terminates the inspection requirement of this AD. We have added new paragraph (i) to this AD to clarify the terminating action.

Request To Clarify Requirement for Removing Window

AAL requested clarification regarding window removal to accomplish the modification. AAL stated that window removal can be done at the operator's discretion. We agree that clarification is needed. Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, does not state that window removal is necessary nor does it limit the operator from removing the window during modification. Step 14 in Parts 4 and 8 has been removed from Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, to eliminate implication of window removal. No change has been made to this AD in this regard.

Request To Clarify Compliance Time

CAL stated that the compliance time has already started with the release of Boeing Alert Service Bulletin 767–56A0010, Revision 1, dated January 24, 2008. Therefore, CAL proposed that the compliance time start with the effective date of the AD.

From these statements, we infer that the commenter requested that we revise paragraph (f) of the supplemental NPRM (73 FR 70608, November 21, 2008) to clarify the proposed compliance time. We agree that clarification is necessary in this regard. We have added new paragraph (j) to this AD to specify this exception to Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011. We have also revised paragraph (g) of this AD to refer to paragraph (j) of this AD, and reidentified subsequent paragraphs accordingly.

Request To Revise the AMM

UPS requested that the Boeing 767 AMM be revised to reflect the requirement for inspection and applicable corrective action. UPS asserted that neither Section 56–11–02–04, ''Removal/Installation,'' nor Section 56–11–02–06, ''Adjustment/Test,'' contains any direction for the operator to perform the prescribed inspection of the link arms to ensure that they are in the over-center position. UPS stated that failure to update these sections would result in an incomplete set of instructions for the continued airworthiness of the airplane. We acknowledge the commenter's request. The 767 AMM is only listed as a reference in Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011. However, the inspection required by paragraph (g) of this AD must be done in accordance with Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, which contains illustrations that show the over-center position. Therefore, accomplishing the instructions in Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, addresses the identified unsafe condition. We have not changed the AD in this regard.

Request To Clarify General Visual Inspection

AAL requested clarification of the definition of a general visual inspection. AAL stated that the definition of a general visual inspection listed in Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, differs from the definition in the Boeing 767 Maintenance Review Board Report.

We agree to clarify the definition of a general visual inspection. The definition of a general visual inspection is correctly stated as the MSG–3 (maintenance steering group) definition in the Accomplishment Instructions of Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011. No change has been made to the AD in this regard.

Additional Changes to Proposed AD

We have included the on-condition costs in the Cost of Compliance section of this AD.

We have added paragraph (d) to this AD to include the Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code, and re-identified subsequent paragraphs accordingly.

We have deleted the phrase ''before further flight following any rigging change or replacement of any number 2 window assembly,'' from paragraph (g) (formerly paragraph (f)) of this AD. Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, does not specify doing an inspection after doing the rigging change or replacing any number 2 window assembly. We have determined that this action is not necessary to address the identified unsafe condition except for airplanes on which modified windows were replaced with unmodified windows, as specified in paragraph (i) of this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM (73 FR 70608, November 21, 2008) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (73 FR 70608, November 21, 2008).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 384 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
General visual inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle	$32,640 per inspection cycle.

We estimate the following costs to do any necessary modifications 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 this modification:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Modifying link arm	Up to 19 work-hours × $85 per hour = $1,615.	Up to $7,013	Up to $8,628.

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 AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

(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),

(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.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

AD–2012–05–04 The Boeing Company: Amendment 39–16976. Docket No. FAA–2007–27223; Directorate Identifier 2006–NM–224–AD.

(a) Effective Date

This AD becomes effective April 24, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category, as identified in Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 56, Windows.

(e) Unsafe Condition

This AD results from reports of the number 2 windows in the flight compartment opening during takeoff roll, which has resulted in aborted takeoffs. We are issuing this AD to prevent the opening of the number 2 windows during takeoff roll, which could adversely affect the flightcrew's ability to perform critical takeoff communication and result in an aborted takeoff or an unscheduled landing.

(f) Compliance

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

(g) Inspection

Do a general visual inspection of the number 2 windows to determine whether the link arms are in the over-center position, and do all applicable modifications, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, except as provided by paragraph (i) of this AD. Except as required by paragraph (j) of this AD, do the actions at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011. Do all applicable modifications before further flight.

(h) Credit for Previous Actions

This paragraph provides credit for inspections and applicable modifications, as required by paragraph (g) of this AD, if those actions were done before the effective date of this AD using Boeing Alert Service Bulletin 767–56A0010, Revision 1, dated January 24, 2008; or Boeing Service Bulletin 767–56A0010, Revision 2, dated June 18, 2009.

(i) Terminating Action and Replacing With an Unmodified Part

Doing the modification specified in Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, or replacing the assembly with a modified assembly identified in paragraph 2.C.3. of Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, terminates the inspection requirement for that particular assembly. For airplanes that replace the assembly with an unmodified assembly, do the actions required in paragraph (g) of this AD.

(j) Exception to Service Bulletin Specifications

Where Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011, specifies a compliance time ''after the Revision 1 date of the service bulletin,'' this AD requires compliance within the specified time after the effective date of this AD.

(k) 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.

(l) Related Information

For more information about this AD, contact Emerson Hevia, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6414; fax: 425–917–6590; email: *emerson.hevia@faa.gov.*

(m) Material Incorporated by Reference

You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information.

(1) Boeing Service Bulletin 767–56A0010, Revision 3, dated March 3, 2011.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6118 Filed 3–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0565; Directorate Identifier 2010–NM–280–AD; Amendment 39–16977; AD 2012–05–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–215–1A10, CL–215–6B11 (CL–215T Variant), and CL–215–6B11 (CL–415 Variant) airplanes. This AD was prompted by reports of cracked or broken support bracket assemblies of the emergency water dump pulley. This AD requires inspecting the bracket assembly of the emergency water dump pulley to determine if certain rivets are installed; replacing rivets and installing new stiffeners on the bracket assembly, if necessary; inspecting the stiffeners for the bracket assembly for cracks, deformation, or corrosion, and replacement if necessary; and re-installing the bracket assembly with radius packers. We are issuing this AD to detect and correct failure of the support bracket assembly of the emergency water dump pulley, and in combination with other system failures, such as an engine failure during take off or a pitch control system jam, may result in loss of controllability of the airplane.

DATES: This AD becomes effective April 24, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 24, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andreas Rambalakos, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7345; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 10, 2011 (76 FR 34014). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> The emergency water dump pulley support bracket assembly, Part Number (P/N) 215–94711–2, has been found cracked or broken on a number of aeroplanes. Failure of the emergency water dump pulley support bracket assembly in combination with other system failures such as an engine failure during take off or pitch control system jam, may result in a loss of control of the aeroplane.
>
> Revision 2 of this [Transport Canada Civil Aviation (TCCA)] AD is issued to ensure that terminating action for this [TCCA] AD is carried out prior to the 2011 fire season.

The required actions include a general visual inspection to determine if either universal solid (round head) rivets or flush rivets of the bracket assembly of the emergency water dump pulley are installed; replacing the solid rivets with flush rivets and installing new stiffeners on the bracket assembly of the emergency water dump pulley, if necessary; a detailed inspection and a liquid penetrant inspection of the stiffeners for cracks, deformations, or signs of corrosion, and replacing the stiffeners with new stiffeners if necessary; and re-installing the bracket assembly of the emergency water dump pulley using radius packers. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Extend Proposed Compliance Time for Replacing Damaged Stiffeners for Airplanes Used in Utility-Category Flight Operations

Aero-Flite, Inc. stated that it does not find that a reduction in operational safety exists for utility-category flight operations where the water tanks

remain empty and the emergency water dump system becomes inoperative. Aero-Flite, Inc. stated that its review of the airplane flight manual emergency and abnormal procedures for Model CL–215 airplanes conducting restricted category operations revealed that the emergency water dump system is required as a back up in the event of failure of the electro-hydraulic water door system. Aero-Flite, Inc. also stated that prohibiting all flight operations if cracks, signs of corrosion, or deformation of the stiffeners is found during inspection creates an unnecessary burden for the operator, affecting mission availability and increasing the cost of compliance without providing a meaningful improvement in safety. Aero-Flite, Inc. stated the changes will allow the operator to plan for utility-category flight mission requirements.

Aero-Flite, Inc. recommended that all flight limitations contained in the NPRM (76 FR 34014, June 10, 2011) be changed to consider that water or fire retardant must be in the tanks for the unsafe condition to exist. Therefore, Aero-Flite, Inc. suggested that all occurrences of ''before further flight'' (specified in paragraphs (i) and (j) of the NPRM) be changed to ''before further approved restricted category operations with water or fire retardant in the tanks including scooping operations.''

We do not agree. Per the type certificate data sheet for Model CL–215–1A10, CL–215–6B11 (CL–215T Variant), and CL–215–6B11 (CL–415 Variant) airplanes, these airplanes are certificated in the restricted category only and therefore no reference can be made to utility-category operations. In addition, because of the safety implications and consequences associated with cracking, our policy requires repair of known cracks, deformation, and signs of corrosion, before further flight. This policy is based on the fact that such damaged airplanes do not conform to the FAA-certificated type design and, therefore, are not airworthy until a properly approved repair is made. While we recognize that repair deferrals might be necessary in certain cases of unusual need, routinely deferring repairs could reduce the safety of the type certificated design if such repair deferrals are practiced routinely. We have not changed the AD regarding this issue.

Request To Extend the Compliance Time for the Liquid Penetrant Inspection and Re-Installing the Bracket Assembly of the Emergency Water Dump Pulley

Aero-Flite, Inc. requested that we change the compliance time in paragraph (j) of the NPRM (76 FR 34014, June 10, 2011) to ''Within 100 flight cycles or 120 days after the effective date of this AD or as of November 1, 2011, whichever occurs later.'' Aero-Flite, Inc. stated that it finds that the compliance time specified in paragraph (j) of this NPRM may provide an unnecessary burden for the operator, resulting in airplanes becoming unavailable, and risking substantial loss of property and life from wild fires without providing a meaningful improvement in airplane operational safety.

We disagree with extending the compliance time for the liquid penetrant inspection and re-installing the bracket assembly of the emergency water dump pulley. In developing an appropriate compliance time for the actions specified in paragraph (j) of this AD, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the specified actions. We have determined that the proposed compliance time will ensure an acceptable level of safety and allow the actions to be done during scheduled maintenance intervals for most affected operators. In addition, investigations by Bombardier have revealed that the cracked support bracket assemblies did not pass limit and ultimate load conditions. Because this is a strength issue, Bombardier recommends replacement of affected parts followed by installation of radius packers to strengthen the support bracket assembly, which would terminate the need for repetitive inspections. Affected operators, however, may request an alternative method of compliance (AMOC) under the provisions of paragraph (1)(1) of this AD by submitting data substantiating that the change would provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Use an Optional Service Inspection

Aero-Flite, Inc. requested that we revise paragraph (l) of the NPRM (76 FR 34014, June 10, 2011) to add an optional visual inspection for the exposed areas of the stiffeners, paying special attention to the identified critical locations (removing the bolt from the critical bolt hole and inspect the hole).

Aero-Flite, Inc. stated that accomplishing the repetitive inspections in accordance with Bombardier Service Bulletin 215–A543, Revision 1, dated June 23, 2010, requires removal of the bracket assembly from the airplane. Aero-Flite, Inc. stated that it finds that the repetitive visual inspections of the critical locations on the stiffeners can be accomplished without removing the bracket assembly and without substantial systems disassembly by removing the fastener common to the triangular flange. Aero-Flite, Inc. also stated that mandating removal of the bracket assembly to conduct visual inspections creates a burden on the operator, which may affect fire fighting mission availability, and increase the cost of compliance without providing a meaningful improvement in safety.

We disagree with the request to use an optional visual inspection. Bombardier has only validated the required inspections in Bombardier Service Bulletin 215–A543, Revision 1, dated June 23, 2010. We have not received sufficient technical information from Bombardier validating that a visual inspection without removing the bracket assembly would identify the unsafe condition. Affected operators, however, may request an AMOC under the provisions of paragraph (l)(1) of this AD by submitting data substantiating that the change would provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Use Optional Surface Eddy Current Inspection

Aero-Flite, Inc. recommends that we revise paragraph (j)(1) of the NPRM (76 FR 34014, June 10, 2011) to include an optional surface eddy current inspection for detecting cracks, corrosion, and deformation of the stiffeners.

Aero-Flite, Inc. stated that the liquid penetrant inspection specified in the NPRM (76 FR 34014, June 10, 2011) seems to eliminate an equivalent inspection, such as a surface eddy current inspection for detecting cracks, and a visual inspection for corrosion and deformation. Aero-Flite, Inc. also stated that general surface eddy current inspection procedures are published in the Bombardier CL–215 nondestructive testing manual, and that the procedures can be used to detect cracks in the stiffeners with an accuracy that is at least equivalent to liquid penetrant inspection procedure. Aero-Flite, Inc. stated that using a visual inspection for signs of corrosion allows the inspector to look for loose paint, discoloration of the surface, or variations in surface roughness, and that a visual inspection provides detection that is equivalent to

the liquid penetrant inspection. Aero-Flite, Inc. stated that requiring the operator to inspect the stiffeners only using liquid penetrant may create a burden on the operator that may affect fire fighting mission availability and increase the cost of compliance without providing an improvement in safety.

We disagree with the request to use an optional surface eddy current inspection. Bombardier has only validated the required inspections in Bombardier Service Bulletin 215–A543, Revision 1, dated June 23, 2010. We have not received sufficient technical information from Bombardier validating that an inspection other than visual would identify the unsafe condition. Affected operators, however, may request an optional inspection under the provisions of paragraph (l)(1) of this AD by submitting data substantiating that the change would provide an acceptable level of safety. We have not changed this AD in this regard.

Requests To Allow Use of Locally or Operator Fabricated Parts

Aero-Flite, Inc. requested that we revise paragraph (j)(2) of the NPRM (76 FR 34014, June 10, 2011) to allow operators to install owner/operator fabricated replacement parts.

Aero-Flite, Inc. stated that the requirement for replacing defective stiffeners with new stiffeners, and using original equipment manufacturer radius packers appears to eliminate the possibility of using engineering dispositions for serviceable stiffeners or fabricated radius packers. Aero-Flite, Inc. also stated that it finds that installing locally fabricated stiffeners and radius packers will not reduce the level of safety achieved, and that requiring the operator to install only new parts and radius packers purchased from the OEM may create a burden on the operator that may affect fire fighting mission availability and increase the cost of compliance without providing an improvement in safety.

We disagree with the request to use locally or operator fabricated parts. The requested list of non-OEM substitute parts and materials is extensive and uncontrolled—and, in many cases, not FAA-approved. An operator may request approval of an AMOC in accordance with the provisions of paragraph (l)(1) of this AD. We have not changed this AD regarding this issue.

Explanation of Change Made to This AD

We have revised the heading for and the wording in paragraph (k) of this AD; this change has not changed the intent of that paragraph.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed—except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 34014, June 10, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 34014, June 10, 2011).

Differences Between This AD and the MCAI or Service Information

This AD differs from the MCAI and/or service information as follows:

Although Canadian Airworthiness Directive CF–2010–38R2, dated March 17, 2011, has a compliance time of ''No later than 01 June 2011,'' for Part II—Terminating Action, this AD has a compliance time for a terminating action of ''Within 100 flight cycles or 60 days after the effective date of this AD, whichever occurs first.'' We have coordinated this difference with Transport Canada Civil Aviation (TCCA).

Although Canadian Airworthiness Directive CF–2010–38R2, dated March 17, 2011, has an initial compliance time of ''within 50 flight cycles after the effective date of this AD'' for identifying the type of rivet installed, this AD has a compliance time of ''within 50 flight cycles or 30 days after the effective date of this AD, whichever occurs first.'' In addition, the follow-on inspections in paragraph (i) of this AD for airplanes on which flush rivets are determined to be installed, is ''within 100 flight cycles or 60 days after the effective date of this AD, whichever occurs first.'' We have coordinated this difference with TCCA.

Costs of Compliance

We estimate that this AD will affect 6 products of U.S. registry. We also estimate that it will take about 40 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $20,400, or $3,400 per product.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD. 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 AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

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 AD and placed it in the AD docket.

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

2012–05–05 Bombardier, Inc.: Amendment 39–16977. Docket No. FAA–2011–0565; Directorate Identifier 2010–NM–280–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 24, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–215–1A10 airplanes, serial numbers 1051 through 1125 inclusive; Model CL–215–6B11 (CL–215T Variant) airplanes, serial numbers 1056 through 1125 inclusive; and Model CL–215–6B11 (CL–415 Variant) airplanes; serial numbers 2001 through 2085 inclusive; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

(e) Reason

This AD was prompted by reports of cracked or broken support bracket assemblies of the emergency water dump pulley. We are issuing this AD to detect and correct failure of the support bracket assembly of the emergency water dump pulley, and in combination with other system failures, such as an engine failure during take off or a pitch control system jam, may result in loss of controllability of the airplane.

(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) Inspections

Within 50 flight cycles or 30 days after the effective date of this AD, whichever occurs first, do a general visual inspection to determine if either universal solid (round head) rivets or flush rivets of the bracket assembly of the emergency water dump pulley are installed, in accordance with the Accomplishment Instruction of Bombardier Alert Service Bulletin 215–A543, Revision 1, dated June 23, 2010 (for Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4424, Revision 2, dated June 23, 2010 (for Model CL–215–6B11 (CL–415 Variant) airplanes).

(h) Corrective Action if Universal Solid Rivets are Installed

If, during the inspection required by paragraph (g) of this AD, universal solid rivets are determined to be installed: Within 50 flight cycles or 30 days after the effective date of this AD, whichever occurs first, replace the solid rivets with flush rivets, and install new stiffeners on the bracket assembly of the emergency water dump pulley, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A543, Revision 1, dated June 23, 2010 (for Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4424, Revision 2, dated June 23, 2010 (for Model CL–215–6B11 (CL–415 Variant) airplanes).

(i) Corrective Action if Flush Rivets are Installed

If, during the inspection required by paragraph (g) of this AD, flush rivets are determined to be installed; and for airplanes on which flush rivets are installed in accordance with paragraph (h) of this AD: Within 100 flight cycles or 60 days after the effective date of this AD, whichever occurs first, do a detailed inspection of the stiffeners for cracks, deformation, and signs of corrosion, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A543, Revision 1, dated June 23, 2010 (for Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4424, Revision 2, dated June 23, 2010 (for Model CL–215–6B11 (CL–415 Variant) airplanes). Thereafter, at intervals not to exceed 100 flight cycles, repeat the detailed inspections of the stiffeners. If any crack, deformation, or signs of corrosion are found, before further flight, replace the stiffeners with new stiffeners, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A543, Revision 1, dated June 23, 2010 (for Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4424, Revision 2, dated June 23, 2010 (for Model CL–215–6B11 (CL–415 Variant) airplanes).

(j) Terminating Action

Within 100 flight cycles or 60 days after the effective date of this AD, whichever occurs first, do the actions specified in paragraphs (j)(1) and (j)(2) of this AD. Installation of the radius packers terminates the repetitive detailed inspections of the support bracket assembly of the emergency water dump pulley required by paragraph (i) of this AD.

(1) Do a liquid penetrant inspection of the stiffeners having P/N 215–94711–6 and P/N 215–94711–8 for cracks, deformation, or signs of corrosion, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A543, Revision 1, dated June 23, 2010 (for Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4424, Revision 2, dated June 23, 2010 (for Model CL–215–6B11 (CL–415 Variant) airplanes). If any crack, deformation, or sign of corrosion is found, before further flight, replace damaged stiffeners with new stiffeners, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A543, Revision 1, dated June 23, 2010 (for Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4424, Revision 2, dated June 23, 2010 (for Model CL–215–6B11 (CL–415 Variant) airplanes).

(2) Re-install the bracket assembly of the emergency water dump pulley using radius packers, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A543, Revision 1, dated June 23, 2010 (for Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4424, Revision 2, dated June 23, 2010 (for Model CL–215–6B11 (CL–415 Variant) airplanes).

(k) Credit Previous Actions

This paragraph provides credit for the actions required by paragraphs (g), (h), (i), and (j) of this AD, if the actions were performed before the effective date of this AD using the service information specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD.

(1) Bombardier Service Bulletin 215–4424, dated January 25, 2010.

(2) Bombardier Alert Service Bulletin 215–A4424, Revision 1, dated May 18, 2010.

(3) Bombardier Alert Service Bulletin 215–A543, dated May 19, 2010.

(l) 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, 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.

(m) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2010–38R2, dated March 17, 2011, and the service information specified in paragraphs (m)(1) and (m)(2) of this AD; for related information.

(1) Bombardier Alert Service Bulletin 215–A543, Revision 1, dated June 23, 2010.

(2) Bombardier Alert Service Bulletin 215–A4424, Revision 2, dated June 23, 2010.

(n) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Bombardier Alert Service Bulletin 215–A543, Revision 1, dated June 23, 2010.

(ii) Bombardier Alert Service Bulletin 215–A4424, Revision 2, dated June 23, 2010.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 1, 2012.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6117 Filed 3–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0191; Directorate Identifier 2012–NM–035–AD; Amendment 39–16980; AD 2012–05–08]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 airplanes. This AD requires repetitive inspections for fuel leakage and cracks on the wing spar II, close to the rib 10 area, and repair if necessary. This AD was prompted by reports of fuel seepage at the left-hand wing, close to the rib 10 area in two airplanes. We are issuing this AD to detect and correct cracking on the wing spar II, which could result in a fuel leak, consequent reduced structural integrity of the airplane, and possible fire.

DATES: This AD becomes effective April 4, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 4, 2012.

We must receive comments on this AD by May 4, 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.

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 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: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2768; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2012–02–01, dated February 22, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It has been found cases of fuel seepage at the Left Hand (LH) wing and close to the Rib 10 area in two different airplanes. Further investigation revealed that the seepage was caused by a crack at the LH wing spar II close to the Rib 10. The ANAC is issuing this AD to detect and correct cracking in the wing spar II, which could result in a fuel leak and reduced structural integrity of the airplane.
>
> * * * * *

This AD requires repetitive general visual inspections for fuel leakage on the wing spar II, close to the rib 10 area; repetitive detailed inspections for cracks on the wing spar II, spar cap third, and main box lower skins of the wings, close to the rib 10 area; an eddy current inspection for cracks on the wing spar II if necessary; and repair if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EMBRAER has issued Alert Service Bulletin 170–57–A053, dated February 13, 2012. 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 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Interim Action

This AD is considered interim action to address the unsafe condition. If final action is later identified, we might consider further rulemaking then.

Differences Between the AD and the MCAI or Service Information

The MCAI requires actions only for airplanes that have exceeded 12,000 total flight cycles, but the requirements of this (FAA) AD apply to all Model 170 airplanes.

For airplanes with fuel leakage but no crack, this AD, in paragraph (j)(2), requires repeating the general visual and detailed inspections. The MCAI does not require that this inspection be repeated under those conditions.

We have coordinated these differences with ANAC.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of fuel leaks caused by spar cracks, which could result in reduced structural integrity of the wing, and possible fire. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0191; Directorate Identifier 2012–NM–035–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 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 determined that this AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

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 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.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

2012–05–08 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–16980. Docket No. FAA–2012–0191; Directorate Identifier 2012–NM–035–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 4, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57: Wings.

(e) Reason

This AD was prompted by reports of fuel seepage at the left-hand wing, close to the rib 10 area in two airplanes. We are issuing this AD to detect and correct cracking on the wing spar II, which could result in a fuel leak, consequent reduced structural integrity of the airplane, and possible fire.

(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) General Visual Inspection for Fuel Leakage

At the applicable time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Do a general visual inspection for fuel leakage on the wings, close to the rib 10 area, while both tanks are fully fueled, in accordance with Part I of the Accomplishment Instructions of EMBRAER Alert Service Bulletin 170–57–A053, dated February 13, 2012.

Note 1 to paragraph (g) of this AD: Guidance on performing the inspection for fuel leakage can be found in Task 28–11–00–790–801–A, Wing Tank—Fueled Tank Leakage Check, of the EMBRAER 170/175 Aircraft Maintenance Manual.

(1) For airplanes that have accumulated 11,999 or fewer total flight cycles as of the effective date of this AD: Inspect before the accumulation of 12,000 total flight cycles, or within 150 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated more than 11,999 total flight cycles but fewer than 13,926 total flight cycles as of the effective date of this AD: Inspect within 150 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated more than 13,925 total flight cycles as of the effective date of this AD: Inspect before the accumulation of 14,075 total flight cycles, or within 75 flight cycles after the effective date of this AD, whichever occurs later.

(h) Detailed Inspection for Cracks (Leakage Found)

If any sign of fuel leakage is found during any inspection required by paragraph (g) of this AD, before further flight, do a detailed inspection for cracks on spar II, spar cap third, and main box lower skin of the wings, close to the rib 10, in accordance with Part II or Part III, as applicable, of the Accomplishment Instructions of EMBRAER Alert Service Bulletin 170–57–A053, dated February 13, 2012. Repeat the inspection thereafter at intervals not to exceed 50 flight

cycles until accomplishment of the requirements of paragraph (j) of this AD.

(i) Detailed Inspection for Cracks (No Leakage Found)

If no sign of fuel leakage is found during the most recent inspection required by paragraph (g) of this AD, within 450 flight cycles after accomplishing the inspection, repeat the general visual inspection required by paragraph (g) of this AD and do a detailed inspection for cracks on spar II, spar cap third, and main box lower skin of the wings, close to the rib 10, in accordance with Part II and Part III of the Accomplishment Instructions of EMBRAER Alert Service Bulletin 170–57–A053, dated February 13, 2012. Repeat both inspections thereafter at intervals not to exceed 450 flight cycles.

(j) Special Detailed Inspection (Leakage Found)

If any fuel leakage is found during any inspection required by paragraph (g) or (i) of this AD: Within 150 flight cycles after the most recent inspection, do an eddy current special detailed inspection for cracks on spar II of the wings, and a defueled tank leak check for fuel leakage, in accordance with Part IV and Part V, as applicable, of the Accomplishment Instructions of EMBRAER Alert Service Bulletin 170–57–A053, dated February 13, 2012.

(1) If any crack is found: Do the actions specified in paragraph (k) of this AD.

(2) If no crack is found: Repeat the general visual inspection specified in paragraph (g) of this AD and the detailed inspection specified in paragraph (i) of this AD at intervals not to exceed 450 flight cycles.

(k) Repair

If any cracking or fuel leakage is found during any inspection or check required by this AD: Before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Agência Nacional de Aviação Civil (ANAC) (or its delegated agent). Repair of any crack terminates the repetitive inspection requirements required by this AD for that side of the wing.

Note 2 to paragraph (k) of this AD: Guidance on the classification of ''fuel leakage'' and the disposition of fuel leaks can be found in Task 28–11–00–790–801–A, Wing Tank—Fueled Tank Leakage Check, of the EMBRAER 170/175 Aircraft Maintenance Manual.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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, ANM–116, send it to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2768; 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) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(n) Related Information

Refer to MCAI Brazilian Airworthiness Directive 2012–02–01, dated February 22, 2012; and EMBRAER Alert Service Bulletin 170–57–A053, dated February 13, 2012; for related information.

(o) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Embraer Alert Service Bulletin 170–57–A053, dated February 13, 2012.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170–Putim–12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 7, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6447 Filed 3–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB58

Changes to the Labor Certification Process for the Temporary Non-Agricultural Employment of H–2B Aliens in the United States; Transition Period

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Guidance.

SUMMARY: On February 21, 2012, the Department of Labor (the Department or DOL) published a Final Rule amending H–2B regulations governing the certification of temporary employment of nonimmigrant workers in temporary or seasonal non-agricultural employment. The Department's H–2B Final Rule also created new regulations to provide for enhanced enforcement under the H–2B program requirements when employers fail to meet their obligations under the H–2B program. The Department also made changes to the *Application for Temporary Employment Certification,* ETA Form 9142.

The H–2B Final Rule becomes effective on April 23, 2012. All applications filed on or after that date will need to comply with all applicable program requirements. The purpose of this guidance is to provide transition procedures to ensure that employers filing H–2B applications on or after April 23, 2012, have sufficient information to file appropriately.

DATES: This guidance is effective March 20, 2012.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; Telephone: (202) 693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 21, 2012, the Department published a Final Rule amending the H–2B regulations at 20 CFR part 655, Subpart A. 76 FR 10038, Feb. 21, 2012. The rule becomes effective April 23, 2012 and applies to all applications filed on or after that date. Among other things, the H–2B Final Rule provides for a return to the compliance-based certification model, by which employers file before conducting recruitment. The

H–2B Final Rule also includes a new registration process, to precede the filing of applications.

Applications filed under Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes, 73 FR 78020, Dec. 19, 2008 (the current regulation), must be sent to the Office of Foreign Labor Certification's (OFLC's) Chicago National Processing Center (CNPC) and postmarked no later than midnight April 22, 2012, the last day before the effective date of the H–2B Final Rule. An application filed up to the effective date of the H–2B Final Rule must still comply in full with the requirements of the current regulations. Applications postmarked on or after April 23, 2012 will be adjudicated in accordance with the requirements described in the H–2B Final Rule.

Any application filed under the current regulation that is postmarked on or after April 23, 2012 or later will be rejected, and the employer (and its agent or attorney) will be informed of the need to file a new application in accordance with the provisions of the new H–2B Final Rule.

To ensure a smooth transition from the current regulation and allow the OFLC to make the necessary changes to its program operations to accommodate the new planned registration process, the Department noted in the H–2B Final Rule, at 20 CFR 655.11(j), that it would announce in the **Federal Register** a separate transition period for the registration process. Employers who file H–2B applications with a start date of need before October 1, 2013 will not be required to obtain the pre-approved H–2B registration under 20 CFR 655.15, and the Department will continue to adjudicate temporary need during the processing of applications by reviewing the employer's statement of temporary need in Section B of the ETA Form 9142. Employers filing H–2B applications on or after April 23, 2012 with a start date of need on or after October 1, 2013, must comply with all the requirements contained in the registration process unless the OFLC publishes additional guidance in the **Federal Register**.

Employers with questions are encouraged to submit such questions to H–2B.Regulation@dol.gov. The Department will provide responses in the form of Frequently Asked Questions (FAQs) on its Web site.

Signed in Washington, this 14th day of March, 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–6580 Filed 3–19–12; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 211

[Docket No. FDA–1997–N–0518] (formerly 97N–0300)

Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; Revision of Certain Labeling Controls

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the packaging and labeling control provisions of the current good manufacturing practice (CGMP) regulations for human and veterinary drug products by limiting the application of special control procedures for the use of cut labeling to immediate container labels, individual unit cartons, or multiunit cartons containing immediate containers that are not packaged in individual unit cartons. FDA is also permitting the use of any automated technique, including differentiation by labeling size and shape, that physically prevents incorrect labeling from being processed by labeling and packaging equipment when cut labeling is used. This action is intended to protect consumers from labeling errors more likely to cause adverse health consequences, while eliminating the regulatory burden of applying the rule to labeling unlikely to reach or adversely affect consumers. This action is also intended to permit manufacturers to use a broader range of error prevention and labeling control techniques than permitted by current CGMPs.

DATES: This final rule is effective on March 20, 2013, except for the amendment adding § 211.122(g)(4), which is effective April 19, 2012.

FOR FURTHER INFORMATION CONTACT: Brian Hasselbalch, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4364, Silver Spring, MD 20993–0002, 301–796–3279, email: *brian.hasselbalch@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 29, 1997 (62 FR 40489) (the proposed rule), FDA proposed to amend the packaging and labeling control provisions of the CGMP regulations for human and veterinary drug products by limiting the application of special control procedures for the use of cut labeling to immediate container labels, individual unit cartons, or multiunit cartons containing immediate containers that are not packaged in individual unit cartons, and to permit the use of any automated technique, including differentiation by labeling size and shape, that physically prevents incorrect labeling from being processed by labeling and packaging equipment when cut labeling—single labels for individual drug products that are ''cut'' from a sheet or roll of labels—is used.

Persistent problems with drug product mislabeling and subsequent recalls led FDA in 1987 and in 1990 to review labeling procedures and product recalls. The review identified gang-printed and cut labeling as a leading cause of labeling mixups. Gang-printed labeling is defined in § 210.3(b)(22) (21 CFR 210.3(b)(22)) as labeling derived from a sheet of material on which more than one item of labeling is printed. Each sheet includes labeling for a variety of products and, because of this, labeling for individual drug products must be separated from the labeling for other products. When labels are gang-printed, the labels for different drug products or different strengths for the same drug product are processed together, making them especially susceptible to mixups. Similarly, cut labeling is commonly placed in separate stacks before being transported to packaging and labeling lines for application to appropriate products. FDA found that stacks of labeling of similar size, shape, and color could easily be intermixed and, if the printer or manufacturer did not detect the error, incorrect labeling could be applied and a mislabeled drug product distributed. To reduce the frequency and likelihood of such mislabeling, FDA, in the **Federal Register** of August 3, 1993 (58 FR 41348), amended the packaging and labeling control provisions of the CGMP regulations in part 211 (21 CFR part 211) to provide specific conditions for the use of all gang-printed and cut labeling. Under § 211.122(f), use of gang-printed labeling for different drug products, or different strengths or net

contents of the same product, is prohibited unless the labeling from gang-printed sheets is adequately differentiated by size, shape, or color. Under § 211.122(g), packaging and labeling operations must use one of three special control features if cut labeling is used: (1) Packaging and labeling lines must be dedicated to each different strength of each different drug product; (2) appropriate electronic or electromechanical equipment must be used to conduct a 100 percent examination for correct labeling during or after completion of finishing operations; or (3) where labeling is hand-applied, use of visual inspection to conduct a 100 percent examination for correct labeling during or after completion of finishing operations must be performed by one person and independently verified by a second person.

To further limit the potential for mislabeling, FDA also required written procedures for the identification and handling of filled drug product containers not immediately labeled (§ 211.130(b)). FDA also amended § 211.125(c) to exempt manufacturers that use automated 100 percent examination for correct labeling from the label reconciliation requirements. FDA also defined gang-printed labeling at § 210.3(b)(22). The final rule applied to all types of labeling, including product inserts, multiunit containers packaged in individual containers, and shipping containers.

In May 1994, FDA received two citizen petitions from several trade associations requesting, among other things, that FDA consider additional comments on the application of § 211.122(g) to items of labeling other than the immediate container label, and requesting additional time to obtain, install, or validate equipment necessary to comply with the August 3, 1993 final rule. In response to these requests, FDA extended the compliance date to August 3, 1995, for § 211.122(g) as it applies to labeling other than immediate container labels, and opened the administrative record for comments on the scope of § 211.122(g). All other provisions of the August 3, 1993, final rule became effective on August 3, 1994. To adequately assess comments received during the extended comment period and provide industry additional time to comply with the regulation, FDA published several notices extending the compliance date for § 211.122(g), as it applies to labeling other than immediate container labels, to August 2, 1996, to August 1, 1997, and, in the July 29, 1997, **Federal Register** (62 FR 40447), until the effective date of this final rule.

FDA evaluated the comments received during the extended comment period, met with industry representatives, reviewed recall data to determine the danger to consumers from errors in different types of drug product labeling, and surveyed packaging and labeling control technology. On July 29, 1997, FDA issued a proposed rule to narrow the scope of § 211.122(g) and to expand the permissible control procedures. This rule finalizes the July 29, 1997, proposed rule. As described in more detail in section II of this document, the final rule adopts the proposed codified without change.

II. Description of the Final Rule

A. Scope of § 211.122

The first sentence of current states: ''If cut labeling is used, packaging and labeling operations shall include one of the following special control procedures.'' The final rule amends the first sentence of § 211.122(g) to state: ''If cut labeling is used for immediate container labels, individual unit cartons, or multiunit cartons containing immediate containers that are not packaged in individual unit cartons, packaging and labeling operations shall include one of the following special control procedures.'' Thus, instead of applying to all types of labeling as required in the August 3, 1993, final rule, the control procedures specified in revised § 211.122(g) apply only to cut labeling used for immediate container labels, individual unit cartons, or multiunit cartons containing immediate containers that are not packaged in individual unit cartons. This amendment is intended to protect consumers from labeling errors that are more likely to cause adverse health consequences, while eliminating the regulatory burden of applying the rule to labeling unlikely to reach or adversely affect consumers. As explained in the proposed rule, the immediate container label is most likely to be read by consumers. The individual unit carton labeling is the outermost container in which a drug product is commonly marketed at retail, and many consumers read this labeling when deciding whether to purchase a product. When using multiunit cartons containing immediate containers that are not packaged in individual unit cartons (for example, sterile dosage forms in tray packs in which immediate containers lack unit cartons), consumers and health professionals are more likely to rely on labeling on the outer multiunit container than to examine the labeling on the individual drug product immediate containers.

B. Special Control Procedures

Currently, there are three control procedures delineated in § 211.122(g)(1) through (g)(3): (1) Dedication of labeling and packaging lines to each different strength of each different drug product; (2) use of appropriate electronic or electromechanical equipment to conduct a 100 percent examination for correct labeling during or after completion of finishing operations; or (3) use of visual inspection to conduct a 100 percent examination for correct labeling during or after completion of finishing operations for hand-applied labeling. The visual inspection must be performed by one person and independently verified by a second person. The final rule amends § 211.122(g) to add a fourth alternative special control procedure for packaging and labeling operations when cut labeling is used that provides for more flexibility in determining adequate controls. The fourth control, added at § 211.122(g)(4), states: ''Use of any automated technique, including differentiation by labeling size and shape, that physically prevents incorrect labeling from being processed by labeling and packaging equipment.'' As noted in the proposed rule (62 FR 40489 at 40491), this additional control procedure is being added because FDA believes that this will provide manufacturers with the widest possible latitude in selecting appropriate labeling control technologies. It will permit the use of a number of automated techniques that will physically prevent incorrect labeling from being processed by packaging and labeling equipment. A labeling control method using size and shape as part of an automated technique that prevents incorrect labeling from being processed by labeling and packaging lines provides equivalent labeling control protection, through prevention, as do the other special control procedures through surveillance or dedication of labeling and packaging lines. An acceptable automated technique will allow labeling and packaging operations to operate only if correct labeling unique to a given product (for example, a specific size) is used.

III. Responses to Comments on the Proposed Rule

FDA received three comments on the proposed rule which raised a limited number of issues. The specific issues raised by the commenters are described in this section III.

(Comment 1) One comment said that the final rule should permit all effective means of label control, whether they

involve automated systems or nonautomated systems. The comment said that FDA has indicated that both automated and nonautomated systems of label control are equally effective in preventing label mixups. The comment cited the June 23, 1989, proposed rule and the August 3, 1993, final rule, and noted that FDA said that three label control practices were not involved in any of the recalls attributed to label mixups (i.e., the use of labels differentiated by size, shape, or color; the use of dedicated packaging lines; and the use of electronic label verification systems that validate the labeling of each product during finishing operations (100 percent label inspection)). The comment said that these label control practices include both automated (the use of electronic label verification systems that validate the labeling of each product during finishing operations) and nonautomated (use of labels differentiated by size, shape, or color and the use of dedicated packaging lines) methods.

The comment also said that industry's experiences with certain electronic and electromechanical control systems have shown inconsistent results, and 50–60 percent of the electronic systems that were installed during the recent past (the comment was submitted in 1997) could not be used because of lack of reliability against the zero-defect standard. The comment said that some automated systems are not robust enough to identify ''bad'' labels 100 percent of the time, at certain line speeds and under certain conditions, and the systems erred with unacceptable levels of false positives (that is, flagging ''good'' labels as ''bad'').

The comment said the special control procedures under proposed § 211.122(g) should be modified to allow companies to document a system of control that best fits the unique abilities of each particular company, without requiring any one particular control system (for example, electronic or electromechanical controls) to be used across the entire industry. The comment said this approach would allow the implementation of technology appropriate for the individual plants involved.

The comment noted that many companies currently use multiple layers of control in their labeling operations that have yielded very robust systems of total control, and they should not be required to add another special layer of control that may not improve their total system. The comment stated that FDA should permit additional automated and nonautomated methods of control for items of labeling within the scope of § 211.122(g). Differentiation by size, shape, or color or by any other effective, validated means should be permitted, whether automated or not. The comment described other types of layers of control that should be permitted, including labeling design to minimize mixups, using labeling suppliers that have excellent internal control, using label control rooms, proper purging of labeling lines, using computerized material requirements planning systems, online checks of operations, and reconciliation of labeling.

Another comment said that the proposed rule would limit industry's choice of control measures, and too great an emphasis was placed on ''high tech'' electronic verification systems. The comment stated that traditional methods of label control have proven to be just as effective. The comment said that industry is largely operating using traditional label control measures along with some high tech electronic verification systems as part of an overall system of label control. These traditional systems consist of multilevel control measures that work together to ensure that label mixups are avoided. The comment said that the use of electronic systems alone will not provide this level of assurance, because electronic systems are not 100 percent effective and often give false alarms in labeling operations that can lead to operator complacency and/or inefficient line operation. The comment expressed doubt that the use of electronic verification systems would improve systems currently in place at its company. The comment recommended other control measures as part of an overall system for label control that should be considered by FDA, including: (1) An ongoing program to assess the label supplier's operations and controls; (2) labeling designed to avoid mixups such as differentiation by size, shape, and color; (3) procedures addressing art/label approval; (4) a multilevel control system that incorporates personnel training, label inspection, line clearance, and other control procedures designed to avoid mixups; and (5) a validation of such systems that gives assurance that label controls are acceptable.

(Response) First, the Agency believes that it is important to emphasize that one of the special controls listed in § 211.122(g) must be used only when cut labeling is used for the types of labeling described in § 211.122(g). Manufacturers have significant additional flexibility to use different labeling controls for other types of labeling.

When cut labeling is used for the identified types of labeling, at least one of the special controls in § 211.122(g) must be used. The final rule permits the choice of a special control from one of four options specified in § 211.122(g)(1) through (g)(4). Two are nonautomated controls: dedication of lines (paragraph (g)(1)) and visual inspection for hand applied labels (paragraph (g)(3)). Two are automated controls: Electronic or electromechanical examination to conduct a 100-percent examination for correct labeling during or after completion of finishing operations (paragraph (g)(2)), and use of any automated technique that physically prevents incorrect labeling from being processed by labeling and packaging equipment (paragraph (g)(4)). This provides industry with a number of options, including manual, electronic, electromechanical, and automated systems. It also permits broad discretion to industry to select appropriate electronic or automated systems for this purpose, and to ''layer'' different controls, if desired, as long as at least one of the options listed in paragraph (g) is used as one of the layers.

However, FDA disagrees that additional nonautomated special controls, in addition to dedicated lines or visual inspection, should be added to paragraph (g). As we noted in the proposed rule (62 FR 40489 at 40491), nonautomated (i.e., manual) differentiation of size and shape as a labeling control does not provide adequate protection from labeling mixups when cut labeling is used. It is the increased opportunity for human error afforded by the process of cutting, sorting, and subsequent handling of different items of labeling that has caused labeling mixups and recalls. One of the goals of this rulemaking is to reduce the likelihood for such human error through the increased use of automated labeling control systems and through the elimination of manual label differentiation by size and shape. In addition, in response to the commenter's concern that electronic systems are not sufficiently reliable, we believe that development and use of advanced code scanning equipment has made many current electronic verification systems accurate and reliable. For example, all prescription drug products (with limited exceptions), biological products, and certain over-the-counter (OTC) drug products are now required by 21 CFR 201.25 to bear on the label a bar code containing, at a minimum, the drug's NDC (National Drug Code). Electronic systems can use these codes to scan the labels as part of

the label controls. These and other advanced scanning techniques have made current electronic systems reliable to the 100 percent standard.

If cut labeling is used, the choice of one of the four special control procedures listed above should allow manufacturers to document a system of control that best fits the unique abilities of each particular manufacturer without requiring any one particular control system to be used. The final rule permits manufacturers considerable latitude under § 211.122(g)(1) through (g)(4) in establishing control procedures over cut labeling, and is sufficiently flexible to permit technological innovation in automated labeling inspection systems. For example, under the final rule, a labeling control method designed by an individual manufacturer could incorporate electronic or electromechanical equipment or the use of a visual inspection to conduct a 100 percent examination for correct labeling. Moreover, manufacturers are free to use one of the specifically enumerated special controls in § 211.122(g) in combination with any other special or general labeling controls. The rule merely establishes that, at a minimum, one of the four enumerated special controls must be used when the identified types of cut labeling are used. Accordingly, many of the alternative special and general controls discussed by the commenters could also be used in conjunction with one of the enumerated special controls.

The comments suggest that this rule will mandate that manufacturers who currently have effective label control systems but are not currently using one of the controls enumerated in § 211.122(g)(1) through (g)(4) must change their system to include one of the four special controls. FDA points out that this would only be true for situations where cut labeling is currently being used for those labels subject to the enforcement discretion period (labels other than immediate container labels) if the manufacturer is not currently voluntarily using one of the enumerated special controls. Processes using cut labeling for immediate containers labels (the bulk of the labels covered by this change) were not subject to enforcement discretion and would already be required to use one of the three special controls in current § 211.122(g)(1) through (g)(3). The only change made by this rule for those labeling processes would be the addition of a new option to meet the requirement of subsection (g). Those lines would not be *required* to make any change by this final rule.

(Comment 2) One comment said that the controls for cut labeling used for multiunit cartons containing immediate containers that are not packaged in individual unit cartons (§ 211.122(g)) should not apply to OTC drug product shelf-packs. The comment explained that OTC drug products are sometimes packaged in what could be called multiunit cartons containing immediate containers that are not packaged in individual unit cartons. These are often called ''shelf-packs'' or ''trays.'' The comment gave the following examples: antacid tablets packaged in individual rolls and placed in a tray near the checkout of a drugstore or supermarket; bottles of sunscreen products displayed in an end-unit in a store for convenience and added display space; and analgesic powders in printed envelopes placed in a tray to keep them upright on the store shelf. The comment noted that for these products the immediate containers are not packaged in individual unit cartons. However, complete labeling is on the individual packages, and neither consumers nor health professionals rely on the information on the tray or end-unit to purchase or use the product. The comment said that the proposed rule could be interpreted to apply to OTC shelf-packs, trays, or end units, but that special control procedures are not needed for these products because their labeling is not relied on to purchase the products. In addition, because the labeling on the shelf pack, tray, or end unit itself does not accompany the product to its point of use, it is not relied on by the consumer to use the product. Therefore, the comment said, no significant additional protection to the public health and safety would result from special control procedures for these products. The comment recommended that proposed § 211.122(g) be revised to read: ''* * * multiunit cartons containing immediate containers of prescription drugs that are not packaged in individual unit cartons * * *.''

(Response) FDA does not agree that the final rule should specifically exclude OTC shelf-packs. First, FDA disagrees with the assertion that consumers and health professionals do not rely on the information on the tray or end-unit to purchase or use the product. Although mislabeling of immediate containers poses the most obvious threat to public health and safety, a considerable danger is also posed by errors in the labeling that influences consumer selection of the product at the time of purchase. Indeed, we believe that, in the context of shelf-packs, these requirements are more important for OTC drugs for which there is not necessarily a health care professional involved to help ensure proper product selection. FDA does not agree that the rule would significantly affect the use of shelf-packs because shelf-packs rely on other packaging and labeling operations and infrequently use cut labeling. To the extent that OTC shelf-packs do use cut labeling, the special control procedures allow manufacturers considerable latitude in establishing appropriate controls.

(Comment 3) One comment said the rule should not apply to drug products in preprinted immediate containers such as tubes, vials, cans, bottles, pouches, and blister packages. The comment requested that the final rule be revised to specifically exclude preprinted immediate containers.

(Response) FDA agrees that the rule does not apply to drug products in preprinted immediate containers because the likelihood of labeling mixups appears to be remote and because preprinted drug product containers are still subject to existing general labeling controls to prevent mixups. Preprinted immediate containers include tubes, vials, cans, bottles, pouches, and blister packages where the labeling is directly ''inked'' into the package. FDA does not agree that it is necessary to amend § 211.122 to expressly exclude drug products in preprinted immediate containers because, as adopted in this final rule, § 211.122 does not apply to preprinted containers.

(Comment 4) One comment requested that the rule be finalized only as currently applied to immediate container labels in § 211.122(g) and not expanded to individual unit cartons or multiunit cartons containing immediate containers that are not packaged in individual unit cartons.

(Response) As explained earlier in this preamble, the control procedures specified in § 211.122(g) apply to cut labeling used for immediate container labels, individual unit cartons, or multiunit cartons containing immediate containers that are not packaged in individual unit cartons. This is intended to protect consumers from labeling errors that are more likely to cause adverse health consequences, while eliminating the regulatory burden of applying the rule to labeling unlikely to reach or adversely affect consumers. The immediate container label is most likely to be read by consumers. The individual unit carton labeling is the outermost container in which a drug product is commonly marketed at retail, and many consumers read this labeling when deciding whether to purchase a

product. When using multiunit cartons containing immediate containers that are not packaged in individual unit cartons (for example, sterile dosage forms in tray packs in which immediate containers lack unit cartons), consumers and health professionals are likely to rely both on labeling on the outer multiunit container as well as the labeling on the individual drug product immediate containers.

(Comment 5) One comment questioned the use of the term ''gang-printed materials'' in the following paragraph of the proposed rule: ''FDA notes, however, that nonautomated (i.e., manual) differentiation of size and shape as a labeling control does not provide adequate protection from labeling mixups. It is the increased opportunity for human error afforded by the process of cutting, sorting, and subsequent handling of different items of labeling from gang-printed materials that has caused labeling mixups and recalls. One of the goals of this proposed rulemaking is to reduce the likelihood for such human error through the use of automated labeling control systems'' (62 FR 40489 at 40491 and 40492).

The comment said that this paragraph appears to equate cut labeling with gang-printing. The comment noted that gang-printing is prohibited under § 211.122(f): ''Use of gang-printed labeling for different drug products, or different strengths or net contents of the same product, is prohibited unless the labeling from gang-printed sheets is adequately differentiated by size, shape, or color.'' In addition, gang-printed labeling is defined in § 210.3(b)(22) as ''labeling derived from a sheet of material on which more than one item of labeling is printed.'' The comment noted that the printing of repetitions of the same item of labeling on the same sheet results in cut labeling, as the individual repetitions of the item are cut from the sheet for use. The comment said that this is not gang-printing and does not present the same opportunity ''for human error afforded by the process of cutting, sorting, and subsequent handling of different items of labeling'' as does gang-printing, because the labeling is all identical.

(Response) FDA acknowledges that the distinction between ''gang-printed labeling'' and ''cut labeling'' in the July 29, 1997, proposed rule (62 FR 40490) may have caused confusion among some readers. Gang-printed labeling, as explained earlier in this preamble, is defined in § 210.3(b)(22) (21 CFR 210.3(b)(22)) as labeling derived from a sheet of material on which more than one item of labeling is printed. For example, a sheet of material that contains labeling for different strengths of a drug product is considered to be gang-printed. In contrast, cut labeling, as described in the August 3, 1993, final rule (58 FR at 41350), refers to items of labeling that have been detached or ''cut'' from printed stock material. This stock material may or may not be gang-printed; it may contain labeling for different drug products or different strengths of the same drug product or it may contain identical labeling for the same drug product. The printing method of the stock material has no bearing on whether labeling is considered to be cut labeling. The defining feature of cut labeling is simply that it is ''cut.'' After being cut, such labeling is commonly sorted by type or strength of drug product (if it is not identical), placed into separate, corresponding stacks, and then transported to the packaging and labeling lines for application to the appropriate product. Cut labeling is problematic because the items, when cut and placed into individual stacks for application to different drug products, are easily mixed up. FDA found that stacks of labeling of similar size, shape, and color could easily be intermixed and, if the manufacturer did not detect the error, incorrect labeling could be applied and a mislabeled drug product distributed.

(Comment 6) One comment said that § 211.122(g)(3) should be revised to include the sentence: ''Such a 100 percent examination must be conducted by one person and independently verified by a second person.'' The comment said by omitting this phrase the public might be led to the presumption that the ''verification by a second person'' is no longer required.

(Response) FDA notes that it did not propose to amend § 211.122(g)(3), nor is that section being amended by this final rule. Moreover, because the first sentence of § 211.122(g)(3) already states that ''a 100-percent examination'' for correct labeling is required, repeating the phrase ''100-percent'' in the second sentence of paragraph (3), as proposed by the commenter, would be redundant. Therefore, the final rule does not adopt the change suggested by the commenter.

(Comment 7) One comment said that the proposed compliance date of 6 months after publication of the final rule should be extended to 1 year to adequately implement any new controls.

(Response) As requested by the comment, we are providing an effective date of 1 year from the date of publication of this final rule as it applies to labels that had not previously been covered by this regulation. The application of § 211.122(g) to labeling other than labeling used for immediate container labels has been stayed since August 3, 1994. Although it lifts the stay, the final rule also narrows the applicability of § 211.122(g) so that, in addition to immediate container labeling, the only other labeling that is subject to final § 211.122(g) is cut labeling used for individual unit cartons, or multiunit cartons containing immediate containers that are not packaged in individual unit cartons. We believe 1 year will be sufficient to permit companies to adopt an appropriate control from § 211.122(g)(1) through (g)(4) for those limited additional categories of cut labeling.

The shorter implementation period applicable to cut labeling used for immediate container labels (which make up the majority of cut labeling used) reflects the fact that sections 211.122(g)(1) through (g)(3) as they apply to such labels have been effective since August 3, 1994. As to those labels, this final rule merely adds an additional control option for the appropriate use of cut labeling (i.e., § 211.122(g)(4)). Accordingly, as to those labels, we are making this rule effective 30 days after its publication in the **Federal Register.** If they wish, labelers may continue to use one of the appropriate controls listed in § 211.122(g)(1) through (g)(3) that have been applicable to those labels since 1994. Adoption of the additional control option in § 211.122(g)(4) added by this final rule is purely voluntary but, since the regulation provides an alternative method of compliance, there is no reason to delay its applicability beyond the statutory 30-day period.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule reduces the scope of the 1993 final rule and

provides manufacturers greater flexibility to meet regulatory requirements, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

The purpose of this final rule is to protect consumers from those labeling errors that are more likely to cause adverse health consequences, while eliminating the regulatory burden of applying the rule to labeling unlikely to reach or adversely affect consumers. This rule amends the 1993 final rule by limiting the scope to cut labeling for immediate container labels, individual unit cartons, and multiunit cartons containing immediate containers that are not packaged in individual unit cartons. This rule also increases flexibility for firms selecting special labeling control procedures by adding a provision for the use of any automated technique, including differentiation by size and shape, that physically prevents incorrect labeling from being processed by labeling and packaging equipment. Therefore, this rule is expected to have a positive economic impact on drug manufacturers that would otherwise be subject to the more stringent requirements under current regulations.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 211 is amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

■ 1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 360b, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

■ 2. Section 211.122 is amended by revising the introductory text of paragraph (g) and by adding paragraph (g)(4) to read as follows:

§ 211.122 Materials examination and usage criteria.

* * * * *

(g) If cut labeling is used for immediate container labels, individual unit cartons, or multiunit cartons containing immediate containers that are not packaged in individual unit cartons, packaging and labeling operations shall include one of the following special control procedures:

* * * * *

(4) Use of any automated technique, including differentiation by labeling size and shape, that physically prevents incorrect labeling from being processed by labeling and packaging equipment.

* * * * *

Dated: March 13, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6502 Filed 3–19–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF JUSTICE

28 CFR Parts 35 and 36

[CRT Docket No. 122; AG Order No. 3326–2012]

RIN 1190–AA68

Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities; Swimming Pools

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Final rule.

SUMMARY: By this rule, the Department of Justice is extending the date for compliance with certain requirements in the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design (2010 Standards) that relate to provision of accessible entry and exit for swimming pools, wading pools, and spas. This final rule, based on a finding of good cause, changes the date for compliance from March 15, 2012, to May 21, 2012 in order to allow additional time to address misunderstandings regarding compliance with these ADA requirements. Some pool owners and operators believed that taking certain steps would always satisfy their obligations under the ADA when in fact those steps would not necessarily result in compliance with the ADA regulations.

DATES: Effective on March 15, 2012, the compliance date for 28 CFR 35.150(b)(1), (b)(2)(ii), and 28 CFR 36.304(d)(2)(iii) for sections 242 and 1009 of the 2010 Standards is delayed to May 21, 2012.

FOR FURTHER INFORMATION CONTACT: Allison Nichol, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307–0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

This rule is also available in an accessible format on the ADA Home Page at *http://www.ada.gov.* You may obtain copies of this rule in large print or on computer disk by calling the ADA Information Line listed above.

SUPPLEMENTARY INFORMATION: The Department of Justice published its revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010. *See* 75 FR 56163. The revised ADA rules were the result of a six-year process to update the Department's regulations. As part of this process, the Department sought extensive public comment, issuing an Advance Notice of Proposed Rulemaking (ANPRM) on September 30, 2004, 69 FR 58768, and two Notices of Proposed Rulemaking (NPRM) on June 17, 2008, 73 FR 34466 (title II), and 73 FR 34508 (title III). The Department also held a public hearing on the NPRMs and received over 4,435 written public comments. On September 15, 2010, the Department published a final rule revising the regulations implementing titles II and III of the ADA. As part of this revision, the Department adopted the 2010 ADA Standards for Accessible

Design (''2010 Standards''), which are based in large part on the 2004 ADA Accessibility Guidelines adopted by the United States Access Board in 2004. *See* 69 FR 44083 (July 23, 2004). With limited exception, the Department's revised regulations went into effect on March 15, 2011.

With a compliance deadline of March 15, 2012, the 2010 Standards set minimum scoping and technical requirements for accessible entry and exit for new construction and alteration of swimming pools, wading pools, and spas (collectively, ''pools''). In addition, the title III regulation provides that as of March 15, 2012, public accommodations' barrier removal efforts must comply with the 2010 Standards to the extent readily achievable, including with respect to barriers to accessing pools. 28 CFR 36.304 (d)(2)(iii). The title II regulation provides that the 2010 Standards apply where public entities choose to meet their title II ADA program access obligations by making structural changes to their pools. 28 CFR 35.150(b)(1), (b)(2)(ii).

Regulatory Certifications

Administrative Procedure Act

The Department of Justice finds that good cause exists for adopting this rule as a final rule with an immediate effective date because proceeding via ordinary Administrative Procedure Act process would be impracticable and contrary to the public interest. *See* 5 U.S.C. 553(b). The Department promulgated a Final Rule on September 15, 2010 (the 2010 Final Rule), adopting the 2010 ADA Standards for Accessible Design and implementing ADA title II requirements for program accessibility and the title III requirements for readily achievable barrier removal as applied to existing swimming programs and swimming pools. As the March 15, 2012, date for compliance approached, the Department received a large number of inquiries regarding the obligations of owners and operators of existing pools under the 2010 Final Rule. On January 31, 2012, the Department of Justice Civil Rights Division published a technical assistance document entitled ''ADA 2010 Revised Requirements: Accessible Pools—Means of Entry and Exit'' (the ''TA Document''). The Civil Rights Division issued the TA document to educate public entities and public accommodations about their obligations under the ADA regulations as revised by the 2010 Final Rule.

Both the inquiries received by the Department prior to the TA Document's publication and the pool owners and operators' response to the TA Document reveal that there were misunderstandings among a substantial number of pool owners and operators concerning the obligations imposed by the ADA as implemented in the 2010 Final Rule as to their obligations with respect to existing pools and their options with respect to the provision of pool lifts. Some pool owners and operators believed that taking certain steps would always satisfy their obligations when in fact those steps would not necessarily result in compliance with the ADA regulations. Recognizing that pool owners and operators face challenges in correcting their misunderstandings and determining appropriate compliance when faced with what is now an immediate compliance date, the Department determined that it would be impracticable and contrary to the public interest to retain the existing compliance date, and that a brief 60-day extension of that date is necessary to provide an opportunity for pool owners and operators to assess their obligations under the Final Rule and determine how best to comply. Further, the Department is contemporaneously issuing a Notice of Proposed Rulemaking seeking public comment on whether an even longer period of time to allow pool owners and operators to meet their compliance obligations would be appropriate. Accordingly, this 60-day extension of the compliance date is intended to avoid economic effects and disruption of the existing status quo while enabling public comment and meaningful review of those comments on the question of whether a longer extension of the compliance date is warranted. Thus, the government concludes that the requisite good cause for issuance of this final rule exists, and the requirements for notice and comment are not applicable to this brief extension of the compliance date set forth in the 2010 Final Rule. 5 U.S.C. 553(b).

Additionally, this rule is effective immediately on date of display for public inspection in the **Federal Register**. Section 553(d) of the Administrative Procedures Act requires 30-days notice before the effective date of a final rule. However, section 553(d)(1) allows an exception to the 30-day notice where a rule relieves a restriction. Because this final rule relieves a restriction, in the form of an existing date for compliance with a regulatory requirement, the Department invokes section 553(d)(1) to allow an immediate effective date.

Executive Order 12866—Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132—Federalism

This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), has reviewed this regulation, and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This rule merely extends for 60 days the compliance date of the specified provisions of the title II and title III ADA rules to avoid economic effects and disruption of the existing status quo while enabling public comment and meaningful review of those comments on the question of whether a longer extension of the compliance date is warranted.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-

based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

Paperwork Reduction Act of 1995

This rule does not contain any information collection requirements that require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Dated: March 15, 2012.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2012–6748 Filed 3–15–12; 4:45 pm]

BILLING CODE 4410–13–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 321 and 330

United States Savings Bonds and Notes; Payments

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: Treasury is changing the procedures for financial institutions to transmit and receive settlement for redeemed definitive (paper) savings securities (savings bonds and savings notes) from the EZ Clear system to an image-based securities process through the Federal Reserve. By changing the procedures, Treasury will reduce costs and provide for a more efficient method of processing savings securities through the Federal Reserve. Treasury is making discretionary the payment of fees to paying agents for the processing of redeemed definitive savings securities. Treasury will have the flexibility to adjust paying agent fees and significantly reduce program costs.

DATES: *Effective date:* April 11, 2012.

ADDRESSES: You can download this Final Rule at the following Internet addresses: <*http://www.publicdebt.treas.gov*>, <*http://www.gpo.gov*>, or <*http://www.regulations.gov*>.

FOR FURTHER INFORMATION CONTACT: D. Michael Linder, Director, Division of Program Administration, Office of Retail Securities, Bureau of the Public Debt, at (304) 480–6319 or <*mike.linder@bpd.treas.gov*>.

Ann Fowler, Attorney-Adviser, Brian Metz, Attorney-Adviser, Dean Adams, Assistant Chief Counsel, Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or <*dean.adams@bpd.treas.gov*>.

SUPPLEMENTARY INFORMATION: United States savings securities are non-marketable Treasury securities. Generally, definitive savings securities are redeemed by banks and other financial institutions that are authorized by Treasury as paying agents to redeem eligible savings securities for cash and process those securities in accordance with Treasury regulations and instructions.

Beginning October 1, 1988, Treasury permitted paying agents to transmit and receive settlement for redeemed definitive savings securities through the EZ CLEAR system, under which the securities are manually sorted and mailed to the appropriate Federal Reserve Bank or Branch. Service fees for redeemed definitive savings securities presented through EZ CLEAR are paid to the institution presenting the securities to a Federal Reserve Bank.

Effective April 11, 2012, financial institutions will begin to transition the submission of redeemed definitive savings securities from the EZ CLEAR process to an existing image-based securities process through the Federal Reserve. Use of this existing image-based securities process will enable paying agents to image redeemed definitive savings securities in the same manner as they do for checks and electronically transmit the images to a Federal Reserve Processing Site for payment. The Federal Reserve will provide specific details on the use of the image-based securities process while the Bureau of the Public Debt will provide other detailed instructions to paying agents via its Web site at *www.treasurydirect.gov* and other established means of communication such as FedFlash and FedFocus. The new procedures will enable financial institutions to eliminate the manual sorting of redeemed definitive savings securities and mailing them to a Federal Reserve Bank for clearing. This will simplify and modernize the processing of redeemed definitive savings securities for paying agents.

Treasury will be using a more streamlined, efficient, and cost-effective method for redeeming and processing definitive savings securities through a Federal Reserve Processing Site to which the paying agent is instructed to transmit images of redeemed definitive savings securities for payment. The Federal Reserve Bank of Minneapolis will continue to provide fiscal services as the designated Treasury Retail Securities Site.

The new procedures eliminate exception processing for paying agents and greatly reduce their handling costs. Accordingly, Treasury is making the payment of paying agent fees discretionary, which will allow Treasury the flexibility to adjust paying agent fees and significantly reduce Treasury's program costs. Treasury anticipates that most agents will continue redeeming definitive savings securities as a service to their customers.

Procedural Requirements

Executive Order 12866. This rule is not a significant regulatory action pursuant to Executive Order 12866.

Administrative Procedure Act (APA). Because this rule relates to United States securities, which are contracts between Treasury and the owner of the security, this rule falls within the contract exception to the APA, 5 U.S.C. 553(a)(2). As a result, the notice, public comment, and delayed effective date provisions of the APA are inapplicable to this rule.

Regulatory Flexibility Act. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply to this rule because, pursuant to 5 U.S.C. 553(a)(2), it is not required to be issued with notice and opportunity for public comment.

Paperwork Reduction Act (PRA). We ask for no collections of information in this final rule. Therefore, the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply.

Congressional Review Act (CRA). This rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 *et seq.,* because it is a minor amendment that is expected to decrease costs for taxpayers; therefore, this rule is not expected to lead to any of the results listed in 5 U.S.C. 804(2). This rule will take effect April 11, 2012, after we submit a copy of it to Congress and the Comptroller General.

List of Subjects

31 CFR Part 321

Banks and banking, Federal Reserve System, Government Securities.

31 CFR Part 330

Banks and banking, Federal Reserve System, Government Securities.

Accordingly, for the reasons set out in the preamble, Treasury amends 31 CFR Chapter II, Subchapter B, as follows:

PART 321—PAYMENTS BY BANKS AND OTHER FINANCIAL INSTITUTIONS OF DEFINITIVE UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

■ 1. Revise the authority citation for part 321 to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 321; 31 U.S.C. 3105, 3126.

■ 2. The heading for part 321 is revised to read as set forth above.

■ 3. Revise § 321.0 to read as follows:

§ 321.0 Purpose.

These regulations govern the manner in which financial institutions may qualify and act as paying agents for the redemption of:

(a) Definitive United States Savings Bonds of Series A, B, C, D, E, EE, and I, and United States Savings Notes (Freedom Shares), presented for cash payment; and

(b) Eligible definitive Series E and Series EE savings bonds and savings notes presented for redemption in exchange for Series HH savings bonds under the provisions of Department of the Treasury Circular, Public Debt Series No. 2–80 (31 CFR part 352).

■ 4. Amend § 321.1 by:

■ a. Removing the paragraph designations and arranging the definitions in alphabetical order;

■ b. Removing the definitions for ''Central site,'' ''EZ Clear,'' ''Federal Reserve Bank or Branch,'' ''Mixed cash letter,'' ''Presenting institution,'' and ''Separately sorted cash letter,''; and

■ c. Adding the definitions of ''Definitive security,'' ''Federal Reserve Operating Circular,'' ''*Federal Reserve Processing Site,''* and ''*Federal Reserve Treasury Retail Securities Site* or *TRS Site''* to read as follows:

§ 321.1 Definitions.

* * * * *

Definitive security means a Treasury security held in paper form.

* * * * *

Federal Reserve Operating Circular means the operating circular referred to in § 321.27, issued by the Federal Reserve Banks, that provides instructions on the requirements for submitting definitive redeemed securities to a Federal Reserve Processing Site and sets forth the rights and obligations of paying agents with respect to such securities.

Federal Reserve Processing Site means a Federal Reserve Bank (including any Branch or office thereof, as appropriate) referred to in § 321.26 to which the paying agent, or institution acting on its behalf, is instructed to transmit redeemed securities for payment pursuant to the Federal Reserve Operating Circular.

Federal Reserve Treasury Retail Securities Site or *TRS Site* means a Federal Reserve Bank (including any Branch or office thereof, as appropriate) referred to in § 321.26 that is authorized to qualify paying agents and provide other fiscal agency services consistent with this part.

* * * * *

■ 5. Amend § 321.2, by revising paragraph (a)(3) to read as follows:

§ 321.2 Eligible organizations.

(a) * * *

(3) Are under the supervision of a federal or state regulatory agency or equivalent authority; and

* * * * *

■ 6. Amend § 321.2 by revising paragraph (b) to read as follows:

§ 321.2 Eligible organizations.

* * * * *

(b) An organization that desires to redeem securities must first qualify as a paying agent. An organization that has qualified and is serving as a paying agent must:

(1) Submit redeemed securities directly to a Federal Reserve Processing Site in accordance with the Federal Reserve Operating Circular; and

(2) Have the ability to receive payment of applicable fees by ACH, or arrange to obtain one or more of these services from another financial institution.

■ 7. In § 321.3:

■ a. Amend paragraph (a):

■ i. In the introductory text by adding the paragraph designation ''(1)'' before ''An eligible'' and revising the first sentence;

■ ii. By redesignating paragraphs (a)(1) and (2) as (a)(1)(i) and (ii), respectively; and

■ iii. By designating the undesignated paragraph as (a)(2) and revising it;

■ b. Amend paragraph (b) by revising the first two sentences; and

■ c. Revise paragraphs (c) and (d).

The revisions read as follows:

§ 321.3 Procedure for qualifying and serving as paying agent.

(a) *Execution of application-agreement.* (1) An eligible organization wishing to act as a paying agent shall obtain from, execute, and file an application-agreement with a TRS Site. * * *

* * * * *

(2) For the purpose of these regulations, all eligible institutions shall make application to a TRS Site.

* * * * *

(b) *Qualification.* A TRS Site, as fiscal agent of the United States, is authorized to qualify any eligible organization that possesses adequate authority under its charter to act as paying agent. Upon approval of an application-agreement, a TRS Site will issue a certificate of qualification to the organization. * * *

(c) *Announcement of authority.* Upon receipt of a certificate of qualification from a TRS Site, a financial institution may announce or advertise its authority to redeem eligible securities for cash and to process eligible Series E and EE savings bonds and savings notes presented for redemption in exchange for Series HH savings bonds under the provisions of Department of the Treasury Circular, Public Debt Series No. 2–80 (31 CFR part 352).

(d) *Adverse action.* A TRS Site will notify an organization in writing if its application-agreement to act as paying agent is not approved.

■ 8a. Amend § 321.5 by revising paragraphs (a) and (b) to read as follows:

§ 321.5 Termination of qualification.

(a) *By the Treasury.* The Secretary of the Treasury, or a designee, may authorize a TRS Site to terminate the qualification of any paying agent at any time, following prior written notice of such action to the agent.

(b) *At request of paying agent.* A TRS Site will terminate the qualification of a paying agent upon its written request, provided the agent renders a final accounting for all redeemed securities and is found to have fully complied with the terms of its agreement and the applicable regulations and instructions.

* * * * *

§ 321.7 [Amended]

■ 8b. In § 321.7(e), in the first sentence, remove the reference ''§ 321.1(f)'' and add in its place ''§ 321.1''.

■ 9. Amend § 321.8 by revising paragraph (d) to read as follows:

§ 321.8 Redemption-exchange of Series E and EE savings bonds and savings notes.

* * * * *

(d) *Completion of transaction.* An agent shall transmit for settlement eligible securities redeemed on exchange and, at the same time, forward the exchange application (PD F 3253) and any additional cash needed to complete the transaction to a TRS Site.

■ 10. Revise § 321.13 to read as follows:

§ 321.13 Cancellation of redeemed securities.

A paying agent shall cancel each redeemed security by imprinting the word ''PAID'' on its face and entering the amount and date of the actual payment and the agent's name, location, and four-digit code number assigned by a TRS Site or nine-digit ABA code number. The recordation of this data shall constitute a certification by the agent that the security was redeemed in accordance with the provisions of this part, that the presenter's identity and entitlement to request payment were duly established, and that the proceeds were paid to the presenter or remitted to a TRS Site in payment for Series HH savings bonds.

■ 11. Revise § 321.14 to read as follows:

§ 321.14 Transmittal to and settlement with a Federal Reserve Processing Site.

Except for eligible securities redeemed on exchange pursuant to § 321.8, a paying agent shall transmit for payment all redeemed securities to a Federal Reserve Processing Site in accordance with the Federal Reserve Operating Circular.

■ 12. Revise § 321.16 to read as follows:

§ 321.16 Report of erroneous payment.

If an agent discovers an erroneous payment of securities, it should immediately advise the Bureau of the Public Debt, Parkersburg, WV, as further described in the instructions and guidance issued pursuant to § 321.27.

■ 13. Revise § 321.20 to read as follows:

§ 321.20 Applicability of provisions.

The provisions of this subpart shall apply to securities redeemed by or submitted to any Federal Reserve Processing Site, any TRS Site, or any Treasury office authorized to redeem securities, as well as to paying agents.

■ 14. Revise § 321.22 to read as follows:

§ 321.22 Forwarding securities not payable by an agent.

Any securities an agent is not authorized to pay under the provisions of this part should be forwarded for redemption to a TRS Site. The requests for payment on the securities should be properly certified. Any documentary evidence required to support the transaction should accompany the securities. If the securities are presented for redemption-exchange, they must also be accompanied by a completed and signed exchange subscription and additional cash needed to complete the transaction. Unpaid securities must be forwarded to a TRS Site in accordance with the rules in this part. The Bureau of the Public Debt provides agents with instructions and guidance regarding forwarding items. These instructions identify the specific types of redemption cases that should be forwarded and the processing instructions that paying agents must follow. These instructions are available from a TRS Site or online at *www.treasurydirect.gov*.

■ 15. Revise § 321.23 to read as follows:

§ 321.23 Paying agent fees and charges.

(a) *Fees.* Fees may be paid as outlined in this section. A schedule setting out the fees, and the basis on which they are computed and paid, is separately published in the **Federal Register**. Current information is available from a TRS Site or online at *www.treasurydirect.gov*.

(b) *Discontinuance, reduction, or delay in fees.* The Secretary may authorize, upon notice in the **Federal Register**, the discontinuance, reduction, or delay of fee payments.

(c) *Charges to presenters.* A paying agent shall not make any charge whatever to persons entitled to request payment of securities, for redeeming them under the provisions of this part.

■ 16. Revise § 321.25 to read as follows:

§ 321.25 Payment and retention of definitive securities.

The definitive security must be presented and surrendered to the paying agent in order to receive payment. An agent is prohibited from accepting an image, or other copy or reproduction of the definitive security, for redemption or processing. To ensure that all transactions processed by agents are properly validated, agents must establish and comply with a retention period for definitive securities that are truncated and converted to an electronic image. At a minimum, the agent must retain such securities for a period of thirty calendar days following the date that the agent submitted the electronic image of the paid security to a Federal Reserve Processing Site. Agents may establish longer retention periods for definitive securities at their discretion.

§§ 321.26 and 321.27 [Redesignated as §§ 321.28 and 321.29]

■ 17. Redesignate §§ 321.26 and 321.27 as §§ 321.28 and 321.29, respectively.

■ 18. Add a new § 321.26 to read as follows:

§ 321.26 Role of Federal Reserve Banks.

Federal Reserve Banks (including any Branch or office thereof, as appropriate) perform services as fiscal agents of the United States. These Federal Reserve Banks shall perform such services in connection with this part as may be requested by the Secretary of the Treasury, or a designee. These Federal Reserve Banks are authorized and directed to perform such duties, including the issuance of supplemental instructions and forms, as may be necessary to fulfill the purposes and requirements of these regulations. The instructions and guidance issued pursuant to § 321.27 set forth each Federal Reserve Bank that has been designated as a Federal Reserve Processing Site or as a TRS Site by the Secretary of the Treasury, or a designee.

■ 19. Add a new § 321.27 to read as follows:

§ 321.27 Instructions and guidance.

(a) The Bureau of the Public Debt will provide Federal Reserve Processing Sites, TRS Sites, and paying agents with instructions and guidance on how to process redemption transactions. This information is available online at the Bureau of the Public Debt's Web site at *www.treasurydirect.gov*, Federal Reserve Processing Sites, and TRS Sites. Paying agents must follow these instructions and guidance.

(b) The Federal Reserve Operating Circular sets forth additional rights and obligations of paying agents with respect to redemption transactions. Additional instructions and guidance are available online at the Federal Reserve Bank Services Web site at *www.FRBservices.org*.

(c) Paying agents are required to process redemptions in accordance with the terms and conditions cited in paragraphs (a) and (b) of this section. The Secretary of the Treasury, or a designee, reserves the right to hold an agent liable whose failure to follow these instructions results in an incorrect amount being paid for a redeemed security.

* * * * *

■ 20. Amend the appendix to part 321:

■ a. Under ''Subpart B'' by:

■ i. Revising paragraph 4; and

■ ii. Revising the first sentence of paragraph 5

■ b. Under ''Subpart C,'' in paragraph 9, by revising the first sentence of paragraph (a);

■ c. Under ''Subpart D'' by:

■ i. Revising, under paragraph 13, paragraphs (a) and (b);

■ ii. Revising, under paragraph 14, paragraphs (a), (b), and (d);

■ iii. Revising paragraph 15;

■ iv. Removing paragraphs 16 and 17; and

■ v. Redesignating paragraph 18 as paragraph 16 and revising it;

■ d. Under ''Subpart E'' by:

■ i. Revising the Subpart E heading;

■ ii. Redesignating paragraphs 19 through 22 as paragraphs 17 through 20, respectively; and
■ iii. Revising newly redesignated paragraph 17;
■ e. Under ''Subpart F'' by redesignating paragraph 23 and paragraph 21 and revising its heading, paragraphs (a) and (d), and revising the last sentence of paragraph (e);
■ f. Under ''Subpart G'' by:
■ i. Redesignating paragraphs 24 through 26 as paragraphs 22 through 24 respectively;
■ ii. Revising newly redesignated paragraphs 22 and 23;
■ iii. Adding new paragraph 25; and
■ iv. Redesignating paragraph 27 and paragraph 26 and revising it.
■ The revisions and addition read as follows:

Appendix to Part 321—Appendix to Department of the Treasury Circular No. 750, Fourth Revision

Fiscal Service, Bureau of the Public Debt

* * * * *

Subpart B—Procedures for Qualification

* * * * *

4. *Paying agent code numbers.* [§§ 321.3(b) and 321.13] The TRS Site may assign a four-digit code number to each agent it qualifies. A separate number may be assigned to each branch of the paying agent authorized to redeem and submit redeemed securities for its own account at a TRS Site. At the paying agent's request, only one four-digit code will be assigned for use by all of its branches.

5. *Requalification.* [§ 321.3(b)] If there has been a change in the corporate name of an agent, whether through merger, consolidation, sale of assets, or in any other manner, the agent may be asked by a TRS Site to requalify to reflect the change. * * *

* * * * *

Subpart C—Scope of Authority

* * * * *

9. * * *

(a) * * * Securities that an agent may not redeem because of the limitations in § 321.9 should be forwarded to a TRS Site for handling. * * *

* * * * *

Subpart D—Payment and Transmittal of Securities

* * * * *

13. * * *

(a) *Redemption value tables.* [§ 321.12] The Bureau of the Public Debt distributes redemption values in various formats and as parts of programs for personal computers, for: (1) Series E savings bonds, (2) Series EE savings bonds, (3) Series I savings bonds, and (4) savings notes. Additional tables or information may be requested from a TRS Site.

(b) *Use of tables.* [§ 321.12] Care should be exercised to correctly determine the current redemption value of the security presented for the month in which it is redeemed. Incorrect payments can lead to costly and time-consuming adjustments for the agent, Department of the Treasury, and a TRS Site.

* * * * *

14. * * *

(a) *Paying agent stamp.* [§ 321.13] Each redeemed security must be cancelled by the imprint of a payment stamp. The stamp may not exceed 1⅛ inches in any dimension and must include the following information in the arrangement shown:

Paid $_____ (for recording amount paid)
Name, location, and four-digit paying agent code number assigned by a TRS Site (subject to abbreviation and arrangement by a TRS Site) or ABA code number.
Date _____ (for recording actual date of payment).
By _____ (for use by agent in recording initials, or signature, codes, symbols, etc., of the officer or employee who approved or made the payment.)

(b) *Procurement of stamps.* [§ 321.12] A paying agent may requisition stamps from a TRS Site or purchase its own stamps. Stamps not provided by a TRS Site must conform exactly in size to that prescribed or approved by a TRS Site. To insure legible impressions, stamps should be replaced when worn.

* * * * *

(d) *Redemption-exchange.* [§ 321.13] Eligible Series E and EE savings bonds and savings notes presented for redemption-exchange shall be stamped ''PAID'' in the same manner as securities redeemed for cash, but only when all elements of the transaction have been completed, including the receipt of any additional cash. The exact date of redemption shall also be recorded on the exchange subscription to enable a TRS Site to establish the proper issue date for the Series HH savings bonds. An officer or authorized employee of the agent shall also sign the exchange subscription, in his or her official capacity, and furnish other requested information that identifies the paying agent.

* * * * *

15. *Transmittal of securities to a Federal Reserve Processing Site.* [§ 321.14] An agent shall transmit and settle a redeemed security in accordance with the rules and instructions set forth in the Federal Reserve Operating Circular.

16. *Record of securities paid.* [§§ 321.14 and 321.24] A record of the serial number, amount paid, and any other information necessary to complete the form for an ''Application for Relief Due to the Loss, Theft, or Destruction of Paid United States Savings Bonds/Notes'' (PD F 2517) must be retained by the agent for each definitive security sent to a Federal Reserve Processing Site. Copies or other records of the front and back of a paper savings bond must be kept confidential, and prints of the bond may be made only with the permission of the Bureau of the Public Debt or a TRS Site.

Subpart E—Losses Resulting from Erroneous Payments [§ 321.16]

17. *Report of erroneous payment.* Any erroneous payment that comes to the attention of an agent should be reported immediately to the Bureau of the Public Debt, Parkersburg, WV, as further described in the instructions and guidance issued pursuant to § 321.27.

* * * * *

Subpart F—Forwarding Items

21. *Securities forwarded to a TRS Site for payment.* [§ 321.22]

(a) *General.* [§ 321.22] Securities presented for cash payment or redemption-exchange that an agent is not authorized to redeem shall be forwarded to a TRS Site, with all required supporting documentation and any necessary payment instructions.

* * * * *

(d) *Redemption-exchange.* [§ 321.22] For redemption-exchange transactions submitted as forwarding items, the issue date of the Series HH savings bonds will be the first day of the month in which a correctly completed and signed exchange subscription and full payment are received by a TRS Site.

(e) *Partial redemption.* [§§ 321.9(l) and 321.22] * * * The security shall be forwarded to a TRS Site.

Subpart G—Miscellaneous Provisions

22. *Fees and charges.* [§ 321.23] Service fees are not intended to compensate paying agents for the reporting of interest paid as part of the redemption value of securities as required by Federal Tax Regulations (26 CFR 1.6049–4). Fees may be paid as set out in § 321.23.

23. *Claims on account of lost securities.* [§ 321.24] If a security redeemed by an agent is lost, stolen, or destroyed while in the custody of the agent, or in transit prior to settlement or audit, relief will be considered, provided the security can be identified by serial number. [See paragraph 16 of this Appendix regarding the maintenance of records of redeemed securities.] The agent should resubmit a facsimile of the security to obtain settlement in accordance with established procedures. Questions concerning the established procedures should be referred to a TRS Site.

* * * * *

25. *Payment and retention of definitive securities.* [§ 321.25] The definitive security must be presented to the agent in order to receive payment. An agent is prohibited from accepting an image, or other copy or reproduction of the definitive security, for redemption or processing. To ensure that all transactions processed by agents are properly validated, agents must establish and comply with a retention period for definitive securities that are truncated and converted to an electronic image. At a minimum, the agent must retain such definitive securities for a period of thirty calendar days following the date that the agent submitted the electronic image of the paid security to a Federal Reserve Processing Site. Agents may establish longer retention periods for definitive securities at their discretion.

(a) Example: if the agent paid the presenter of a security on May 7, 2012, and submitted the security's electronic image to a Federal Reserve Processing Site on May 11, 2012, then the retention requirements would obligate the agent to retain the definitive security, at a minimum, until June 10, 2012.

(b) During the specified retention period, agents must store the securities under

suitably secured conditions that safeguard customer information. Specifically, the securities must be stored in a secured location with physical, procedural, and systemic controls in place to ensure that access to the securities is restricted to authorized personnel and that the securities are protected from loss, theft, destruction, and unauthorized or inadvertent viewing.

(c) At the end of the retention period, agents must destroy the securities in a manner that safeguards customer information. Specifically, securities must be destroyed by burning, mulching, pulping, pulverizing, or shredding beyond recognition and reconstruction.

26. *Additional information.* [§ 321.26] Requests for additional advice, clarification of the payment regulations or this Appendix, and other matters relating to the actions of a financial institution as paying agent should generally be made to a TRS Site.

PART 330—REGULATIONS GOVERNING PAYMENT UNDER SPECIAL ENDORSEMENT OF DEFINITIVE UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

■ 21. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3105.

■ 22. Revise § 330.0 to read as follows:

§ 330.0 Purpose.

The regulations in this part establish a procedure under which qualified paying agents may specially endorse definitive United States Savings Bonds of certain series and United States Savings Notes (Freedom Shares), and either redeem the securities so endorsed, or forward them to a TRS Site for redemption, with or without the owner's signature to the request for payment.

■ 23. Amend § 330.1 by:

■ a. Removing the paragraph designations and arranging the defintions in alphabetical order;

■ b. Removing the definition for ''Federal Reserve Bank or Bank'';

■ c. Adding the definitions of ''Definitive security,'' ''Federal Reserve Processing Site,'' and ''Federal Reserve Treasury Retail Securities Site or TRS Site''; and

■ d. Revising the definitions of ''Savings bond(s) or bond(s),'' ''Security or securities,'' and ''Special endorsement''.

The additions and revisions read as follows:

§ 330.1 Definition of terms.

* * * * *

Definitive security means a Treasury security held in paper form.

* * * * *

Federal Reserve Processing Site means a Federal Reserve Bank (including any Branch or office thereof, as appropriate) referred to in 31 CFR part 321, to which the paying agent, or institution acting on its behalf, is instructed to transmit redeemed securities for payment pursuant to the Federal Reserve Operating Circular.

Federal Reserve Treasury Retail Securities Site or *TRS Site* means a Federal Reserve Bank (including any Branch or office thereof, as appropriate) referred to in 31 CFR part 321, that is authorized to qualify paying agents, provide customer service, and provide other fiscal agency services under the provisions of this part. See § 330.9.

* * * * *

Savings bond(s) or *bond(s)* means a definitive United States Savings Bond of Series A, B, C, D, E, EE, or I.

* * * * *

Security or *securities* means a savings bond or savings note, as defined in paragraphs (h) and (i) of this section.

Special endorsement means a procedure under which a security is redeemed by an agent, qualified under the provisions of this part, for cash or on redemption-exchange (or forwarded for redemption to a TRS Site), utilizing a special stamp placed on the security in lieu of a request for payment signed by the owner.

■ 24. Amend § 330.3 by revising the first sentence of the endorsement in paragraph (a) and revising paragraph (b) to read as follows:

§ 330.3 Special endorsement of securities.

(a) * * *

Request by owner and validity of transaction guaranteed in accordance with Treasury Department Circular No. 888, as revised. (Name, location and paying agent code number assigned by a TRS Site.)

* * * * *

(b) *Endorsement stamps.* Endorsement stamps may be obtained from a TRS Site or, with its approval, purchased by the agent. Requests for stamps to be furnished or approved by a TRS Site must be made in writing by an officer of the paying agent. Stamps procured by an agent may not exceed a space bounded by 1¾ inches vertically and 3 inches horizontally. They must follow exactly the wording prescribed. They may also include space for the transaction date and the initials or signature of the officer or employee authorized to approve the transaction.

* * * * *

■ 25. Revise § 330.4 to read as follows:

§ 330.4 Guaranty given to the United States.

By the act of paying or submitting to any Federal Reserve Processing Site, any TRS Site, or any Treasury office authorized to redeem securities, a security on which it has affixed the special endorsement, a paying agent shall be deemed to have:

(a) Unconditionally guaranteed to the United States the validity of the transaction, including the identification of the owner and the disposition of the proceeds or the new bonds, as the case may be, in accordance with the presenter's instruction;

(b) Assumed complete and unconditional liability to the United States for any loss which may be incurred by the United States as a result of the transaction; and

(c) Unconditionally agreed to make prompt reimbursement for the amount of any loss, upon request of the Department of the Treasury.

■ 26. Amend § 330.6, by revising paragraph (c) to read as follows:

§ 330.6 Securities eligible for special endorsement.

* * * * *

(c) *Securities owned by nonresident aliens.* As securities owned by a nonresident alien individual, or a nonresident foreign corporation, partnership, or association, may be subject to the nonresident alien withholding tax, bonds and notes held or received by an agent for the account of such owners must be forwarded to a TRS Site for redemption, even though the agent may specially endorse the securities.

■ 27. Amend § 330.7 by removing the last two sentences of the section and adding a new last sentence to read as follows:

§ 330.7 Payment or redemption-exchange by agent.

* * * Securities so paid should be combined with other securities paid under that Circular and presented for settlement in accordance with 31 CFR part 321.

■ 28. Revise § 330.8 to read as follows:

§ 330.8 Payment or redemption-exchange by a TRS Site.

Specially endorsed securities that an agent is not authorized to redeem for cash or on exchange should be forwarded to a TRS Site in accordance with the instructions set forth in 31 CFR part 321. The transmittals must be accompanied by appropriate instructions governing the transaction and the disposition of the redemption proceeds. The securities must be kept

separate from other securities the agent has paid and must be submitted in accordance with instructions issued by the Bureau of the Public Debt and/or its fiscal agents.

■ 29. Revise § 330.9 to read as follows:

§ 330.9 Fiscal agents.

Federal Reserve Banks (including any Branch or office thereof, as appropriate) perform services as fiscal agents of the United States. These Federal Reserve Banks shall perform such services in connection with this part as may be requested by the Secretary of the Treasury, or a designee. These Federal Reserve Banks are authorized and directed to perform such duties, including the issuance of supplemental instructions and forms, as may be necessary to fulfill the purposes and requirements of these regulations. The instructions and guidance issued pursuant to § 321.27 set forth each Federal Reserve Bank that has been designated as a Federal Reserve Processing Site or as a TRS Site by the Secretary of the Treasury, or a designee.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2012–6351 Filed 3–19–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control is amending the Iranian Transactions Regulations to redefine the term *entity owned or controlled by the Government of Iran* to substantially conform to the definition in the amended Iranian Financial Sanctions Regulations.

DATES: *Effective:* March 20, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

By a separate rulemaking, the Department of the Treasury's Office of Foreign Assets Control (''OFAC'') has amended the Iranian Financial Sanctions Regulations, 31 CFR part 561 (the ''IFSR''), and reissued them in their entirety, to implement section 1245(d) of the National Defense Authorization Act for Fiscal Year 2012. In the amended IFSR, OFAC defined the term *entity owned or controlled by the Government of Iran* in a way that differs slightly from the definition of the term in the Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''). To ensure that the term *entity owned or controlled by the Government of Iran* is defined consistently in these Iran sanctions programs, OFAC also is amending the ITR to more closely conform the definition in section 560.313 of the ITR to the one in section 561.322 of the IFSR. OFAC intends to issue more thorough amendments to the ITR to implement Executive Order 13599 of February 5, 2012 (''Blocking Property of the Government of Iran and Iranian Financial Institutions'')(''E.O. 13599''), at a later date. See 77 FR 7660 (Feb. 13, 2012), for a Notice containing additional information on E.O. 13599 and OFAC general and specific licenses set forth in or issued pursuant to the ITR.

Public Participation

Because the ITR involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the ITR are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 560

Administrative practice and procedure, Banks, Banking, Brokers, Foreign Trade, Investments, Loans, Securities, Iran.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 560 as follows:

PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 1. The authority citation to part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 22 U.S.C. 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart C—General Definitions

■ 2. Revise § 560.313 to read as follows:

§ 560.313 Entity owned or controlled by the Government of Iran.

The term *entity owned or controlled by the Government of Iran* includes any corporation, partnership, association, or other entity in which the Government of Iran owns a 50 percent or greater interest or a controlling interest, and any entity which is otherwise controlled by that government.

Dated: March 9, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–6606 Filed 3–19–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0154]

Safety Zones; Recurring Events in Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones in the Sector New York area of responsibility on various dates and times. This action is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port (COTP).

DATES: The regulations for the safety zones described in 33 CFR 165.160 will be enforced on the dates and times listed in the table below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Ensign Kimberly Farnsworth, Coast Guard; telephone 718–354–4163, email *Kimberly.A.Farnsworth@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.160 on the specified dates and times as indicated in Table 1 below. If the event is delayed by inclement weather, the regulation will be enforced on the rain date indicated in Table 1 below. These regulations were published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

1. Allied PRA Fireworks, Liberty Island Safety Zone, 33 CFR 165.160(2.1).	• *Launch site:* A barge located in approximate position 40°41′16.5″ N, 074°02′23″ W (NAD 1983), located in Federal Anchorage 20–C, about 360 yards east of Liberty Island. • Date: April 20, 2012. • Time: 10 p.m.–11:15 p.m.
2. N.E.C.O., Awards Fireworks, Liberty Island Safety Zone, 33 CFR 165.160(2.1).	• *Launch site:* A barge located in approximate position 40°41′16.5″ N, 074°02′23″ W (NAD 1983) located in Federal Anchorage 20–C, about 360 yards east of Liberty Island. • Date: May 12, 2012. • Rain Date: May 13, 2012. • Time: 11 p.m.–12:10 a.m.
3. Town of North Hempstead Fireworks, Hempstead Harbor Safety Zone, 33 CFR 165.160(3.9).	• *Launch site:* A barge located in approximate position 40°49′50″ N, 073°39′12″ W (NAD 1983), approximately 190 yards north of Bar Beach, Hempstead Harbor, NY. • Date: May 26, 2012. • Time: 9 p.m.–10:20 p.m.
4. Girl Scouts 100th Anniversary Fireworks, South Ellis Island Safety Zone, 33 CFR 165.160(2.2).	• *Launch site:* A barge located in approximate position 40°41′45″ N, 074°02′09″ W (NAD 1983) about 365 yards east of Ellis Island. • Date: June 23, 2012. • Time: 9:15 p.m.–10:30 p.m.
5. City of Glen Cove Fireworks, Hempstead Harbor Safety Zone, 33 CFR 165.160(3.9).	• *Launch site:* A barge located in approximate position 40°49′50″ N, 073°39′12″ W (NAD 1983), approximately 190 yards north of Bar Beach, Hempstead Harbor, New York. • Date: July 4, 2012. • Rain Date: July 7, 2012. • Time: 8:45 p.m.–10:05 p.m.
6. Larchmont Yacht Club, Larchmont Harbor, Western Long Island Sound Safety Zone, 33 CFR 165.160(3.3).	• *Launch site:* A barge located in approximate position 40°54′45″ N, 073°44′55″ W (NAD 1983), approximately 450 yards southwest of the entrance to Horseshoe Harbor. • Date: July 4, 2012. • Rain Date: July 5, 2012. • Time: 9 p.m.–10:20 p.m.
7. City of Poughkeepsie, Hudson River Safety Zone, 33 CFR 165.160(5.13).	• *Launch site:* A barge located in approximate position 41°42′24.5″ N, 073°56′44.1″ W (NAD 1983) about 420 yards north of Mid-Hudson Bridge. • Date: July 4, 2012. • Rain Date: July 5, 2012. • Time: 8:30 p.m.–10 p.m.
8. Breezy Point Cooperative Fireworks, Rockaway Inlet Safety Zone, 33 CFR 165.160(2.8).	• *Launch site:* A barge located in approximate position 40°34′28.2″ N, 073°50′00″ W (NAD 1983), 350 yards off of Beach 116th Street. • Date: July 6, 2012. • Rain Date: July 7, 2012. • Time: 9 p.m.–10:22 p.m.

Under the provisions of 33 CFR 165.160, a vessel may not enter the regulated area unless given express permission from the COTP or the designated representative. Spectator vessels may transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: March 6, 2012.

G.P. Hitchen,

Captain, U.S. Coast Guard Acting Captain of the Port New York.

[FR Doc. 2012–6659 Filed 3–19–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 67

[Docket No. USCG–2010–1124]

Application for Foreign Rebuilding Determination

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and response to comments.

SUMMARY: On February 25, 2011, the Coast Guard published a document seeking comments on a petition for rulemaking to amend the Coast Guard regulation concerning foreign-rebuilt determinations for vessels entitled to a coastwise trade endorsement. Under the Jones Act, to maintain a coastwise trade endorsement, a vessel must not be rebuilt outside the United States. This document responds to the comments we received on our February 25, 2011 request for comments, and announces the availability of our response to the petitioners denying their petition.

DATES: On March 13, 2012, the Coast Guard denied the December 9, 2010 petition to amend 46 CFR 67.177.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this document as being available in the docket, are part of docket USCG–2010–1124 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket online by going to *http://www.regulations.gov,* inserting USCG–2010–1124 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email Lieutenant Commander Erin Ledford, Executive Secretary, Maritime Safety and Security Council, U.S. Coast Guard; telephone 202–372–3857, email *Erin.H.Ledford@uscg.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

In a petition dated December 9, 2010, Marc J. Fink, on behalf of a coalition of maritime organizations, petitioned the Coast Guard to amend 46 CFR 67.177, Application for foreign rebuilding determination. On February 25, 2011, we published a document in the **Federal Register** (76 FR 10553) seeking comments on that petition for rulemaking.

The regulation the petition seeks to amend sets the parameters for rebuilt-foreign determinations and directs when vessels with coastwise trade endorsements whose hulls or superstructure are altered outside the United States must submit a written statement to the National Vessel Documentation Center. Section 67.177 also states when vessel owners considering such alterations may seek a preliminary rebuilt determination.

Under 46 U.S.C. 12132(b), to maintain a coastwise endorsement a vessel must not be rebuilt outside the United States. For definitions of ''coastwise endorsement'' and ''rebuilt in the United States,'' *see* 46 U.S.C. 12101.

We received five submissions in response to our February 25, 2011 request for comments, and have responded to these comments below. After considering these comments we responded to the petitioners in a letter.

As reflected in that letter, we concluded that amendments to 46 CFR 67.177 are neither needed nor desired, and therefore we denied the petition. The petition and its three exhibits, along with our letter responding to the petition, are available in the docket as indicated under **ADDRESSES**.

Discussion of Comments

All five submissions to the docket in response to our February 25, 2011 document, including a submission from the petitioners, supported the petition. Four of the five specifically requested that that we move forward expeditiously with a rulemaking in order to clarify what types and amounts of foreign shipyard work on vessels are allowed under the Merchant Marine Act of 1920, known as the Jones Act, 41 Stat. 988, c. 250; *see* specifically 46 U.S.C. §§ 12101, 12112, 12132(b), and 55102.

In their submission in response to the request for comments, the petitioners stated that amending § 67.177 is necessary to resolve a number of industry disputes over what types and amounts of foreign shipyard work on vessels are and are not permissible under the Jones Act. The petitioners also stated that amending § 67.177 as they proposed would be beneficial because this regulation would then—

- Specifically define ''major component,'' and thus clarify what constitutes a major component.
- Establish clear and uniform guidance to the industry regarding the Coast Guard's standards for determining when certain work on a vessel in a foreign shipyard constitutes a rebuilding of that vessel pursuant to the Second Proviso to the Jones Act.
- Resolve ambiguities and open questions in the current rules that are currently left unanswered by mixed court decisions, including what is the relationship between the ''major component'' test and the ''considerable part'' test.

A shipyard company stated that a definition of what constitutes a major component is needed for purposes of determining whether a vessel is rebuilt, and of when subassemblies individually added to a vessel become, in totality, a major component. This company noted that the existing discretionary rebuild test of 7.5 to 10 percent of hull or superstructure steel weight is ambiguous when applied to a vessel modification for purposes of evaluating compliance with the Jones Act, and that amending this provision to establish a single threshold for applying the rebuild test will significantly improve the conflicting interpretations of compliance that currently exist.

The Coast Guard believes that, as a result of the recent decision of the Fourth Circuit Court of Appeals in *Shipbuilders Council of America* v. *U.S. Coast Guard,* 578 F.3d 234 (2009) involving the SEABULK TRADER, certainty and predictability have been achieved on the foreign rebuild regulation, and particularly its major component test and the relationship between that test and the corresponding ''considerable part test''. The Coast Guard believes there is now a settled understanding of the interpretation of 46 CFR 67.177 to a greater degree than there has been over the course of many years of attempts to address this contentious issue.

The Coast Guard notes that the current regulation was promulgated after controversy surrounding the previous attempt to regulate on this subject. That previous regulation—46 CFR 67.27–3, Required application for rebuilt determination (1988)—was challenged in court and overturned in 1989. *See American Hawaii Cruises* v. *Skinner,* 713 F.Supp. 452 (D.D.C. 1989). The current regulation was then issued in 1996, in response to that successful challenge. *See* 60 FR 17290, April 5, 1995, and 61 FR 17814, April 22, 1996. However, it was also challenged in court in the SEABULK TRADER case in 2006, with initial success at the District Court level. *See Shipbuilders Council of America* v. *U.S. Dept. of Homeland Sec.,* 551 F.Supp.2d 447 (E.D.Va. 2008). But this time the Fourth Circuit Court of

Appeals reversed that District Court decision and held, instead, that the Coast Guard's ''interpretive scheme has the great virtue of construing each provision of the regulation to have functional significance'' and, further, that its interpretation ''offers a holistic vision of the regulation that gives effect to each of its provisions.'' *Id.* at 245. Thus, the current regulation now enjoys the strong imprimatur of support, giving rise to certainty and predictability in its interpretation, by a Court of Appeals of the United States.

The petitioners may disagree with the substance and effect that the clarity established by the Fourth Circuit Court of Appeals has revealed. However, the changes sought by the petition would, in the name of clarity, change the substantive outcomes of Coast Guard determinations and upset a regulatory regime that has been in place since 1996.

Prior to the decision by the Fourth Circuit Court of Appeals, and the Coast Guard determinations that it affirmed, the foreign rebuild regulation may have appeared to some to be less than clear. However, that lack of clarity related less to the lack of a definition of ''major component,'' which is the centerpiece of petitioners' proposal, and more so to a structural tension in the rule itself; specifically, the uneasy combination of a quantitative test (the considerable part test) with a qualitative test (the major component test). The Fourth Circuit Court of Appeals examined the Coast Guard's balancing of these tests and, as noted above, found that the Coast Guard's interpretive scheme had resolved those tensions.

For example, among the items deemed by petitioner's proposed rule to be major components are container racks. Even by petitioner's definition, major components are components of the hull or superstructure of a vessel. However, ''hull'' and ''superstructure'' remain defined terms at 46 CFR 67.3 and, in both cases, the central characteristic for any item to be considered a component of either is that it be structural in nature. It has long been the case that container racks (excluding their foundations, pedestals or required reinforcements) have been determined by the Coast Guard National Vessel Documentation Center (NVDC), aided with technical support from naval architects and marine engineers at the Coast Guard Naval Architecture Division (NAD), to be non-structural ''outfit.'' As such, they would be and have been excluded from consideration under the major component test as well as, for that matter, from the calculation of the considerable part test. For a recent analysis of the structural or non-structural nature of container racks see the NVDC's U.S. build determination letter dated August 1, 2011, and accompanying analysis of the NAD dated July 15, 2011, in the case of a NASSCO flat-deck container barge, both of which are now posted on the NVDC Web site, *http://www.uscg.mil/hq/cg5/nvdc/,* under ''Latest News''.

Consequently, while apparently retaining the requirement that major components must be structural components of the hull or superstructure, petitioners would nevertheless, as part of the same definition, specifically deem an item, long-established by expert analysis to be non-structural in nature, to be a major component. Including this specific item (the container rack) as a major component in the definition by regulatory fiat, would be inconsistent with Coast Guard prior practice; it would also be inconsistent with the proposed rule itself. While acknowledging the requirement that major components of the hull and superstructure must, at the very least, have a structural characteristic, the proposal would completely revamp that basic understanding.

The petitioners' proposed amendments, in the name of clarity, seek to re-balance the ''holistic approach'' found to characterize the current rule and its interpretation by the Fourth Circuit Court of Appeals. By expanding the definition of ''major component'' it would give significantly greater weight to the major component test over the considerable part test. The reason for this effect is that the steelweight percentage threshold for an item to be considered a major component is 1.5 percent, while the steelweight percentage threshold of the considerable part test (even if amended as the petitioners' propose) is 10 percent. Consequently, by expanding the scope of what would be deemed a major component, it would become far more likely that proposed foreign work would be barred by that 1.5 percent threshold without even having to take into account the 10 percent threshold.

The NVDC's regulatory interpretations have been quite clear and consistent. In making its determinations, it considers the greater of steel added or steel removed. This is the conservative middle ground between those in industry who have advocated, on the one hand, that we consider both steel added and steel removed, and those who have advocated, on the other hand, that we consider only the net of steel added and steel removed.

The petitioners' proposed amendments would introduce other substantive changes. For example, the Coast Guard believes that none of the determinations leading up to the increase in Agency appeals, litigation and Court appeals of the last few years (including the MOKIHANA, SEABULK TRADER, SEABULK CHALLENGE, DELAWARE TRADER, PHILADELPHIA and NEW YORK) would be decided the same way under the petitioners' proposed amendments.

In addition, petitioner's proposal would establish new and onerous procedural impediments to any applicant seeking to have work done at a foreign shipyard. Their proposal would make the process slower, more cumbersome, inflexible, conducive to adversarial disputes and appeals by third parties—whether or not directly affected, and more resource-intensive for the Coast Guard.

For example, new determinations would be required as to whether proposed work was, or was not, casualty-related as well as whether no shipyard in the United States is capable or available to perform the desired work. Notices as to all actions and proposed actions would have to be posted in the **Federal Register**. As already mentioned, appeals would be opened and available to any person, without regard to whether or not they are directly affected by the determination. The Coast Guard would be obligated, somehow, to compel parties to enter into protective orders in connection with those appeals and, of course, it would then be incumbent upon the Coast Guard to police and enforce violations of those protective orders.

Moreover, virtually all applicants consider the information submitted to the Coast Guard in connection with requests for foreign rebuild determinations to be highly proprietary. When those determinations have been contested in the past, including in all of the cases already mentioned, they have been contested by direct commercial competitors of those applicants. Consequently, even a protective order might not offer sufficient proprietary protection to a potential applicant.

The effect of these procedural changes would be to present additional impediments, and thus, likely discourage potential applicants from even applying in the first place.

Finally, because of—

- The substantive re-balancing at the heart of the petition which would raise the bar (by lowering the applicable steelweight percentage in most cases) for any foreign work,

• The inclusion of items as major components which have never before been so included because they represent non-structural ''outfit,''

• The procedural impediments which would have the effect of discouraging applicants, and

• Other more restrictive measures, such as the proposal to take into account the weight of both the steel added and the steel removed rather than the greater of the weight of either the steel added or the steel removed,

alone or in combination, by amending the current regulation as petitioners propose may cause other countries to challenge the continued applicability of the exemption from certain provisions of the General Agreement on Tariffs and Trade 1994 (''GATT 1994'') that the Jones Act statutes and regulations currently enjoy.

The Coast Guard understands that the national treatment obligation in the GATT 1994 requires the United States to treat imported goods no less favorably than domestic goods, including with regard to the sale, lease and use of the goods. Vessels engaged in the coastwise trade are considered goods for purposes of the GATT 1994.

The United States has a specific exemption from the national treatment and certain other obligations of the GATT 1994 for the Jones Act statutes and measures, such as the Coast Guard regulations implementing those statutes. That exemption is contained in paragraph 3 of the GATT 1994. Any changes to the Jones Act statutes or measures implementing those statutes must not make them less consistent with GATT 1994.

For a more detailed response to the specific amendments proposed by the petitioners, please see the March 13, 2012 letter in the docket responding to the petition for rulemaking. This document is issued under authority of 33 CFR 1.05–20 and 5 U.S.C. 552(a).

Dated: March 13, 2012.

F.J. Kenney,

RDML, U.S. Coast Guard, Judge Advocate General, Chairman, Marine Safety and Security Council.

[FR Doc. 2012–6588 Filed 3–19–12; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 77, No. 54
Tuesday, March 20, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2011–0299]

RIN 3150–AJ08

Station Blackout

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing this Advance Notice of Proposed Rulemaking (ANPR) to begin the process of considering amendments of its regulations that address a condition known as station blackout (SBO). SBO involves the loss of all onsite and offsite alternating current (ac) power at a nuclear power plant. The NRC seeks public comment on specific questions and issues with respect to possible revisions to the NRC's requirements for addressing SBO conditions to develop new SBO requirements and a supporting regulatory basis. This regulatory action is one of the near-term actions based on lessons-learned stemming from the March 2011 Fukushima Dai-ichi accident in Japan.

DATES: Submit comments by May 4, 2012. Comments received after the comment period deadline will be considered if it is practical to do so, but the NRC is only able to ensure consideration of comments received on or before the end of the public comment period. Due to priority of this regulatory action and the associated effort on the part of the Commission to expedite the action, the Commission will not accept requests for extensions of the public comment period unless extraordinary circumstances exist.

ADDRESSES: Please include Docket ID NRC–2011–0299 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0299. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive a reply email confirming that we have received your comments, contact us directly at 301–415–1677.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone: 301–415–1677.)
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

FOR FURTHER INFORMATION CONTACT: Timothy A. Reed, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1462, or email: *Timothy.Reed@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information
II. Fukushima Dai-ichi Event and the NRC Regulatory Response
III. Background
A. General Design Criteria 2 and 17
B. Station Blackout Rule
C. Petition for Rulemaking on Station Blackout Due to Coronal Mass Ejection
D. Mitigating Strategies
IV. Discussion and Request for Public Comment
A. Advance Notice of Proposed Rulemaking Purpose
B. Rulemaking Scope
C. Rulemaking Objectives/Success Criteria
D. Functional Considerations and Requirements for Supporting Structures, Systems, and Components and Procedures
E. Applicability to NRC Licenses and Approvals
F. Relationship Between Existing Station Blackout Requirements in Title 10 of the *Code of Federal Regulations* Section 50.63 and the New Station Blackout Requirements
G. Advisory Committee on Reactor Safeguards Recommendations
V. Public Meeting
VI. Rulemaking Process
VII. Availability of Supporting Documents

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, or 301–415–4737, or by email to *PDR.Resource@nrc.gov*.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this advance notice of proposed rulemaking can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0299.

II. Fukushima Dai-ichi Event and the NRC Regulatory Response

On March 11, 2011, a magnitude 9.0 earthquake struck off the coast of the Japanese island of Honshu. The earthquake resulted in a large tsunami that is estimated to have exceeded 14 meters (45 feet) in height, which inundated the Fukushima Dai-ichi Nuclear Power Plant site. The earthquake and tsunami produced widespread devastation across northeastern Japan, and significantly affected the infrastructure and industry in the northeastern coastal areas of Japan.

When the earthquake occurred, Fukushima Dai-ichi Units 1, 2, and 3 were in operation, and Units 4, 5, and 6, were shut down for routine refueling and maintenance activities. The Unit 4 reactor fuel had been offloaded into the Unit 4 spent fuel pool (SFP) to facilitate maintenance activities in the reactor pressure vessel. Following the earthquake, the three operating units automatically shut down and offsite power was lost to the entire facility. The emergency diesel generators started at all six units, providing ac electrical power to critical systems at each unit. The facility response to the earthquake appears to have been normal.

Approximately 40 minutes following the earthquake and shutdown of the operating units, the first large tsunami wave inundated the site, followed by additional waves. The tsunami caused extensive damage to site facilities and resulted in a complete loss of all ac electrical power at Units 1 through 5, a condition known as SBO. In addition, all direct current (dc) electrical power was lost early in the event on Units 1 and 2, and after some period of time at the other units. Unit 6 retained the function of one air-cooled emergency diesel generator. Despite their actions, the operators lost the ability to cool the fuel in the Unit 1 reactor after several hours, in the Unit 2 reactor after about 70 hours, and in the Unit 3 reactor after about 36 hours, resulting in damage to the nuclear fuel shortly after the loss of cooling capabilities.

In the days following the Fukushima Dai-ichi nuclear accident in Japan, the NRC Chairman directed the staff to establish a senior-level agency task force to conduct a methodical and systematic review of the NRC's processes and regulations to determine whether the agency should make additional improvements to its regulatory system and to make recommendations to the Commission for its policy direction. This direction was provided in a tasking memorandum dated March 23, 2011, from the NRC Chairman to the NRC Executive Director for Operations (COMGBJ–11–0002). In SECY–11–0093, ''The Near-Term Report and Recommendations for Agency Actions Following the Events in Japan,'' dated July 12, 2011, the Near-Term Task Force (NTTF) provided its recommendations to the Commission regarding SBO and the need for revising the NRC's SBO rule (Title 10 of the *Code of Federal Regulations* (10 CFR) section 50.63). The staff requirements memorandum (SRM) for SECY–11–0093, dated August 19, 2011, directed the staff to ''identify and make recommendations regarding any NTTF recommendations that can, and in the staff's judgment, should be implemented, in part or in whole, without unnecessary delay.''

The NTTF provided a specific proposal for SBO mitigation that was subsequently endorsed by the National Resources Defense Council in a petition for rulemaking (PRM), PRM–50–101 (76 FR 58165) as a way to address SBO mitigation. The approach for SBO mitigation put forth by the NTTF as NTTF Recommendation 4.1 was:

> Initiate rulemaking to revise 10 CFR 50.63 to require each operating and new reactor licensee to: (1) Establish a minimum coping time of 8 hours for a loss of all ac power, (2) establish the equipment, procedures, and training necessary to implement an ''extended loss of all ac'' coping time of 72 hours for core and spent fuel pool cooling and for reactor coolant system and primary containment integrity as needed, and (3) preplan and prestage offsite resources to support uninterrupted core and spent fuel pool cooling, and reactor coolant system and containment integrity as needed, including the ability to deliver the equipment to the site in the time period allowed for extended coping, under conditions involving significant degradation of offsite transportation infrastructure associated with significant natural disasters.

In SECY–11–0124 and SECY–11–0137, the staff provided for Commission consideration its recommendations on those NTTF action items that should be initiated, in part or in whole, without unnecessary delay, and the associated prioritization for each item. Regarding SBO mitigation actions the staff recommended that the NRC, as a near-term action:

> Engage stakeholders in support of rulemaking activities to enhance the capability to maintain safety through a prolonged SBO. These activities will include the development of the regulatory basis, a proposed rule, and implementing guidance.

In SRM–SECY–11–0124, dated October 18, 2011, the Commission approved the staff's proposed actions to implement without unnecessary delay the NTTF recommendations as described in SECY–11–0124. Subsequently, in SRM–SECY–11–0137, dated December 15, 2011, the Commission approved the staff's proposed prioritization of the NTTF recommendations and supported action on the recommendations subject to the direction in the SRM.

Regarding regulatory actions to address SBO, the Commission directed the staff to initiate a rulemaking on NTTF Recommendation 4.1 in the form of an ANPR. This document is responsive to that Commission direction.

In November 2011, the Institute of Nuclear Power Operations (INPO) issued INPO–11–005, ''Special Report on the Nuclear Accident at the Fukushima Dai-ichi Nuclear Power Station.'' In SRM–SECY–11–0137, the Commission directed the staff to use INPO–11–005 as an input to its development of technical bases for any proposed regulatory changes. Much of the technical information regarding the Fukushima Dai-ichi accident discussed in this document has been derived from INPO–11–005.

III. Background

A. General Design Criteria 2 and 17

As defined in 10 CFR 50.2, ''design bases'' means that information which identifies the specific functions to be performed by a facility structure, system, or component (SSC), and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. The actual detailed design of facility SSCs must reflect the assigned design basis functions and assure performance of those functions within the reference bounds for design. An applicant for a construction permit or combined license for a facility is required, pursuant to 10 CFR 50.34(a)(3) or 52.79(a)(4)(i), respectively, to describe the principal design criteria (PDC) for the proposed facility. The PDC generally identify facility SSCs and their functions, which is part of the design bases described above. U.S. facilities for which construction permits were issued before 1971 had plant-specific PDC, since the Atomic Energy Commission (AEC), the authority that was the predecessor to the NRC, had yet to develop generic requirements for facility design criteria at that time.

On July 11, 1967, the AEC published for comment a proposed amendment to 10 CFR part 50 entitled ''General Design Criteria for Nuclear Power Plant Construction Permits'' (32 FR 10213). Subsequently, on February 20, 1971, the AEC published the final general design

criteria (GDC) and added appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR part 50 (36 FR 3255). The GDC provide minimum requirements for facility PDC, and form part of the facility design basis since they identify SSCs and their required functions at a high level. NRC regulations, including the GDC and plant-specific PDC, set general minimum standards for the values or ranges of values chosen for controlling parameters as reference bounds for design, which is the second element of the design bases defined in 10 CFR 50.2. These values or ranges of values are determined in accordance with detailed NRC guidance applicable to the particular SSCs found in nuclear power facilities. The GDC relevant to this ANPR are GDC 2, which governs consideration of natural phenomena, and GDC 17, which governs electrical system design. For facilities with construction permits issued before 1971, plant-specific PDC, which differ in certain respects from GDC 2 and 17, are also relevant to this ANPR.

GDC 2

General Design Criterion 2 currently requires nuclear power plants designed in accordance with appendix A to 10 CFR part 50 to be protected against natural phenomena. Specifically, SSCs important to safety shall be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, hurricanes, floods, tsunami, and seiches without loss of capability to perform their safety functions. The design bases for these structures, systems, and components shall reflect: (1) Appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area, with sufficient margin for the limited accuracy, quantity, and period of time in which the historical data have been accumulated; (2) appropriate combinations of the effects of normal and accident conditions with the effects of the natural phenomena; and (3) the importance of the safety functions to be performed. Severe natural phenomena may be reflected in a facility design basis through selection and appropriate consideration of severe events that will then be the basis for establishing the reference bounds for the design. Accordingly, the questions in this ANPR will refer to the specific values or ranges of values chosen for controlling parameters as reference bounds for design associated with natural phenomena as ''the bounding events selected for design purposes.''

GDC 17

General Design Criterion 17 governs electric power systems for nuclear power plants designed in accordance with appendix A to 10 CFR part 50. The draft version of this GDC published for comment in 1967 was proposed GDC 39, ''Emergency Power for Engineered Safety Features (Category A)'' (32 FR 10213). Proposed GDC 39 read as follows:

> Alternate power systems shall be provided and designed with adequate independency, redundancy, capacity, and testability to permit the functioning required of the engineered safety features. As a minimum, the onsite power system and the offsite power system shall each, independently, provide this capacity assuming a failure of a single active component in each power system.

The public comments on proposed GDC 39 stated that the requirement that offsite power must satisfy the ''single failure criterion'' was impractical and asked the Commission to eliminate all reference to offsite power. The resolution to the comment stated the following:

> The criterion has been rewritten to make it clear that the offsite power system need not meet the ''single failure criterion.'' Reference to offsite power has not been deleted because we believe that offsite power is required to provide adequate assurance of safety (see New Criterion 17). New Criterion 17 has been discussed with the IEEE [Institute of Electrical and Electronics Engineers] Subcommittee which is developing criteria for power requirements for nuclear power units. The members of the subcommittee indicated that the new criterion is acceptable and consistent with their requirements.

Therefore, the Commission promulgated GDC 17 in appendix A to 10 CFR part 50 to state as follows:

> An onsite electrical power system and an offsite electrical power system shall be provided to permit functioning of structures, systems, and components important to safety. The safety function for each system (assuming the other system is not functioning) shall be to provide sufficient capacity and capability to assure that (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.
>
> The onsite electrical power sources, including the batteries, and the onsite electrical distribution system, shall have sufficient independence, redundancy, and testability to perform their safety functions assuming a single failure.
>
> Electrical power from the transmission network to the switchyard shall be supplied by two physically independent transmission lines (not necessarily on separate rights of way) designed and located so as to suitably minimize the likelihood of their simultaneous failure under operating and postulated accident and environmental conditions. Two physically independent circuits from the switchyard to the onsite electrical distribution system shall be provided. Each of these circuits shall be designed to be available in sufficient time following a loss of all onsite alternating current power sources and the other offsite electrical power circuit, to assure that specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded. One of these circuits shall be designed to be available within a few seconds following a loss-of-coolant accident to assure that core cooling, containment integrity, and other vital safety functions are maintained.
>
> Provisions shall be included to minimize the probability of losing electrical power from any of the remaining sources as a result of, or coincident with, the loss of power generated by the nuclear power unit, the loss of power from the transmission network, or the loss of power from the onsite electrical power sources.

Section 8.2, ''Offsite Power System,'' of NUREG–75/087, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition'' (SRP), published May 1980, and NUREG–0800, originally published November 1975 with the most current revision published May 2010, provide the review guidelines and acceptance criteria for the offsite power system. Similarly, Section 8.3 of the SRP provides the review guidelines and acceptance criteria for the onsite ac power system. For nuclear power plants that were licensed before GDC 17 applied, the plant-specific PDC, which are set forth in the Updated Final Safety Analysis Report, provide the applicable design criteria. A significant fraction of currently operating nuclear power facilities were licensed in accordance with plant-specific PDC rather than the GDC.

B. Station Blackout Rule

The availability of ac electrical power is essential for the safe operation and accident recovery of commercial nuclear power plants. The plant itself or offsite power sources normally supply this power through the plant switchyard, through which the plant is connected to the electrical grid. The term SBO is defined in 10 CFR 50.2 as follows:

> Station blackout (SBO) means the complete loss of alternating current (ac) electric power to the essential and nonessential switchgear buses in a nuclear power plant (i.e., loss of offsite electric power system concurrent with turbine trip and unavailability of the onsite emergency ac power system). Station blackout does not include the loss of available ac power to buses fed by station

batteries through inverters or by alternate ac sources as defined in 10 CFR 50.2, nor does it assume a concurrent single failure or design basis accident (DBA). At single unit sites, any emergency ac power source(s) in excess of the number required to meet minimum redundancy requirements (i.e., single failure) for safe shutdown (non-DBA) is assumed to be available and may be designated as an alternate power source(s) provided the applicable requirements are met. At multi-unit sites, where the combination of emergency ac power sources exceeds the minimum redundancy requirements for safe shutdown (non-DBA) of all units, the remaining emergency ac power sources may be used as alternate ac power sources provided they meet the applicable requirements. If these criteria are not met, station blackout must be assumed on all the units.

Because many of the safety systems relied upon for reactor core decay heat removal and containment heat removal are dependent on ac power, the consequences of an SBO could be significant. In the event of an SBO, the capability to cool the reactor core is dependent on the availability of systems that do not rely upon ac power from the essential or nonessential switchgear buses for a specified time, and on the ability to restore ac power within the specified time. Unavailability of power can have a significant adverse impact on a plant's ability to achieve and maintain safe-shutdown conditions. In fact, risk analyses performed for nuclear power plants indicate that the loss of all ac power can be a significant contributor to the risk associated with plant operation, contributing more than 70 percent of the overall risk at some plants. Therefore, the frequency of a loss of offsite power (LOOP) and the time for subsequent restoration of offsite power are important inputs to plant risk models, and these inputs must reflect current industry performance in order for plant risk models to accurately estimate the risk associated with LOOP-initiated scenarios.

One important subset of LOOP-initiated scenarios involves SBO situations in which the affected plant achieves safe shutdown by relying on components that are not ac powered, such as turbine- or diesel-driven pumps. Thus, the reliability of such components, dc battery depletion times, and characteristics of offsite power restoration are important in determining risk from an SBO.

The SBO rule was developed based on insights gained from several plant-specific probabilistic safety studies; operating experience; and reliability, accident sequence, and consequence analyses completed between 1975 and 1988. One such study, WASH–1400, ''Reactor Safety Study,'' issued in 1975, indicated that SBO could be an important contributor to the total risk from nuclear power plant accidents. In 1980, the Commission designated the issue of SBO as Unresolved Safety Issue A–44, ''Station Blackout.'' The technical findings of the staff's studies of the SBO issue are presented in NUREG–1032, ''Evaluation of Station Blackout Accidents at Nuclear Power Plants, Technical Findings Related to Unresolved Safety Issue A–44,'' June 1988.

The final rule containing SBO requirements was published in the **Federal Register** (53 FR 23203) on July 21, 1988. The Commission issued the SBO rule based on operating experience suggesting that both onsite emergency ac power systems and offsite power from the transmission network might be less reliable than originally anticipated, even for plants designed to meet GDC 17 of appendix A to 10 CFR part 50. The objective of the rule is to reduce the risk of severe accidents resulting from SBO by maintaining highly reliable ac electric power systems and, as additional defense-in-depth, assuring that plants can cope with an SBO for a specified duration. NRC guidance for implementing the SBO rule can be found in Regulatory Guide 1.155, ''Station Blackout,'' August 1988 (RG 1.155), which endorses Nuclear Management and Resources Council (NUMARC) 8700, ''Guidelines and Technical Bases for NUMARC Initiatives Addressing Station Blackout at Light Water Reactors,'' November 1987. Additional background regarding the SBO rule, its basis, and NRC guidance relating to SBO is referenced within RG 1.155.

The SBO rule requires that nuclear power plants have the capability to withstand an SBO and maintain core cooling and containment integrity for a specified duration. The specified SBO duration for a plant is determined based on (1) the redundancy of the onsite emergency ac power sources, (2) the reliability of the onsite emergency ac power sources, (3) the expected frequency of LOOP at the particular site, and (4) the probable time needed to restore offsite power. The assumption used for a LOOP at a plant site was an initiating event resulting from a switchyard-related or grid-related event due to random faults, or an external event, such as a grid disturbance, or weather events such as high winds, snow, and ice loading that affects the offsite power system either throughout the grid or at the plant. During the development of the current SBO rule, it was concluded that there was a sufficiently low likelihood of a LOOP generated by a fire, flood, or seismic activity and that preexisting licensing requirements specified sufficient protective measures such that LOOPs from such causes need not be considered under the SBO rule requirements (see NUREG–1032 and NUREG/CR–3226 for further detail).

In order to meet the requirements of the SBO rule and depending on the station's existing capability, some stations were modified (i.e., by adding an alternate ac power source or increasing the capacity of the station batteries, plant/instrument air system, or condensate storage tank) in order to cope with the longer station blackout duration. In addition, licensees enhanced station procedures and training for restoring both offsite and onsite ac power sources. The NRC and its licensees also increased their emphasis on establishing and maintaining high reliability of onsite emergency power sources. The SBO rule does not require systems and equipment used to cope with SBO to meet 10 CFR part 50 quality assurance requirements for safety-related equipment; instead, Appendix A of RG 1.155 provides the applicable quality assurance guidance for non-safety systems and equipment used to meet the SBO rule requirements.

Once the NRC has approved the ''specified duration'' of an SBO and the coping analysis for a particular facility, the SBO rule does not require licensees to update either the specified duration or the coping analyses. However, the parameters that were used for inputs into both the determination of the specified duration and the SBO coping analysis are subject to change over time. These parameters include the number of LOOP events expected at a particular site, recovery time for offsite power, frequency of grid blackout events, and diesel generator reliability. Changes to these parameters may have a significant effect on the SBO duration and coping analyses originally performed by the licensees. Nonetheless, if the NRC determines that a licensee's plans for coping with an SBO are no longer adequate, the NRC could require a licensee to modify its SBO plans or related equipment as necessary, so long as the NRC satisfies the requirements of the Backfit Rule (10 CFR 50.109).

C. Petition for Rulemaking on Station Blackout Due to Coronal Mass Ejection

The NRC has received a petition for rulemaking (PRM–50–96) from Thomas Popik (the petitioner) that deals with long-term cooling and unattended water makeup of SFPs due to potential long term grid loss stemming from extreme

solar activity (76 FR 26223, dated May 6, 2011). The petitioner believes that a widespread and prolonged grid outage of a year or longer is possible and could result in degradation of societal infrastructure to the extent that normal, commercial deliveries of diesel fuel to reactor sites could not be relied upon. In this scenario, grid failure might lead to a delayed SBO when onsite fuel for emergency diesel generators was exhausted. The NRC has not yet completed its evaluation of PRM–50–96 and it is unclear whether there are any implications for the SBO rulemaking activity which is the subject of this ANPR. Persons interested in the NRC action on PRM–50–96 may follow the NRC activities at the regulations.gov Web site under the docket heading NRC–2011–0069. Pending further evaluation of PRM–50–96, the SBO rulemaking activity will proceed independently.

D. Mitigating Strategies

Following the terrorist attacks of September 11, 2001, the NRC ordered licensees to develop and implement specific guidance and strategies to maintain or restore core cooling, containment, and SFP cooling capabilities using existing or readily available resources that can be effectively implemented under the circumstances associated with loss of large areas of the plant due to explosions or fire. After further development, these requirements were imposed as license conditions for individual licensees and formalized in the rulemaking of March 27, 2009, in 10 CFR 50.54(hh)(2) (74 FR 13969). Events at the Fukushima Dai-ichi Nuclear Power Station following the March 11, 2011, earthquake and tsunami highlighted the further potential benefits for these same strategies to mitigate the effects of prolonged SBOs or other events that may challenge core cooling, containment, and spent fuel pool cooling.

IV. Discussion and Request for Public Comment

A. Advance Notice of Proposed Rulemaking Purpose

In its SRM on SECY–11–0124, the Commission directed the staff to initiate a rulemaking to address SBO by means of an ANPR. Accordingly, this ANPR's objective is to solicit external stakeholder input to support the staff's efforts to assemble a regulatory basis for a rule that amends SBO requirements. The Commission also encouraged the staff to craft recommendations that continue to realize the strengths of a performance-based system as a guiding principle. The Commission indicated that, to be effective, approaches should be flexible and able to accommodate a diverse range of circumstances and conditions. The Commission stated that for consideration of events beyond the design basis, a regulatory approach founded on performance-based requirements will foster development of the most effective and efficient site-specific mitigation strategies, similar to how the agency approached the approval of licensee response strategies for the ''loss of large area'' event addressed in 10 CFR 50.54(hh)(2).

The NRC is open to flexible, performance-based strategies to address SBO mitigation. The following questions are intended to solicit information that will support development of such a framework and assembly of a complete and adequate regulatory basis for any rule changes that are ultimately determined to be justified. In this context, commenters are encouraged to provide information on any aspect of SBO mitigation that would support this regulatory objective, whether in response to an ANPR question or not.

B. Rulemaking Scope

The NRC would like external stakeholders to respond to the following questions to support the NRC's efforts to define the scope of the regulatory framework.

1. Recognizing the uncertainties associated with natural phenomena and in the context of establishing a set of events upon which to base reference bounds for design, should SBO equipment be designed to withstand natural phenomena which the facility is not already designed to withstand, and should SBO mitigation strategies consider such natural phenomena? What severity of natural phenomena should be considered (e.g., length of return period or duration of the phenomena)? For example, flooding risks are of concern due to a ''cliff-edge'' effect, in that the safety consequences of a flooding event may increase sharply with only a small increase in the flooding level. Therefore, to address uncertainties for SBO events and to build in additional defense-in-depth margin to mitigate SBO for such events, should analysis of an SBO consider a flood elevation at some prescribed level above the level for which the plant is designed? If so, what criteria should be used to establish the prescribed level? What is the basis for your position?

2. If such an analysis (per the above question) is warranted, what margin in addition to that included in the reference bounds for design should be considered? For existing facilities, should such an analysis include factors such as the existence of nearby dams or water sources?

3. For events that do not fall within the reference bounds for design, but may result in SBO conditions, it may be necessary for licensees to take early action in order to increase the potential for successful mitigation. Recognizing that there are several actions that take time during such events that include, but are not limited to (1) the need to properly identify and diagnose the event or situation, (2) the need to make the decision to implement actions or strategies to mitigate existing or imminent SBO conditions, and (3) the time for licensees to implement the strategies once the decision is made; what time constraints do stakeholders understand to be important in developing SBO mitigation requirements? For example, what should be the coping time with no mitigation for SBO conditions given time constraints that include the time to (1) identify and determine the need to take mitigative actions and (2) implement these strategies under worst case conditions? How long should mitigation strategies be expected to be deployed before the receipt of offsite assistance? If certain mitigation actions must be taken early in the event to avert core damage, how should those actions be determined and how should the time when they must be performed be determined?

4. Similar to question B.2, but from a broader perspective of establishing all the new SBO mitigation requirements: Different regions of the United States have different natural phenomena that are more significant in terms of potentially creating SBO conditions. Should the NRC construct a new regulatory framework containing criteria that enable licensees to establish the set of natural phenomena of concern for their sites? If so, what criteria should be used to determine whether an event needs to be considered at a particular site? Please provide the basis for your position.

5. The current requirements in 10 CFR 50.63 for SBO are ''unit-specific,'' meaning that the total loss of all ac is not assumed to extend to all the power reactors at a given site. Based on the lessons learned from the Fukushima Dai-ichi event, the NRC believes the SBO requirements may need to be expanded to consider an SBO for the entire site (i.e., assume the SBO condition occurs to all the units for multi-unit sites). What are stakeholder views on this matter, and how should it

be addressed in the new SBO rule? Please provide the basis for your position.

6. The current provisions in 10 CFR 50.63 require a facility to withstand, for a specified duration, and recover from an SBO as defined in 10 CFR 50.2. Should the new SBO rule require long-term cooling and water makeup to SFPs during an SBO? Please provide the basis for your position.

7. Should the SBO rule address how external events would affect the ''specific duration'' of the SBO and the associated coping time? Specifically:

a. Should the NRC require consideration of the likelihood of external events that fall outside the bounding events selected for design purposes in the determination of SBO specified duration, or the capability to cope with an SBO for the specified duration, or both? If so, what should the rule require? What is the basis for your position?

b. Should the NRC require consideration of additional margin in the probability or magnitude (or both) of bounding events selected for design purposes with respect to natural phenomena (e.g., design basis external flood plus 10 additional feet or extending the ability to withstand the total loss of ac power for longer durations) in the determination of SBO specified duration or the capability to cope with an SBO during the specified duration, or both? Provide any proposed rule provisions and a discussion that supports your position.

c. Should the SBO rule require applicants and licensees to address a more challenging condition such as the total loss of all ac, including ac from the dc batteries through inverters? Please provide the basis for your position.

8. If new requirements as discussed in this section should be imposed for existing licensees or with respect to existing certified designs, what sort of benefits or costs do stakeholders estimate could be incurred?

C. Rulemaking Objectives/Success Criteria

The NRC is considering whether enhancements to current SBO requirements are advisable in order to consider natural phenomena beyond the plant-specific events selected as bounding for design purposes, even if the plant's design basis meets the NRC requirements and guidance for natural phenomena that are applicable to new plant applications. The NRC would like stakeholder views on specific regulatory objectives and success criteria for the potential rulemaking, as follows:

1. What specific objectives should the SBO rule be designed to achieve?

a. For example, should the objective of the SBO rule be to significantly reduce the frequency of core damage from a prolonged SBO, or would it be better to focus on the reduction of the frequency of large early release of radiation for low probability external events that result in SBO conditions? Please provide the basis for your position.

b. Alternatively, should the SBO rule be designed to achieve a more qualitative safety objective such as increasing, as a defense-in-depth measure, requirements for the mitigating strategies to cope with prolonged SBO conditions stemming from events that do not fall within the reference bounds for the design, assuming GDC 2 (or the corresponding PDC) is satisfied? Please provide the basis for your position.

c. Should the SBO rule provide increased assurance that the facility can achieve and maintain a safe shutdown condition under SBO conditions for a set of initiating events that lead to SBO conditions, and as one way of doing this, enable licensees to use a criterion for determining the set of conditions that apply to their plants or sites? Please provide the basis for your position.

d. Should the NRC adopt an SBO rule that is more performance-based and which would not specify the events that must be considered in determining the SBO duration or the capability for coping with an SBO of specified duration? Specifically should the NRC structure an SBO rule as follows:

(1) Require each applicant and licensee to develop, implement, and maintain SBO procedures that describe how the licensee will address the following areas if the plant experiences an event that exceeds the values or does not fall within the ranges of values chosen for the reference bounds for the design of the facility:

(i) Communication with onsite personnel and offsite entities providing support to mitigate the event;

(ii) Onsite actions necessary to enhance the capability of the facility to mitigate the consequences of the loss of all ac power and other equipment damage;

(iii) Dispersal of equipment and personnel, as well as rapid entry into site protected areas for essential onsite personnel and offsite responders who are necessary to mitigate the event; and

(iv) Recall of site personnel.

(2) Require each applicant and licensee to develop and implement guidance and strategies intended to maintain or restore core cooling, containment, and SFP cooling capabilities under the circumstances associated with the loss of all ac power, from an event that does not fall within the reference bounds chosen for the design of the facility, including:

(i) Station blackout coping and power restoration activities;

(ii) Operations to mitigate fuel damage; and

(iii) Actions to minimize radiological release.

Please provide the basis for your position.

e. Recognizing that the SBO mitigation requirements could address a set of events that fall outside the reference bounds for design of the plant and may lead to SBO conditions, success criteria might be more readily established. Should the rule establish success criteria or requirements that apply as a function of the probability of the events? For example, for the more probable/common SBO events, such as those that 10 CFR 50.63 currently addresses, the current 10 CFR 50.63 requirements could largely remain in place. For the low probability, high consequence, hazard-driven SBOs, a different set of success criteria could be established that recognize the lower probabilities of occurrence of these types of SBOs. Please provide the basis for your position.

2. How should actions taken to address the staff's recommended approach for NTTF Recommendation 4.2 be used to support the development of SBO mitigation requirements within a coherent, integrated regulatory framework? Provide a discussion that supports your position.

3. The NRC would like stakeholder's views on a regulatory approach to SBO mitigation that conceptually follows the NTTF proposal in NTTF Recommendation 4.1. Specifically, do stakeholders believe that the best conceptual approach for SBO mitigation is to establish requirements for an initial coping period (no ac power available), during which time licensees establish mitigation strategies; followed by an interim period during which time the mitigation strategies are employed for a duration sufficient to enable offsite relief to arrive; followed by a final phase where offsite relief has arrived and a stable shutdown condition is established? Alternatively, if stakeholders have alternative approaches or suggested changes to this conceptual approach, please provide the basis for them.

The NRC notes that there is a close relationship between the SBO mitigation requirements under consideration in this regulatory effort and several other near-term actions

stemming from the Fukushima Dai-ichi event (and identified in SECY–11–0124 and SECY–11–0137). Regulatory actions taken in response to these other activities may have an impact on any regulatory actions taken to address SBO. In this regard, the NRC would like stakeholder views on the following:

4. Recognizing that SBO mitigation may rely upon Emergency Operating Procedures (EOPs) and Severe Accident Management Guidelines (SAMGs), how should regulatory actions taken to address NTTF Recommendation 8 with regard to coordination of EOPs, SAMGs, and Extensive Damage Mitigation Guidelines be best integrated with SBO mitigation requirements to ensure that actions to address each of these NTTF recommendations do not unduly overlap or inadvertently introduce unnecessary redundancy, inconsistency, or other unintended consequences?

5. Recognizing that the containment function is a key defense-in-depth measure for SBO events, how should regulatory actions to address NTTF Recommendation 5.1, which discusses installation of reliable hardened containment vent systems for boiling water reactors with Mark I and II containments designs, be integrated with potential SBO load-shedding mitigation activities to ensure that actions to address each of these NTTF recommendations do not unduly overlap or inadvertently introduce unnecessary redundancy, inconsistency, or other unintended consequences?

6. Recognizing the importance of SFP cooling and the need to understand the condition of the SFP, how should regulatory actions taken to address NTTF Recommendation 7.1, which addresses SFP instrumentation, be integrated into SBO mitigation plans to ensure that actions to address each of these NTTF recommendations do not unduly overlap or inadvertently introduce unnecessary redundancy, inconsistency, or other unintended consequences?

D. Functional Considerations and Requirements for Supporting Structures, Systems, and Components and Procedures

An important element of a new set of SBO requirements would be identifying the functions that need to be performed under SBO conditions, since performance of these functions relates directly to achieving the objectives of the rulemaking. Additionally, establishing the functions that must be performed enables the identification of the set of SSCs (SBO mitigation equipment) and supporting procedures, guidelines, and strategies that would need to be employed. The NRC considers the key safety functions identified below to be the essential functions for SBO mitigation, and would like stakeholder's views on whether this is the correct set:

1. Reactor core cooling;
2. Spent fuel pool cooling; and
3. Containment.

With regard to the requirements that would stem from identification of the SBO mitigation functions, the NRC would like stakeholder views on:

1. What requirements (e.g., design, inspection, testing, quality assurance, corrective action) should be applied to the SBO mitigation SSCs that perform the key safety functions to provide increased assurance that the functions can be performed? What constitutes increased assurance (i.e., what must be achieved with the additional treatment requirements) for the mitigation of SBO conditions stemming from either design basis events or from external events that exceed the events chosen as bounding for design purposes? Please provide the basis for your position.

2. What requirements for supporting procedures, guidelines, strategies, and training should be included within the SBO rule (also refer to question C.6)? Please provide the basis for your position.

3. Should the SBO rule address licensee staffing requirements for SBO mitigation for an event involving more than a single unit (for multi-unit sites)? Please provide the basis for your position.

4. Should the NRC require surveillance testing and limiting conditions for operation for some or all equipment credited for mitigating an SBO event? Alternatively, should the NRC use a different approach for testing of SBO equipment, such as either specific testing requirements in a new rule, use of 10 CFR 50.65 (Maintenance Rule), or other existing plant processes? Please provide the basis for your position.

5. Should the NRC require applicants and licensees to describe the SSCs, supporting procedures, and programs used to implement the new SBO requirements in the Final Safety Analysis Report? Alternatively, should the NRC consider a special change control requirement for these SSCs, procedures, and programs? If stakeholders agree that such a requirement would be valuable, what criteria would be used to determine when changes could be made without prior NRC review and approval?

6. If new requirements under the items above were to be imposed for existing licensees or with respect to existing certified designs, what sort of benefits and costs do stakeholders estimate could be incurred?

E. Applicability to NRC Licenses and Approvals

The NRC would apply any new SBO requirements to power reactors, both currently operating and new reactors, and would like stakeholder input on this aspect of the rule. Accordingly, the NRC envisions that this would include (but not be limited to):

1. Nuclear power plants currently licensed under 10 CFR parts 50 or 52;
2. Nuclear power plants currently being constructed under construction permits issued under 10 CFR part 50, or whose construction permits may be reinstated;
3. Current and future applications for standard design certification and standard design approval under 10 CFR part 52;
4. Future nuclear power plants whose construction permits and operating licenses are issued under 10 CFR part 50;
5. Future nuclear power plants whose combined licenses are issued under 10 CFR part 52, and
6. Future nuclear power plants that are manufactured under 10 CFR part 52.

F. Relationship Between Existing Station Blackout Requirements in Title 10 of the Code of Federal Regulations, Section 50.63 and the New Station Blackout Requirements

The NRC is considering how any new SBO requirements would relate to the existing SBO requirements in 10 CFR 50.63, and has identified three approaches:

1. Approach 1 (Base Case—Supplementary SBO Requirements): The new SBO requirements would 1) address SBO issues which are separate from, and address scenarios which go beyond, the existing 10 CFR 50.63 requirements; and 2) be added to the existing 10 CFR 50.63 SBO requirements, possibly in a new section (e.g., 10 CFR 50.XX). This approach would not change the existing 10 CFR 50.63 requirements, with the exception of some conforming changes needed to ensure coordination between the existing, unchanged 10 CFR 50.63 requirements, and the newly-added SBO requirements.

2. Approach 2 (Unified SBO Requirements): The new SBO requirements would: (1) Address SBO issues which are separate from, and address scenarios which go beyond, the existing 10 CFR 50.63 requirements (same as Element 1 of Approach 1); and (2) be integrated into a single rule,

representing a unified overall approach to SBO. This differs from Approach 1 in that the NRC would develop new rule language that presents a single, unified approach to SBO covering the full spectrum of issues, accidents, plant conditions, and performance objectives that each nuclear power plant must meet. The new rule would include the current 10 CFR 50.63 requirements.

3. Approach 3 (Superseding SBO Requirements): The new SBO requirements would envelope the full spectrum of issues, accidents, plant conditions, and performance objectives that each nuclear power plant must meet, so that the existing SBO requirements in 10 CFR 50.63 would be subsumed in the new rule. This approach differs from Approach 1 in that the new SBO requirements would address SBOs whose characteristics and scope may be more ''severe'' than originally envisioned in 10 CFR 50.63. Under Approach 3, the new SBO requirements would entirely supersede and displace the existing SBO requirements in 10 CFR 50.63. All existing SBO requirements would be removed from 10 CFR 50.63 and licensees would be required to change their SBO licensing bases (e.g., change or remove a Final Safety Analysis Report description, a technical specification, or a license condition) to comply with the new requirements.

The NRC therefore seeks stakeholder views on which of these options is best suited for implementing new requirements recommended in response to ANPR Sections B, C, and D, above. What is the basis for your position?

G. Advisory Committee on Reactor Safeguards Recommendations

By letter dated October 13, 2011, the Advisory Committee on Reactor Safeguards (ACRS) provided its recommendations concerning near-term actions that should be taken without delay. With regard to the mitigation of SBO, the ACRS recommended that:

> Staff should also require licensees to provide an assessment of capabilities to cope with an extended SBO, including system vulnerabilities (e.g., reactor coolant pump seal qualifications) and capabilities to mobilize and deliver offsite resources (e.g., portable generators, fuel supplies, water pumping equipment). This information will inform staff interactions with the industry during the rulemaking process and help develop guidance that can be applied in the near term for enhanced confidence that each site has identified their available options.

Accordingly, the NRC is interested in stakeholder feedback regarding both current and projected future (i.e., considering other actions that could stem from the staff's recommendation to address NTTF Recommendation 4.2 as well as other relevant NTTF actions) capabilities for coping with an extended SBO, including system vulnerabilities. Additionally, the NRC would like stakeholder views concerning the capabilities to mobilize and deliver offsite resources (e.g., portable generators, fuel supplies, water pumping equipment) as contemplated by both the NTTF and by the industry conceptual approach described in the Nuclear Energy Institute (NEI) paper, ''An Integrated, Safety-Focused Approach to Expediting Implementation of Fukushima Daiichi Lessons-Learned,'' dated December 16, 2011.

V. Public Meeting

The NRC plans to hold a category 3 public meeting with stakeholders during the ANPR public comment period. The public meeting is intended to provide a forum to discuss the ANPR with external stakeholders and inform stakeholder views on SBO mitigation to enable stakeholders to provide feedback. The meeting is not intended for the NRC to receive comments and instead the NRC will encourage stakeholders to provide any comments in written form. To support full participation of stakeholders, the staff plans to provide teleconferencing and Webinar access. The NRC does not intend to transcribe the meeting. The NRC will issue the public meeting notice at least 10 days prior to the public meeting. Stakeholders should monitor the NRC's public meeting Web site: *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

VI. Rulemaking Process

The NRC does not intend to provide detailed comment responses for information provided in response to this ANPR. The NRC will consider timely comments on this ANPR in the rule development process. If the NRC ultimately develops a proposed rule on SBO requirements, any notice of proposed rulemaking will provide an opportunity to comment on the proposed rule, and the NRC will document its responses to any comments received in accordance with the notice. If supporting guidance is developed for a proposed rule, stakeholders will have an opportunity to provide feedback on the guidance as well.

VII. Availability of Supporting Documents

The following documents provide additional background and supporting information regarding this rulemaking activity. The documents can be found using any of the methods provided in the table. Instructions for accessing ADAMS were provided under the **ADDRESSES** section of this document.

Date	Document	ADAMS Accession No./Web link/**Federal Register** citation
July 12, 2011	SECY–11–0093, ''The Near-Term Report and Recommendations for Agency Actions following the Events in Japan''.	ML111861807.
August 19, 2011	Staff Requirements—SECY–11–0093, ''The Near-Term Report and Recommendations for Agency Actions following the Events in Japan''.	ML112310021.
July 26, 2011	PRM–50–101, Petition for Rulemaking to Revise 10 CFR 50.63	*http://www.regulations.gov* by searching on Docket ID NRC–2011–0189.
September 9, 2011	SECY–11–0124, ''Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report''.	ML11245A127, ML11245A144.
October 18, 2011	Staff Requirements—SECY–11–0124, ''Recommended Actions to be Taken Without Delay From The Near-Term Task Force Report''.	ML112911571.
October 3, 2011	SECY–11–0137, ''Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned''.	ML11272A203, ML11269A204.
December 15, 2011	Staff Requirements—SECY–11–0137, ''Prioritization of Recommended Actions to be Taken in Response to the Fukushima Lessons Learned''.	ML113490055.

Date	Document	ADAMS Accession No./Web link/**Federal Register** citation
January 28, 1971	SECY–R–143, ''Amendment to Title 10 of the Code of Federal Regulations (10 CFR) Section 50—General Design Criteria for Nuclear Power Plants''.	ML072420278.
July 11, 1967	General Design Criteria for Nuclear Power Plant Construction Permits.	32 FR 10213.
May 1980	NUREG–75/087, Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.	ML042080088.
May 2010	NUREG–0800, Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition, Section 8.2, ''Offsite Power System''.	ML100740246.
October 1975	WASH–1400 (NUREG–75/014), Reactor Safety Study: An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants.	ML072350618.
June 1988	NUREG–1032, ''Evaluation of Station Blackout Accidents at Nuclear Power Plants, Technical Findings Related to Unresolved Safety Issue A–44''.	Accessible from U. S. Department of Energy's Information Bridge at *http://www.osti.gov/bridge/purl.cover.jsp?purl=/5122568-gvK0cy/5122568.pdf.*
March 21, 1986	Notice of Proposed Rulemaking: Station Blackout (10 CFR 50.63)	51 FR 9829.
June 21, 1988, Sept. 22, 1998	Station Blackout (10 CFR 50.63)	53 FR 23203, 63 FR 50480.
March 27, 2009	10 CFR 50.54(hh)(2)	74 FR 13969.
March 23, 2011	Tasking Memorandum from Chairman Gregory B. Jaczko to the Executive Director for Operations (COMGBJ–11–0002): NRC Actions Following the Events in Japan.	ML110950110.
November 2011	INPO–11–005, ''Special Report on the Nuclear Accident at the Fukushima Dai-ichi Nuclear Power Station''.	ML11347A454.
March 15, 2011	PRM–50–96	*http://www.regulations.gov* by searching on Docket ID NRC–2011–0069. 76 FR 26223.
February 20, 1971	Amendment to 10 CFR Part 50—General Design Criteria For Nuclear Power Plants.	36 FR 3256.
July 6, 1970	Status Report On General Design Criteria	ML003726549.
August 28, 2007	Appendix A to Part 50—General Design Criteria for Nuclear Power Plants.	72 FR 49505.
April 1, 2002	Staff Guidance on Scoping of Equipment Relied on to Meet the Requirements of the Station Blackout (SBO) Rule (10 CFR 50.63) for License Renewal (10 CFR 54.4(a)(3)).	ML020920464.
August 28, 2007	Final Rule: Licenses, Certifications, and Approvals for Nuclear Power Plants.	72 FR 49352.
December 16, 2011	NEI Submittal of An Integrated, Safety-Focused Approach to Expediting Implementation of Fukushima Daiichi Lessons Learned.	ML11353A008.
October 13, 2011	Initial ACRS Review of: (1) the NRC Near-Term Task Force Report on Fukushima and (2) Staff's Recommended Actions to be Taken Without Delay.	ML11284A136.
August 1988	NRC Regulatory Guide 1.155, ''Station Blackout''	ML003740034.
November 1987	''Guidelines and Technical Bases for NUMARC Initiatives Addressing Station Blackout at Light Water Reactors,'' NUMARC 8700.	ML12074A007.

Dated at Rockville, Maryland, this 12th day of March 2012.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2012–6665 Filed 3–19–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2011–BT–NOA–0013]

Energy Conservation Program: Data Collection and Comparison With Forecasted Unit Sales of Five Lamp Types

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of data availability.

SUMMARY: The U.S. Department of Energy (DOE) is informing the public of its collection of shipment data and creation of spreadsheet models to provide comparisons between actual and benchmark estimate unit sales of five lamp types (*i.e.,* rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps), which are currently exempt from energy conservation standards. As the actual sales do not exceed the forecasted estimate by 100 percent for any lamp type (*i.e.,* the threshold triggering a rulemaking for an energy conservation standard for that lamp type has not been exceeded), DOE has determined that no regulatory action is necessary at this time. However, DOE will continue to track sales data for these exempted lamps. Relating to this activity, DOE has prepared, and is making available on its Web site, a spreadsheet showing the comparisons of anticipated versus actual sales, as well as the model used to generate the original sales estimates. The spreadsheet is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/five_lamp_types.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *Lucy.Debutts@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Definitions
A. Rough Service Lamps
B. Vibration Service Lamps
C. Three-Way Incandescent Lamps
D. 2,601–3,300 Lumen General Service Incandescent Lamps
E. Shatter-Resistant Lamps
III. Comparison Methodology
IV. Comparison Results
A. Rough Service Lamps
B. Vibration Service Lamps
C. Three-Way Incandescent Lamps
D. 2,601–3,300 Lumen General Service Incandescent Lamps
E. Shatter-Resistant Lamps
V. Conclusion

I. Background

The Energy Independence and Security Act of 2007 (EISA 2007; Pub. L. 110–140) was enacted on December 19, 2007. Among the requirements of subtitle B (Lighting Energy Efficiency) of title III of EISA 2007 were provisions directing DOE to collect, analyze, and monitor unit sales of five lamp types (*i.e.,* rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps). In relevant part, section 321(a)(3)(B) of EISA 2007 amended section 325(l) of the Energy Policy and Conservation Act of 1975 (EPCA) by adding paragraph (4)(B), which generally directs DOE, in consultation with the National Electrical Manufacturers Association (NEMA), to: (1) collect unit sales data for each of the five lamp types for calendar years 1990 through 2006 in order to determine the historical growth rate for each lamp type; and (2) construct a model for each of the five lamp types based on coincident economic indicators that closely match the historical annual growth rates of each lamp type to provide a neutral comparison benchmark estimate of future unit sales. (42 U.S.C. 6295(l)(4)(B)) Section 321(a)(3)(B) of EISA 2007 also amends section 325(l) of EPCA by adding paragraph (4)(C), which, in relevant part, directs DOE to collect unit sales data for calendar years 2010 through 2025, in consultation with NEMA, for each of the five lamp types. DOE must then compare the actual lamp sales in that year with the benchmark estimate, determine if the unit sales projection has been exceeded, and issue the findings within 90 days after the end of the analyzed calendar year. (42 U.S.C. 6295(l)(4)(C)).

On December 18, 2008, DOE issued a notice of data availability (NODA) for the *Report on Data Collection and Estimated Future Unit Sales of Five Lamp Types* (hereafter the ''2008 analysis''),[1] which was published in the **Federal Register** on December 24, 2008. 73 FR 79072. The 2008 analysis presented the 1990 through 2006 shipment data collected in consultation with NEMA, the spreadsheet model DOE constructed for each lamp type, and the benchmark unit sales estimates for 2010 through 2025. On April 4, 2011, DOE published a NODA in the **Federal Register** (hereafter the ''2010 comparison'') announcing the availability of updated spreadsheet models presenting the benchmark estimates from the 2008 analysis and the collected sales data from 2010 for the first annual comparison.[2] 76 FR 18425. Today's NODA presents the second annual comparison; specifically, section IV of this report compares the actual unit sales against benchmark unit sales estimates for 2011.

EISA 2007 also amends section 325(l) of EPCA by adding paragraphs (4)(D) through (4)(H) which state that if DOE finds that the unit sales for a given lamp type in any year between 2010 and 2025 exceed the benchmark estimate of unit sales by at least 100 percent (*i.e.,* more than double the anticipated sales), then DOE must take regulatory action to establish an energy conservation standard for such lamps. (42 U.S.C. 6295(l)(4)(D)—(H)) For 2,601–3,300 lumen general service incandescent lamps, DOE must adopt a statutorily-prescribed energy conservation standard, and for the other four types of lamps, the statute requires DOE to initiate an accelerated rulemaking to establish energy conservation standards. If the Secretary does not complete the accelerated rulemakings within one year of the end of the previous calendar year, there is a ''backstop requirement'' for each lamp type, which would establish energy conservation standard levels and related requirements by statute. *Id.*

As in the 2008 analysis and 2010 comparison, DOE uses manufacturer shipments as a surrogate for unit sales in this NODA because manufacturer shipment data is tracked and aggregated by the trade organization, NEMA. DOE believes that annual shipments track closely with actual unit sales of these five lamp types, as DOE presumes that retailer inventories remain constant from year to year. DOE believes this is a reasonable assumption because the markets for these five lamp types have existed for many years, thereby enabling manufacturers and retailers to establish appropriate inventory levels that reflect market demand. Furthermore, in the long-run, unit sales could not increase in any one year without manufacturer shipments increasing either that year or the following one. In either case, increasing unit sales must eventually result in increasing manufacturer shipments. This is the same methodology presented in DOE's 2008 analysis and 2010 comparison, and the Department did not receive any comments challenging this assumption or the general approach.

II. Definitions

A. Rough Service Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a ''rough service lamp.'' The statutory definition reads as follows: ''The term 'rough service lamp' means a lamp that—(i) has a minimum of 5 supports with filament configurations that are C–7A, C–11, C–17, and C–22 as listed in Figure 6–12 of the 9th edition of the IESNA [Illuminating Engineering Society of North America] Lighting handbook, or similar configurations where lead wires are not counted as supports; and (ii) is designated and marketed specifically for 'rough service' applications, with—(I) the designation appearing on the lamp packaging; and (II) marketing materials that identify the lamp as being for rough service.'' (42 U.S.C. 6291(30)(X)).

As noted above, rough service incandescent lamps must have a minimum of five filament support wires (not counting the two connecting leads at the beginning and end of the filament), and must be designated and marketed for ''rough service'' applications. This type of incandescent lamp is typically used in applications where the lamp would be subject to mechanical shock or vibration while it is operating. Standard incandescent lamps have only two support wires (which also serve as conductors), one at each end of the filament coil. When operating (*i.e.,* when the tungsten filament is glowing so hot that it emits light), a standard incandescent lamp's filament is brittle, and rough service

[1] The Report on the 2008 analysis is available on the DOE Web site at: *www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/five_lamp_types_report.pdf.*

[2] These 2010 spreadsheet models are also available on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/docs/five_lamp_types_2010_shipment_comparison.xlsx.*

applications could cause it to break prematurely. To address this problem, lamp manufacturers developed lamp designs that incorporate additional support wires along the length of the filament to ensure that it has support not just at each end, but at several other points as well. The additional support protects the filament during operation and enables longer operating life for incandescent lamps in rough service applications. Typical applications for these rough service lamps might include commercial hallways and stairwells, gyms, storage areas, and security areas.

B. Vibration Service Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a ''vibration service lamp.'' The statutory definition reads as follows: ''The term 'vibration service lamp' means a lamp that—(i) Has filament configurations that are C–5, C–7A, or C–9, as listed in Figure 6–12 of the 9th Edition of the IESNA Lighting Handbook or similar configurations; (ii) has a maximum wattage of 60 watts; (iii) is sold at retail in packages of 2 lamps or less; and (iv) is designated and marketed specifically for vibration service or vibration-resistant applications, with—(I) the designation appearing on the lamp packaging; and (II) marketing materials that identify the lamp as being vibration service only.'' (42 U.S.C. 6291(30)(AA))

The statute mentions three examples of filament configurations for vibration service lamps in Figure 6–12 of the *IESNA Lighting Handbook,* one of which (*i.e.,* C–7A) is also listed in the statutory definition of ''rough service lamp.'' The definition of ''vibration service lamp'' requires that such lamps have a maximum wattage of 60 watts and be sold at a retail level in packages of two lamps or fewer. Similar to rough service lamps, vibration service lamps must be designated and marketed for vibration service or vibration-resistant applications. As the name suggests, this type of incandescent lamp is generally used in applications where the incandescent lamp would be subject to a continuous low level of vibration, such as in a ceiling fan light kit. In such applications, standard incandescent lamps without additional filament support wires may not achieve the full rated life, because the filament wire is brittle and would be subject to breakage at typical operating temperature. To address this problem, lamp manufacturers typically use a more malleable tungsten filament to avoid damage and short circuits between coils.

C. Three-Way Incandescent Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a ''3-way incandescent lamp.'' The statutory definition reads as follows: ''The term '3-way incandescent lamp' includes an incandescent lamp that—(i) employs 2 filaments, operated separately and in combination, to provide 3 light levels; and (ii) is designated on the lamp packaging and marketing materials as being a 3-way incandescent lamp.'' (42 U.S.C. 6291(30)(Y)).

Three-way lamps are commonly found in wattage combinations such as 50, 100, and 150 watts or 30, 70, and 100 watts. These lamps use two filaments (*e.g.,* a 30-watt and a 70-watt filament) and can be operated separately or together to produce three different lumen outputs (*e.g.,* 305 lumens with one filament, 995 lumens with the other, or 1,300 lumens using the filaments together). When used in three-way sockets, these lamps allow users to control the light level. Three-way incandescent lamps are typically used in residential multi-purpose areas, where consumers may adjust the light level to be appropriate for the task they are performing.

D. 2,601–3,300 Lumen General Service Incandescent Lamps

The statute does not provide a definition of ''2,601–3,300 Lumen General Service Incandescent Lamps''; however, DOE is interpreting this term to be a general service incandescent lamp [3] that emits between 2,601 and 3,300 lumens. In this lumen range, the wattages of covered general service incandescent lamps are between 140 and 170 watts. Within that range, the only commonly made lamp that meets other general service incandescent lamp criteria is rated at 150 watts. Should other rated wattages enter the market that fall within this lumen range, they will be immediately recognizable because as required by the Energy Policy Act of 1992, Public Law 102–486, all general service incandescent lamps must be labeled with lamp lumen output.[4] These lamps are used in general service applications when high light output is needed.

E. Shatter-Resistant Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a ''shatter-resistant lamp, shatter-proof lamp, or shatter-protected lamp.'' The statutory definition reads as follows: ''The terms 'shatter-resistant lamp,' 'shatter-proof lamp,' and 'shatter-protected lamp' mean a lamp that—(i) has a coating or equivalent technology that is compliant with [National Sanitation Foundation/American National Standards Institute] NSF/ANSI 51 and is designed to contain the glass if the glass envelope of the lamp is broken; and (ii) is designated and marketed for the intended application, with—(I) the designation on the lamp packaging; and (II) marketing materials that identify the lamp as being shatter-resistant, shatter-proof, or shatter-protected.'' (42 U.S.C. 6291(30)(Z)) Although the definition provides three names commonly used to refer to these lamps, DOE simply refers to them collectively as ''shatter-resistant lamps.''

Shatter-resistant lamps incorporate a special coating designed to prevent glass shards from being strewn if a lamp's glass envelope breaks. Shatter-resistant lamps incorporate a coating compliant with industry standard NSF/ANSI 51,[5] ''Food Equipment Materials,'' and are labeled and marketed as shatter-resistant, shatter-proof, or shatter-protected. The coatings protect the lamp from breakage in applications subject to heat and thermal shock that may occur from water, sleet, snow, soldering, or welding.

III. Comparison Methodology

In the 2008 analysis, DOE reviewed each of the five sets of shipment data that were collected in consultation with NEMA and applied two curve fits to generate unit sales estimates for the five lamp types after calendar year 2006. One curve fit applied a linear regression to the historical data and extends that line into the future. The other curve fit applied an exponential growth function to the shipment data and projects unit sales into the future. For this calculation, linear regression treats the year as a dependent variable and shipments as the independent variable. The linear regression curve fit is modeled by minimizing the differences

[3] ''General service incandescent lamp'' is defined as a standard incandescent or halogen type lamp that—(I) Is intended for general service applications; (II) has a medium screw base; (III) has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and (IV) is capable of being operated at a voltage range at least partially within 110 and 130 volts. (42 U.S.C. 6291(30)(D)).

[4] The Federal Trade Commission issued the lamp labeling requirements in 1994 (*see* 59 FR 25176 (May 13, 1994)). Further amendments were made to the lamp labeling requirements in 2007 (*see* 16 CFR 305.15(b); 72 FR 49948, 49971–72 (August 29, 2007)). The package must display the lamp's light output (in lumens), energy use (in watts), and lamp life (in hours).

[5] NSF/ANSI 51 applies specifically to materials and coatings used in the manufacturing of equipment and objects destined for contact with foodstuffs.

among the data points and the best curve-fit linear line using the least squares function.[6] The exponential curve fit is also a regression function and uses the same least squares function to find the best fit. For some data sets, an exponential curve provides a better characterization of the historical data, and, therefore, a better projection of the future data.

For 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps, DOE found that the linear regression and exponential growth curve fits produced nearly the same estimates of unit sales (*i.e.,* the difference between the two forecasted values was less than 1 or 2 percent). However, for rough service and vibration service lamps, the linear regression curve fit projects lamp unit sales would decline to zero for both lamp types by 2018. In contrast, the exponential growth curve fit projected a more gradual decline in unit sales, such that lamps will still be sold beyond 2018, and it was, therefore, considered the more realistic forecast. While DOE would be satisfied that either the linear regression or exponential growth spreadsheet model would generate a reasonable benchmark unit sales estimate for 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps, DOE is selecting the exponential growth curve fit for these lamp types for consistency with the selection made for rough service and vibration service lamps.[7] DOE examines the benchmark unit sales estimates and actual sales for each of the five lamp types in the following section and also makes the comparisons available in a spreadsheet online at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/five_lamp_types.html.*

IV. Comparison Results

A. Rough Service Lamps

For rough service lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2011 to be 6,080,000 units. The NEMA-provided shipment data reported shipments of 6,829,000 rough service lamps in 2011. As this finding exceeds the estimate by only 12.3 percent, DOE will continue to track rough service lamp sales data and will not initiate regulatory action for this lamp type at this time.

B. Vibration Service Lamps

For vibration service lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2011 to be 3,176,000 units. The NEMA-provided shipment data reported shipments of 914,000 vibration service lamps in 2011. As this finding is only 28.8 percent of the estimate, DOE will continue to track vibration service lamp sales data and will not initiate regulatory action for this lamp type at this time.

C. Three-Way Incandescent Lamps

For 3-way incandescent lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2011 to be 50,652,000 units. The NEMA-provided shipment data reported shipments of 31,619,000 3-way incandescent lamps in 2011. As this finding is only 62.4 percent of the estimate, DOE will continue to track 3-way incandescent lamp sales data and will not initiate regulatory action for this lamp type at this time.

D. 2,601–3,300 Lumen General Service Incandescent Lamps

For 2,601–3,300 lumen general service incandescent lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2011 to be 33,913,000 units. The NEMA-provided shipment data reported shipments of 9,878,000 2,601–3,300 lumen general service incandescent lamps in 2011. As this finding is 29.1 percent of the estimate, DOE will continue to track 2,601–3,300 lumen general service incandescent lamp sales data and will not initiate regulatory action for this lamp type at this time.

E. Shatter-Resistant Lamps

For shatter-resistant lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2011 to be 1,659,000 units. The NEMA-provided shipment data reported shipments of 1,210,000 shatter-resistant lamps in 2011. As this finding is only 72.9 percent of the estimate, DOE will continue to track shatter-resistant lamp sales data and will not initiate regulatory action for this lamp type at this time.

V. Conclusion

None of the shipments for the rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, or shatter-resistant lamps crossed the statutory threshold for a standard. DOE will monitor the situation for these five currently exempted lamp types and will reassess 2012 sales by March 31, 2013, in order to determine whether energy conservation standards rulemaking is required, consistent with 42 U.S.C. 6295(l)(4)(D)–(H).

Issued in Washington, DC, on March 6, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–6746 Filed 3–19–12; 8:45 am]

BILLING CODE 6450–01–P

[6] The least squares function is an analytical tool that DOE uses to minimize the sum of the squared residual differences between the actual historical data points and the modeled value (*i.e.,* the linear curve fit). In minimizing this value, the resulting curve fit will represent the best fit possible to the data provided.

[7] This selection is consistent with the 2010 comparison. See DOE's 2008 forecast spreadsheet models of the lamp types for greater detail of the estimates. The spreadsheet models are available at: *www1.eere.energy.gov/buildings/appliance_standards/residential/docs/five_lamp_types_models.xls.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0269; Directorate Identifier 2011–NM–105–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation 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 Dassault Aviation Model FALCON 7X airplanes. This proposed AD was prompted by a report that a passenger oxygen pipe at frame 10 was chafing against the forward lavatory rear structure, raising the risk of the oxygen pipe developing a crack. This proposed AD would require modifying the routing of and, if necessary, replacing, the oxygen pipe. We are proposing this AD to prevent rupture of the oxygen pipe which, in case of a cabin depressurization, would impair operation of the passenger oxygen distribution system.

DATES: We must receive comments on this proposed AD by May 4, 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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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–2012–0269; Directorate Identifier 2011–NM–105–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 2011–0070, dated April 18, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Inspections of two aeroplanes during cabin completions have shown that a passenger oxygen line at frame 10 was chafing with the forward lavatory rear structure.
>
> Design review of the area confirmed a local low clearance value which raises the risk of the oxygen line developing a crack.
>
> This condition, if not detected and corrected, could lead to rupture of the oxygen line which, in case of a cabin depressurization, would impair operation of the passengers' oxygen distribution system.
>
> To address this unsafe condition, Dassault Aviation have designed a modification with a new oxygen line routing.
>
> This AD requires an [general visual] inspection of the oxygen line for interference or damage and, in case of discrepancies [damage, or clearance less than 3 mm], accomplishment of the modification [including general visual inspections, and, if necessary, replacing the oxygen line/pipe] before next flight. It requires as well accomplishment of the modification of the oxygen line routing for the aeroplanes in which [clearance of 3 mm or more but less than 12 mm] were identified.

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

Relevant Service Information

Dassault Aviation has issued Mandatory Service Bulletin 7X–174, dated March 10, 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.

Differences Between This AD and the MCAI or Service Information

This AD differs from the MCAI and/or service information as follows: The MCAI specifies that all airplanes must be modified before further flight if any discrepancy is found, and if no discrepancy, the modification must be done within 98 months or 4,000 flight cycles. This AD requires modification before further flight if damage or a certain clearance is found, and if a certain other clearance is found, modification within 98 months or 4,000 flight cycles. No modification is necessary for airplanes having a clearance of 12 mm or more.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 11 products of U.S. registry. We also estimate that it would take about 11 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 $10,285, or $935 per product.

In addition, we estimate that any necessary follow-on actions would take about 16 work-hours and require parts costing $655, for a cost of $2,015 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); and

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:

Dassault Aviation: Docket No. FAA–2012–0269; Directorate Identifier 2011–NM–105–AD.

(a) Comments Due Date

We must receive comments by May 4, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, serial numbers 3, 10, 13, 18, 19, 20, 22, 23, 24, 26, 27, 29, 30, 31, 32, 33, 35, 36, 38, 41, 42, 43, 47, 48, 58, 63, 64, 66, 67, 68, 71, 76, 78, 79, 83, 84, 85, 86, 87, and 93; except for airplanes on which the Dassault Aviation modification specified in Dassault Mandatory Service Bulletin 7X–174, has been incorporated.

(d) Subject

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

(e) Reason

This AD was prompted by a report that a passenger oxygen pipe at frame 10 was chafing against the forward lavatory rear structure, raising the risk of the oxygen pipe developing a crack. We are issuing this AD to prevent rupture of the oxygen pipe which, in case of a cabin depressurization, would impair operation of the passenger oxygen distribution system.

(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

Within 2 months after the effective date of this AD, do a boroscope inspection of the passenger oxygen pipe for clearance and a general visual inspection for damage of the oxygen pipe, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin 7X–174, dated March 10, 2011.

(h) Corrective Actions

If during any inspection required by paragraph (g) of this AD any damage is found or oxygen pipe clearance is less than 3 millimeters (mm) (0.12 inch): Before further flight, modify the oxygen pipe routing, including doing a general visual inspection for chafing of the pipe and doing all applicable replacements, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin 7X–174, dated March 10, 2011.

(i) Oxygen Pipe Routing Modification

If, during any inspection required by paragraph (g) of this AD, oxygen pipe clearance is 3 mm (0.12 inch) or more but less than 12 mm (0.47 inch): Within 98 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the routing of the passenger oxygen pipe, including doing a general visual inspection for chafing of the pipe and doing all applicable replacements, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin 7X–174, dated March 10, 2011.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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.

(k) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0070, dated April 18, 2011; and Dassault Mandatory Service Bulletin 7X–174, Initial Issuance, dated March 10, 2011; for related information.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6627 Filed 3–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0268; Directorate Identifier 2011–NM–129–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD was prompted by reports of incorrectly installed bolts common to the rear spar termination fitting on the horizontal stabilizer. This proposed AD would require inspecting for a serial number that starts with the letters ''SAIC'' on the left- and right-side horizontal stabilizer identification plate; a detailed inspection for correct bolt protrusion and chamfer of the termination fitting bolts of the horizontal stabilizer rear spar, if necessary; inspecting to determine if certain bolts are installed, if necessary, and related investigative and corrective actions if necessary. This proposed AD would also require

repetitive inspections for cracking of the termination fitting at certain bolt locations, and repair if necessary. We are proposing this AD to prevent loss of structural integrity of the horizontal stabilizer attachment and loss of control of the airplane.

DATES: We must receive comments on this proposed AD by May 4, 2012.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 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 proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0268; Directorate Identifier 2011–NM–129–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

We received reports of incorrectly installed bolts common to the rear spar terminal fitting of the horizontal stabilizer. During manufacturing, the termination fitting bolts were installed without proper thread protrusion due to missing washers. This resulted in an unclamped condition between the horizontal stabilizer rear spar and the termination fitting. Loose bolts attaching the horizontal stabilizer termination fitting can lead to premature cracking of the fitting. This condition, if not corrected, could result in the loss of structural integrity of the horizontal stabilizer attachment and loss of control of the airplane.

Relevant Service Information

We reviewed Boeing Service Bulletin 737–55–1090, dated March 30, 2011. This service information describes procedures for inspecting for a serial number that starts with the letters ''SAIC'' on the left- and right-side horizontal stabilizer identification plate; a detailed inspection for correct bolt protrusion and chamfer of the termination fitting fasteners of the horizontal stabilizer rear spar, if necessary; an inspection to determine if certain bolts are installed, if necessary, and related investigative and corrective actions if necessary. This service information also describes procedures for repetitive high frequency eddy current (HFEC) and ultrasonic (UT) inspections for cracking of the termination fitting at certain bolt locations, and repair if necessary.

The related investigative action is a detailed inspection for damage (including chafing, galling, nicks, gouges, and exposed bare metal) of the bolt shank. The corrective action includes installing new hardware, replacing the bolt with a new bolt, and contacting The Boeing Company for repair instructions and doing the repair.

The initial compliance time for certain airplanes is before 32,000 total flight cycles or within 12 months after the original issue date of the service information. For certain other airplanes, the initial compliance time is before 36,000 total flight cycles or within 12 months after the original issue date of the service information.

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 these same type designs.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

Boeing Service Bulletin 737–55–1090, dated March 30, 2011, does not specify doing an inspection for bolt type. This proposed AD would require inspection for correct bolt type. If incorrect bolt type is found, paragraph (k) of this proposed AD would require repair using a method approved in accordance with paragraph (l).

Figure 1 of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, contains an error. The illustration of an identification plate that points to the location of a part number should point to the serial number and the example ''SAIC 1234'' should be located on the serial number line. This proposed AD requires an inspection for an identification plate with a serial number that starts with the letters ''SAIC.''

Boeing Service Bulletin 737–55–1090, dated March 30, 2011, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

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

we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 373 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
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85	$31,705
Replacement of bolts	17 work-hours × $85 per hour = $1,445	1,530	2,975	1,109,675

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions (contacting Boeing and repairing cracks or damage) specified in this AD.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0268; Directorate Identifier 2011–NM–129–AD.

(a) Comments Due Date

We must receive comments by May 4, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 737–55–1090, dated March 30, 2011.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of incorrectly installed bolts common to the rear spar termination fitting of the horizontal stabilizer. We are issuing this AD to prevent loss of structural integrity of the horizontal stabilizer attachment and loss of control of the airplane.

(f) Compliance

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

(g) Inspecting the Horizontal Stabilizer and Corrective Actions

Except as provided by paragraph (i) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–55–1090, dated March 30, 2011: Do an inspection for a serial number that starts with the letters ''SAIC'' on the identification plates of the left- and right-side horizontal stabilizers, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011.

(1) If a serial number starting with the letters ''SAIC'' is found on a horizontal stabilizer identification plate: Except as provided by paragraph (i) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, do a detailed inspection for correct bolt protrusion and correct chamfer of the termination fitting bolts of the horizontal stabilizer rear spar, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011. Concurrently with the detailed inspection, inspect to determine if bolts other than part number (P/N) BACB30US14K() or BACB30US16K(), as applicable, are installed. Before further flight, do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011.

(2) If no SAIC serial number is found, no further action is required by this AD.

(h) High Frequency Eddy Current and Ultrasonic Inspections of Termination Fitting and Repair

For any location where a new bolt having a P/N BACB30US14K() is installed due to damage found during any inspection required by paragraph (g) of this AD: Except as provided by paragraph (i) of this AD, at the times specified in paragraph 1.E.,

''Compliance,'' of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, do HFEC and ultrasonic inspections for cracking of the forward and aft sides of the termination fitting, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011. If any crack is found in any termination fitting: Before further flight, repair in accordance with the procedures specified in paragraph (l) of this AD. Repeat the HFEC and ultrasonic inspections thereafter at intervals not to exceed 3,500 flight cycles.

(i) Exception to Compliance Time

Where Boeing Service Bulletin 737–55–1090, dated March 30, 2011, specifies a compliance time ''after the original issue date on the service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) Exception to Service Bulletin

Where Figure 1 of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, points to the location of a part number rather than the serial number, this AD requires an inspection for an identification plate with a serial number that starts with the letters ''SAIC.''

(k) Exceptions to Corrective Actions

If, during any inspection required by paragraphs (g) and (h) of this AD, any bolts other than P/N BACB30US14K() or BACB30US16K(), as applicable, are found: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(l) 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.

(m) Related Information

(1) For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 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; email *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 8, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6628 Filed 3–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0267; Directorate Identifier 2011–NM–174–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 series airplanes. This proposed AD was prompted by reports that the automatic de-icing mode became unavailable due to a failure of the timer and monitor unit (TMU). This proposed AD would require replacing the TMU. We are proposing this AD to prevent loss of the automatic de-icing mode and consequent increased workload for the flight crew, which, depending on additional failures, could lead to loss of control of the airplane.

DATES: We must receive comments on this proposed AD by May 4, 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: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; 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–2012–0267; Directorate Identifier 2011–NM–174–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–2011–34, dated August 16, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There have been multiple reports of in-service incidents where the automatic deicing mode became unavailable due to a failure of the Timer and Monitor Unit (TMU).
>
> Investigation has revealed that the failures were attributed to overstressed capacitors installed in the circuit board of the TMU ''Module 300'' power supply. The failure of the capacitors leads to failure of the TMU ''Module 300'' power supply and subsequent loss of the automatic deicing mode.
>
> This [TCCA] directive mandates the replacement of the TMU, part number (P/N) 4100S018–06, with a new improved unit, P/N 4100S018–07.

The unsafe condition is loss of the automatic de-icing mode and consequent increased workload for the flight crew, which, depending on additional failures, could lead to loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier, Inc. has issued Service Bulletin 84–30–14, dated May 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 81 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. 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 $20,655, or $255 per product.

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–2012–0267; Directorate Identifier 2011–NM–174–AD.

(a) Comments Due Date

We must receive comments by May 4, 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, equipped with Aerazur timer and monitor unit, part number (P/N) 4100S018–06.

(d) Subject

Air Transport Association (ATA) of America Code 30: Ice and rain protection.

(e) Reason

This AD was prompted by reports that the automatic de-icing mode became unavailable due to a failure of the timer and monitor unit (TMU). We are issuing this AD to prevent loss of the automatic de-icing mode and consequent increased workload for the flight crew, which, depending on additional failures, could lead to loss of control of the airplane.

(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) Replace the TMU

Within 3,000 flight hours or 18 months after the effective date of this AD, whichever occurs first: Replace TMU P/N 4100S018–06 with new TMU P/N 4100S018–07, by incorporating Bombardier ModSum 4–126525, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–30–14, dated May 20, 2011.

(h) Parts Installation

As of the effective date of this AD, no person may install a TMU, P/N 4100S018–06, on any airplane.

(i) 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.

(j) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–34, dated August 16, 2011; and Bombardier Service Bulletin 84–30–14, dated May 20, 2011; for related information.

Issued in Renton, Washington, on March 7, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6626 Filed 3–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0142; Directorate Identifier 2010–NM–275–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 CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes. This proposed AD was prompted by reports of failures of a hydraulic accumulator's screw-cap/end cap while on the ground that resulted in loss of use of that hydraulic system and in high-energy impact damage to adjacent systems and structures. This proposed AD would require an inspection for part numbers; repetitive inspections for any cracking of certain hydraulic system accumulators, and replacement, if necessary; and revising the maintenance program to include a life limit for certain hydraulic system accumulators. We are proposing this AD to prevent loss of use of a hydraulic system, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 4, 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., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@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: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; 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–2012–0142; Directorate Identifier 2010–NM–275–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 Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–35R1, dated June 28, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Seven cases of on-ground hydraulic accumulator screw cap/end cap failure have been experienced on CL–600–2B19 aeroplanes resulting in loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. The lowest number of flight cycles accumulated at the time of failure, to date, has been 6,991 flight cycles.
>
> Although there have been no failures to date on any CL–600–2C10, CL–600–2D15 or CL–600–2D24 aeroplanes, similar accumulators to those installed on the CL–600–2B19, are installed. The part numbers (P/Ns) of the accumulators installed on CL–600–2C10, CL–600–2D15 and CL–600–2D24 aeroplanes are 900096–1 (Hydraulic System No. 1 and Hydraulic System No. 2 accumulators), 900097–1 (Hydraulic System No. 3 accumulator) and 08–60204–001 (Inboard Brake and Outboard Brake accumulators).
>
> A detailed analysis of the calculated line of trajectory of a failed screw cap/end cap for each of the accumulators has been conducted, resulting in the identification of

several areas where systems and/or structural components could potentially be damaged. Although all of the failures to date have occurred on the ground, an in-flight failure affecting such components could potentially have an adverse effect on the controllability of the aeroplane.

This [Canadian] directive gives instructions to conduct [an inspection to determine if certain hydraulic accumulators are installed and, if necessary,] repetitive ultrasonic inspections [for cracking] of the Hydraulic System No. 1, Hydraulic System No. 2, Hydraulic System No. 3, Inboard Brake and Outboard Brake accumulators, P/Ns 900096–1, 900097–1, and 08–60204–001, that are not identified by the letter ''M'' or ''T'' after the S/N [serial number] on the identification plate.

* * * * *

Required actions include revising the maintenance program to include a life limit for certain accumulators, and for airplanes on which cracking is found during an ultrasonic inspection, replacing the accumulator with a new accumulator containing the letter ''M'' or ''T'', as applicable, after the serial number on the identification plate or with a new accumulator with a different part number, and eventual replacement of certain accumulators with new accumulators. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued the following service information.

- Bombardier Alert Service Bulletin A670BA–29–011, Revision A, dated July 27, 2010, including Appendix A, Revision A, dated July 26, 2010.
- Bombardier Alert Service Bulletin A670BA–29–012, including Appendix A, Revision A, dated July 27, 2010.
- Bombardier Service Bulletin A670BA–32–021, Revision C, dated July 27, 2010, including Appendix A, Revision A, dated October 18, 2007.
- Bombardier Service Bulletin 670BA–29–013, Revision A, dated July 27, 2010, including Appendix A, dated January 29, 2010.
- Bombardier Service Bulletin 670BA–32–026, Revision A, dated July 27, 2010, including Appendix A, dated January 29, 2010.
- Bombardier Service Bulletin 670BA–29–014, dated December 22, 2010.
- Bombardier Service Bulletin 670BA–29–015, dated December 22, 2010.
- Bombardier Service Bulletin 670BA–32–028, dated December 22, 2010.
- Tasks 29–11–11–000–801 and 29–11–11–400–801 of Section 1.3, Safe Life Components, of Part 2, Airworthiness Limitations, of the Bombardier CL–600–2C10, CL–600–2D15, CL–600–2D24, CL–600–2E25 Maintenance Requirements Manual, CSP B–053, Revision 11, dated October 20, 2010.

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 389 products of U.S. registry. We also estimate that it would take up to 21 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $8,988 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 up to $4,190,697, or $10,773 per product, per inspection cycle.

In addition, we estimate that any necessary follow-on actions would take up to 7 work-hours and require parts costing $8,988, for a cost of $9,583 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–2012–0142; Directorate Identifier 2010–NM–275–AD.

(a) Comments Due Date

We must receive comments by May 4, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, with serial number (S/N) 10003 through 10314 inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, with S/N 15001 through 15259 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 29: Hydraulic Power, and 32: Landing Gear.

(e) Reason

This AD was prompted by reports of failures of a hydraulic accumulator's screw-cap/end cap while on the ground that resulted in loss of use of that hydraulic system and in high-energy impact damage to adjacent systems and structures. We are issuing this AD to prevent loss of use of a hydraulic system, which could result in reduced controllability of the airplane.

(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 Part Numbers (P/Ns)

At the applicable time specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, inspect the hydraulic accumulators in the hydraulic systems No. 1, No. 2, and No. 3, and the inboard and outboard brake systems, to determine the part number of the accumulator. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the accumulator can be conclusively determined from that review.

(1) For an accumulator with more than 4,500 total flight cycles as of the effective date of this AD, inspect that accumulator within 500 flight cycles after the effective date of this AD.

(2) For an accumulator with 4,500 or less total flight cycles as of the effective date of this AD, inspect that accumulator before it has accumulated 5,000 total flight cycles.

(3) If it is not possible to determine the total flight cycles accumulated on an accumulator, inspect that accumulator within 500 flight cycles after the effective date of this AD.

(h) Inspection for Letter Designation After the Serial Number

If, during an inspection required by paragraph (g) of this AD, an accumulator having P/N 900096–1 (for hydraulic systems No. 1 and No. 2 accumulators), 900097–1 (for hydraulic system No. 3 accumulator), or 08–60204–001 (for inboard and outboard brake accumulators) is found, at the applicable time specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, do an inspection of the identification plate on the hydraulic accumulator to determine if an ''M'' (for hydraulic system accumulators) or a ''T'' (for brake system accumulators) follows the serial number on the identification plate. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and the letter of the accumulator can be conclusively determined from that review.

Note 1 to paragraphs (h), (i), (k), (l)(2), and (m): The letter ''M'' after the serial number on the identification plate is applicable to accumulators, P/Ns 900096–1 and 900097–1, on hydraulic systems No. 1, No. 2, and No. 3. The letter ''T'' after the serial number on the identification plate is applicable to accumulators, P/N 08–60204–001, on the brake system.

(i) Initial Ultrasonic Inspections of Hydraulic System No. 1, Hydraulic System No. 2, Hydraulic System No. 3, Inboard Brake, and Outboard Brake Accumulators

If, during any inspection required by paragraph (h) of this AD, any accumulator without the letter ''M'' (for hydraulic system accumulators) or a ''T'' (for brake system accumulators) after the serial number is found, at the applicable time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Do an ultrasonic inspection of the inner shoulders of the accumulator screw-cap for cracking, in accordance with Part B of the Accomplishment Instructions of the applicable Bombardier service bulletin identified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, and at the internal threads of the screw-caps, in accordance with the Accomplishment Instructions of the applicable Bombardier service bulletin identified in paragraphs (i)(4), (i)(5), and (i)(6) of this AD.

(1) For hydraulic system No. 1, and hydraulic system No. 2 accumulators: Bombardier Alert Service Bulletin A670BA–29–011, Revision A, dated July 27, 2010, including Appendix A, Revision A, dated July 26, 2010.

(2) For hydraulic system No. 3 accumulators: Bombardier Alert Service Bulletin A670BA–29–012, including Appendix A, Revision A, dated July 27, 2010.

(3) For inboard brake, outboard brake accumulators: Bombardier Service Bulletin A670BA–32–021, Revision C, dated July 27, 2010, including Appendix A, Revision A, dated October 18, 2007.

(4) For hydraulic system No. 1 accumulators: Bombardier Service Bulletin 670BA–29–013, Revision A, dated July 27, 2010, including Appendix A, dated January 29, 2010.

(5) For hydraulic system No. 2 accumulators: Bombardier Service Bulletin 670BA–29–013, Revision A, dated July 27, 2010, including Appendix A, dated January 29, 2010.

(6) For inboard brake, outboard brake accumulators: Bombardier Service Bulletin 670BA–32–026, Revision A, dated July 27, 2010, including Appendix A, dated January 29, 2010.

(j) No Cracking Found During Accomplishment of Paragraph (i) of This AD

If no cracking is found during the inspections required by paragraph (i) of this AD, do the actions required by paragraph (l) of this AD.

(k) Any Cracking Found During Accomplishment of Paragraph (i) of This AD

If any cracking is found during the inspections required by paragraph (i) of this AD, before further flight, replace the accumulator with a new accumulator containing the letter ''M'' or ''T'', as applicable, after the serial number on the identification plate, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraphs (i)(1) through (i)(6) of this AD, or replace the accumulator with a new accumulator as specified in paragraphs (k)(1) through (k)(3) of this AD, as applicable.

(1) For any cracked hydraulic system No. 1 or No. 2 accumulator, replace the cracked accumulator with a new accumulator, P/N 900121–1, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–29–014, dated December 22, 2010.

(2) For any cracked hydraulic system No. 3 accumulator, replace the cracked accumulator with a new accumulator, P/N 900122–1, in accordance with the replacement specified in paragraph (o) of this AD.

(3) For any cracked inboard brake or outboard brake accumulator replaced the cracked accumulator with a new accumulator, P/N 90006691, in accordance with the replacement specified in paragraph (p) of this AD.

(l) Repetitive Ultrasonic Inspections of Hydraulic System No. 1, Hydraulic System No. 2, Hydraulic System No. 3, Inboard Brake, and Outboard Brake Accumulators

For each accumulator on which no cracking was found during any inspection required by paragraph (i) of this AD, within 500 flight cycles after the previous ultrasonic inspection, inspect the accumulator in accordance with paragraph (i) of this AD.

(1) If no cracking is found, do the actions required by paragraph (l) of this AD and repeat thereafter at intervals not to exceed 500 flight cycles.

(2) If any cracking is found, before further flight, replace the accumulator with a new accumulator containing the letter ''M'' or ''T'', as applicable, after the serial number on the identification plate, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraphs (i)(1) through (i)(6) of this AD, or replace the accumulator with a new accumulator as specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD, as applicable.

(m) Replacement of Hydraulic System No. 1 and No. 2 Accumulators

For airplanes on which a hydraulic system No. 1 or No. 2 accumulator having P/N 900096–1 without the letter ''M'' after the serial number is installed: At the applicable time specified in paragraphs (m)(1) and (m)(2) of this AD, replace the accumulator

with a new one having P/N 900096–1 with the letter ''M'' after the serial number; or having P/N 900121–1, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–29–014, dated December 22, 2010.

(1) For an accumulator with more than 19,500 total flight cycles as of the effective date of this AD, replace that accumulator within 500 flight cycles after accomplishing the most recent inspection required by paragraph (i) or (l) of this AD.

(2) For an accumulator with 19,500 or less total flight cycles as of the effective date of this AD, replace that accumulator before it has accumulated 20,000 total flight cycles.

(3) If it is not possible to determine the total flight cycles accumulated on an accumulator, replace that accumulator within 500 flight cycles after accomplishing the most recent ultrasonic inspection required by paragraph (i) or (l) of this AD.

(n) Hydraulic System Safe Life Limit Introduction

Within 60 days after the effective date or this AD, revise the maintenance program to include a safe life limit for the hydraulic system No. 1 and No. 2 accumulators, P/N 900096–1, by incorporating Tasks 29–11–11–000–801 and 29–11–11–400–801 of Section 1.3, Safe Life Components, of Part 2, Airworthiness Limitations, of the Bombardier CL–600–2C10, CL–600–2D15, CL–600–2D24, CL–600–2E25 Maintenance Requirements Manual, CSP B–053, Revision 11, dated October 20, 2010.

(o) Replacement of Hydraulic System No. 3 Accumulator

Within 4,000 flight cycles or 24 months after the effective date of this AD, whichever occurs first, replace any hydraulic system No. 3 accumulator having P/N 900097–1 with a new accumulator having P/N 900122–1, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–29–015, dated December 22, 2010.

(p) Replacement of Inboard or Outboard Brake System Accumulators

Within 4,000 flight cycles or 24 months after the effective date of this AD, whichever occurs first, replace any inboard or outboard brake system accumulator having P/N 08–60204–001 with a new accumulator having P/N 90006691, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–028, dated December 22, 2010.

(q) Credit for Actions Accomplished in Accordance With Previous Service Information

(1) Actions done before the effective date of this AD using Part B of the Accomplishment Instructions of the Bombardier service bulletin identified in paragraph (q)(1)(i), (q)(1)(ii), (q)(1)(iii), (q)(1)(iv), or (q)(1)(v) of this AD is acceptable for compliance with the corresponding requirements of this AD.

(i) Bombardier Alert Service Bulletin A670BA–29–011, dated October 18, 2007.

(ii) Bombardier Alert Service Bulletin A670BA–29–012, dated March 13, 2008.

(iii) Bombardier Alert Service Bulletin A670BA–32–021, dated November 21, 2006.

(iv) Bombardier Alert Service Bulletin A670BA–32–021, Revision A, dated March 7, 2007.

(v) Bombardier Alert Service Bulletin A670BA–32–021, Revision B, dated October 18, 2007.

(2) Actions done before the effective date of this AD using the Accomplishment Instructions of Bombardier Service Bulletin 670BA–29–013, dated January 29, 2010; or 670BA–32–026, dated January 29, 2010; are acceptable for compliance with the corresponding requirements of this AD.

(r) Terminating Actions

Accomplishing the actions required by paragraphs (m), (n), (o), and (p) of this AD terminates the requirements of this AD for the accumulator at that location only.

(s) 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, 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 manager of 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.

(t) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2010–35R1, dated June 28, 2011, and the service information identified in paragraphs (t)(1) through (t)(9) of this AD, for related information.

(1) Bombardier Alert Service Bulletin A670BA–29–011, Revision A, dated July 27, 2010, including Appendix A, Revision A, dated July 26, 2010.

(2) Bombardier Alert Service Bulletin A670BA–29–012, including Appendix A, Revision A, dated July 27, 2010.

(3) Bombardier Service Bulletin A670BA–32–021, Revision C, dated July 27, 2010, including Appendix A, Revision A, dated October 18, 2007.

(4) Bombardier Service Bulletin 670BA–29–013, Revision A, dated July 27, 2010, including Appendix A, dated January 29, 2010.

(5) Bombardier Service Bulletin 670BA–32–026, Revision A, dated July 27, 2010, including Appendix A, dated January 29, 2010.

(6) Bombardier Service Bulletin 670BA–29–014, dated December 22, 2010.

(7) Bombardier Service Bulletin 670BA–29–015, dated December 22, 2010.

(8) Bombardier Service Bulletin 670BA–32–028, dated December 22, 2010.

(9) Tasks 29–11–11–000–801 and 29–11–11–400–801 of Section 1.3, Safe Life Components, of Part 2, Airworthiness Limitations, of the Bombardier CL–600–2C10, CL–600–2D15, CL–600–2D24, CL–600–2E25 Maintenance Requirements Manual, CSP B–053, Revision 11, dated October 20, 2010.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6622 Filed 3–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Parts 35 and 36

[CRT Docket No. 123; AG Order No. 3327–2012]

RIN 1190–AA69

Delaying the Compliance Date for Certain Requirements of the Regulations Implementing Titles II and III of the Americans With Disabilities Act

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: By this rule, the Department of Justice is proposing to extend the date for compliance with certain requirements in the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design that relate to provision of accessible entry and exit for existing swimming pools and spas. Concurrently with the publication of this Notice of Proposed Rulemaking (NPRM), the Department is publishing a final rule that extends the compliance date with respect to existing swimming pools, wading pools, and spas to May 21, 2012 in order to allow additional time to address misunderstandings among pool owners and operators regarding these ADA requirements. By this rule, the Department seeks public comment on its proposal to extend the compliance date for a longer period of six months, until September 17, 2012 in the interest of promoting clear and consistent application of the ADA's requirements to existing facilities.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before April 4, 2012. Comments received by mail will be considered timely if they are postmarked on or before that date. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: You may submit comments, identified by RIN (or Docket No. 123), by any one of the following methods:

- *Federal eRulemaking portal: www.regulations.gov.* Follow the Web site instructions for submitting comments. The Regulations.gov Docket ID is.
- *Mail:* Please submit all written comments to Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530.
- *Overnight, courier or hand delivery:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue NW., Suite 4039, Washington, DC 20005.

Please submit your comments by only one method. Because of the short timeframe for this rulemaking, the Department will not review comments received by means other than those listed above, or that are received after the comment period has closed. While the Department is soliciting comments on the proposed suspension of the applicability of the requirements in the 2010 Standards to swimming pools and spas, we do not with this NPRM seek comments related to the merits of the requirements themselves, which have already been evaluated fully through an earlier, extensive notice and comment process. We will deem any such comments on this NPRM out of scope and will not consider them.

FOR FURTHER INFORMATION CONTACT: Allison Nichol, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307–0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

SUPPLEMENTARY INFORMATION:

Posting of Public Comments. Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT.**

The reason the Department is requesting electronic comments before Midnight Eastern Time at the end of the day the comment period closes is that the inter-agency Regulations.gov/Federal Docket Management System (FDMS), which receives electronic comments, terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern may want to take this fact into account so that their electronic comments can be received. The constraints imposed by the Regulations.gov/FDMS system do not apply to U.S. postal comments which, as stated above, will be considered as timely filed if they are postmarked before Midnight on the day the comment period closes.

Discussion

The Department of Justice published its revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010. *See* 75 FR 56163. The revised ADA rules were the result of a six-year process to update the Department's regulations. As part of this process, the Department sought extensive public comment, issuing an Advance Notice of Proposed Rulemaking (ANPRM) on September 30, 2004, 69 FR 58768, and two Notices of Proposed Rulemaking (NPRM) on June 17, 2008, 73 FR 34466 (title II), and 73 FR 34508 (title III). The Department also held a public hearing on the NPRMs and received more than 4,435 written public comments. On September 15, 2010, the Department published a final rule revising the regulations implementing titles II and III of the ADA. As part of this revision, the Department adopted the 2010 ADA Standards for Accessible Design (''2010 Standards''), which are based in large part on the 2004 ADA Accessibility Guidelines adopted by the United States Access Board in 2004. *See* 69 FR 44083 (July 23, 2004). With limited exception, the Department's revised regulations went into effect on March 15, 2011.

With a compliance deadline of March 15, 2012, the 2010 Standards set minimum scoping and technical requirements for accessible entry and exit for new construction and alteration of swimming pools, wading pools, and spas (collectively, ''pools''). In addition, the title III regulation provides that as of March 15, 2012, public accommodations' barrier removal efforts must comply with the 2010 Standards to the extent readily achievable, including with respect to barriers to accessing pools. 28 CFR 36.304(d)(2)(iii). The title II regulation provides that the 2010 Standards apply where public entities choose to meet their title II ADA program access obligations by making structural changes to their pools. 28 CFR 35.150(b)(1), (2)(ii).

To help educate pool owners and operators concerning the requirements imposed by the regulations issued by the Department in September 2010, the Civil Rights Division published a technical assistance document entitled ''ADA 2010 Revised Requirements: Accessible Pools—Means of Entry and Exit'' (the ''TA Document''), on January 31, 2012. Both the inquiries received by the Department prior to the TA Document's publication and the pool owners and operators' response to the TA Document reveal that there were misunderstandings among a substantial number of pool owners and operators concerning the obligations imposed by the ADA as implemented in the 2010 Final Rule as to their obligations with respect to existing pools and their options with respect to the provision of pool lifts. Some pool owners and

operators believed that taking certain steps would always satisfy their obligations when in fact those steps would not necessarily result in compliance with the ADA regulations. Recognizing that pool owners and operators face challenges in correcting their misunderstandings and determining appropriate compliance when faced with what is now an immediate compliance date, the Department determined that it would be impracticable and contrary to the public interest to retain the existing compliance date. Thus the Department is contemporaneously issuing a Final Rule providing a brief 60-day extension of the March 15, 2012, compliance date.

The Department now requests public comment on a proposal to further extend the compliance dates for the title II program accessibility requirements pursuant to 28 CFR 35.150 and the title III barrier removal obligations pursuant to 28 CFR 36.304 as they relate to accessible means of entry into swimming pools, wading pools, and spas in compliance with the 2010 Standards. The proposed extension would run for a period of 180 days from the compliance date specified in the September 2010 Final Rule, namely March 15, 2012. As discussed above, the extension would provide pool owners and operators additional time to evaluate and comply with their program accessibility and readily achievable barrier removal obligations in compliance with sections 242 and 1009 of the 2010 Standards.

Regulatory Certifications

Executive Order 12866—Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132—Federalism

This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This rule merely requests comment on a proposal to further extend the compliance dates for the title II program accessibility requirements pursuant to 28 CFR 35.150 and the title III barrier removal obligations pursuant to 28 CFR 36.304 as they relate to accessible means of entry into swimming pools, wading pools, and spas. The extension would provide regulated entities additional time to evaluate and comply with their program accessibility and readily achievable barrier removal obligations.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

Paperwork Reduction Act of 1995

This proposed rule does not contain any information collection requirements that require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Dated: March 15, 2012.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2012–6747 Filed 3–15–12; 4:45 pm]

BILLING CODE 4410–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1029]

RIN 1625–AA00; AA87

Safety & Security Zones; OPSAIL 2012 Connecticut, Thames River, New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary safety and security zones on the Thames River near New London, CT for OPSAIL 2012 Connecticut (CT) activities. This action is necessary to provide for the safety of life and protection of naval vessels on navigable waters during OPSAIL 2012 CT. This action would restrict vessels from entering into, transiting through, mooring or anchoring within the zones unless authorized by the Captain of the Port (COTP) Sector Long Island Sound (SLIS).

DATES: Comments and related material must be received by the Coast Guard on or before May 21, 2012.

Requests for public meetings must be received by the Coast Guard on or before April 10, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1029 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Petty Officer Joseph Graun, Prevention Department, U.S. Coast Guard Sector Long Island Sound, (203) 468–4544, *Joseph.L.Graun@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to 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.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking USCG–2011–1029, 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 you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. 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*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–1029'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

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*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–1029'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

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).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before April 10, 2012 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.**

Basis and Purpose

The legal basis for the temporary rule is 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety and security zones.

OPSAIL 2012 CT is a multi-day marine event involving a gathering of naval vessels, and a fireworks display. This proposed rule is necessary to; (1) Protect participating naval vessels from security threats, (2) Protect waterway users from the dangers inherent to fireworks displays.

Discussion of Proposed Rule

From Tuesday, July 3, 2012 through Monday, July 9, 2012, Operation Sail, Inc. is sponsoring a naval vessels viewing and a fireworks display as part of the OPSAIL 2012 CT. Participating U.S. and foreign naval vessel will begin arriving in the New London, CT area on July 3, 2012. Upon arrival each vessel will transit up the Thames River to Admiral Shear State Pier where they will stay moored for public viewing until July 9, 2012. On the evening of July 7, 2012 the event organizer will put on an on-water fireworks display for public viewing. The fireworks will be launched from two barges anchored in the Thames River adjacent to New London City Pier.

The gathering of naval vessels is a significant event and creates a potential target for sabotage, subversive acts, or other terrorist activity. For these reasons COTP SLIS has determined it necessary to establish security zones for all naval vessels visiting during OPSAIL 2012 CT. Current regulations established in 33 CFR part 165 subpart G, provide a naval protective zone of 100 yards around each U.S. naval vessel greater than 100 feet in length. This rule purposes to create a security zone in accordance with 33 CFR part 165 subpart G of 100 yards around each U.S. naval vessel 100 feet or less in length and all foreign naval vessels while underway, anchored, or moored while on the navigable waters of the Thames River, CT between the Thames River Railroad Bridge in the Port of New London and New London Ledge light located at the mouth of the Thames River. This rule also proposes to create a security zone around Admiral Shear State Pier including all navigable waters of the Thames River, CT within 100 yards of Admiral Shear State Pier. The specific geographic locations of the regulated areas and specific requirements of this rule are contained in the regulatory text.

Based on the inherent hazards associated with fireworks, the COTP SLIS has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, and debris falling into the water has the potential to result in serious injuries or fatalities. This proposed rule would establish a temporary safety zone to restrict vessel movement around the location of the launch platforms to reduce the risk associated with the fireworks display. The launch platforms composed of two barges will be located on the Thames

River between New London City Pier and Fort Trumbull. The geographic locations of the regulated area and specific requirements of this rule are contained in the regulatory text.

The Coast Guard anticipates this proposed rule would be effective and enforced from 7:30 a.m. on July 3, 2012 until 5 p.m. on July 9, 2012. Notice of the safety and security zones, would be provided prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners. In addition, the sponsoring organization, Operation Sail, Inc., is planning to publish information of the event in local newspapers, pamphlets, internet sites, television and radio broadcasts.

Persons and vessels would be prohibited from entering, transiting through, anchoring in, or remaining within the safety and security zones unless authorized by the COTP SLIS or designated representative. Persons and vessels would be able to request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the COTP SLIS by telephone at (203) 468–4401, or designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within any of the regulated areas is granted by the COTP SLIS or designated representative, all persons and vessels receiving such authorization would be required to comply with the instructions of the COTP SLIS or designated representative.

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.

Executive Order 12866 and Executive Order 13563

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed it under that Order.

The Coast Guard has determined this proposed rule is not a significant regulatory action for the following reasons: (1) The regulated areas will be of limited duration and cover only a small portion of the navigable waterways; (2) vessels may transit the navigable waterways outside of the safety and security zones and (3) vessels requiring entry into the safety and security zones may be authorized to do so by the COTP SLIS or designated representative.

Advance public notifications will also be made to the local maritime community through the Local Notice to Mariners as well as Broadcast Notice to Mariners. In addition, the sponsoring organization, OPSAIL, Inc., is planning to publish information of the event in local newspapers, pamphlets, internet sites, television and radio broadcasts.

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 fewer than 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 or operators of vessels intending to transit the Thames River from July 3–9, 2012. The regulated areas will be of limited duration and cover only a small portion of the navigable waterways. Vessels would be able to transit the navigable waterways outside of the safety and security zones. Vessels requiring entry into the safety and security zones may be authorized to do so by the COTP or designated representative. Before the effective period, the Coast Guard will make notifications to the public through the Local Notice to Mariners and Broadcast Notice to Mariners. In addition, the sponsoring organization, OPSAIL, Inc., is planning to publish information of the event in local newspapers, pamphlets, internet sites, television and radio broadcasts.

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.

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. 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 under **FOR FURTHER INFORMATION CONTACT**. 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.

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).

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.

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 rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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.

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.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This 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.

Indian Tribal Governments

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

Energy Effects

We have analyzed this 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.

Technical Standards

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

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

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 that do not individually or cumulatively have a significant effect on the human environment.

A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. It appears that this proposed rule will qualify for Coast Guard categorical exclusion (34)(g), as described in figure 2–1 of the Instruction. This proposed rule establishes temporary safety and security zones. 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, and 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01–1029 to read as follows:

§ 165.T01–1029 Safety & Security Zones; OPSAIL 2012 Connecticut, Thames River, New London, CT.

(a) The following areas are established as security zones:

(1) 100 yards around all U.S. naval vessels measuring 100 feet or less in length while in the navigable waters of the Thames River, CT between 41°21′46″ N, 072°05′17″ W (Thames River Railroad Bridge in the Port of New London) and 41°18′21.14″ 72°04′38.78″ (New London Ledge light), whether the U.S. naval vessel is underway, anchored, or moored.

(2) 100 yards around all foreign naval vessels in the navigable waters of the Thames River, CT between 41°21′46″ N, 072°05′17″ W (Thames River Railroad Bridge in the Port of New London) and 41°18′21.14″ 72°04′38.78″ (New London Ledge light), whether the foreign naval vessel is underway, anchored, or moored.

(3) All navigable waters surrounding Admiral Shear State Pier shoreward of a boundary line created by connecting the following coordinates. Beginning at position 41°21′37″ N, 072°05′26″ W then to position 41°21′25″ N, 072°05′16″ W then to position 41°21′21″ N, 072°05′24″ W then ending at position 41°21′23″ N, 072°05′26″ W (NAD 83).

(b) The following area is established as a safety zone: All navigable waters within a 1000 foot radius of each fireworks barge located in approximate positions 41°20′57.1″ N, 072°05′22.1″ W and 41°21′03.3″ N, 072°05′24.5″ W (NAD 83).

(c) Regulations. (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply. (2) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port (COTP) Sector long Island Sound (SLIS) or designated representative.

(3) All persons and vessels shall comply with the instructions of the COTP SLIS or designated representative. These designated representatives are comprised of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights or other means the operator of a vessel shall proceed as directed.

(4) Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety or security zones must contact the COTP SLIS by telephone at (203)–468–4401, or designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety or security zones is granted by the COTP SLIS or designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP SLIS or designated representative.

(5) The Coast Guard will provide notice of the safety and security zones, prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners. Notice will also be provided by on-scene designated representatives.

(d) Enforcement period. This section will be enforced during the following times.

(1) Naval Vessel Security Zones will be enforced from 7:30 a.m. on July 3, 2012 until 5 p.m. on July 9, 2012.

(2) Admiral Shear State Pier Security Zone will be enforced from 7:30 a.m. on July 3, 2012 until 5 p.m. on July 9, 2012.

(3) Fireworks Safety Zone will be enforced from 8:30 p.m. until 10 p.m. on July 7, 2012. If the fireworks display is postponed, it will be enforced from 8:30 p.m. until 10 p.m. on July 8, 2012.

Dated: March 6, 2012.

J.M. Vojvodich,

Captain, U. S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2012–6489 Filed 3–19–12; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 77, No. 54
Tuesday, March 20, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meetings of Committees of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of three public meetings: two public meetings of the Committee on Regulation and one public meeting of the Committee on Adjudication of the Assembly of the Administrative Conference of the United States. Notice is also given of the cancellation of one public meeting of the Committee on Regulation. At these meetings, the committees will consider draft reports and recommendations.

DATES: Committee on Regulation: Wednesday April 4, 2012, from 1 p.m. to 4 p.m. and Thursday, May 3, 2012, from 1 p.m. to 4 p.m. Please note that the Committee on Regulation's meeting that was previously scheduled to take place on Wednesday, April 18 from 1 p.m. to 4 p.m. is hereby cancelled. Committee on Adjudication: Thursday April 5, 2012, from 9:30 a.m. to 12:30 p.m.

ADDRESSES: The meetings will be held at 1120 20th Street NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Reeve T. Bull (Committee on Regulation) or Funmi E. Olorunnipa (Committee on Adjudication), Designated Federal Officers, Administrative Conference of the United States, 1120 20th Street NW., Suite 706 South, Washington, DC 20036; Telephone 202–480–2080; Email *rbull@acus.gov* or *folorunnipa@acus.gov.*

SUPPLEMENTARY INFORMATION: Complete details regarding the committee meetings, the nature of the projects, how to attend (including information about remote access and obtaining special accommodations for persons with disabilities), and how to submit comments to each committee can be found on the Conference's Web site, at *http://www.acus.gov.* Click on ''Research,'' then on ''Committee Meetings.''

Comments may be submitted by email to *Comments@acus.gov*, with the name of the appropriate committee in the subject line, or by postal mail to the appropriate committee at the address given below.

Committee on Regulation

The April 18, 2012 meeting of the Committee on Regulation, which was previously announced in the February 6, 2012 **Federal Register** (77 FR 5755), has been cancelled, and two additional meetings have been scheduled for April 4 and May 3, 2012. The Science in the Administrative Process project, which was scheduled to be discussed at the April 18 meeting, will be postponed, with additional meetings likely to take place in the fall of 2012. At the upcoming meetings, the Committee on Regulation will consider a report and set of draft recommendations dealing with regulatory analysis requirements. The report, authored by Curtis W. Copeland, analyzes the various regulatory analysis requirements with which agencies must comply and offers a set of recommendations for streamlining those processes. Reeve T. Bull is the Designated Federal Officer for this committee. More information can be found in the ''Research'' section of the Conference's Web site, at *http://www.acus.gov.* Click on ''Research,'' then on ''Conference Projects,'' and then on ''Review of Regulatory Analysis Requirements.''

Committee on Adjudication

An additional meeting of the Committee on Adjudication has been scheduled for April 5, 2012. This meeting is in addition to the Committee's April 23, 2012 meeting, which will occur as scheduled. At the meeting, the Committee on Adjudication will discuss further a draft report on the Immigration Adjudication Project and a draft recommendation based on the consultants' report. The report, prepared by Professor Lenni B. Benson (New York Law School) and Russell Wheeler (Brookings Institution), presents the findings of a study of potential improvements to the procedures for immigration adjudication. Funmi E. Olorunnipa is the Designated Federal Officer for this committee. More information can be found in the ''About'' section of the Conference's Web site, at *http://www.acus.gov.* Click on ''About,'' then on ''The Committees,'' and then on ''Committee on Adjudication.''

Dated: March 15, 2012.

David M. Pritzker,

Deputy General Counsel.

[FR Doc. 2012–6712 Filed 3–19–12; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Section 538 Guaranteed Rural Rental Housing Program 2012 Industry Forums—Open Teleconference and/or Web Conference Meetings

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces a series of teleconference and/or web conference meetings regarding the U.S. Department of Agriculture (USDA) Section 538 Guaranteed Rural Rental Housing Program, which are scheduled to occur during the months of April, August, and November of 2012. This notice also outlines suggested discussion topics for the meetings and is intended to notify the general public of their opportunity to participate in the teleconference and/or web conference meetings.

DATES: The dates and times for the teleconference and/or web conference meetings will be announced via email to parties registered as described below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to register for the calls and obtain the call-in number, access code, web link and other information for any of the public teleconferences and/or web conferences may contact Monica Cole, Financial and Loan Analyst, Multifamily Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, telephone: (202) 720–1251, fax: (202) 205–5066, or email: *monica.cole@wdc.usda.gov.* Those who request registration less than 15

calendar days prior to the date of a teleconference and/or web conference meetings may not receive notice of that teleconference and/or web conference meeting, but will receive notice of future teleconference and/or web conference meetings. The Agency expects to accommodate each participant's preferred form of participation by telephone or via web link. However, if it appears that existing capabilities may prevent the Agency from accommodating all requests for one form of participation, each participant will be notified and encouraged to consider an alternative form of participation. Individuals who plan to participate and need language translation assistance should inform Monica Cole within 10 business days in advance of the meeting date.

SUPPLEMENTARY INFORMATION: The objectives of this series of teleconferences are as follows:

- Enhance the effectiveness of the Section 538 Guaranteed Rural Rental Housing Program.
- Establish a two-way communications forum to update industry participants and Rural Housing Service (RHS) staff.
- Enhance RHS' awareness of the market and other forces that impact the Section 538 Guaranteed Rural Rental Housing Program.

Topics to be discussed could include, but will not be limited to, the following:

- Updates on USDA's Section 538 Guaranteed Rural Rental Housing Program activities.
- Perspectives on the current state of debt financing and its impact on the Section 538 program.
- Enhancing the use of Section 538 financing with the transfer and/or preservation of Section 515 developments.
- The impact of Low Income Housing Tax Credits program changes on Section 538 financing.

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., STOP 9410, Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). ''USDA is an equal opportunity provider, employer, and lender.''

Dated: March 11, 2012.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2012–6607 Filed 3–19–12; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Interim Procedures for Considering Requests under the Commercial Availability Provision of the United States-Korea Free Trade Agreement.

OMB Control Number: None.

Type of Request: Emergency submission (new information collection).

Burden Hours: 89.

Number of Respondents: 16.

Average Hours per Response: 8 hours for Request for Commercial Availability Determination; 2 hours for Response to a Request; and 1 hour for Rebuttal.

Needs and Uses: The United States and Korea negotiated the U.S.-Korea Free Trade Agreement (the ''Agreement''), which entered into force on March 15, 2012. Subject to the rules of origin in Annex 4–A of the Agreement, pursuant to the provisions of the Agreement, textile and apparel articles must contain fiber, yarn, and fabric produced in Korea or the United States to receive duty-free tariff treatment. Appendix 4–B–1 of the Agreement will contain a list of specific fiber, yarn, or fabric that either importing Party determined, based on information supplied by interested entities, that the fiber, yarn, or fabric is not available in commercial quantities in a timely manner in its territory, or if no interested entity objects to the request. Textile and apparel articles containing these fibers, yarns, or fabrics would also be entitled to duty-free or preferential duty treatment despite not being produced in Korea or the United States.

The list of commercially unavailable fibers, yarns, and fabrics may be changed pursuant to the commercial availability provision in Chapter 4, Annex 4–B, Paragraphs 1–13 of the Agreement. Under this provision, interested entities from the United States or Korea have the right to request that a specific fiber, yarn, or fabric be added to, or removed from, the list of commercially unavailable fibers, yarns, and fabrics in Appendix 4–B–1.

Section 202(o)(3) of the Act provides that the President may modify the list of fibers, yarns and fabrics in Appendix 4–B–1 by determining whether additional fibers, yarns, or fabrics are not available in commercial quantities in a timely manner in the United States, and that the President will issue procedures governing the submission of requests and providing an opportunity for interested entities to submit comments. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (CITA), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (OTEXA). OTEXA was unable to publish these procedures earlier and is requesting an emergency review of the information collection and procedures from the Office of Management and Budget.

CITA must collect information about fiber, yarn or fabric technical specifications and the production capabilities of U.S. textile producers to determine whether certain fibers, yarns, or fabrics are available in commercial quantities in a timely manner in the United States, subject to Section 202(o)(3) of the U.S.-Korea Free Trade Agreement Implementation Act.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Department 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 by April 16, 2012 to Wendy Liberante,

OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: March 14, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–6624 Filed 3–19–12; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Interim Procedures for Considering Requests from the Public under the Textile and Apparel Safeguard Provision of the United States-Korea Free Trade Agreement.

OMB Control Number: None.

Type of Request: Emergency submission (new information collection).

Burden Hours: 56.

Number of Respondents: 14.

Average Hours per Response: 4 hours for a Textile and Apparel Safeguard Request; and 4 hours for a Comment.

Needs and Uses: Title III, Subtitle C, Section 331 through Section 338 of the United States-Korea Free Trade Agreement Implementation Act (the ''Act'') implements the textile and apparel safeguard provisions, provided for in Article 4.1 of the United States-Korea Free Trade Agreement (the ''Agreement''), which entered into force on March 15, 2012. This safeguard mechanism applies when, as a result of the reduction or elimination of a customs duty under the Agreement, a Korean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 4.1.1(b) permits the United States to (a) suspend any further reduction in the rate of duty provided for under Annex 2–B of the Agreement in the duty imposed on the article; or (b) increase duties on the imported article from Korea to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (''NTR'')/most-favored-nation (''MFN'') duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day before the Agreement enters into force.

The Statement of Administrative Action accompanying the Act provides that the Committee for the Implementation of Textile Agreements (CITA) will issue procedures for requesting such safeguard measures, for making its determinations under Section 332(a) of the Act, and for providing relief under Section 332(b) of the Act. CITA was unable to publish these procedures earlier and is requesting an emergency review of the information collection and procedures from the Office of Management and Budget.

CITA must collect information in order to determine whether a domestic textile or apparel industry is being adversely impacted by imports of these products from Korean, thereby allowing CITA to take corrective action to protect the viability of the domestic textile or apparel industry, subject to section 332(b) of the Act.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante. (202) 395–3647.

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 email at *JJessup@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent by April 16, 2012 to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.gov.*

Dated: March 14, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–6625 Filed 3–19–12; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 120309175–2178–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Supplement to the Fiscal Year 2012 Annual Materials Plan

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The purpose of this notice is to advise the public that the National Defense Stockpile Market Impact Committee, co-chaired by the Departments of Commerce and State, is seeking public comments on the potential market impact of the proposed supplement to the Fiscal Year 2012 Annual Materials Plan related to establishing three new material research and development projects. The research and development projects involve three materials—cadmium zinc tellurium (CZT) substrates, trichlorobenzene (TCB), and rhenium alloy. The role of the Market Impact Committee is to advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals involving the stockpile and related material research and development projects. Public comments are an important element of the Committee's market impact review process.

DATES: To be considered, written comments must be received by April 19, 2012.

ADDRESSES: Address all comments concerning this notice to Michael Vaccaro, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, 1401 Constitution Avenue NW., Room 3876, Washington, DC 20230, fax: (202) 482–5650 (Attn: Michael Vaccaro), email: *MIC@bis.doc.gov;* and Douglas Kramer, U.S. Department of State, Bureau of Energy Resources, Office of Europe, Middle East, and Africa, 2201 C Street NW., Washington, DC 20520, fax: (202) 647–4037 (Attn: Douglas Kramer), or email: *KramerDR@state.gov.*

FOR FURTHER INFORMATION CONTACT: Liam McMenamin, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482–2233.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Strategic and Critical Materials Stock Piling Revision Act of 1979, as amended (the Stock Piling Act) (50 U.S.C. 98, *et seq.*), the Department of Defense, as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 9(b)(2)(G)(ii) of the Stock Piling Act (50 U.S.C. 98(h)(b)(2)(G)(ii)) authorizes the National Defense Stockpile Manager to fund material research and development projects to develop new materials for the stockpile.

Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–I) formally established a Market Impact Committee (the ''Committee'') to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *.'' The Committee must also balance market impact concerns with the statutory requirement to protect the U.S. Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, the Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to consult with industry representatives that produce, process, or consume the materials stored in or of interest to the National Defense Stockpile Manager.

In Attachment 1, the Defense Logistics Agency (DLA) lists the quantities of materials associated with three proposed material research and development projects to supplement its FY 2012 Annual Materials Plan. Two of the material research and development projects relate to DLA establishing vendor-owned buffer inventories in the United States for cadmium zinc tellurium (CZT) substrates and trichlorobenzene (TCB) up to the levels enumerated in Attachment 1. In these material research and development projects, DLA would enter into arrangements with vendors to maintain inventories of the two materials with options that DLA could purchase material if needed. In the third material research and development project, DLA would establish a DLA administered material reclamation process project to recycle rhenium alloy which would be re-introduced into the market by the vendor up to the level enumerated in Attachment 1.

The Committee is seeking public comments on the potential market impact of the material research and development projects. Public comments are an important element of the Committee's market impact review process.

DLA is required to supplement its FY 2012 Annual Materials Plan to account for the three material research and development projects because DLA will be using the Defense National Stockpile Transaction Fund to pay for the three material research and development projects. The quantities listed in Attachment 1 are not acquisition target quantities, but rather a statement of the proposed maximum quantity of each listed material that may be associated with the three material research and development projects in FY 2012. DLA is not proposing to acquire these materials and add them to the National Defense Stockpile. The quantity of each material that will actually be associated with the three material research and development projects will depend on the market for the materials during the fiscal year as well as on the quantity of each material approved for these material research and development projects by Congress.

Submission of Comments

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the quantities associated with the three material research and development projects. All comments must be submitted to the address indicated in this notice. All comments submitted through email must include the phrase ''Market Impact Committee Notice of Inquiry'' in the subject line.

The Committee encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on April 19, 2012. The Committee will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

All comments submitted in response to this notice will be made a matter of public record and will be available for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Committee will seek to protect such information to the extent permitted by law.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–1900 for assistance.

Dated: March 14, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

Attachment 1

PROPOSED SUPPLEMENT TO FISCAL YEAR 2012 ANNUAL MATERIALS PLAN

Material	Unit	Quantity	Footnote
Cadmium Zinc Tellurium (CZT) substrates	cm^2	40,000	[1]
Trichlorobenzene (TCB)	Lbs	45,000	[1]
Rhenium Alloy	ST	0.8	[2]

[1] Vendor-owned buffer inventory material research and development project.
[2] Material reclamation research and development project.

[FR Doc. 2012–6668 Filed 3–19–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 120309179–2147–01]

XRIN 0694–XA41

Reporting for Calendar Year 2011 on Offsets Agreements Related to Sales of Defense; Articles or Defense Services to Foreign Countries or Foreign Firms

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice; annual reporting requirements.

SUMMARY: This notice is to remind the public that U.S. firms are required to report annually to the Department of Commerce (Commerce) information on contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offsets agreements exceeding $5,000,000 in value. U.S. firms are also required to report annually to Commerce information on offsets transactions completed in performance of existing offsets commitments for which offsets credit of $250,000 or more has been claimed from the foreign representative. This year, such reports must include relevant information from calendar year 2011 and must be submitted to Commerce no later than June 15, 2012.

ADDRESSES: Reports should be addressed to ''Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, Room 3878, Washington, DC 20230.''

FOR FURTHER INFORMATION CONTACT: Ronald DeMarines, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, telephone: (202) 482–3755; fax: (202) 482–5650; email: *ronald.demarines@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 723(a)(1) of the Defense Production Act of 1950, as amended (DPA) requires the President to submit an annual report to Congress on the impact of offsets on the U.S. defense industrial base. Section 723(a)(2) directs the Secretary of Commerce (Secretary) to prepare the President's report and to develop and administer the regulations necessary to collect offsets data from U.S. defense exporters.

The authorities of the Secretary regarding offsets have been delegated to the Under Secretary of Commerce for Industry and Security. The regulations associated with offsets reporting are set forth in part 701 of title 15 of the Code of Federal Regulations. Offsets are compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services, as defined by the Arms Export Control Act and the International Traffic in Arms Regulations. For example, a company that is selling a fleet of military aircraft to a foreign government may agree to offset the cost of the aircraft by providing training assistance to plant managers in the purchasing country. Although this distorts the true price of the aircraft, the foreign government may require this sort of extra compensation as a condition of awarding the contract to purchase the aircraft. As described in the regulations, U.S. firms are required to report information on contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offsets agreements exceeding $5,000,000 in value. U.S. firms are also required to report annually information on offsets transactions completed in performance of existing offsets commitments for which offsets credit of $250,000 or more has been claimed from the foreign representative.

Commerce's annual report to Congress includes an aggregated summary of the data reported by industry in accordance with the offsets regulation and the DPA. As provided by section 723(c) of the DPA, BIS will not publicly disclose individual firm information it receives through offsets reporting unless the firm furnishing the information specifically authorizes public disclosure. The information collected is sorted and organized into an aggregate report of national offsets data, and therefore does not identify company-specific information.

In order to enable BIS to prepare the next annual offset report reflecting calendar year 2011 data, U.S. firms must submit required information on offsets agreements and offsets transactions from calendar year 2011 to BIS no later than June 15, 2012.

Dated: March 14, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–6672 Filed 3–19–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–825, A–533–810, A–588–833, A–469–805]

Stainless Steel Bar From Brazil, India, Japan, and Spain: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 1, 2011, the Department of Commerce (the Department) initiated the third sunset reviews of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain pursuant to section 751(c) of the Tariff Act of 1930 (the Act), as amended. The Department has conducted expedited (120-day) sunset reviews of these orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping as indicated in the ''Final Results of Reviews'' section of this notice.

DATES: *Effective Date:* March 20, 2012.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2011, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain[1] pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 74775 (December 1, 2011) (*Notice of Initiation*).

The Department received a notice of intent to participate in these sunset reviews from the domestic interested parties, Carpenter Technology Corporation, Crucible Industries LLC, Electralloy a G.O. Carlson Inc. Co., Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless, Inc. (collectively, the domestic interested parties), within the 15-day period specified in 19 CFR 351.218(d)(1)(i).

[1] *Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan,* 60 FR 9661 (February 21, 1995) and *Amended Final Determination and Antidumping Duty Order: Stainless Steel Bar From Spain,* 60 FR 11656 (March 2, 1995).

The domestic interested parties claimed interested-party status under section 771(9)(C) of the Act as manufacturers and/or producers of a domestic like product in the United States.

The Department received a complete substantive response to the *Notice of Initiation* from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i). The Department received no substantive response from any respondent interested parties. In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain.

Scope of the Orders

Imports covered by the orders are shipments of stainless steel bar. Stainless steel bar means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.,* cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.,* cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bars subject to the orders is currently classifiable under subheadings 7222.10.00, 7222.11.00, 7222.19.00, 7222.20.00, and 7222.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the orders is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum for the Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders on Stainless Steel Bar from Brazil, India, Japan, and Spain'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice (Issues and Decision Memo), which is hereby adopted by this notice. The Issues and Decision Memo addresses the likelihood of continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in the Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System and is accessible on the Import Administration Web site at *http://ia.ita.doc.gov/frn/index.html.*

Final Results of Reviews

The Department determines that revocation of the antidumping duty orders on stainless steel bar from Brazil, India, Japan and Spain would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/producers/exporters	Weighted-average margin (percent)
Brazil:	
Acos Villares, S.A.	19.43
All others	19.43
India:	
Grand Foundry, Ltd.	3.87
Mukand, Ltd.	21.02
All others	12.45
Japan:	
Aichi Steel Works, Ltd	61.47
Daido Steel Co., Ltd	61.47
Sanyo Special Steel Co., Ltd	61.47
All others	61.47
Spain:	
Acenor, S.A. (and all successor companies, including Digeco, S.A. and Clorimax, SRL)	62.85
Roldan, S.A.	7.72
All others	25.77

Notification Regarding APO

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: March 13, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–6739 Filed 3–19–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Tilefish Individual Fishing Quota Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 21, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jason Berthiaume, 978–281–9177, or *Jason.Berthiaume@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

National Marine Fisheries Service (NMFS) Northeast Region manages the tilefish fishery of the Exclusive Economic Zone (EEZ) of the Northeastern United States, through the Tilefish Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations implementing the FMP are specified at 50 CFR part 648 subpart N.

The recordkeeping and reporting requirements at § 648.294 form the basis for this collection of information. NMFS requests information from tilefish individual fishing quota (IFQ) permit holders in order to process applications to ensure that IFQ allocation owners are provided a statement of their annual catch quota, and for enforcement purposes, to ensure vessels are not exceeding an individual quota allocation. In conjunction with the application, NMFS also collects IFQ share accumulation information to ensure that an IFQ limited access privilege holder does not acquire an excessive share of the total limited access privileges, as required by section 303A(c)(5)(D) of the Magnuson-Stevens Act.

NMFS requests transfer application information to process and track requests from allocation holders to transfer quota allocation (permanent and temporary) to another entity. NMFS also collects information for cost recovery purposes as required under the Magnuson-Stevens Act to collect fees to recover the costs directly related to management, data collection and analysis, and enforcement of IFQ programs. Lastly, NMFS collects landings information to ensure that the amounts of tilefish landed and ex-vessel prices are properly recorded for quota monitoring purposes and the calculation of IFQ fees, respectively. Having this information results in an increasingly more efficient and accurate database for management and monitoring of fisheries of the Northeastern U.S. EEZ.

II. Method of Collection

The IFQ Allocation permit application, IFQ ownership cap form, and the IFQ transfer form are all paper applications. These applications can be filled out online, but must be printed and signed to complete. The IFQ cost recovery process is entirely online at *www.pay.gov* and the IFQ reporting requirements are completed through a phone call to NMFS interactive voice response phone line.

III. Data

OMB Control Number: 0648–0590.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 79.

Estimated Time per Response: IFQ Allocation Permit Application, 30 minutes; IFQ Ownership Cap Form, 5 minutes; IFQ Transfer Form, 5 minutes; IFQ Cost Recovery, 2 hours; IFQ Reporting Requirements, 2 minutes.

Estimated Total Annual Burden Hours: 53.

Estimated Total Annual Cost to Public: $23.48.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 14, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–6623 Filed 3–19–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Permitting, Vessel Identification, and Reporting Requirements for the Pelagic Squid Jig Fishery in the Western Pacific Region

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 21, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, (808) 944–2275 or *Walter.Ikehara@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for 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 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.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0589.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Individuals; Business or other for-profit organizations.

Estimated Number of Respondents: 30.

Estimated Time per Response: Permit applications, 3o minutes; permit appeal, 2 hours; logbooks, 15 minutes; vessel identification, 45 minutes.

Estimated Total Annual Burden Hours: 265 hours.

Estimated Total Annual Cost to Public: $765 in mailing/reporting/identification costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 15, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–6680 Filed 3–19–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Tilefish Individual Fishing Quota Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 21, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jason Berthiaume, 978–281–9177, or *Jason.Berthiaume@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

National Marine Fisheries Service (NMFS) Northeast Region manages the tilefish fishery of the Exclusive Economic Zone (EEZ) of the Northeastern United States, through the Tilefish Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations implementing the FMP are specified at 50 CFR part 648 subpart N.

The recordkeeping and reporting requirements at § 648.294 form the basis for this collection of information. NMFS requests information from tilefish individual fishing quota (IFQ) permit holders in order to process applications to ensure that IFQ allocation owners are provided a statement of their annual catch quota, and for enforcement purposes, to ensure vessels are not exceeding an individual quota allocation. In conjunction with the application, NMFS also collects IFQ share accumulation information to ensure that an IFQ limited access privilege holder does not acquire an excessive share of the total limited access privileges, as required by section 303A(c)(5)(D) of the Magnuson-Stevens Act.

NMFS requests transfer application information to process and track requests from allocation holders to transfer quota allocation (permanent and temporary) to another entity. NMFS also collects information for cost recovery purposes as required under the Magnuson-Stevens Act to collect fees to recover the costs directly related to management, data collection and analysis, and enforcement of IFQ programs. Lastly, NMFS collects landings information to ensure that the amounts of tilefish landed and ex-vessel prices are properly recorded for quota monitoring purposes and the calculation of IFQ fees, respectively. Having this information results in an increasingly more efficient and accurate database for management and monitoring of fisheries of the Northeastern U.S. EEZ.

II. Method of Collection

The IFQ Allocation permit application, IFQ ownership cap form, and the IFQ transfer form are all paper applications. These applications can be filled out online, but must be printed and signed to complete. The IFQ cost recovery process is entirely online at *www.pay.gov* and the IFQ reporting requirements are completed through a phone call to NMFS interactive voice response phone line.

III. Data

OMB Control Number: 0648–0590.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 79.

Estimated Time per Response: IFQ Allocation Permit Application, 30 minutes; IFQ Ownership Cap Form, 5 minutes; IFQ Transfer Form, 5 minutes; IFQ Cost Recovery, 2 hours; IFQ Reporting Requirements, 2 minutes.

Estimated Total Annual Burden Hours: 53.

Estimated Total Annual Cost to Public: $23.48.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 14, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–6681 Filed 3–19–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB091

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Oversight Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, April 5, 2012 at 9 a.m.

ADDRESSES: The meeting will be held at the Hotel Providence, 139 Mathewson Street, Providence, RI 02903; telephone: (401) 861–8000; fax: (401) 454–4306.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will begin developing specific measures for Framework 24. This action is primarily setting specifications for fishing years 2013 and 2014. At this meeting the Committee will primarily work on other measures that will be considered in this action in addition to specifications. Specifically, (1) possible modification of Georges Bank access area opening dates; (2) consider measures to address sub-ACL of yellowtail flounder for the LAGC trawl fishery; (3) consider modifying the effective date of YT sub-ACL AMs from Year 2 to Year 3; (4) leasing LAGC IFQ mid-year; and 5) expanding the observer set-aside program to include LAGC open area trips. The Committee will make recommendations for research priorities for the 2013 and 2014 Research Set-Aside program. If time permits, the Committee may review and provide input on a draft outline for a Performance Evaluation of the LAGC IFQ program to date. In addition, there will be a presentation from the Northeast Fisheries Science Center (NEFSC) on future plans for the federal scallop survey and how results will be integrated with existing survey methods. The Committee may discuss other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: March 15, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–6677 Filed 3–19–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council: Native Hawaiian Representative, Ocean Related Tourism Representative, Conservation Alternate, Native Hawaiian (Elder) Alternate, and two Native Hawaiian Alternates. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; and philosophy regarding the protection and management of marine and cultural resources. Applicants who are chosen as members should expect to serve 2 year terms, pursuant to the council's charter, or until a Monument Alliance is formed in compliance with the Federal Advisory Council Act (FACA).

DATES: Applications are due by April 30, 2012.

ADDRESSES: Application kits may be obtained from Wesley Byers, Reserve Advisory Council Coordinator, Office of National Marine Sanctuaries, Pacific Island Region, 6600 Kalaniana'ole Hwy, #300, Honolulu, HI 96825, and at the following link: *www.papahanaumokuakea.gov*. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Wesley Byers, Reserve Advisory Council Coordinator, Office of National Marine Sanctuaries, Pacific Island Region, 6600

Kalaniana'ole Hwy, #300, Honolulu, HI 96825 Phone: 808–694–3920, *wesley.byers@noaa.gov*.

SUPPLEMENTARY INFORMATION: The NWHI Coral Reef Ecosystem Reserve is a marine protected area designed to conserve and protect the coral reef ecosystem and related natural and cultural resources of the area. The NWHI Reserve was established by Executive Order 13178 (12/00) and Executive Order 13196 (1/01) pursuant to the National Marine Sanctuaries Amendments Act of 2000 (Pub. L.106–513). The Reserve was incorporated into Papahanaumokuakea Marine National Monument when the Monument was established in 2006 and is now also part of the Papahanaumokuakea Marine National Monument World Heritage site established by UNESCO in July, 2010.

The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Orders. The management principles and implementation strategy and requirements for the Reserve are found in the enabling Executive Orders, which are part of the application kit, and can be found on the Monument's Web site *www.papahanaumokuakea.gov*.

In designating the Reserve, the Secretary of Commerce was directed to establish a Coral Reef Ecosystem Reserve Advisory Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the management of the natural and cultural resources within the Reserve.

The Office of National Marine Sanctuaries has established the Reserve Advisory Council and is now accepting applications from interested individuals for Representatives and/or Alternates for each of the following citizen/constituent positions on the Council:

1. One (1) Native Hawaiian Representatives (Native Hawaiian).
2. One (1) Ocean-Related Tourism Representative (Ocean-Related Tourism).
3. One (1) Native Hawaiian (Elder) Alternate (Native Hawaiian)
3. Two (2) Native Hawaiian Alternates (Native Hawaiian).
4. One (1) Conservation Alternate (Conservation).

Current Reserve Council Representatives and Alternates may reapply for these vacant seats.

The Council consists of 25 members, 15 of which are non-government voting members (the State of Hawai'i representative is a voting member) and 10 of which are government non-voting members. The voting members are representatives of the following constituencies: Conservation (2), Citizen-At-Large, Ocean-Related Tourism, Recreational Fishing, Research (3), Commercial Fishing, Education, State of Hawai'i and Native Hawaiian (3). The government non-voting seats are represented by the following agencies: Department of Defense, Department of the Interior, Department of State, Marine Mammal Commission, NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA's National Marine Fisheries Service, National Science Foundation, U.S. Coast Guard, Western Pacific Regional Fishery Management Council, and NOAA's Papahanaumokuakea Marine National Monument.

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 8, 2012.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–6538 Filed 3–19–12; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Channel Islands National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Channel Islands National Marine Sanctuary Advisory Council: Recreational Fishing member and alternate, Tourism member and alternate, Education member and alternate, Chumash member and alternate, Public at large alternates (2), and Business alternate. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the council's charter.

DATES: Applications are due by April 20, 2012.

ADDRESSES: Application kits may be obtained from *http://channelislands.noaa.gov/.* Completed applications should be sent *sara.hutto@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Mike Murray, *Michael.murray@noaa.gov,* 805–884–1464, 113 Harbor Way, Suite 150, Santa Barbara, CA 93109.

SUPPLEMENTARY INFORMATION: The CINMS Advisory Council was originally established in December 1998 and has a broad representation consisting of 21 members, including ten government agency representatives and eleven members from the general public. The Council functions in an advisory capacity to the Sanctuary Superintendent. The Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Office National Marine Sanctuaries. Specifically, the Council's objectives are to provide advice on: (1) Protecting natural and cultural resources and identifying and evaluating emergent or critical issues involving Sanctuary use or resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting to develop an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the Office of National Marine Sanctuaries.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 9, 2012.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–6537 Filed 3–19–12; 8:45 am]

BILLING CODE 3510–NK–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Senior Corps Grant Application (424–NSSC)—reference OMB Control Number 3045–0035, with an expiration date of May 31, 2014. The Corporation proposes to renew the Senior Corps Grant Application with the following modifications:

- To modify Grant Application Instructions to align with upcoming standard performance measure requirements.
- To separate the currently combined Grant Application Instructions by program, with a set of instructions specifically for the RSVP program and a set of instructions for the Foster Grandparent and Senior Companion programs.
- To incorporate technical corrections and enhancements, including simplifying language, establishing page limits, requiring extended zip code (zip plus four), and others.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 21, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Senior Corps, Attention: Ms. Angela Roberts, Associate Director, 9401; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3475, Attention: Ms. Angela Roberts, Associate Director.

(4) Electronically through *www.regulations.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Angela Roberts by email at *aroberts@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The Senior Corps Grant Application is completed by applicant organizations interested in sponsoring a Senior Corps program. The application is also used by existing grantees to apply for continuation year grants (annual submissions in years two and three of a three year grant). The application is completed electronically using the Corporation's web-based grants management system, eGrants.

Current Action

The Corporation seeks to renew the current application with modifications. The modifications are: to modify Grant Application Instructions to align with upcoming standard performance measure requirements; separate the currently combined Grant Application Instructions by program, with a set of instructions specifically for the RSVP program and a set of instructions for the Foster Grandparent and Senior Companion programs; and incorporate technical corrections and enhancements, including simplifying language, establishing page limits, requiring extended zip code (zip plus four), and others.

The information collection will otherwise be used in the same manner as the existing application.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Senior Service Corps Grant Application.

OMB Number: 3045–0035.

Agency Number: SF 424–NSSC.

Affected Public: Current and prospective sponsors of National Senior Service Corps Grants.

Total Respondents: 1,250.

Frequency: Annually, with exceptions.

Average Time Per Response: Estimated at 16.5 hours each for 180 first-time respondents; 15 hours each for 900 continuation sponsors; 5 hours each for 270 revisions.

Estimated Total Burden Hours: 17,820 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $6,497.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 15, 2012.

Angela Roberts,

Associate Director, Senior Corps.

[FR Doc. 2012–6687 Filed 3–19–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

ACTION: Notice of Meeting Cancellation of the Air Force Institute of Technology (AFIT) Subcommittee of the Air University Board of Visitors.

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 announced that the Air Force Institute of Technology (AFIT) Subcommittee of the Air University Board of Visitors was scheduled to meet on Monday, March 12th, 2012, from 8 a.m. to 5 p.m. and Tuesday, March 13th, 2012, from 8 a.m. to 5 p.m.

Due to changing requirements beyond the control of the Air University Board of Visitors or its Designated Federal Officer, the Committee was unable to process the amended **Federal Register** notice for the above meeting as required by 41 CFR 102.3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Any member of the public wishing to provide input to the Air University Board of Visitors should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. The Designated Federal Officer will review all timely submissions with the Air University Board of Visitors' Board Chairperson and ensure they are provided to members of the Board before the next meeting.

FOR FURTHER INFORMATION CONTACT: Mrs. Diana Bunch, Designated Federal Officer, Air University Headquarters, 55 LeMay Plaza South, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–4547.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2012–6605 Filed 3–19–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–3–000]

Commission Information Collection Activities (FERC–598); Comment Request

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–598, Self Certification for Entities Seeking Exempt Wholesale Generator or Foreign Utility Company Status, to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (77 FR 97, 1/3/2012) requesting public comments. FERC received no comments on the FERC–598 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by April 19, 2012.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0166, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC12–3–000, by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–598, Self Certification for Entities Seeking Exempt Wholesale Generator or Foreign Utility Company Status.

OMB Control No.: 1902–0166.

Type of Request: Three-year extension of the FERC–598 information collection requirements with no changes to the reporting requirements.

Abstract: The Commission uses the information collected under the requirements of FERC–598, ''Self Certification for Entities Seeking Exempt Wholesale Generator or Foreign Utility Company Status'' (OMB Control No. 1902–0166), to implement the statutory provisions of Title XII, subchapter F of the Energy Policy Act of 2005 (EPAct 2005).[1]

EPAct 2005 repealed the Public Utility Holding Company Act (PUHCA) of 1935 in its entirety, including section 32. This repeal enabled the Commission to exempt wholesale generators from PUHCA 1935 on a case-by-case basis. The Commission amended its regulations (in Order No. 667 [2]) to add procedures for self-certification by entities seeking exempt wholesale generator (EWG) and foreign utility company (FUCO) status. Moreover, Order No. 667 implemented the repeal of PUHCA 1935 and the supplementary enactment of PUHCA 2005. This self-certification is similar to the process available to entities that seek qualifying facility status.

An EWG is a ''person engaged directly, or indirectly through one or more affiliates * * * and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.'' [3] A FUCO is a company that ''owns or operates facilities that are not located in any state and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company: (1) Derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and (2) neither the company nor any of its subsidiary companies is a public-utility

[1] Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005) (codified at 42 U.S.C. 16451, *et seq.*)

[2] Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005, 70 FR. 75,592 (2005), FERC Statutes and Regulations ¶ 31,197 (2005) *Order on reh'g,* 71 FR 28,446 (2006), FERC Statutes and Regulations ¶ 31,213 (2006), *order on reh'g,* 71 FR 42,750 (2006), FERC Statutes and Regulations ¶ 31,224 (2006), *order on reh'g,* FERC ¶ 61,133 (2007).

[3] 18 CFR 366.1.

company operating in the United States.'' [4]

An exempt EWG or FUCO or its representative may file with the Commission a notice of self certification demonstrating that it satisfies the definition of exempt wholesale generator or foreign utility company. In the case of EWGs, the person filing a notice of self certification must also file a copy of the notice of self certification with the state regulatory authority of the state in which the facility is located and that person must also represent to the Commission in its submission that it has filed a copy of the notice with the appropriate state regulatory authority.[5]

A submission of the information is necessary for the Commission to carry out its responsibilities under EPAct 2005.[6] The Commission implements its responsibilities through the Code of Federal Regulations (CFR) Title 18 Part 366. These filing requirements are mandatory.

Type of Respondents: EWGs and FUCOs.

Estimate of Annual Burden: [7] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–598 (IC12–3–000): SELF CERTIFICATION FOR ENTITIES SEEKING EXEMPT WHOLESALE GENERATOR OR FOREIGN UTILITY COMPANY STATUS

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
EWG/FUCOs	102	1	102	6	612

The total estimated annual cost burden to respondents is $41,890 [612 hours ÷ 2080 [8] hours/year = 0.29423 years * $142,372 [9] = $41,890].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6649 Filed 3–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–4–000]

Commission Information Collection Activities (FERC–716); Comment Request

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–716, Self Certification for Entities Seeking Exempt Wholesale Generator or Foreign Utility Company Status, to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (77 FR 98, 1/3/2012) requesting public comments. FERC received no comments on the FERC–716 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by April 19, 2012.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0170, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC12–4–000, by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov*, by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–716, Good Faith Request for Transmission Service and Response by Transmitting Utility Under Sections 211(a) and 213(a) of the Federal Power Act.

OMB Control No.: 1902–0170.

Type of Request: Three-year extension of the FERC–716 information collection requirements with no changes to the reporting requirements.

Abstract: The Commission uses the information collected under the requirements of FERC–716 to

[4] 18 CFR 366.1.

[5] 18 CFR 366.7.

[6] 42 U.S.C. 16451 *et seq.*

[7] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[8] 2080 hours = 40 hours/week * 52 weeks (1 year)

[9] Average annual salary per employee in 2011.

implement the statutory provisions of sections 211 and 213 of the Federal Power Act (FPA) as amended and added by the Energy Policy Act of 1992. FERC–716 also includes the requirement to file a section 211 request if the negotiations between the transmission requestor and the transmitting utility are unsuccessful. For the initial process, the information is not filed with the Commission. However, the request and response may be analyzed as a part of a section 211 action. The Commission may order transmission services under the authority of FPA 211.

The Commission's regulations in the Code of Federal Regulations (CFR), 18 CFR 2.20, provide standards by which the Commission determines if and when a valid good faith request for transmission has been made under section 211 of the FPA. By developing the standards, the Commission sought to encourage an open exchange of data with a reasonable degree of specificity and completeness between the party requesting transmission services and the transmitting utility. As a result, 18 CFR 2.20 identifies 12 components of a good faith estimate and 5 components of a reply to a good faith request.

Type of Respondents: Transmission Requestors and Transmitting Utilities.

Estimate of Annual Burden: [1] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–716 (IC12–4–000): GOOD FAITH REQUEST FOR TRANSMISSION SERVICE AND RESPONSE BY TRANSMITTING UTILITY UNDER SECTIONS 211(a) AND 213(a) OF THE FEDERAL POWER ACT

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
Information exchange between parties	3	1	3	100	300
Application submitted to FERC if parties' negotiations are unsuccessful	3	1	3	2.5	[2] 8
Total					308

The total estimated annual cost burden to respondents is $21,082 [308 hours ÷ 2080 [3] hours/year = 0.14807 years * $142,372 [4] = $21,082].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6645 Filed 3–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13734–001]

Lock+ Hydro Friends Fund XLVI, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13734–001.

c. *Date Filed:* February 7, 2012.

d. *Submitted By:* Lock+ Hydro Friends Fund XLVI, LLC.

e. *Name of Project:* Hildebrand Lock and Dam Hydroelectric Project.

f. *Location:* At the existing Hildebrand Lock and Dam on the Monongahela River, in Monongalia County, West Virginia. The project would occupy United States lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Mark R. Stover, Lock+™ Hydro Friends Fund XLVI, c/o Hydro Green Energy, LLC, 900 Oakmont Lane, Suite 310, Westmont, IL 60559; (877) 556–6566 ext. 711; email—*mark@hgenergy.com.*

i. *FERC Contact:* John Mudre at (202) 502–8902; or email at *john.mudre@ferc.gov.*

j. Lock+ Hydro Friends Fund XLVI, LLC filed its request to use the Traditional Licensing Process on February 7, 2012. Lock+ Hydro Friends Fund XLVI, LLC provided public notice of its request on February 3, 2012. In a letter dated March 14, 2012, the Director of the Division of Hydropower Licensing approved Lock+ Hydro Friends Fund XLVI, LLC's request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the West Virginia State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Lock+ Hydro Friends Fund XLVI, LLC as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, and section 106 of the National Historic Preservation Act.

m. Lock+ Hydro Friends Fund XLVI, LLC filed a Pre-Application Document

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] Actual figure (7.5) rounded to 8.

[3] 2080 hours = 40 hours/week * 52 weeks (1 year).

[4] Average annual salary per employee in 2011.

(PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: March 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6648 Filed 3–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13740–001]

Lock+ Hydro Friends Fund XXXIX, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13740–001.

c. *Date Filed:* February 7, 2012.

d. *Submitted by:* Lock+ Hydro Friends Fund XXXIX, LLC.

e. *Name of Project:* C.W. Bill Young Lock and Dam Hydroelectric Project.

f. *Location:* At the existing C.W. Bill Young Lock and Dam on the Allegheny River, in Allegheny County, Pennsylvania. The project would occupy United States lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Mark R. Stover, Lock+™ Hydro Friends Fund XXXIX, c/o Hydro Green Energy, LLC, 900 Oakmont Lane, Suite 310, Westmont, IL 60559; (877) 556–6566 ext. 711; email—*mark@hgenergy.com.*

i. *FERC Contact:* John Mudre at (202) 502–8902; or email at *john.mudre@ferc.gov.*

j. Lock+ Hydro Friends Fund XXXIX, LLC filed its request to use the Traditional Licensing Process on February 7, 2012. Lock+ Hydro Friends Fund XXXIX, LLC provided public notice of its request on February 3, 2012. In a letter dated March 14, 2012, the Director of the Division of Hydropower Licensing approved Lock+ Hydro Friends Fund XXXIX, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and (b) the Pennsylvania State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Lock+ Hydro Friends Fund XXXIX, LLC as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, and section 106 of the National Historic Preservation Act.

m. Lock+ Hydro Friends Fund XXXIX, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: March 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6644 Filed 3–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1781–001.
Applicants: Northern Indiana Public Service Company.
Description: Amendment to Triennial Updated Market Power Analysis Filing Letter of Northern Indiana Public Service Company.
Filed Date: 3/12/12.
Accession Number: 20120312–5240.
Comments Due: 5 p.m. ET 4/2/12.

Docket Numbers: ER11–3322–002.
Applicants: PJM Interconnection, LLC.
Description: Compliance Filing per the February 24, 2012 Order in Docket ER11–3322–001 to be effective 11/7/2011.
Filed Date: 3/12/12.
Accession Number: 20120312–5236.
Comments Due: 5 p.m. ET 4/2/12.

Docket Numbers: ER11–4272–003.
Applicants: ITC Midwest LLC.
Description: Filing of a Compliance Filing to be effective 10/10/2011.
Filed Date: 3/12/12.
Accession Number: 20120312–5161.
Comments Due: 5 p.m. ET 4/2/12.

Docket Numbers: ER12–1244–000.
Applicants: RLD Resources, LLC.
Description: RLD Resources MBR Tariff Filing to be effective 3/26/2012.
Filed Date: 3/12/12.
Accession Number: 20120312–5183.
Comments Due: 5 p.m. ET 4/2/12.

Docket Numbers: ER12–1245–000.
Applicants: Interstate Power and Light Company.
Description: Amended IPL & ITC Operations Services Agreement to be effective 1/1/2011.
Filed Date: 3/12/12.
Accession Number: 20120312–5191.
Comments Due: 5 p.m. ET 4/2/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 13, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6633 Filed 3–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1246–000.
Applicants: Southern California Edison Company.
Description: Amended SGIA SERV AG SCE–TDBU SCE–GPS 2510–2580 Walnut Ave Roof Top Solar Project to be effective 3/14/2012.
Filed Date: 3/13/12.
Accession Number: 20120313–5003.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: ER12–1247–000.
Applicants: Louisville Gas & Electric Company, Kentucky Utilities Company.
Description: Louisville Gas and Electric Company, *et al.* submits Notice of Cancellation.
Filed Date: 03/13/2012.
Accession Number: 20120313–5022.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: ER12–1248–000.
Applicants: PJM Interconnection, LLC.
Description: Original Service Agreement No. 3246; Queue No. W1–119 to be effective 2/14/2012.
Filed Date: 3/13/12.
Accession Number: 20120313–5024.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: ER12–1249–000.
Applicants: PJM Interconnection, LLC.
Description: Original Service Agreement No. 3247; Queue No. W1–120 to be effective 2/14/2012.
Filed Date: 3/13/12.
Accession Number: 20120313–5026.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: ER12–1250–000.
Applicants: PSEG New Haven LLC.
Description: PSEG New Haven LLC Market Based Rated Tariff to be effective 4/6/2012.
Filed Date: 3/13/12.
Accession Number: 20120313–5027.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: ER12–1251–000.
Applicants: PJM Interconnection, LLC.
Description: Original Service Agreement No. 3248; Queue No. W2–083 to be effective 2/14/2012.
Filed Date: 3/13/12.
Accession Number: 20120313–5028.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: ER12–1252–000.
Applicants: PJM Interconnection, LLC.
Description: Original Service Agreement No. 3258; Queue No. X2–014 to be effective 2/20/2012.
Filed Date: 3/13/12.
Accession Number: 20120313–5030.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: ER12–1253–000.
Applicants: PJM Interconnection, LLC.
Description: Original Service Agreement No. 3257; Queue No. W4–097 to be effective 2/20/2012.
Filed Date: 3/13/12.
Accession Number: 20120313–5046.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: ER12–1254–000.
Applicants: PJM Interconnection, LLC.
Description: Notice of Cancellation of SA No. 3134; FOA between DEO and DEK to be effective 5/12/2012.
Filed Date: 3/13/12.
Accession Number: 20120313–5066.
Comments Due: 5 p.m. ET 4/3/12.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF12–99–001.
Applicants: DeWind Novus II, LLC.
Description: Application for Certification of a Small Power Facility.
Filed Date: 3/13/12.
Accession Number: 20120313–5104.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: QF11–235–001.
Applicants: DeWind Novus, LLC.
Description: Application for Certification of a Small Power Facility.
Filed Date: 3/13/12.
Accession Number: 20120313–5114.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: QF12–252–001.
Applicants: Elk Hills Power, LLC.
Description: Application for Certification of a Cogeneration Facility.
Filed Date: 3/13/12.
Accession Number: 20120313–5080.
Comments Due: 5 p.m. ET 4/3/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 13, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6634 Filed 3–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–45–000]

Notice of Petition for Declaratory Order: PJM Interconnection, L.L.C.

Take notice that on March 12, 2012, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, PJM Interconnection, L.L.C. (PJM) filed a Petition for Declaratory Order, requesting that the Commission find that: (1) PJM does not have responsibility under its tariffs to oversee worker safety in maintenance operations performed by employees of the Transmission Owners (TOs), and (2) the bar to ordinary negligence claims set forth in PJM's Open Access Transmission Tariff applies when PJM executes its Regional Transmission Organization functions of planning for future grid reliability and approving the request by one of its member TOs to schedule an outage of the TO's transmission facility.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the

comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 11, 2012.

Dated: March 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6650 Filed 3–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14328–000]

Cortez Pumped Storage Project; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 30, 2011, INCA Engineers, Inc., Washington, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Cortez Pumped Storage Project to be located on Plateau Creek, near the town of Dolores, Montezuma County, Colorado. The project affects federal lands administered by the Forest Service (San Juan National Forest). The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following new facilities: (1) An upper reservoir, formed by a 130-foot-high by 6,500-foot-long, roller-compacted concrete (RCC) dam, with a total storage capacity of 8,000 acre-feet and a water surface area of 275 acres at full pool elevation; (2) a lower reservoir, formed by a 270-foot-high by 800-foot-long dam, having a total storage capacity of 9,500 acre-feet and a water surface area of 200 acres at full pool elevation; (3) two 15-foot-diameter steel consisting of a surface penstock, a vertical shaft and an inclined tunnel; (4) two 27-foot-diameter tailrace tunnels that would be 850-feet-long; (5) an underground powerhouse containing two reversible pump-turbines totaling 500 megawatts (MW) (2 units × 250 MW units) of generating capacity; and (6) a 7-mile-long, 230 kilovolt (kV) transmission line that would connect from the switchyard with an existing 230 kV interconnection east of the project area. The project's annual energy output would vary between 600 and 1,500 gigawatthours.

Applicant Contact: Mr. Donald Thompson, INCA Engineers, Inc., 400 112th Ave. NE., Suite 400 Bellevue, WA 98004; phone (425) 653–1000.

FERC Contact: Brian Csernak; phone: (202) 502–6144.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14328–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 14, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6630 Filed 3–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14337–000]

Mayville Pumped Storage, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 16, 2011, Mayville Pumped Storage, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project located on the Ohio River in Mason County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of two alternatives:

Alternative A would consist of: (1) An intake structure on the Ohio River and a 24-inch-diameter, 8,000-foot-long pipeline to supply water to the upper reservoir; (2) a 260-foot-high, 1,360-foot-long roller-compacted concrete upper dam; (3) an upper reservoir with a surface area of 126.0 acre and a storage capacity of 9,970 acre-feet; (4) a 27-foot-diameter, 500-foot-long concrete-lined headrace; (5) a 27-foot-diameter, 1,320-foot-long concrete-lined pressure shaft; (6) a powerhouse/pumping station containing four pump/generating units with a total capacity of 1,000.0 megawatts (MW); (7) a 32-foot-diameter, 2,730-foot-long concrete-lined tailrace; (8) a lower reservoir created within excavated underground mine space with a surface area of 212 acres and a storage capacity of 9,540 acre-feet; and (9) a 6-mile-long, 345 kilo-volt (KV) transmission line. The project would have an estimated average annual

generation of 2,190,000 megawatt-hours (MWh) and the project power would be sold.

Alternative B would consist of: (1) An intake structure on the Ohio River and a 24-inch-diameter, 4,100-foot-long pipeline to supply water to the upper reservoir; (2) a 260-foot-high, 1,540-foot-long roller-compacted concrete upper dam; (3) an upper reservoir with a surface area of 138 acres and a storage capacity of 11,900 acre-feet; (4) a 29-foot-diameter, 5,000-foot-long concrete-lined headrace; (5) a 29-foot-diameter, 885-foot-long concrete-lined pressure shaft; (6) a powerhouse/pumping station containing four pump/generating units with a total capacity of 1,000.0 megawatts (MW); (7) a 35-foot-diameter, 2,000-foot-long concrete-lined tailrace; (8) a lower reservoir created within excavated underground mine space with a surface area of 266 acres and a storage capacity of 12,000 acre-feet; and (9) a 2.5-mile-long, 345 kilo-volt (KV) transmission line. The project would have an estimated average annual generation of 2,190,000 megawatt-hours (MWh) and the project power would be sold.

Applicant Contact: Mr. Matthew Shapiro, Gridflex Energy, LLC, 1210 W. Franklin St., Ste. 2, Boise, ID 83702. (208) 246–9925.

FERC Contact: Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14337–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 14, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6631 Filed 3–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14338–000]

Spartanburg Water System; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 20, 2011, Spartanburg Water System (Spartanburg) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project located on the Pacolet River in Spartanburg County, South Carolina. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) An existing 70.0-foot-high, 700-foot-long roller-compacted concrete dam, owned by Spartanburg; (2) a reservoir with a surface area of 1,050.0 acres and a storage capacity of 23,000 acre-feet; (3) a 8.0-foot-diameter steel penstock installed in the existing outlet conduit; (4) an 8-foot-diameter butterfly valve located at the powerhouse; (5) a powerhouse containing one generating unit with a total capacity of 1,600.0 kilowatts (kW), discharging directly into the dam's existing tailrace; (6) a 1,100-foot-long, 4.16 kilo-volt (KV) transmission line to; (7) a proposed substation; and (8) a 100-foot-long, 12 KV transmission line to the point of interconnection. The project would have an estimated average annual generation of 7,000 megawatt-hours (MWh) and the project power would be sold.

Applicant Contact: Ms. Sue Schneider, General Manager, Spartanburg Water, 200 Commerce Street, P.O. Box 251, Spartanburg, South Carolina 29304. (864) 580–5642.

FERC Contact: Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14338–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 14, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6632 Filed 3–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the Southwest Power Pool, Inc. (SPP):

SPP Strategic Planning Committee Task Force on Order No. 1000 Meeting

March 8, 2012

10:00–4 p.m., Local Time.

March 9, 2012

8:00–3 p.m., Local Time.

March 29, 2012

9:00–3 p.m., Local Time.

The above-referenced meeting will be held at: AEP Offices, 1201 Elm Street, Dallas, TX 72501.

The above-referenced meeting is open to stakeholders.

Further information may be found at *www.spp.org*.

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER09–35–001, *Tallgrass Transmission, LLC.*

Docket No. ER09–36–001, *Prairie Wind Transmission, LLC.*

Docket No. ER09–36–002, *Prairie Wind Transmission, LLC.*

Docket No. ER09–548–001, *ITC Great Plains, LLC.*

Docket No. ER11–4105–000, *Southwest Power Pool, Inc.*

Docket No. EL11–34–001, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–3967–002, *Southwest Power Pool, Inc.*

Docket No. ER11–3967–003, *Southwest Power Pool, Inc.*

Docket No. ER12–1179–000, *Southwest Power Pool, Inc.*

For more information, contact Luciano Lima, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 502–6210 or *luciano.lima@ferc.gov*.

Dated: March 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6629 Filed 3–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

PJM Regional Transmission Planning Task Force Subgroup

March 16, 2012, 9 a.m.–12 p.m., Local Time.

The above-referenced meeting will be held over conference call only.

The above-referenced meeting is open to stakeholders.

Further information may be found at *www.pjm.com.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. EL05–121, *PJM Interconnection, L.L.C.*

Docket No. ER06–456, ER06–954, ER06–1271, ER07–424, ER06–880, EL07–57, ER07–1186, ER08–229, ER08–1065, ER09–497, and ER10–268, *PJM Interconnection, L.L.C.*

Docket No. ER10–253 and EL10–14, *Primary Power, L.L.C.*

Docket No. EL10–52, *Central Transmission, LLC* v. *PJM Interconnection, L.L.C.*

Docket No. ER11–4070, *RITELine Indiana et al.*

Docket No. ER11–2875 and EL11–20, *PJM Interconnection, L.L.C.*

Docket No. ER09–1256, *Potomac-Appalachian Transmission Highline, L.L.C.*

Docket No. ER09–1589, *FirstEnergy Service Company*

Docket No. EL11–56, *FirstEnergy Service Company*

Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL12–10, *PJM Interconnection, L.L.C.*

Docket No. ER12–718, *New York Independent System Operator, Inc.*

Docket No. EL12–1177, *PJM Interconnection, L.L.C.*

Docket No. EL12–1178, *PJM Interconnection, L.L.C.*

For more information, contact Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6604 or *jonathan.fernandez@ferc.gov.*

Dated: March 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6647 Filed 3–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the Midwest Independent Transmission System Operator, Inc. (MISO):

Planning Advisory Committee—March 21, 2012.

RECB Task Force—March 22, 2012.

Order 1000—Right of First Refusal Task Team—March 23, 2012.

The above-referenced meeting will be held at: MISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

The above-referenced meeting is open to the public.

Further information may be found at *www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER12–715, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–309, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL11–56, *FirstEnergy Service Company.*

Docket No. EL11–30, *E.ON Climate & Renewables North America, LLC v. Midwest Independent Transmission System Operator, Inc.*

Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Dated: March 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6646 Filed 3–19–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2012–0163, FRL–9650–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generator Standards Applicable to Laboratories Owned by Eligible Academic Entities

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to the Office of Management and Budget (OMB) to renew an existing approved Information Collection Request (ICR) concerning standards for laboratories owned by eligible academic entities. This ICR is scheduled to expire on July 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 21, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2012–0163, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave. NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2012–0163. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Kristen Fitzgerald, (mail code 5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–8286; fax number: 703–308–8827; email address: *fitzgerald.kristen@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2012–0163, which is available for online viewing at *www.regulations.gov,* or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for RCRA Docket is (202) 566–0270.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES.**
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are private as well as State, Local, or Tribal Governments.

Title: Generator Standards Applicable to Laboratories Owned by Eligible Academic Entities.

ICR numbers: EPA ICR No. 2317.02, OMB Control No. 2050–0204.

ICR status: This ICR is currently scheduled to expire on July 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The U.S. Environmental Protection Agency (EPA) has finalized an alternative set of generator requirements applicable to laboratories owned by eligible academic entities, as defined in the final rule. The rule, which establishes a new Subpart K within 40 CFR part 262, provides a flexible and protective set of regulations that address the specific nature of hazardous waste generation and accumulation in laboratories owned by colleges and universities, and teaching hospitals and non-profit research institutes that are either owned by or formally affiliated with a college or university. In addition, the final rule allows colleges and universities and these other eligible academic entities formally affiliated with a college or university the discretion to determine the most appropriate and effective method of compliance with these requirements by allowing them the choice of managing their hazardous wastes in accordance with the new alternative regulations as set forth in Subpart K or remaining subject to the existing generator regulations.

Burden Statement: The hourly reporting burden associated with the final rule is estimated to be 10 minutes per respondent. This includes time for preparing and submitting a Site Identification Form to opt into Subpart K. The hourly recordkeeping burden associated with the final rule is estimated to be approximately 130 hours per respondent. This includes time for reading the regulations, labeling containers, and preparing and maintaining specified documents (e.g., Laboratory Management Plan).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 112.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 6,429.

Estimated total annual burden hours: 14,459 hours.

Estimated total annual costs: $$562,079, which includes $516,116 annualized labor costs and $45,963 annualized capital or O&M costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: March 8, 2012.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2012–6671 Filed 3–19–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 4, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Amos Kendall Bass III Revocable Trust, Rebecca Sue Bass Revocable Trust, and Rebecca Sue Bass,* as trustee, all of McAlester, Oklahoma; to acquire control of Wilburton State Bancshares, Inc., and thereby indirectly acquire control of Wilburton State Bank, both in Wilburton, Oklahoma.

Board of Governors of the Federal Reserve System, March 15, 012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–6636 Filed 3–19–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Minier Financial, Inc. Employee Stock Ownership Plan with 401(k) Provisions,* Minier, Illinois; to increase its ownership of Minier Financial, Inc., and thereby indirectly increase its ownership of First Farmers State Bank, both in Minier, Illinois.

Board of Governors of the Federal Reserve System, March 15, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–6635 Filed 3–19–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m. (Eastern Time), March 26, 2012.

PLACE: 10th Floor Conference Room, 77 K Street NE., Suite 1000, Washington, DC 20002.

STATUS: Parts will be open to the public and parts will be closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the Minutes of the February 27, 2012 Board Member Meeting.

2. Thrift Savings Plan Activity Report by the Executive Director:

a. Monthly Participant Activity Report.

b. Investment Performance Report.

c. Legislative Report.

Parts Closed to the Public

3. Predecisional Matters.

CONTACT PERSON FOR MORE INFORMATION: Kimberly A. Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: March 16, 2012.

Megan G. Grumbine,

Acting Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2012–6808 Filed 3–16–12; 4:15 pm]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

[File No. 112 3209]

Billion Auto, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 16, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Billion Auto, File No. 112 3209'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/billionautoconsent*, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robin Thurston (202–326–2752), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 14, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 16, 2012. Write ''Billion Auto, File No. 112 3209'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/billionautoconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write ''Billion Auto, File No. 112 3209'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 16, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'') has accepted, subject to final approval, an agreement containing a consent order from Billion Auto, Inc. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondent is a motor vehicle dealer. The matter involves its advertising of the purchase, financing, and leasing of its motor vehicles. According to the FTC complaint, respondent has represented that when a consumer trades in a used vehicle in order to purchase another vehicle, respondent will pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan. The complaint alleges that in fact, when a consumer trades in a used vehicle with negative equity (*i.e.* the loan balance on the vehicle exceeds the vehicle's value) in order to purchase another vehicle, respondent does not pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan. Instead, the respondent includes the amount of the negative equity in the loan for the newly purchased vehicle. The complaint alleges therefore that the representation is false or misleading in violation of Section 5 of the FTC Act. In addition, the complaint alleges violations of the Truth in Lending Act (''TILA'') and Regulation Z for failing to disclose certain costs and terms when advertising credit. The complaint also alleges a violation of the Consumer Leasing Act (''CLA'') and Regulation M for failing to disclose the costs and terms of certain leases offered.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting that it will pay the remaining loan balance on a consumer's trade-in vehicle such that the consumer will have no obligation for any amount of that loan. It also prohibits misrepresenting any other material fact relating to the financing or leasing of a motor vehicle.

Part II of the proposed order addresses the TILA allegations. It requires clear and conspicuous TILA/Regulation Z disclosures when advertising any of the relevant triggering terms with regard to issuing consumer credit. It also requires that if any finance charge is advertised, the rate be stated as an ''annual percentage rate'' using that term or the abbreviation ''APR.'' In addition, Part II prohibits any other violation of TILA or Regulation Z.

Part III of the proposed order addresses the CLA allegation. It requires that the respondent clearly and conspicuously make all of the disclosures required by CLA and Regulation M if it states relevant triggering terms, including the monthly lease payment. In addition, Part III prohibits any other violation of CLA and Regulation M.

Part IV of the proposed order requires respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements. Part V requires that respondent provide copies of the order to certain of its personnel. Part VI requires notification of the Commission regarding changes in corporate structure that might affect compliance obligations under the order. Part VII requires the respondent to file compliance reports with the Commission. Finally, Part VIII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–6727 Filed 3–19–12; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 112 3207]

Ramey Motors, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 16, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Ramey Motors, File No. 112 3207'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/rameymotorsconsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robin Thurston (202–326–2752), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 14, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW, Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 16, 2012. Write ''Ramey Motors, File No. 112 3207'' on your comment. Your comment B—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/rameymotorsconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Ramey Motors, File No. 112 3207'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 16, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''AFTC'') has accepted, subject to final approval, an agreement containing a consent order from Ramey Motors, Inc. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondent is a motor vehicle dealer. The matter involves its advertising of the purchase and financing of its motor vehicles. According to the FTC complaint, respondent has represented that when a consumer trades in a used vehicle in order to purchase another vehicle, respondent will pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan. The complaint alleges that in fact, when a consumer trades in a used vehicle with negative equity (i.e. the loan balance on the vehicle exceeds the vehicle's value) in order to purchase another vehicle, respondent does not pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan. Instead, the respondent includes the amount of the negative equity in the loan for the newly purchased vehicle. The complaint alleges therefore that the representation is false or misleading in violation of Section 5 of the FTC Act. In addition, the complaint alleges violations of the Truth in Lending Act (''TILA'') and Regulation Z for failing to disclose certain costs and terms when advertising credit.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting that it will pay the remaining loan balance on a consumer's trade-in vehicle such that the consumer will have no obligation for any amount of that loan. It also prohibits misrepresenting any other material fact relating to the financing or leasing of a motor vehicle.

Part II of the proposed order addresses the TILA allegations. It requires clear and conspicuous TILA/Regulation Z disclosures when advertising any of the relevant triggering terms with regard to issuing consumer credit. It also requires that if any finance charge is advertised, the rate be stated as an ''annual percentage rate'' using that term or the abbreviation ''APR.'' In addition, Part II prohibits any other violation of TILA or Regulation Z.

Part III of the proposed order requires respondent to keep copies of relevant advertisements and materials substantiating claims made in the

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

advertisements. Part IV requires that respondent provide copies of the order to certain of its personnel. Part V requires notification of the Commission regarding changes in corporate structure that might affect compliance obligations under the order. Part VI requires the respondent to file compliance reports with the Commission. Finally, Part VII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–6733 Filed 3–19–12; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 112 3206]

Frank Myers AutoMaxx, LLC; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 16, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Frank Myers AutoMaxx, File No. 112 3206'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/fmautomaxxconsent*, by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robin Thurston (202–326–2752), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis To Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 14, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 16, 2012. Write ''Frank Myers AutoMaxx, File No. 112 3206'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/fmautomaxxconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!hom*e, you also may file a comment through that Web site.

If you file your comment on paper, write ''Frank Myers Automaxx, File No. 112 3206'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 16, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'') has accepted, subject to final approval, an agreement containing a

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

consent order from Frank Myers AutoMaxx, LLC. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondent is a motor vehicle dealer. The matter involves its advertising of the purchase, financing, and leasing of its motor vehicles. According to the FTC complaint, respondent has represented that when a consumer trades in a used vehicle in order to purchase another vehicle, respondent will pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan. The complaint alleges that in fact, when a consumer trades in a used vehicle with negative equity (i.e. the loan balance on the vehicle exceeds the vehicle's value) in order to purchase another vehicle, respondent does not pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan. Instead, the respondent may require the consumer to pay for the negative equity in cash at the time of sale. The complaint alleges therefore that the representation is false or misleading in violation of Section 5 of the FTC Act.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting that it will pay the remaining loan balance on a consumer's trade-in vehicle such that the consumer will have no obligation for any amount of that loan. It also prohibits misrepresenting any other material fact relating to the financing or leasing of a motor vehicle.

Part II of the proposed order requires respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements. Part III requires that respondent provide copies of the order to certain of its personnel. Part IV requires notification of the Commission regarding changes in corporate structure that might affect compliance obligations under the order. Part V requires the respondent to file compliance reports with the Commission. Finally, Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–6736 Filed 3–19–12; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 112 3204]

Key Hyundai of Manchester, LLC; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 16, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Key Hyundai, File No. 112 3204'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/keyhyundaiconsent*, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robin Thurston (202–326–2752), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 14, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 16, 2012. Write ''Key Hyundai, File No. 112 3204'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and

you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/keyhyundaiconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write ''Key Hyundai, File No. 112 3204'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 16, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'') has accepted, subject to final approval, an agreement containing a consent order from Key Hyundai of Manchester, LLC, and Hyundai of Milford, LLC. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondents are motor vehicle dealers. The matter involves their advertising of the purchase, financing, and leasing of their motor vehicles. According to the FTC complaint, respondents have represented that when a consumer trades in a used vehicle in order to purchase another vehicle, respondents will pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan. The complaint alleges that in fact, when a consumer trades in a used vehicle with negative equity (i.e. the loan balance on the vehicle exceeds the vehicle's value) in order to purchase another vehicle, respondents do not pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan. Instead, the respondents include the amount of the negative equity in the loan for the newly purchased vehicle. The complaint alleges therefore that the representation is false or misleading in violation of Section 5 of the FTC Act. In addition, the complaint alleges violations of the Truth in Lending Act (''TILA'') and Regulation Z for failing to disclose certain costs and terms when advertising credit. The complaint also alleges a violation of the Consumer Leasing Act (''CLA'') and Regulation M for failing to disclose the costs and terms of certain leases offered.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I of the proposed order prohibits the respondents from misrepresenting that they will pay the remaining loan balance on a consumer's trade-in vehicle such that the consumer will have no obligation for any amount of that loan. It also prohibits misrepresenting any other material fact relating to the financing or leasing of a motor vehicle.

Part II of the proposed order addresses the TILA allegations. It requires clear and conspicuous TILA/Regulation Z disclosures when advertising any of the relevant triggering terms with regard to issuing consumer credit. It also requires that if any finance charge is advertised, the rate be stated as an ''annual percentage rate'' using that term or the abbreviation ''APR.'' In addition, Part II prohibits any other violation of TILA or Regulation Z.

Part III of the proposed order addresses the CLA allegation. It requires that the respondents clearly and conspicuously make all of the disclosures required by CLA and Regulation M if it states relevant triggering terms, including the monthly lease payment. In addition, Part III prohibits any other violation of CLA and Regulation M.

Part IV of the proposed order requires respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements. Part V requires that respondent provide copies of the order to certain of its personnel. Part VI requires notification of the Commission regarding changes in corporate structure that might affect compliance obligations under the order. Part VII requires the respondent to file compliance reports with the Commission. Finally, Part VIII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–6732 Filed 3–19–12; 8:45 am]

BILLING CODE 6750–01–P

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for the ''2012 ASPR Challenge Titled Now Trending: #Health in My Community''

AGENCY: Office of the Assistant Secretary for Preparedness and Response, HHS.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Preparedness and Response (ASPR) is announcing the launch of the 2012 ASPR Challenge titled *Now Trending: #Health in My Community.* This challenge aims to address the gaps in health surveillance at the State, Local, Tribal, and Territorial level to improve situational awareness and response to health threats. Specifically, this contest will challenge entrants to create a Web-based application that takes open source Twitter data for a specified geographic area, counts the frequency of common illness related terms, and creates a top five list of trending illnesses for the previous twenty-four hour period. The top five list would be automatically delivered daily to public health

practitioners at health departments via a Web-based widget. This information can then be used by the health departments in multiple ways such as building a baseline of trend data, engaging the public on trending health topics, serving as an indicator of potential health issues emerging in the population, or cross-referencing other data sources. The resulting product from this challenge will cut down on the manpower intensive task of sifting through Twitter postings for meaningful health data.

DATES: Important dates for this Challenge are:

Submission Period Begins: 03–16–2012.

Submission Period Ends: 06–01–2012.

Judging Process for Finalists Begins: 06–18–2012.

Judging Process for Finalists Ends: 07–31–2012.

Winners notified: August 2012.

Winners announced: September 2012.

Winners Present Tools at Fusion Forum: November 2012.

FOR FURTHER INFORMATION CONTACT: Diana Boss, MPH, Public Health Analyst, Fusion Cell, OPEO, ASPR, HHS. *Phone:* 202–260–5189.

Award Approval Official: RADM Nicole Lurie, MD, MSPH., Office of the Assistant Secretary for Preparedness and Response.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

Entrants are asked to develop a Web-based application that can ingest open source Twitter data for a specified geographic area, count the frequency of common illness related terms based on a provided common disease term taxonomy, and produce a top five list of trending illnesses for the previous twenty-four hour period. The daily top five list would be automatically delivered daily to public health practitioners at health departments via a Web-based widget. The resulting information will then be available to health departments to use in a variety of ways including building a baseline of trend data, engaging the public on trending health topics, serving as an indicator of potential health issues emerging in the population, or cross-referencing other data sources.

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by ASPR;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States;

(4) May not be a Federal entity or Federal employee acting within the scope of their employment;

(5) Shall not be an HHS employee working on their applications or submissions during assigned work hours;

(6) Shall not be an employee of the Office of the Assistant Secretary for Preparedness and Response;

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award;

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

This Challenge is open to any Contestant, defined as (1) an individual or team of U.S. citizens or permanent residents of the United States who are 18 years of age and over, or (2) an entity incorporated in and maintaining a primary place of business in the United States. Foreign citizens can participate as employees of an entity that is properly incorporated in the U.S. and maintains a primary place of business in the U.S. Contestants may submit more than one entry, e.g., if they have developed more than one tool.

Any individual or team that supplies false information, enters the challenge by fraudulent means, or is otherwise determined to be in violation of the eligibility criteria or terms of the challenge shall be ineligible for any prize and shall be required to forfeit and prize obtained based on such information or means.

Eligibility for a prize award is contingent upon fulfilling all requirements set forth herein. ASPR will not select as a Winner an individual or entity that is currently on the Excluded Parties List (*https://www.epls.gov/*).

By participating in this competition, participants agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

By participating in this competition, participants agree to indemnify the Federal Government against third party claims for damage arising from or related to competition activities.

Based on the subject matter of the contest, the type of work that it will possibly require, as well as an analysis of the likelihood of any claims for death, bodily injury, or property damage, or loss potentially resulting from contest participation, Contestants are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in this contest.

Upon submission, each Contestant warrants that he or she is the sole author and owner of the submission; that the submission is wholly original with the Contestant (or is an improved version of an existing tool that the Contestant has sufficient rights to use); and that it does not infringe any copyright or any other rights of any third party of which Contestant is aware. Each Contestant also warrants that their submission is free of malware. Each Contestant also warrants that he or she has complied with the Twitter API Guidelines and Terms listed on the following Web site: *https://dev.twitter.com/docs.*

By participating in this contest, each Contestant grants to ASPR an irrevocable, paid-up, royalty-free nonexclusive worldwide license to post, link to, share, and display publicly the submission on the Web, for the purpose of the Challenge, during the duration of the Challenge, and for a period of two years following announcement of the winners. Contestants with winning submissions also grant to ASPR an irrevocable, paid-up, royalty-free nonexclusive worldwide license to use winning submissions and distribute them to the public to enhance situational awareness and response to health threats for a period of two years following announcement of the winners. All Contestants will retain all other intellectual property rights in their submissions. For example, during the two-year period referenced above, contestants retain the right to utilize and modify their submissions as desired and to provide licenses (paid or un-paid) to other entities. Thereafter, the nonexclusive license will expire, and contestants could grant an exclusive license if they so desired.

Registration Process for Participants

Interested persons that meet the eligibility criteria above should register at *www.nowtrendingchallenge.com.* Registration is free and can be completed anytime during the Submission Period, 03–16–2012 to 06–01–2012.

Amount of the Prize

At the culmination of the submission period, all submitted entries will be reviewed for eligibility criteria. Those entries that are found to be eligible will be reviewed by a judging panel for determination of one grand prize submission. The grand prize submission will be awarded $21,000.00. If a team wins the prize, the prize money will be divided evenly among all team members. The winning entry will also receive $1,000 to apply towards travel to Washington, DC for the announcement of the winner.

Payment of Prize

Prizes awarded under this competition will be paid by electronic funds transfer and may be subject to Federal income taxes. Any Federal, state, and, local taxes, and all similar fees and assessments, are the sole responsibility of the prize recipients. HHS will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Basis Upon Which Winner Will Be Selected

All submissions that satisfy eligibility criteria will be judged by an expert panel composed of ASPR staff. The expert panel may also include and/or consult with Federal employees from other HHS components and Federal agencies, State and Local public health representatives, and/or external members of the health information technology community in compliance with the requirements of the America COMPETES Act. Judges may be named after commencement of the challenge. The judging panel will make selections based upon the following criteria:

1. *Accessibility:* Each entry will be rated on its ease of accessibility. Preference will be given to applications that are easily accessible to a wide range of users, including those with disabilities, on a variety of platforms.

2. *Innovation:* Each tool must meet the basic requirements for entry in the competition. Beyond the basics, each entry will be rated to the degree of new thinking it brings to applications targeting health surveillance. Innovations that help refine the tool's output or add additional knowledge beyond the top five trends are encouraged. These innovations may include but are not limited to: Adaptability to categories beyond diseases, reduction of noise to improve data quality, refinement of geolocation ability, etc.

3. *Usability:* Each entry will be rated on its ease of usability and interactive capabilities. Entries will be judged based on the user interface for selecting the location of interest for reporting and on the user ability to interact with output data.

4. *Potential for impact on ability to gain/maintain health situational awareness:* Each entry will be rated on the strength of its potential to help health authorities increase their knowledge of emerging health topics in their population of interest.

Submissions should include a title; a description of the submission in the form of a document (5 page maximum) or a slide presentation (10 slide maximum); a Web address for the technology; instructions on how to operate the tool; and system requirements required to run the tool. Pictures and video are optional but helpful.

Additional Information

1. *General*—Contestants must provide continuous access to their submission, a detailed description of the tool, instructions on how to install and operate the tool, and system requirements required to run the tool.

2. *Acceptable platforms*—The submission must be designed for the Web, a personal computer, a mobile handheld device, console, or any platform broadly accessible on the open Internet.

3. *Acceptable Twitter Sources*—All participants must use openly available Twitter information via one of the following Twitter API's: REST API or Streaming API

3. *Accessibility*—The tool must, to the extent practicable, be accessible to a wide range of users, including users with disabilities. It should also aim to meet objectives for Federal compliance guidelines for information technology as addressed by Section 508 of the Rehabilitation Act of 1973: *http://www.section508/gov.*

4. *Deadlines and Modifications*—All submissions must be available for evaluation and judging by 11:59 p.m., EDT, on 06–01–2012.

5. *Intellectual Property*—The Submission must not infringe any copyright or any other rights of any third party.

6. *No logo or endorsement*—The tool must not use any HHS or ASPR logo or official seal in the submission and must not claim HHS or ASPR endorsement. The award of a prize in this Challenge does not constitute an endorsement of a specific product by HHS, ASPR, or the Federal Government.

7. *Functionality/Accuracy*—A Submission may be disqualified if the tool fails to function as expressed in the description provided by the user or if the tool provides inaccurate or incomplete information.

8. *Security*—Submissions must be free of malware. The Contestant agrees that HHS may conduct testing on the tool to determine whether malware or other security threats may be present. HHS may disqualify the tool if, in HHS's judgment, the tool may damage the Government's or others' equipment or operating environment.

9. *Debarment and Suspension Screening.* By submitting an entry, Contestants consent to debarment and compliance screening.

Compliance With Rules and Contacting Challenge Winners

Finalists and the Challenge Winners must comply with all terms and conditions of these Official Rules and winning is contingent upon fulfilling all requirements contained herein. Awards may be subject to Federal income taxes, and the Department of Health and Human Services will comply with the Internal Revenue Service withholding and reporting requirements, where applicable. Winners will be notified by email, telephone, or mail after the date of the judging.

Privacy

If contestants choose to provide ASPR with personal information by registering or filling out the submission form through the challenge Web site, that information is used to respond to contestants in matters regarding their submission; announcements of entrants, finalists, and winners of the Challenge; and in relation to promotion of the Challenge. Information is not collected for commercial marketing.

Winners are permitted to cite that they won this contest.

General Conditions

ASPR reserves the right to cancel, suspend, and/or modify the Competition, or any part of it, for any reason, at ASPR's sole discretion.

Participation in this Challenge constitutes a contestant's full and unconditional agreement to abide by the Challenge's Official Rules found at *www.Challenge.gov.*

Authority: 15 U.S.C. 3719.

Dated: February 7, 2012.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2012–6608 Filed 3–19–12; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee to the Director, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), has been renewed for a 2-year period through February 1, 2014.

For information, contact Carmen Villar, M.S.W., Designated Federal Officer, Advisory Committee to the Director, CDC, HHS, 1600 Clifton Road, NE., Mailstop D–14, Atlanta, Georgia 30333, telephone 404/639–7000 or fax 404/639–7111.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 13, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–6637 Filed 3–19–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Breast Cancer in Young Women (ACBCYW)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

DATES: *Times and Dates:*
12 p.m.–5 p.m., April 18, 2012,
9 a.m.–5 p.m., April 19, 2012,
8 a.m.–12 p.m., April 20, 2012.

Place: Atlanta Marriott Perimeter Center, 246 Perimeter Center Parkway NE., Atlanta, Georgia 30346.

Status: Open to the public, limited only by the space available.

Purpose: The committee provides advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; and the Director, CDC, regarding the formative research, development, implementation and evaluation of evidence-based activities designed to prevent breast cancer (particularly among those at heightened risk) and promote the early detection and support of young women who develop the disease. The advice provided by the Committee will assist in ensuring scientific quality, timeliness, utility, and dissemination of credible appropriate messages and resource materials.

Matters To Be Discussed: The agenda will include discussions on approaches to increase awareness of clinicians/practitioners regarding topics such as breast health, symptoms, diagnosis, and treatment of breast cancer in young women; and information needs and delivery mechanisms for women at higher risks for developing breast cancer.

Agenda items are subject to change as priorities dictate.

Online Registration Required: All ACBCYW attendees must register for the meeting online in advance at *http://www.cdc.gov/cancer/breast/what_cdc_is_doing/meetings.htm.* Please complete all the required fields before submitting your registration and submit no later than April 3, 2012.

CONTACT PERSON FOR MORE INFORMATION: Temeika L. Fairley, Ph.D., Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 5770 Buford Hwy, NE., Mailstop K52, Atlanta, Georgia 30341, Telephone (770) 488–4518, Fax (770) 488–4760, Email: *acbcyw@cdc.gov*

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and Agency for Toxic Substances and Disease Registry.

Dated: March 13, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–6641 Filed 3–19–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): A Pilot Surveillance for High Impact/Low Prevalence Congenital and Inherited Conditions, FOA DD12–002, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11 a.m.–5 p.m., April 17, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''A Pilot Surveillance for High Impact/Low Prevalence Congenital and Inherited Conditions, FOA DD12–002, initial review.''

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, NE., Mailstop F–46, Atlanta, Georgia 30341, Telephone: (770) 488–3585.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 13, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–6640 Filed 3–19–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0253]

Agency Information Collection Activities: Proposed Collection; Comment Request; Postmarketing Adverse Drug Experience Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on postmarketing adverse drug experience reporting and recordkeeping requirements.

DATES: Submit either written or electronic comments on the collection of information by May 21, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane., rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.Vilela@FDA.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520) 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(c) 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, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Postmarketing Adverse Drug Experience Reporting—21 CFR 310.305 and 314.80 (OMB Control Number 09109–0230)—Extension

Sections 201, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 352, 355, and 371) require that marketed drugs be safe and effective. In order to know whether drugs that are not safe and effective are on the market, FDA must be promptly informed of adverse experiences occasioned by the use of marketed drugs. In order to help ensure this, FDA issued regulations at §§ 310.305 and 314.80 (21 CFR 310.305 and 314.80) to impose reporting and recordkeeping requirements on the drug industry that would enable FDA to take the action necessary to protect the public health from adverse drug experiences.

All applicants who have received marketing approval of drug products are required to report to FDA serious, unexpected adverse drug experiences, as well as followup reports when needed (§ 314.80(c)(1)). This includes reports of all foreign or domestic adverse experiences as well as those based on information from applicable scientific literature and certain reports from postmarketing studies. Section 314.80(c)(1)(iii) pertains to such reports submitted by nonapplicants. Under § 314.80(c)(2) applicants must provide periodic reports of adverse drug experiences. A periodic report includes, for the reporting interval, reports of serious, expected adverse drug experiences and all nonserious adverse drug experiences and an index of these reports, a narrative summary and analysis of adverse drug experiences, and a history of actions taken because of adverse drug experiences. Under § 314.80(i), applicants must keep for 10 years records of all adverse drug experience reports known to the applicant.

For marketed prescription drug products without approved new drug applications or abbreviated new drug applications, manufacturers, packers, and distributors are required to report to FDA serious, unexpected adverse drug experiences as well as followup reports when needed (§ 310.305(c)). Section 310.305(c)(5) pertains to the submission of followup reports to reports forwarded by FDA. Under § 310.305(f), each manufacturer, packer, and distributor shall maintain for 10 years records of all adverse drug experiences required to be reported.

The primary purpose of FDA's adverse drug experience reporting system is to provide a signal for potentially serious safety problems with marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provide the opportunity to collect information on rare, latent, and long-term effects. Signals are obtained from a variety of sources, including reports from patients, treating physicians, foreign regulatory agencies, and clinical investigators. Information derived from the adverse drug experience reporting system contributes directly to increased public health protection because the information enables FDA to make important changes to the product's labeling (such as adding a new warning), decisions about risk evaluation and mitigation strategies or the need for postmarket studies or clinical trials, and when necessary, to initiate removal of a drug from the market.

Respondents to this collection of information are manufacturers, packers, distributors, and applicants. FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
310.305(c)(5)	3	1	3	1	3
314.80(c)(1)(iii)	5	1	5	1	5
314.80(c)(2)	665	22.85	15,195	60	911,700
Total					911,708

[1] The reporting burden for §§ 310.305(c)(1), (c)(2), and (c)(3), and 314.80(c)(1)(i) and (c)(1)(ii) is reported under OMB control number 0910–0291. The capital costs or operating and maintenance costs associated with this collection of information are approximately $25,000 annually.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
310.305(f)	25	1	25	16	400
314.80(i)	665	601.5	399,998	16	6,399,968
Total					6,400,368

[1] There are no capital costs or operating costs associated with this collection of information. There are maintenance costs of $22,000 annually.

These estimates are based on FDA's knowledge of adverse drug experience reporting, including the time needed to prepare the reports, and the number of reports submitted to the Agency.

Dated: March 15, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6692 Filed 3–19–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0883]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 19, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0572. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.Vilela@FDA.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products—(OMB Control Number 0910–0572)—(Extension)

FDA's final rule entitled ''Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products'' (the final rule), which published on January 24, 2006 (71 FR 3922), and was effective on June 30, 2006, amended FDA's regulations governing the format and content of labeling for human prescription drug and biological products to require that the labeling of new and recently approved products contain highlights of prescribing information, a table of contents for prescribing information, reordering of certain sections, minor content changes, and minimum graphical requirements. These revisions were intended to make it easier for health care practitioners to access, read, and use information in prescription drug labeling; to enhance the safe and effective use of prescription drug products; and to reduce the number of adverse reactions resulting from medication errors due to misunderstood or incorrectly applied drug information.

A. Summary of Prescription Drug Labeling Content and Format Requirements That Contain Collections of Information

Section 201.56 (21 CFR 201.56) requires that prescription drug labeling contain certain information in the format specified in either § 201.57 (21 CFR 201.57) or § 201.80 (21 CFR 201.80), depending on when the drug was approved for marketing. Section 201.56(a) sets forth general labeling requirements applicable to all prescription drugs. Section 201.56(b) specifies the categories of new and more recently approved prescription drugs subject to the revised content and format requirements in §§ 201.56(d) and 201.57. Section 201.56(c) sets forth the schedule for implementing these revised content and format requirements. Section 201.56(e) specifies the sections and subsections, required and optional, for the labeling of older prescription drugs not subject to the revised format and content requirements.

Section 201.57(a) requires that prescription drug labeling for new and more recently approved prescription drug products include ''Highlights of

Prescribing Information.'' Highlights provides a concise extract of the most important information required under § 201.57(c) (the Full Prescribing Information (FPI)), as well as certain additional information important to prescribers. Section 201.57(b) requires a table of contents to prescribing information, entitled ''Full Prescribing Information: Contents,'' consisting of a list of each heading and subheading along with its identifying number to facilitate health care practitioners' use of labeling information. Section 201.57(c) specifies the contents of the FPI. Section 201.57(d) mandates the minimum specifications for the format of prescription drug labeling and establishes minimum requirements for key graphic elements such as bold type, bullet points, type size, and spacing.

Older drugs not subject to the revised labeling content and format requirements in § 201.57 remain subject to labeling requirements at § 201.80 (in the final rule, former § 201.57 was redesignated as § 201.80). Section 201.80(f)(2) requires that within 1 year, any FDA-approved patient labeling be referenced in the ''Precautions'' section of the labeling of older products and either accompany or be reprinted immediately following the labeling.

B. Estimates of Reporting Burden

The PRA information collection analysis in the final rule (71 FR 3964–3967) (currently approved under OMB control number 0910–0572) estimated the reporting burden for a multiyear period. We are requesting that OMB extend approval for the information in this collection, as described below that will continue to be submitted to FDA during this multiyear period.

Annual Burden for Prescription Drug Labeling Design, Testing, and Submitting to FDA for New Drug Applications (NDAs) and Biologics License Applications (BLAs) (§§ 201.56 and 201.57) (Table 1)

New drug product applicants must: (1) Design and create prescription drug labeling containing Highlights, Contents, and FPI, (2) test the designed labeling (e.g., to ensure that the designed labeling fits into carton-enclosed products), and (3) submit it to FDA for approval. Based on the projected data estimated in the final rule, FDA estimates that it takes applicants approximately 3,349 hours to design, test, and submit prescription drug labeling to FDA as part of an NDA or a BLA under the revised regulations. Approximately 84 applicants submit approximately 105 new applications (NDAs and BLAs) to FDA per year, totaling 351,645 hours.

In the **Federal Register** of December 19, 2011 (76 FR 78668), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received no comments.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED REPORTING BURDEN FOR NEW DRUG APPLICATIONS [1]

Category (21 CFR section)	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Annual Burden for Labeling Requirements in §§ 201.56 and 201.57	84	1.25	105	3,349	351,645
Total					351,645

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 15, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6693 Filed 3–19–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0247]

Agency Information Collection Activities: Proposed Collection; Comment Request; Guidance for Industry on Formal Meetings With Sponsors and Applicants for Prescription Drug User Fee Act Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection contained in the guidance for industry on formal meetings with sponsors and applicants for Prescription Drug User Fee Act (PDUFA) products.

DATES: Submit either electronic or written comments on the collection of information by May 21, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), 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(c) 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, including each proposed extension of an existing collection of information,

before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Formal Meetings With Sponsors and Applicants for PDUFA Products—(OMB Control Number 0910–0429)—Extension

This information collection approval request is for FDA guidance on the procedures for formal meetings between FDA and sponsors or applicants regarding the development and review of PDUFA products. The guidance describes procedures for requesting, scheduling, conducting, and documenting such formal meetings. The guidance provides information on how the Agency will interpret and apply section 119(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA), specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82 (21 CFR 312.47 and 312.82)).

The guidance describes two collections of information: The submission of a meeting request containing certain information and the submission of an information package in advance of the formal meeting. Agency regulations at §§ 312.47(b)(1)(ii), (b)(1)(iv), and (b)(2) describe information that should be submitted in support of a request for an End-of-Phase 2 meeting and a Pre-NDA meeting. The information collection provisions of § 312.47 have been approved by OMB (OMB control number 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting additional estimates for OMB approval.

A. Request for a Meeting

Under the guidance, a sponsor or applicant interested in meeting with the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) should submit a meeting request to the appropriate FDA component as an amendment to the underlying application. FDA regulations (§§ 312.23, 314.50, and 601.2 (21 CFR 312.23, 314.50, and 601.2)) state that information provided to the Agency as part of an Investigational New Drug Application (IND), New Drug Application (NDA), or Biological License Application (BLA) must be submitted with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs and BLAs. Both forms have valid OMB control numbers as follows: FDA Form 1571—OMB control number 0910–0014 and FDA Form 356h—OMB control number 0910–0338.

In the guidance document, CDER and CBER ask that a request for a formal meeting be submitted as an amendment to the application for the underlying product under the requirements of §§ 312.23, 314.50, and 601.2; therefore, requests should be submitted to the Agency with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The Agency recommends that a request be submitted in this manner for two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the Agency's tracking databases enables the Agency to monitor progress on the activities attendant to scheduling and holding a formal meeting and to ensure that appropriate steps will be taken in a timely manner.

Under the guidance, the Agency requests that sponsors and applicants include in meeting requests certain information about the proposed meeting. Such information includes:

- Information identifying and describing the product;
- The type of meeting being requested;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes from the meeting;
- A preliminary proposed agenda;
- A draft list of questions to be raised at the meeting;
- A list of individuals who will represent the sponsor or applicant at the meeting;
- A list of Agency staff requested to be in attendance;
- The approximate date that the information package will be sent to the Agency; and
- Suggested dates and times for the meeting.

This information will be used by the Agency to determine the utility of the meeting, to identify Agency staff necessary to discuss proposed agenda items, and to schedule the meeting.

B. Information Package

A sponsor or applicant submitting an information package to the Agency in advance of a formal meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the sponsor, applicant, or Agency. The Agency recommends that information packages generally include:

- Identifying information about the underlying product;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes of the meeting;
- A proposed agenda for the meeting;
- A list of specific questions to be addressed at the meeting;
- A summary of clinical data that will be discussed (as appropriate);
- A summary of preclinical data that will be discussed (as appropriate); and
- Chemistry, manufacturing, and controls information that may be discussed (as appropriate).

The purpose of the information package is to provide Agency staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. Although FDA reviews similar information in the meeting request, the information package should provide updated data that reflect the most current and accurate information available to the sponsor or applicant. The Agency finds that reviewing such information is critical to achieving a productive meeting.

The collection of information described in the guidance reflects the current and past practice of sponsors and applicants to submit meeting requests as amendments to INDs, NDAs, and BLAs and to submit background information prior to a scheduled meeting. Agency regulations currently permit such requests and recommend the submission of an information package before an End-of-Phase 2 meeting (§§ 312.47(b)(1)(ii) and (b)(1)(iv)) and a Pre-NDA meeting (§ 312.47(b)(2)).

1. Description of Respondents: A sponsor or applicant for a drug or biological product who requests a formal meeting with the Agency regarding the development and review of a PDUFA product.

2. Burden Estimate: Provided below is an estimate of the annual reporting burden for the submission of meeting requests and information packages under the guidance.

C. Request For a Formal Meeting

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 975 sponsors and applicants (respondents) request approximately 2,014 formal meetings with CDER annually and approximately 127 respondents request approximately 253 formal meetings with CBER annually regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted with a meeting request in accordance with the guidance, is estimated to be approximately 10 hours. Based on FDA's experience, the Agency expects it will take respondents this amount of time to gather and copy brief statements about the product and a description of the purpose and details of the meeting.

D. Information Package

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 756 respondents submitted approximately 1,394 information packages to CDER annually and approximately 112 respondents submitted approximately 203 information packages to CBER annually prior to a formal meeting regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information package in accordance with the guidance, is estimated to be approximately 18 hours. Based on FDA's experience, the Agency expects it will take respondents this amount of time to gather and copy brief statements about the product, a description of the details for the anticipated meeting, and data and information that generally would already have been compiled for submission to the Agency.

As stated earlier, the guidance provides information on how the Agency will interpret and apply section 119(a) of FDAMA, specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82). The information collection provisions in § 312.47 concerning End-of-Phase 2 meetings and Pre-NDA meetings have been approved by OMB (OMB control number 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting for OMB approval these additional estimates.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Meeting requests and information packages	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Meeting Requests					
CDER	975	2.06	2,014	10	20,140
CBER	127	1.99	253	10	2,530
Total					22,670
Information Packages					
CDER	756	1.84	1,394	18	25,092
CBER	112	1.81	203	18	3,654
Total					28,746
Grand Total					51,416

Dated: March 14, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6691 Filed 3–19–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0248]

Agency Information Collection Activities: Proposed Collection; Comment Request; Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection contained in the guidance for industry on formal dispute resolution.

DATES: Submit either electronic or written comments on the collection of information by May 21, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501–3520, 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(c) 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, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level—(OMB Control Number 0910–0430)—Extension

This information collection approval request is for FDA guidance on the process for formally resolving scientific and procedural disputes in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) that cannot be resolved at the division level. The guidance describes procedures for formally appealing such disputes to the office or center level and for submitting information to assist center officials in resolving the issue(s) presented. The guidance provides information on how the Agency will interpret and apply provisions of the existing regulations regarding internal Agency review of decisions (§ 10.75 (21 CFR 10.75), dispute resolution during the investigational new drug (IND) process (§ 312.48 (21 CFR 312.48)), and the new drug application/abbreviated new drug application (NDA/ANDA) process (§ 314.103(21 CFR 314.103)). In addition, the guidance provides information on how the Agency will interpret and apply the specific Prescription Drug User Fee Act (PDUFA) goals for major dispute resolution associated with the development and review of PDUFA products.

Existing regulations, which appear primarily in 21 CFR parts 10, 312, and 314, establish procedures for the resolution of scientific and procedural disputes between interested persons and the Agency, CDER, and CBER. All Agency decisions on such matters are based on information in the administrative file (§ 10.75(d)). In general, the information in an administrative file is collected under existing regulations in part 312 (OMB control number 0910–0014), part 314 (OMB control number 0910–0001), and part 601 (21 CFR part 601) (OMB control number 0910–0338), which specify the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of drugs and biological products. This information is usually submitted as part of an IND, NDA, or biologics license application (BLA), or as a supplement to an approved application. While FDA already possesses in the administrative file the information that would form the basis of a decision on a matter in dispute resolution, the submission of particular information regarding the request itself and the data and information relied on by the requestor in the appeal would facilitate timely resolution of the dispute. The guidance describes the following collection of information not expressly specified under existing regulations: The submission of the request for dispute resolution as an amendment to the application for the underlying product, including the submission of supporting information with the request for dispute resolution.

Agency regulations (§§ 312.23(11)(d), 314.50, 314.94, and 601.2) state that information provided to the Agency as part of an IND, NDA, ANDA, or BLA is to be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs, ANDAs, and BLAs. Both forms have valid OMB control numbers as follows: FDA Form 1571—OMB control number. 0910–0014 and FDA Form 356h—OMB control number 0910–0338.

In the guidance document, CDER and CBER ask that a request for formal dispute resolution be submitted as an amendment to the application for the underlying product and that it be submitted to the Agency in triplicate with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The Agency recommends that a request be submitted as an amendment in this manner for two reasons: To ensure that each request is kept in the administrative file with the entire underlying application and to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the Agency's tracking databases enables the appropriate Agency official to monitor progress on the resolution of the dispute and to ensure that appropriate steps will be taken in a timely manner.

CDER and CBER have determined and the guidance recommends that the following information should be submitted to the appropriate center with each request for dispute resolution so that the Center may quickly and efficiently respond to the request: (1) A brief but comprehensive statement of each issue to be resolved, including a description of the issue, the nature of the issue (*i.e.,* scientific, procedural, or both), possible solutions based on information in the administrative file, whether informal dispute resolution was sought prior to the formal appeal, whether advisory committee review is sought, and the expected outcome; (2) a statement identifying the review division/office that issued the original decision on the matter and, if applicable, the last Agency official that attempted to formally resolve the

matter; (3) a list of documents in the administrative file, or additional copies of such documents, that are deemed necessary for resolution of the issue(s); and (4) a statement that the previous supervisory level has already had the opportunity to review all of the material relied on for dispute resolution. The information that the Agency suggests submitting with a formal request for dispute resolution consists of: (1) Statements describing the issue from the perspective of the person with a dispute, (2) brief statements describing the history of the matter, and (3) the documents previously submitted to FDA under an OMB approved collection of information.

Based on FDA's experience with dispute resolution, the Agency expects that most persons seeking formal dispute resolution will have gathered the materials listed previously when identifying the existence of a dispute with the Agency. Consequently, FDA anticipates that the collection of information attributed solely to the guidance will be minimal.

Description of respondents: A sponsor, applicant, or manufacturer of a drug or biological product regulated by the Agency under the Federal Food, Drug and Cosmetic Act or section 351 of the Public Health Service Act (42 U.S.C. 262) (Pub. L. 99–660) who requests formal resolution of a scientific or procedural dispute.

Burden Estimate: Provided below is an estimate of the annual reporting burden for requests for dispute resolution. Based on data collected from review divisions and offices within CDER and CBER, FDA estimates that approximately nine sponsors and applicants (respondents) submit requests for formal dispute resolution to CDER annually and approximately one respondent submits requests for formal dispute resolution to CBER annually. The total annual responses are the total number of requests submitted to CDER and CBER in 1 year, including requests for dispute resolution that a single respondent submits more than one time. FDA estimates that CDER receives approximately 18 requests annually and CBER receives approximately 1 request annually. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for formal dispute resolution in accordance with this guidance, including the time it takes to gather and copy brief statements describing the issue from the perspective of the person with the dispute, brief statements describing the history of the matter, and supporting information that has already been submitted to the Agency. Based on experience, FDA estimates that approximately 8 hours on average would be needed per response. Therefore, FDA estimates that 152 hours will be spent per year by respondents requesting formal dispute resolution under the guidance.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Requests for formal dispute resolution	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
CDER	9	2	18	8	144
CBER	1	1	1	8	8
Total					152

Dated: March 15, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6690 Filed 3–19–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0389]

Medical Device User Fee Act; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss proposed recommendations for the reauthorization of the Medical Device User Fee Act (MDUFA) for fiscal years (FYs) 2013 through 2017. MDUFA authorizes FDA to collect user fees and use them for the process for the review of medical device applications. The current legislative authority for MDUFA expires on October 1, 2012. New legislation will be required for FDA to collect medical device user fees for future FYs. Following discussions with the device industry and periodic consultations with public stakeholders, the Federal Food, Drug, and Cosmetic Act (FD&C Act) directs FDA to publish the recommendations for the reauthorized program in the **Federal Register**, hold a meeting at which the public may present its views on such recommendations, and provide for a period of 30 days for the public to provide written comments on such recommendations. FDA will then consider such public views and comments and revise such recommendations as necessary.

DATES: The public meeting will be held on March 28, 2012 from 9 a.m. to 5 p.m. Registration to attend the meeting must be received by March 26, 2012. Submit either electronic or written comments by April 16, 2012.

Location: The meeting will be held at the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. For directions and metro information please visit the following Web site: *http://www.hhs.gov/about/hhhmap.html.* The public meeting will also be available to be viewed online via webcast. Registration is required to view the webcast.

Contact Person: Cindy Garris, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, Rm. 4459, Silver Spring, MD 20993, 301–796–5861, FAX: 301–847–8142, email: *MDUFAReauthorization@fda.hhs.gov.*

Registration and Oral Presentations: If you wish to attend and/or speak at the meeting or view the webcast, please register by March 26, 2012. To register for the meeting, please visit *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (or go to the FDA Medical Devices News & Events—Workshops & Conferences calendar and select this public meeting from the posted events list). Please provide complete contact information for each attendee, including name, title, affiliation, address, email address, and phone number. Registrants wishing to speak during the open comment period should note that when registering. We

will try to accommodate all persons who wish to speak. The time allotted for an individual to speak may depend on the number of persons who wish to speak. Registration is free and will be on a first-come, first-served basis, with the following exception. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will not be available.

If you need special accommodations due to a disability, please contact Cindy Garris (email: *MDUFAReauthorization@fda.hhs.gov* or 301–796–5861) at least 2 days before the meeting.

Comments: FDA is holding this public meeting to hear stakeholders' views on the draft recommendations for the reauthorized user fee program (MDUFA III), including suggestions for any changes that FDA should consider. FDA policy issues are beyond the scope of the user fee program. Accordingly, the public comments should focus on MDUFA III draft recommendations.

Regardless of attendance at the public meeting, interested persons may submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov.* All comments should be identified with the docket number found in brackets in the heading of this document. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is announcing its intention to hold a public meeting to discuss proposed recommendations for the reauthorization of the Medical Device User Fee Amendments of 2007 (MDUFA), which authorizes FDA to collect user fees and use them for the process for the review of device applications until October 1, 2012. Without new legislation, FDA will no longer be able to collect user fees for future fiscal years to fund the medical device review process.

As required by section 738A(b)(2), (3), and (6) of the FD&C Act (21 U.S.C. 379j–1(b)(2), (3), and (6)), FDA obtained prior public input and negotiated an agreement with regulated industry while periodically consulting with patient and consumer advocacy groups and making minutes of negotiation and stakeholder meetings publicly available (Ref. 1). Section 738A(b)(4) of the FD&C Act , requires that, after holding negotiations with regulated industry and before transmitting the Agency's final recommendations to Congress for the reauthorized program (MDUFA III), we do the following: (1) Present the draft recommendations to the Committee on Energy and Commerce of the U.S. House of Representatives and the Committee on Health, Education, Labor, and Pensions of the U.S. Senate; (2) publish the draft recommendations in the **Federal Register**; (3) provide a period of 30 days for the public to provide written comments on the draft recommendations; (4) hold a meeting at which the public may present its views on the draft recommendations; and (5) after consideration of public views and comments, revise the draft recommendations as necessary. This notice, the 30 day comment period, and the public meeting will satisfy certain of these requirements. After the public meeting, we will revise the draft recommendations as necessary. In addition, the Agency will present the draft recommendations to the Congressional committees.

The purpose of the meeting is for the public to present its views on the draft recommendations for the reauthorized program (MDUFA III). In general, the meeting format will include a brief presentation by FDA, but will focus on hearing from different stakeholder interest groups (such as patient advocates, consumer advocates, industry, health professionals, and academic researchers). The Agency will also provide an opportunity for individuals to make presentations at the meeting and for organizations and individuals to submit written comments to the docket before and after the meeting. The following information is provided to help potential meeting participants better understand the history and evolution of the medical device user fee program and the current status of the MDUFA III draft recommendations.

II. What is the medical device user fee program? What does it do?

In the years preceding enactment of Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Pub. L. 107–250), FDA's medical device program suffered a long-term, significant loss of resources that undermined the program's capacity and performance. MDUFMA was enacted ''in order to provide the Food and Drug Administration (FDA) with the resources necessary to better review medical devices, to enact needed regulatory reforms so that medical device manufacturers can bring their safe and effective devices to the American people at an earlier time, and to ensure that reprocessed medical devices are as safe and effective as original devices'' (H.R. Rep. No. 107–728, at 21 (2002)). MDUFMA had a 5-year time frame and contained two particularly important features which relate to reauthorization:

- *User fees* for the review of medical device premarket applications, reports, supplements, and premarket notification submissions provided additional resources to make FDA reviews more timely, predictable, and transparent to applicants. MDUFMA fees and increased appropriations for the medical device program helped FDA expand available expertise, modernized its information management systems, provided new review options, and provided more guidance to prospective applicants. The ultimate goal was for FDA to approve and clear safe and effective medical devices more rapidly, benefiting applicants, the health care community and, most importantly, patients.
- *Negotiated performance goals* for many types of premarket reviews provided FDA with benchmarks for measuring review improvements. These quantifiable goals became more demanding each year and included FDA decision goals and cycle goals (cycle goals refer to FDA actions prior to a final action on a submission). Under MDUFMA, FDA also agreed to several commitments that did not have specific time frames or direct measures of performance, such as expanding the use of meetings with industry, maintenance of current performance in review areas where specific performance goals had not been identified, and publication of additional guidance documents.

Medical device user fees and increased appropriations were essential to support high-quality, timely medical device reviews, and other activities critical to the device review program.

MDUFMA provided for fee discounts and waivers for small businesses. Small businesses make up a large proportion of the device industry, and these discounts and waivers helped reduce the financial impact of the user fees on this sector of the device industry, which plays an important role in fostering innovation.

FDA provided periodic reports on its progress towards meeting these performance goals and commitments to stakeholders and Congress. FDA also

provided an annual financial report to Congress, which provided transparency and accountability regarding the Agency's use of the additional resources provided by MDUFMA. Although FDA made progress towards achieving MDUFMA's central objectives, progress was limited by financial shortfalls and unpredictable fee revenues caused by variability in pre-market submission quantities.

In August 2005, Congress enacted the Medical Device User Fee Stabilization Act (Pub. L. 109–45) (MDUFSA), which modified several provisions of MDUFMA. MDUFSA: (1) Repealed the appropriations trigger for FY 2003 and FY 2004 and allowed for tolerances of up to 1 percent of the appropriations trigger for FY 2005–2007; (2) provided for predictable application fees by establishing fixed annual fees for FY 2006 and FY 2007, although at a lower rate of increase than under the original legislation; and (3) expanded the definition of ''small business'' for FY 2006 and FY 2007. However, MDUFSA did not address the issue of ensuring predictable revenues for FDA.

In 2007, Congress reauthorized medical device user fees through FY 2012 under the Medical Device User Fee Amendments of 2007 (MDUFA II) (title II of the Food and Drug Administration Amendments Act of 2007(FDAAA) (Pub. L. 110–85).

Under MDUFA II, the user fee program remained intact, with a few significant modifications to the program. The user fee framework was changed to provide a more reliable and stable funding stream. Specifically, MDUFA II included establishment registration as a new fee type that provided a more predictable amount of funds to be collected by the Agency in any given year. MDUFA II also included changes to the performance goals. Compared to MDUFMA, there were fewer performance goals under MDUFA II, yet the goals were more demanding. FDA published the commitment letter outlining the goals in the last reauthorization, as well as a number of reports that provide the public with useful background on MDUFMA, FDAAA, and MDUFA II (Ref. 2). FDA also posted video presentations on the medical device user fee program to give the public more background information on the program (Ref. 3).

III. Proposed MDUFA III Recommendations

In preparing the proposed recommendations to transmit to Congress for MDUFA reauthorization, we have conducted discussions with the device industry, and we have consulted with stakeholders as required by law. We began the MDUFA reauthorization process with a public meeting held on September 14, 2010 (75 FR 49502, August 13, 2010). The meeting included presentations by FDA and a series of panels representing different stakeholder groups, including patient advocates, consumer groups, the device industry, health care professionals, and scientific and academic experts.

From January 2011 through February 2012, FDA conducted negotiations with representatives of the device industry: The Advanced Medical Technology Association (AdvaMed); the Medical Device Manufacturers Association (MDMA); the Medical Imaging and Technology Alliance (MITA); and, the American Clinical Laboratory Association (ACLA). FDA also held monthly consultations with public stakeholders during that time period. As directed by Congress, FDA posted minutes of these discussions on its Web site (Ref. 4).

The proposed recommendations for MDUFA III address many of the priorities and concerns identified by public stakeholders and the device industry, and many of the important challenges identified by FDA. Each recommendation is briefly described with reference to the applicable section of the draft commitment letter (Ref. 5).

In conjunction with the proposed enhancements and performance goals outlined in the draft commitment letter, FDA is proposing new user fees and several statutory changes. The specific proposals are briefly described with reference to the applicable section of the draft legislative language (Ref. 6).

A. Process Improvements

FDA is proposing several process improvements designed to increase the consistency, predictability, transparency, and efficiency of the device review program.

1. Pre-Submissions

A Pre-Submission provides the opportunity for an applicant to obtain FDA feedback prior to submission of an investigational device exemption or marketing application. Although no specific resources are being allocated through the proposed MDUFA III user fees for the Pre-Submission program, FDA is proposing that we will institute a structured process for managing Pre-Submissions, as resources permit, and not to the detriment of meeting the quantitative review timelines in this proposal and statutory obligations. FDA is proposing to issue a draft guidance document and final guidance document on Pre-Submissions. The draft commitment letter includes additional details on the manner in which FDA intends to manage Pre-Submissions. These details can be found in section I.A of the draft commitment letter.

2. Submission Acceptance Criteria

FDA is proposing to implement revised submission acceptance criteria through the publication of guidance. These revised criteria are intended to ensure that FDA is only reviewing complete submissions. The guidance will outline electronic copy of submissions (e-Copy) and objective criteria for revised ''refuse to accept/refuse to file'' checklists. This recommendation can be found in section I.B of the draft commitment letter. FDA is also proposing corresponding statutory language mandating e-Copy of submissions; this statutory requirement would be implemented through the guidance described in this paragraph. (See section III.L of this document for further information about this proposed statutory change).

3. Interactive Review

FDA is proposing to continue to incorporate an interactive review process to provide for, and encourage, informal communication between FDA and applicants to facilitate timely completion of the review process based on accurate and complete information. This recommendation can be found in section I.C of the draft commitment letter.

4. Guidance Document Development

FDA is proposing to apply user fee revenues to supplement the improvement of the process of developing, reviewing, tracking, issuing, and updating guidance documents. This recommendation can be found in section I.D of the draft commitment letter.

5. Third Party Review

Although no specific resources are being allocated through the proposed MDUFA III user fees for the Third Party Review program, FDA is recommending reauthorization of the program and will work with interested parties to strengthen and improve the current program as resources permit. This recommendation can be found in section I.E of the draft commitment letter.

6. Patient Safety and Risk Tolerance

FDA proposes to fully implement final guidance on factors to consider when making benefit-risk determinations in medical device

premarket review. FDA also proposes to meet with patient groups during MDUFA III to better understand the patient perspective on disease severity or unmet medical need. FDA also proposes to increase its utilization of FDA's Patient Representatives to provide patients' views early in the medical product development process. This recommendation can be found in section I.F of the draft commitment letter.

7. Low Risk Medical Device Exemptions

FDA proposes to identify additional low risk medical devices to exempt from premarket notification. This recommendation can be found in section I.G of the draft commitment letter.

8. Emerging Diagnostics

FDA proposes to work with industry to develop a transitional In Vitro Diagnostics (IVD) approach for the regulation of emerging diagnostics. This recommendation can be found in section I.H of the draft commitment letter.

B. Review Performance Goals—Fiscal Years 2013 Through 2017 as Applied to Receipt Cohorts

FDA is proposing to meet more rigorous goals for MDUFA III while streamlining management of the program. In making these proposals, we have taken into account efficiencies planned for in MDUFA III including: Additional scientific, regulatory, and leadership training; additional staff, including those with expertise demanded by increasingly complex device reviews; improved submission acceptance criteria; and information technology improvements that allow us to better track and manage the device review process.

FDA is proposing to eliminate the ''two-tier'' goal structure that we believe is an impediment to improving average total time to decision and to reaching the ultimate goal of the medical device user fee program—for safe and effective devices to reach patients and health care professionals more quickly. FDA is proposing a more simplified goal structure, which will be easier to implement and will improve predictability of the program, leaving the program less prone to unintended consequences. The simplified goal structure includes a single, high percentage goal for each performance metric. This provides more clarity to industry so applicants will know when to expect feedback from the Agency on their marketing submissions, and allows the Agency's review staff to better manage their time. This structure also allows more flexibility in the Agency's management strategy, allowing for adjustments as needed to ensure achievement of the desired outcomes—specifically, reducing review cycles and reducing average total time to decision.

FDA is proposing decision goals of 180 FDA days for premarket approval applications (PMAs) that do not require Advisory Committee input and for 180-Day PMA Supplements, 320 FDA days for PMAs that do require Advisory Committee input, 90 FDA days for Real-Time PMA Supplements, and 90 FDA days for premarket notification (510(k)) submissions. FDA is proposing performance goals for Clinical Laboratory Improvement Amendments (CLIA) waiver applications: 210 FDA days for dual submission of a 510(k) and CLIA waiver application; 180 FDA days for a CLIA waiver application not requiring Advisory Committee input; and 330 FDA days for CLIA waiver applications that do require Advisory Committee input. For each of these decision goals, FDA is proposing to ''ramp-up'' the percentage of applications that will be completed within the goal time line during the 5-year time period to correspond with the timetable for additional staff to be hired during MDUFA III. The goal percentages will increase to 90 or 95 percent in the final years of the program, depending on the submission type. Additionally, FDA is proposing to institute an acceptance/filing communication and Substantive Interaction goal for several submission types, which will track the Agency's communication with the applicant at specified points during the review process. FDA is proposing to retain the existing goals for Biological Licensing Applications (BLAs) and their supplements. Additional details regarding all of the quantitative review performance goals can be found in section II of the draft commitment letter.

C. Shared Outcome Goals

FDA and representatives of the device industry believe that the process improvements outlined in the draft commitment letter, when implemented by all parties as intended, should reduce the average Total Time to Decision for PMA applications and 510(k) submissions, provided that the total funding of the device review program adheres to the assumptions underlying the agreement. Reducing average total time to decision is an important aspect of the ultimate goal of the user fee program, so that safe and effective devices reach patients and health care professionals more quickly. FDA proposes to report, on an annual basis, the average Total Time to Decision, as defined in the draft commitment letter, for PMA and 510(k) submissions, with shared goals for FDA and industry of 395 calendar days for PMAs and 135 calendar days for 510(k)s beginning with the FY 2013 receipt cohort, declining to 385 calendar days for PMAs and 124 calendar days for 510(k)s for the FY 2017 receipt cohort. Additional details regarding the shared outcome goals can be found in section III of the draft commitment letter.

D. Infrastructure

FDA is proposing to apply user fee revenues to improve scientific and regulatory review capacity by reducing the ratio of review staff to front line supervisors and enhancing and supplementing scientific review capacity. FDA is seeking to obtain streamlined hiring authority in order to accomplish this (see section III.M of this document). FDA is proposing to apply user fee revenues to supplement training programs. FDA is proposing to continue efforts to improve its IT systems. Additional details regarding the infrastructure proposals can be found in section IV of the draft commitment letter.

E. Independent Assessment of Review Process Management

In order to implement continued program improvements and efficiencies, FDA is proposing to conduct a comprehensive assessment of the process for the review of device applications. FDA is proposing to incorporate findings and recommendations of the independent assessment into its management of the premarket review program. Additional details regarding the independent assessment proposal can be found in section V of the draft commitment letter.

F. Performance Reports

FDA is proposing to report its progress toward meeting the goals in the draft commitment letter through quarterly and annual reporting. The proposed reporting structure includes more detailed reporting than the Agency agreed to provide during MDUFA II. Additional details regarding the performance reporting structure can be found in section VI of the draft commitment letter.

G. MDUFA III Inflation and Fee Adjustments

In calculating user fees for each new FY in MDUFA III, FDA proposes to adjust the base revenue amount by inflation. This methodology is specified in the draft legislative language. The

inflation adjuster accounts for changes in FDA's costs related to payroll compensation and benefits as well as changes in non-payroll costs through use of the Consumer Price Index. This weighted composite inflation adjuster will provide a degree of assurance that fees during MDUFA III keep pace with FDA's costs. Additionally, FDA proposes to adjust establishment registration fees annually, as needed, to account for any unanticipated variations in submission and registration quantities that are likely to result in FDA collecting more or less than the authorized amount of fees each year (as adjusted for inflation). Additional details regarding the annual fee setting and adjustments can be found in section 738(c) of the draft legislative language.

H. Impact of MDUFA III Enhancements on User Fee Revenue

Implementing the proposed enhancements discussed in the previous sections of this document will require approximately $595 million, before adjustments for inflation, in device user fee revenue over the course of the 5-year MDUFA III period, FY 2013 through FY 2017. Proposed user fee collections, before adjustments for inflation, are: $97,722,301 in FY 2013; $112,580,497 in FY 2014; $125,767,107 in FY 2015; $129,339,949 in FY 2016; and $130,184,348 in FY 2017. This user fee revenue will support approximately 208 additional full-time equivalent (FTE) staff by the end of the MDUFA III period. In addition, these fee levels will support the continued funding of approximately 32 FTEs over current staffing levels that FDA plans to hire by the end of FY 2012 under MDUFA II using currently authorized and appropriated user fees. Therefore, the net increase over current staffing levels will be approximately 240 FTEs as a result of this proposal. Collections slightly above proposed user fee spending in the early years of MDUFA III will ensure that funds are available to hire additional staff in order to meet the proposed commitments, and will be balanced by collections slightly below proposed user fee spending in the later years of MDUFA III. As in MDUFA II, the premarket application fee and the establishment registration fee are set during the annual fee setting, and other submission fees are determined as a percentage of the premarket application fee. In MDUFA III, the percentage associated with a premarket notification (510(k)) is being raised from 1.84 percent of a premarket application fee to 2.0 percent of a premarket application fee. All other percentages remain the same as during MDUFA II. Base fee amounts for premarket applications, prior to adjustments for inflation, are proposed as: $248,000 in FY 2013; $252,960 in FY 2014; $258,019 in FY 2015; $263,180 in FY 2016; and $268,443 in FY 2017. Base fee amounts for establishment registration, prior to annual adjustments, are proposed as: $2,575 in FY 2013; $3,200 in FY 2014; $3,750 in FY 2015; $3,872 in FY 2016; and $3,872 in FY 2017. Additional details regarding the MDUFA III fees can be found in section 738(a) and (b) of the draft legislative language.

I. Establishment Registration Fee Exemptions

The proposed legislative language eliminates exemptions under MDUFA II that allowed certain types of establishments to meet their requirement to register without incurring a fee. This amendment will increase the base of establishments paying registration fees. Additional details regarding this modification can be found in section 737(13) of the draft legislative language.

J. Fee Waiver or Reduction Authority

FDA is proposing a provision for the Secretary of Health and Human Services (Secretary), in the Secretary's sole discretion, to grant a waiver or reduction of fees if the Secretary finds that such waiver or reduction is in the interest of public health. Additional details regarding this provision can be found in section 738(f) of the draft legislative language.

K. Appropriations and Spending Triggers

FDA is proposing to update the appropriations trigger and the spending trigger to FY 2009 levels. This will provide assurance to industry that user fees will be additive to Budget Authority appropriations, as was the original intent of the user fee program and of the appropriations and spending triggers. Additional details regarding these updates can be found in section 738(h)(1)(A) and (i)(2)(A)(ii) of the draft legislative language.

L. Electronic Copy of Submissions

In order to implement revised submission acceptance criteria, FDA is proposing statutory language requiring an electronic copy (e-Copy) to be provided with any pre-submission or submission for devices. The proposed language provides that implementation of this requirement would occur following issuance of final guidance providing standards for such electronic copy. Additional details regarding this provision can be found under the heading ''Subchapter D—Information and Education'' in the draft legislative language.

M. Streamlined Hiring Authority

In order to facilitate the steep ramp-up in hiring necessary to accomplish the goals agreed to in the draft commitment letter, FDA is proposing statutory language that would grant streamlined hiring authority to FDA for the first 3 years of MDUFA III. Additional details regarding this provision can be found under the heading ''STREAMLINED HIRING AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION TO SUPPORT ACTIVITIES RELATED TO THE PROCESS FOR THE REVIEW OF DEVICE APPLICATIONS'' in the draft legislative language.

IV. References

The following references have been placed on display in the Division of Dockets Management (see Comments) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. The minutes from FDA's negotiation and stakeholder meetings are available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeandModernizationActMDUFMA/ucm236902.htm.*

2. The MDUFA II commitment letter, key **Federal Register** documents, MDUFA II-related guidance documents, legislation, performance reports, and financial reports and plans are available at *www.fda.gov/MDUFA.*

3. The pre-recorded video presentations are available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeandModernizationActMDUFMA/ucm109316.htm.* FDAAA-specific information is available at *http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/FoodandDrugAdministrationAmendmentsActof2007/default.htm.*

4. The minutes from FDA's negotiation and stakeholder meetings are available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeandModernizationActMDUFMA/ucm236902.htm.*

5. Further information can be found on FDA's Web site at *http://www.fda.gov/MedicalDevices/NewsEvents/*

WorkshopsConferences/ucm292860.htm.

6. Further information can be found on FDA's Web site at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm292860.htm.*

V. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov* and at *http://www.fda.gov/MedicalDevices/NewsEvents/Workshops Conferences/ucm292860.htm.* It may be viewed at the Division of Dockets Management (see Comments). A transcript will also be available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. Transcripts of the meeting will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 30 days after the public meeting.

Dated: March 15, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6707 Filed 3–15–12; 4:15 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Request for Comments on the Update of the Scholarships for Disadvantaged Students Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) updates and clarifies the implementation of the Scholarships for Disadvantaged Students (SDS) program under authority of Section 737 of the Public Health Service Act (PHS Act). The publication of the final notice will supersede all previous notices regarding the SDS program.

DATES: *Effective Date:* The program clarifications described in this notice will be implemented in fiscal year (FY) 2012 and beyond and will become effective for SDS funds awarded to schools in FY 2012 and beyond.

Purpose: HRSA is updating the SDS program to increase the impact of the program in the areas addressed in the program's authorizing statute. Specifically, the authorizing statute allows the Secretary to make grants to eligible entities that are carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups. (PHS Act, Sec. 737(d)(1)(B)). In addition, grantees provide scholarships to individuals who meet the following requirements: (1) are from disadvantaged backgrounds; (2) have a financial need for a scholarship; and (3) are enrolled (or accepted for enrollment) at an eligible health professions or nursing school as a full-time student in a program leading to a degree in nursing or a health profession. (PHS Act, Sec. 737(d)(2)(A–C)). Under the statute, priority is given to eligible entities based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities. (PHS Act, Sec. 737(c)).

Current Program: To be eligible, at least 10 percent of a school's enrollment and graduates must be disadvantaged individuals, and eligible entities must be carrying out a recruitment and retention program for students from disadvantaged backgrounds. For the purposes of the SDS program, an individual from a disadvantaged background is defined as one who: (1) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a health profession or nursing school, or from a program providing education or training in allied health professions; or (2) comes from a family with an annual income below the established Census Bureau low-income thresholds, adjusted by the Secretary for health professions and nursing programs eligibility. Eligible entities are: schools of allopathic and osteopathic medicine; dentistry; optometry; pharmacy; podiatric medicine; veterinary medicine; nursing (associate, diploma, baccalaureate, and graduate degree); public health; chiropractic; allied health (baccalaureate and graduate degree programs of dental hygiene, medical laboratory technology, radiology technology, speech pathology, audiology, registered dieticians, and occupational therapy and physical therapy); mental and behavioral health (graduate degree programs in clinical psychology, clinical social work, professional counseling, marriage and family therapy); and physician assistant training. (PHS Act, Sec. 737(d)(1)(A)). Grant awards are determined by formula with the three priority areas based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities. There is also a requirement to award at least 16 percent of the available funds to nursing students (PHS Act Section 740(a)). The amount of the scholarship may not exceed a recipient's cost of tuition expenses, other reasonable educational expenses and reasonable living expenses incurred in attendance at such a school. The scholarship may be expended by the student only for such expenses. The average annual student award is $2,300.

Issues: First, the SDS program grantee population has grown from 401 schools in FY 2000 to almost 700 health profession schools in FY 2011. Since all SDS eligible schools receive grant awards, the funding has been divided into ever decreasing amounts per school over the years. Many of the schools, in an effort to provide funding to each of their disadvantaged students, spread the award equally among the disadvantaged students and the smaller school award amounts result in smaller student scholarship amounts. While the student scholarship amounts have been decreasing, the tuition rates have been increasing. For many students with insufficient financial resources, the small award size is unlikely to provide enough funds to continue in school. Second, the primary care and underrepresented minority student priority weights currently used are too small to adequately incentivize and reward schools that are successful in graduating primary care underrepresented minority students or have excellent plans to improve their programs to recruit and retain students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups. Also, the primary care weights are not enough to incentivize schools to increase the proportion of graduating students going into primary care. Third, the practice of awarding grants for one year at a time does not allow the schools to select financially disadvantaged applicants with the assurance that a student will receive SDS financial aid for the entire time the student is enrolled.

Proposed Changes:

To provide larger award amounts to schools and to increase the retention and graduation of underrepresented

minority and disadvantaged students, HRSA's Bureau of Health Professions (BHPr) proposes the following changes to the SDS program:

(1) Convert the currently formula-based SDS program to a competitive peer-reviewed grant program.

(2) Convert the grant award from a current 1-year project period to a project period of 4-years. A successful applicant would be awarded a 4-year project period with funding provided annually subject to appropriations, the availability of funds and successful progress.

(3) Add a new requirement that individual student awards must be at least 50 percent of the student's annual tuition costs for tuition $30,000 or less, but no student can be awarded over $15,000 SDS funds per year. Individual student awards must be $15,000 for students whose tuitions are over $30,000 per year.

(4) Increase the weight and provide a range of points for primary care and underrepresented minority priorities.

(5) Expand the disciplines eligible for the primary care priority (allopathic and osteopathic medicine, dentistry, graduate nurse practitioners, and physician assistants) to also include dental hygiene and behavioral and mental health.

(6) Use the Institute of Medicine's primary care definition to identify primary care service for the primary care priority within the eligible primary care disciplines:

> Primary Care is the provision of integrated, accessible health care services by clinicians who are accountable for addressing a large majority of personal health care needs, developing a sustained partnership with patients, and practicing in the context of family and community. (Institute of Medicine. Primary Care: America's Health in a New Era. Washington, DC: National Academy Press, 1996).

(7) Increase the school eligibility requirement for disadvantaged students enrolled and disadvantaged students graduated to 20 percent each.

Eligibility Requirements: There are five requirements a school must meet in order to be eligible for the SDS grant program. The requirements, starting in FY 2012, are as follows:

(1) Twenty (20) percent of enrolled students must be disadvantaged.

(2) Twenty (20) percent of graduates must be disadvantaged.

(3) Schools must have a recruitment program for disadvantaged students.

(4) Schools must have a retention program for disadvantaged students.

(5) Student award must be at least 50 percent of the annual tuition cost with a $15,000 maximum award per year, when annual tuition is $30,000 or below—above $30,000 annual tuition equals $15,000 award.

Student Eligibility Requirements: To qualify for the SDS program, a student must:

(1) Meet the definition of an ''individual from a disadvantaged background'' as defined above (PHS Act Sec. 737);

(2) Have a financial need for a scholarship, in accordance with a need analysis procedure approved by the Department of Education (Pub. L. 105–244, Part F, The Higher Education Act of 1965 as amended). In addition, any student who is enrolled (or accepted for enrollment) in a health profession school or program must provide information on his or her parents' financial situation or his or her own depending upon the tax status of the student, and

(3) Be enrolled (or accepted for enrollment), as a full-time student, at an eligible health professions or nursing school in a program leading to a degree in nursing or a heath profession (PHS Act Sec. 737).

Student Award Selection: The law requires that in providing SDS scholarships, the school or program must give awards first to students for whom the cost of attending an SDS school or program would constitute a severe financial hardship. Severe financial hardship is to be determined by the school or program in accordance with standard need analysis procedures prescribed by the Department of Education for its federal student aid programs. The school or program has discretion in deciding how to determine which students have ''severe financial hardship,'' as long as the standard is applied consistently to all eligible students.

The law also requires that schools give awards to students who were former recipients of scholarships under PHS Act sections 736 (Exceptional Financial Need Scholarships) and 740(d)(2)(B) (Financial Assistance for Disadvantaged Health Professions Students Scholarships), as such sections existed on November 13, 1998, if such recipients are still students in financial need.

Elements Of Peer Review: Peer reviewers will assess a school's allocations based on accomplishment of, or commitment to, the following criteria:

(1) Degree to which applicant demonstrates its commitment to the education of disadvantaged students, especially underrepresented minorities (10 points).

(2) Degree to which applicant demonstrates its commitment to increasing primary care practitioners (10 points).

(3) Degree to which applicant demonstrates its commitment to increasing graduates working in medically underserved communities (MUCs) (10 points).

(4) Level of achievements and successes in educating disadvantaged students, including underrepresented minorities, in a way that eliminates barriers along the educational pipeline for disadvantaged students and assures graduates practice in primary care and serve in MUCs (30 points).

(5) Level of adequacy of proposed plan to increase and educate disadvantaged students, including underrepresented minorities, and retain students in their academic programs, and encourage them to enter primary care and serve in MUCs (40 points).

Priority Scoring: Additional points ranging from one through four will be given for having a high percentage of the following priorities: (1) Underrepresented minority students, (2) graduates entering primary care service, or (3) graduates serving in medically underserved communities. The number of points awarded to each applicant for meeting the priorities will be determined by the applicant's percentage in meeting those priorities. A higher number of points for each priority will be assigned to applicants with a higher percentage of meeting that priority. There will be no institutional or discipline preferences.

Expected Outcomes: The stronger eligibility requirements, and the change from the existing formula-based program to a competitive-application review process, will allow selection of schools that have the strongest commitment to disadvantaged students and the greatest likelihood for achieving results to be funded at amounts high enough for schools to offer significant scholarships to students. Requirements to provide each student with 50 percent of tuition costs up to $15,000 will further ensure significant scholarship amounts. With the increased weights for primary care, disadvantaged and underrepresented minority students, the result will be an increase in disadvantaged students going into primary care. The change from a 1-year project period to a 4-year project period will provide grantees the information they need to develop a funding plan for the more disadvantaged student applicants and provide increased matriculation.

Comments: The comment period will close April 19, 2012. All comments

received before the deadline date will be considered before the implementation of these procedures for FY 2012 awards and beyond.

Written comments should be addressed to: Anita Rhawn, Public Health Analyst, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–5331.

Dated: March 14, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–6658 Filed 3–19–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Omics and Genetic Analysis.

Date: April 6, 2012.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tony L Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 13, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6714 Filed 3–19–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: April 10–11, 2012.

Time: 5:30 p.m. to 3 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 4C32, Bethesda, MD 20892.

Contact Person: John J. O'Shea, M.D., Ph.D., Scientific Director, National Institute of Arthritis & Musculoskeletal and Skin Diseases, Building 10, Room 9N228, MSC 1820, Bethesda, MD 20892, (301) 496–2612, *osheaj@arb.niams.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 13, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6710 Filed 3–19–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Longitudinal Studies on the Impact of Adolescent Drinking on the Adolescent Brain.

Date: April 16–17, 2012

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, 6001 Executive Boulevard, B1/B2 Conference Room, Bethesda, MD 20852.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 2081, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: March 13, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6706 Filed 3–19–12; 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; Craniofacial Development and Musculoskeletal Tissue Engineering.

Date: March 29–April 1, 2012.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Daniel F McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Brain Injury, Imaging and Dementia.

Date: April 3–4, 2012.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@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: March 14, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6731 Filed 3–19–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ZHD1 DSR–L 55 2.

Date: April 10, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–2717, *leszcyd@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 14, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6718 Filed 3–19–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: June 11–13, 2012.

Time: June 11, 2012, 7:45 a.m. to 6:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Conference Room 1227/1233, 50 Center Drive, Bethesda, MD 20892.

Time: June 12, 2012, 7:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Conference Room 1227/1233, 50 Center Drive, Bethesda, MD 20892.

Time: June 13, 2012, 7:30 a.m. to 11:40 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Conference Room 1227/1233, 50 Center Drive, Bethesda, MD 20892.

Contact Person: Kathryn C. Zoon, Ph.D., Director, Division of Intramural Research, National Institute of Allergy and Infectious Diseases, NIH, Building 31, Room 4A30, Bethesda, MD 20892, 301–496–3006, *kzoon@niaid.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 14, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6716 Filed 3–19–12; 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: AIDS and AIDS Related Research.
Date: April 9–10, 2012.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.
Date: April 9–10, 2012.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Neuroscience.
Date: April 9, 2012.
Time: 1 p.m. to 2:30 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: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; HIV Protease Program Project.
Date: April 10–11, 2012.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.
Date: April 12–13, 2012.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166 *roebuckk@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: March 14, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6726 Filed 3–19–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; NIGMS Trauma and Burn Research Centers.
Date: April 13, 2012.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency—Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 14, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6723 Filed 3–19–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.
Date: April 10, 2012.
Time: 8:30 a.m. to 5 p.m.
Agenda: The theme of the Office of AIDS Research Advisory Council (OARAC) meeting will be New Scientific Opportunities in AIDS Vaccine Research. The speakers at this meeting will focus on research to address: basic research on HIV vaccine design and development of new vaccine candidates; new assay systems for measuring systemic and mucosal immunity to HIV vaccine candidates; alternative adenovirus vectors; animal models for testing vaccine candidates; updates on the RV144 clinical trial; and plans for future clinical trials to advance HIV vaccine candidates to efficacy testing. An update will be provided on the

latest changes made to the federal treatment and prevention guidelines by the OARAC Working Groups responsible for the guidelines.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level, Suite T–500, Rockville, MD 20852.

Contact Person: Robert Eisinger, Ph.D., Executive Secretary, Director of Scientific and Program Operations, Therapeutics Coordinating Committee, Office of AIDS Research, 5635 Fishers Lane, MSC 9310, Suite 400, Rockville, MD 20852, (301) 496–0357; *be4y@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.oar.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 14, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6719 Filed 3–19–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; ITVA Conflicts.

Date: April 3, 2012.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 14, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6717 Filed 3–19–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the U.S. Customs and Border Protection regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

Name	License No.	Issuing port
Dependable International Services and Transport, Inc.	12574	New Orleans.
Professional Customs Brokers, Inc	22821	San Juan.
BAX Global, Inc	13717	Los Angeles.
Air-Worthy Custom Brokers Corp	10165	New York.
Horizon Logistics, LLC	28432	Dallas.
Sandra L. Smith	15266	Dallas.
Barry E. Booth	09627	San Francisco.
Sandra K. Grider	05684	San Francisco.

Dated: March 13, 2012.

Richard F. DiNucci,

Acting Assistant Commissioner, Office of International Trade.

[FR Doc. 2012–6657 Filed 3–19–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses Due to Death of the License Holder

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License No.	Port name
Max Verne Lund.	13241	Los Angeles.
Robert Hough	06509	New York.

Dated: March 13, 2012.

Richard F. DiNucci,

Acting Assistant Commissioner, Office of International Trade.

[FR Doc. 2012–6652 Filed 3–19–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5610–N–06]

Notice of Proposed Information Collection for Public Comment; Office of Native American Programs (ONAP) Training and Technical Assistance Notice of Funding Availability (NOFA)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. The data required by Office of Native American Programs Training and Technical Assistance NOFA includes pre-award application materials required to be submitted, and post award requirements under the cooperative agreement including technical budgets and reports on financial and task progress. The data identifies needs, outputs and outcomes of the training and technical assistance.

DATES: *Comments Due Date:* May 21, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this information collection proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400, (this is not a toll-free number) or email Ms. Pollard at *Colette.Pollard@hud.gov* for a copy of the proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: ONAP Training and Technical Assistance Information Collection.

OMB Control Number: Pending.

Description of the need for the information and proposed use:

The Department of Housing and Urban Development Appropriations Act, as approved on November 18, 2011 (Pub. L. 112–55, 125 Stat. 552) authorizes HUD to award training and technical assistance contracts on a competitive basis. HUD intends to competitively award training and technical assistance contracts to national and regional nonprofit and for-profit entities with demonstrated experience and expertise in the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

The purpose of the ONAP Training and Technical Assistance program is to improve the quality and quantity of low-income housing in Native American, Alaska Native, and native Hawaiian communities, as funded by Indian Housing Block Grants (IHBG) and Native Hawaiian Housing Block Grants (NHHBG) and authorized by NAHASDA. The regulations for the IHBG program are at 24 CFR part 1000, and for the NHHBG program at 24 CFR part 1006.

Successful applicants will have demonstrated training and technical assistance experience and expertise in NAHASDA; low-income housing development, inspection, maintenance, modernization, and operation; admissions and occupancy; procurement; financial and fiscal management; program income; governance and organizational development; leveraged financing, including Low Income Housing Tax Credits; healthy home environments, including mold and air quality issues; homebuyer education; crime prevention; youth activities, including Boys and Girls Clubs; and other topics responsive to low-income housing issues in native communities. Training and technical assistance services will be provided onsite and remotely, on a one-on-one and classroom basis.

Respondents to the NOFA will be required to submit a single proposal regardless of the number of programs or areas of expertise for which they offer to provide training and technical assistance. Factors for award include Factor 1: Capacity and Experience, Factor 2: Soundness of Approach, Factor 3: Leveraging, and Factor 4: Achieving Results and Program Evaluation. Narratives addressing Factors 1–4 must be formatted so that the total number of pages submitted is equal to or no more than 25 single-sided pages. The one-page application summary, organizational chart, budget discussion, and required forms are not included in the 25 page limit. Required forms include HUD–2880 (Applicant/Recipient Disclosure Update), HUD–2993 (Acknowledgement of Application Receipt), HUD–96011 (HUD Facsimile Transmittal), SF–424 (Application for Federal Assistance), and SF–LLL (Disclosure of Lobbying Activities). Applicants must submit their applications electronically to Grants.Gov or request a waiver from HUD. HUD expects to receive 25 applications and select ten awardees to enter in 24-month cooperative agreements, with a 12-month option period.

Agency form numbers: HUD–2880, HUD–2993, HUD–96011.

Members of affected public: Nonprofit and for-profit entities.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of applicants is 25, responding once a year, for a total reporting burden of 1,500 hours. The estimated number of

awardees is 10, the frequency of response is four times per year; and the total reporting burden is estimated at 1,830 hours.

Status of the proposed information collection: New collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: March 13, 2012.

Merrie Nichols-Dixon,

Deputy Director for Office of Policy, Programs, and Legislative Initiatives.

[FR Doc. 2012–6675 Filed 3–19–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–FA–07]

Announcement of Funding Awards, HOPE VI Revitalization Grant Program, Fiscal Year 2010

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2010 (FY2010) Notice of Funding Availability (NOFA) for the HOPE VI Revitalization grant program. This announcement contains the consolidated names and addresses of this year's award recipients under the HOPE VI Revitalization grant program.

FOR FURTHER INFORMATION CONTACT: For questions concerning the HOPE VI Revitalization program grant awards, contact Ms. Susan Wilson, Director, Office of Urban Revitalization, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4130, Washington, DC 20410, telephone 202-401–8812. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The HOPE VI Revitalization Program provides grants to public housing authorities (PHAs) to: (1) Improve the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects; (2) revitalize sites on which such public housing projects are located and contribute to the improvement of the surrounding neighborhood; (3) provide housing that will avoid or decrease the concentration of very low-income families; and (4) build sustainable communities.

The FY2010 awards totaled $152,729,750, which included funds from both the FY2010 and FY2011 HOPE VI/Choice Neighborhood appropriation. The FY 2010 HOPE VI/Choice Neighborhood appropriation only allowed for the funding of six applications submitted in response to the FY2010 NOFA. In addition to the FY2010 HOPE VI/Choice Neighborhoods appropriation, HUD used the FY2011 HOPE VI/Choice Neighborhoods appropriation to fund two additional FY2010 HOPE VI applicants. HUD used the FY2011 HOPE VI/Choice Neighborhood assistance due to the need to award the FY2011 appropriation to communities as soon as possible and the fact that there were many more high-quality HOPE VI applicants in FY2010 than HUD was able to fund, for which use of the FY2011 appropriation provided a remedy. The results of HUD's HOPE VI selections were announced on May 23, 2011. At that time, and in addition to the applicant and Congressional notification processes, eight grantees and the amount of each award was posted to the HUD Web site at: *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11–097.* Applications were scored and selected for funding based on the selection criteria in the FY2010 HOPE VI Revitalization NOFA.

As a result of HUD's decision, HUD was able to fund eight public housing authorities (PHAs) from among 36 PHAs that applied for FY2010 HOPE VI Revitalization funding. Using the FY2011 HOPE VI/Choice Neighborhoods appropriation in this way allowed HUD to fund two additional FY2010 HOPE VI Revitalization applicants and two additional FY2010 Choice Neighborhoods applicants that would not have otherwise been funded (FY2010 Choice Neighborhoods awards are addressed in a separate **Federal Register** notice). In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the eight awards made under the competition in Appendix A to this document.

Dated: March 9, 2012.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

APPENDIX A

HOPE VI revitalization grantee name and contact information	Amount funded	Project funded
1 Boston Housing Authority, 52 Chauncy Street, Boston, MA 02111–2375	$22,000,000.00	Old Colony.
2 Louisville Metro Housing Authority, 420 South Eighth Street, Louisville, KY 40203	22,000,000.00	Sheppard Square.
3 Taunton Housing Authority, 30 Olney Street, Suite B, Taunton, MA 02780–4141	22,000,000.00	Fairfax Gardens.
4 Housing Authority of the City & County of Denver, 777 Grant Street, Denver, CO 80203–3501.	22,000,000.00	South Lincoln.
5 Housing Authority of the City of Paterson, 60 Van Houten Street, Paterson, NJ 07505–1028.	18,400,000.00	Alexander Hamilton.
6 St. Louis Housing Authority, 3520 Page Boulevard, St. Louis, MO 63106–1417	7,829,750.00	Arthur A. Blumeyer.
7 City of Phoenix Housing Department, 251 W. Washington, 4th Floor, Phoenix, AZ 85003–1611.	20,000,000.00	Frank Luke Addition.
8 Home Forward (Housing Authority of Portland), 135 SW Ash Street Portland, OR 97204–3540.	18,500,000.00	Hillsdale Terrace.

[FR Doc. 2012–6673 Filed 3–19–12; 8:45 am]
BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2012–N054; FXES11130600000D2–123–FF06E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by April 19, 2012.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (e.g., Permit No. TE–123456).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (e.g., Permit No. TE–123456) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225
- *In-Person Drop-off, Viewing, or Pickup:* Call (303) 236–4256 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kris Olsen, Permit Coordinator Ecological Services, (303) 236–4256 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits to allow such otherwise prohibited activities, and requires that we invite public comment before issuing these permits.

A permit granted by the Service under section 10(a)(1)(A) of the Act authorizes you to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (e.g., Permit No. TE–123456) for the application when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number: TE–015150

Applicant: Wyatt Hoback, University of Nebraska, Kearney, Nebraska.

The applicant requests renewal of an existing permit to take (capture, hold, tag, and propagate) American burying beetle *(Nicrophorus americanus)* in conjunction with surveys and population monitoring activities in Nebraska, South Dakota, Kansas, Oklahoma, Arkansas, and Texas for the purpose of enhancing the species' survival.

Permit Application Number: TE–056165

Applicant: Patricia Buys, Kleinfelder, Littleton, Colorado.

The applicant requests renewal of an existing permit to take (harass by survey) Southwestern willow flycatcher *(Empidonax traillii extimus)*in conjunction with surveys and population monitoring activities in Colorado, Utah, and Wyoming for the purpose of enhancing the species' survival.

Permit Application Number: TE–050704

Applicant: T. Michael Phelan, Cedar Creek Associates, Ft. Collins, Colorado.

The applicant requests renewal of an existing permit to take (harass by survey) Southwestern willow flycatcher *(Empidonax traillii extimus)* in conjunction with surveys and population monitoring activities in Colorado, Utah, and Wyoming for the purpose of enhancing the species' survival.

Permit Application Number: TE–051841

Applicant: William Rapley, Toronto Zoo, Ontario, Canada.

The applicant requests renewal of an existing permit to take (display and propagate) captive-bred black-footed ferret *(Mustela nigripes)* in Ontario, Canada, for the purpose of enhancing the species' survival.

Permit Application Number: TE–051826

Applicant: John Walczak, Louisville Zoo, Louisville, Kentucky.

The applicant requests renewal of an existing permit to take (display) captive-bred black-footed ferret *(Mustela nigripes)* in Louisville, Kentucky, for the educational purposes to enhance the species' survival.

Permit Application Number: TE–085324

Applicant: Bonnie Heidel, Wyoming Natural Diversity Database, Laramie, Wyoming.

The applicant requests renewal of an existing permit to take (harass by survey) *Penstemon haydenii* (Blowout penstemon) in conjunction with surveys and population monitoring activities throughout the range of each species in Wyoming for the purpose of enhancing the species' survival.

Permit Application Number: TE–052627

Applicant: Anne Baker, Toledo Zoological Gardens, Toledo, Ohio 43614.

The applicant requests renewal of an existing permit to take (capture, hold, tag, and propagate) Wyoming toad *(Bufo baxteri)* in conjunction with surveys and population monitoring activities in Ohio for the purpose of enhancing the species' survival.

Permit Application Number: TE–145090

Applicant: Daniel Roddy, Wind Cave National Park, Hot Springs, South Dakota.

The applicant requests renewal of an existing permit to take (survey, tag, and reintroduce) black-footed ferret *(Mustela nigripes)* in conjunction with

population monitoring activities in South Dakota for the purpose of enhancing the species' survival.

Permit Application Number: TE–051368

Applicant: Brian Kurzel, Colorado Parks and Wildlife, Colorado Natural Areas Program, Denver, Colorado.

The applicant requests renewal of an existing permit to remove and reduce to possession the following species, in conjunction with surveys and population monitoring for the purpose of enhancing each species' survival. Activities will occur on Federal lands in Colorado, throughout the range of each species.

Eriogonum pelinophilum (Clay-loving wild-buckwheat).

Astragalus humillimus (Mancos milk-vetch).

Phacelia formosula (North Park phacelia).

Astragalus osterhoutii (Osterhout milk-vetch).

Ipomopsis polyantha (Pagosa skyrocket).

Penstemon penlandii (Penland beardtongue).

Permit Application Number: TE–106182

Applicant: Brian Vogt, Denver Botanic Gardens, Denver, Colorado.

The applicant requests renewal of an existing permit to remove and reduce to possession the following species, in conjunction with surveys and population monitoring for the purpose of enhancing each species' survival. Activities will occur on Federal lands in Colorado, New Mexico, Utah, and Wyoming, throughout the range of each species.

Eriogonum pelinophilum (Clay-loving wild-buckwheat).

Pediocactus knowltonii (Knowlton cactus).

Astragalus humillimus (Mancos milk-vetch).

Phacelia formosula (North Park phacelia).

Astragalus osterhoutii (Osterhout milk-vetch).

Ipomopsis polyantha (Pagosa skyrocket).

Penstemon penlandii (Penland beardtongue).

Pediocactus despainii (San Rafael cactus).

Permit Application Number: TE–049109

Applicant: Rita Reisor, Red Butte Garden and Arboretum, Salt Lake City, Utah.

The applicant requests renewal of an existing permit to remove and reduce to possession the following species, in conjunction with surveys and population monitoring for the purpose of enhancing each species' survival. Activities will occur on Federal lands in Utah and Wyoming, throughout the range of each species.

Ranunculus acriformis aestivalis (Autumn buttercup).

Schoenocrambe barnebyi (Barneby reed-mustard).

Lepidium barnebyanum (Barneby ridge-cress).

Astragalus holmgreniorum (Holmgren milk-vetch).

Lesquerella tumulosa (Kodachrome bladderpod).

Pediocactus despainii (San Rafael cactus).

Astragalus ampullarioides (Shivwitz milk-vetch).

Schoenocrambe suffrutescens (Shrubby reed-mustard).

Sclerocactus wrightiae (Wright fishhook cactus).

Permit Application Number: TE–053925

Applicant: Lisa Yager, National Park Service, Missouri National Recreational River, Yankton, South Dakota.

The applicant requests renewal of an existing permit to take (harass by survey) interior least tern *(Sterna antillarum athalassos)* and piping plover *(Charadrius melodus)* in conjunction with population monitoring activities in Nebraska and South Dakota for the purpose of enhancing the species' survival.

Permit Application Number: TE–053961

Applicant: Dennis Pate, Omaha's Henry Doorly Zoo, Omaha, Nebraska.

The applicant requests renewal of an existing permit to take (collect, reintroduce, propagate, and rear) Salt Creek tiger beetle *(Cicindela nevadica lincolniana)* in conjunction with surveys and population monitoring activities in Ohio for the purpose of enhancing the species' survival.

Permit Application Number: TE–051139

Applicant: Dustin Long, Turner Endangered Species Fund, Bozeman, Montana.

The applicant requests renewal of an existing permit to take (survey, trap, tag, and propagate) black-footed ferret *(Mustela nigripes)* in conjunction with surveys and population monitoring activities in Montana for the purpose of enhancing the species' survival.

Permit Application Number: TE–121914

Applicant: Mark Sherfy, U.S. Geological Survey, Northern Prairie Wildlife Research Center, Jamestown, North Dakota.

The applicant requests renewal of an existing permit to take (survey, handle, and band) interior least tern *(Sterna antillarum athalassos)* and piping plover *(Charadrius melodus)* in conjunction with surveys and population monitoring activities in Colorado, Kansas, Montana, Nebraska, North Dakota, and South Dakota for the purpose of enhancing the species' survival.

Permit Application Number: TE–059105

Applicant: Pamela Riddle, Bureau of Land Management, Moab Field Office, Moab, Utah.

The applicant request renewal of an existing permit to take (harass by survey) Mexican spotted owl *(Strix occidentalis lucida)* and Southwestern willow flycatcher *(Empidonax traillii extimus)* in conjunction with surveys and population monitoring activities in Utah for the purpose of enhancing the species' survival.

National Environmental Policy Act

In compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: March 7, 2012.

Michael G. Thabault,

Acting Regional Director, Mountain-Prairie Region.

[FR Doc. 2012–6535 Filed 3–19–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2012–N064; FXES11130600000D2–123–FF06E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by April 19, 2012.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (e.g., Permit No. TE–123456).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (e.g., Permit No. TE–123456) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225.
- *In-Person Drop-off, Viewing, or Pickup:* Call (303) 236–4256 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kris Olsen, Permit Coordinator Ecological Services, (303) 236–4256 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes you to conduct activities with United States endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (e.g., Permit No. TE–123456) for the application when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number: TE–056851

Applicant: U.S. Fish and Wildlife Service, Great Plains Fish and Wildlife Conservation Office, Pierre, South Dakota.

The applicant requests renewal of an existing permit to take (capture, hold, tag, propagate, and kill) pallid sturgeon *(Scaphirhynchus albus)* in conjunction with surveys and population monitoring activities throughout the range of the species in Montana for the purpose of enhancing the species' survival.

Permit Application Number: TE–08832A

Applicant: Phaedra Budy, Utah State University, Logan, Utah.

The applicant requests renewal of an existing permit to take (capture, survey, and tag) bonytail *(Gila elegans),* Colorado pikeminnow *(Ptychocheilus lucius),* and razorback sucker *(Xyrauchen texanus)* in conjunction with surveys and population monitoring activities throughout the range of each species in Utah for the purpose of enhancing the species' survival.

Permit Application Number: TE–66793A

Applicant: Derris R. Jones, Two R Ranch Wildlife Consulting, Helper, Utah.

The applicant requests renewal of an existing permit to take (harass by survey) Southwestern willow flycatcher *(Empidonax traillii extimus)* in conjunction with surveys and population monitoring activities in Utah for the purpose of enhancing the species' survival.

Permit Application Number: TE–053925

Applicant: Pamela Sprenkle, National Park Service, Niobrara National Scenic River, Yankton, South Dakota.

The applicant requests renewal of an existing permit to take (harass by survey) interior least tern *(Sterna antillarum athalassos)* and piping plover *(Charadrius melodus)* in conjunction with population monitoring activities in Nebraska and South Dakota for the purpose of enhancing the species' survival.

Permit Application Number: TE–105455

Applicant: Steve Krentz, U.S. Fish and Wildlife Service, Missouri River Fish and Wildlife Conservation Office, Bismarck, North Dakota.

The applicant requests an amendment to an existing permit to increase take of 560 hatchery-reared pallid sturgeon *(Scaphirhynchus albus)* at the Garrison Dam National Fish Hatchery for the purpose of a seismic activity study on fish species of the Missouri River. These fish are excess to existing augmentation needs.

Permit Application Number: TE–052582

Applicant: Scott Kamber, TRC Environmental Corp., Laramie, Wyoming.

The applicant requests renewal of an existing permit to take (harass by survey) the following species, in conjunction with surveys and population monitoring activities for the purpose of enhancing the species' survival:

American burying beetle *(Nicrophorus americanus)* surveys in South Dakota.

Black-footed ferret *(Mustela nigripes)* surveys in Colorado, New Mexico, Utah, and Wyoming.

Mexican spotted owl *(Strix occidentalis lucida)* surveys in Arizona, Colorado, New Mexico, and Utah.

Preble's meadow jumping mouse *(Zapus hudsonius preblei)* surveys in Colorado and Utah.

Southwestern willow flycatcher *(Empidonax traillii extimus)* surveys in Arizona, Colorado, New Mexico, and Utah.

Permit Application Number: TE–051374

Applicant: Stephen Lenzo, U.S. Forest Service, Nebraska National Forests and Grasslands, Chadron, Nebraska.

The applicant requests renewal of an existing permit to take (harass by

survey) American burying beetle *(Nicrophorus americanus)* in conjunction with population monitoring activities in Nebraska and South Dakota for the purpose of enhancing the species' survival.

Permit Application Number: TE–052005

Applicant: Edwin Miller, Kansas Department of Wildlife and Parks, Independence, Kansas.

The applicant requests renewal of an existing permit to take (harass by survey) American burying beetle *(Nicrophorus americanus)* in conjunction with population monitoring activities in Nebraska and South Dakota for the purpose of enhancing the species' survival.

National Environmental Policy Act

In compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: March 12, 2012.

Michael G. Thabault,

Acting Regional Director, Mountain-Prairie Region.

[FR Doc. 2012–6656 Filed 3–19–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2012–N068; 40120–1112–0000–F2]

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

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 a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given below, by *April 19, 2012.*

ADDRESSES: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Cameron Shaw, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: Cameron Shaw, telephone 904/731–3191; facsimile 904/731–3045.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17. This notice is provided under section 10(c) of the Act.

If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES** section) or via electronic mail (email) to: *permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Fish and Wildlife Service office listed above (see **ADDRESSES** section).

Before including your address, telephone number, email address, or other personal identifying information in your comments, 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit Application Number: TE–206872

Applicant: Joy O'Keefe, Indiana State University, Terre Haute, Indiana.

Applicant requests authorization for non-lethal take of gray bats *(Myotis grisescens)* for the purpose of conducting presence/absence surveys and collecting scientific data. This work will be conducted throughout the range of this species.

Permit Application Number: TE–206886

Applicant: Kentucky Division of Abandoned Mines, Frankfort, Kentucky.

Applicant requests authorization to conduct presence/absence surveys and to conduct scientific studies on the following species:

Indiana bat *Myotis sodalis.*

Gray bat *Myotis grisescens.*

Virginia big-eared bat *Corynorhinus townsendii virginianus.*

Ozark big-eared bat *Corynorhinus townsendii ingens.*

Relict Darter *Etheostoma chienense.*

Blackside dace *Chrosomus cumberlandensis.*

This work will be carried out on lands under the authority of the Kentucky Division of Abandoned Mines.

Permit Application Number: TE–65002A

Applicant: Robert Oney, Winchester, Kentucky.

Applicant requests authorization to conduct presence/absence surveys and to conduct scientific studies on the following species:

Indiana bat *Myotis sodalis.*

Gray bat *Myotis grisescens.*

Virginia big-eared bat *Corynorhinus townsendii virginianus.*

This work will be carried out in Kentucky.

Permit Application Number: TE–65346A

Applicant: Matthew Roberts, Berea Kentucky.

Applicant requests authorization for non-lethal take of gray bats (*Myotis grisescens*) and Indiana bats (*Myotis*

sodalis) for the purpose of conducting presence/absence surveys and collecting scientific data. This work will be conducted throughout the range of these species.

Permit Application Number: TE–139474

Applicant: FTN Associates, LTD., Little Rock, Arkansas.

Applicant requests authorization for non-lethal take of American burying beetle (*Nicrophorus americanus*) while conducting presence/absence surveys in the State of Kansas.

Permit Application Number: TE–65550A

Applicant: Dale Gawlik, Florida Atlantic University, Boca Raton, Florida.

Applicant requests authorization to capture and collect biological specimens from wood storks (*Mycteria Americana*) while conducting scientific research in Dade and Collier Counties, Florida.

Permit Application Number: TE–171516

Applicant: Copperhead Environmental Consulting, Paint Lick, Kentucky.

Applicant requests the addition of Missouri, Indiana, Illinois and Ohio to the location authorized for conducting presence/absence surveys and scientific investigation on listed freshwater mussel species and authorization to conduct presence/absence surveys for the blackside dace (*Chrosomus cumberlandensis*).

Permit Application Number: TE–65968A

Applicant: Jason Dickey, Tallahassee, Florida.

Applicant requests authorization to conduct presence/absence surveys on the following freshwater mussel species:

Fat threeridge *Amblema neislerii.*

Shinyrayed pocketbook *Hamiota subangulata.*

Gulf moccasinshell *Medionidus penicillatus.*

Ochlockonee moccasinshell *Medionidus simpsonianus.*

Oval pigtoe *Pleurobema pyriforme.*

Chipola slabshell *Elliptio chipolaensis.*

Purple bankclimber *Margaritifera marrianae.*

These surveys will be conducted in Alabama, Georgia and Florida.

Permit Application Number: TE–66039A

Applicant: Arkansas Game and Fish Commission, Benton, Arkansas.

Applicant requests authorization to take (non-lethally) the Ozark hellbender (*Cryptobranchus alleganiensis bishop*) for the purpose of scientific research. This activity will take place in Arkansas.

Dated: March 5, 2012.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2012–6643 Filed 3–19–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2012–N037: 94140–1341–0000–N5]

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The ANS Task Force's purpose is to develop and implement a program for U.S. waters to prevent introduction and dispersal of aquatic nuisance species; to monitor, control, and study such species; and to disseminate related information. The meeting is open to the public.

DATES: The ANS Task Force will meet from 8 a.m. to 5 p.m., from Wednesday, May 2 through Thursday May 3, 2012.

ADDRESSES: The ANS Task Force meeting will take place at the O'Callaghan Annapolis Hotel, 174 West Street, Annapolis, MD 21401 (410–263–7700). You may inspect minutes of the meeting at the office of the Chief, Division of Fisheries and Aquatic Resource Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203, during regular business hours, Monday through Friday. You may also view the minutes on the ANS Task Force Web site at: *http://anstaskforce.gov/meetings.php.*

FOR FURTHER INFORMATION CONTACT: Susan Mangin, Executive Secretary, ANS Task Force, at (703) 358–2466, or by email at *Susan_Mangin@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces meetings of the ANS Task Force. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 106–580, as amended).

Agenda

Topics that the ANS Task Force plans to cover during the meeting include:

- ANSTF Strategic Plan
- ANSTF Recreational Guidelines
- Nutria
- Landscape Conservation Cooperatives
- Impact of Fish Passage on the Movement of ANS.

The agenda and other related meeting information are on the ANS Task Force Web site at: *http://anstaskforce.gov/meetings.php.*

Accessibility Information

The meeting location is accessible to wheelchair users. If you require additional accommodations, please notify us at least 1 week in advance of the meeting.

Authority

We publish this notice under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.)

Dated: March 6, 2012.

Jeffrey Underwood,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Deputy Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 2012–6660 Filed 3–19–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–11785; LLAK–965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Ahtna, Incorporated. The decision will approve the conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The lands are located northwesterly of Mentasta, Alaska, and contain 7.25 acres. Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall

have until April 19, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM.

The BLM will reply during normal business hours.

Dina L. Torres,

Land Transfer Resolution Specialist, Branch of Land Transfer Adjudication II.

[FR Doc. 2012–6695 Filed 3–19–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00000 L12200000.PM0000 LXSS006F0000 261A; 12–08807; MO# 4500032858; TAS: 14X1109]

Notice of Public Meetings: Northeastern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC), will hold three meetings in Nevada in fiscal year 2012. All meetings are open to the public.

DATES AND TIMES: April 19 at the California Trail Interpretive Center, 8 miles west of Elko, Nevada at Hunter exit of Interstate 80; July 19 and 20 at the BLM Ely District Office, 702 N. Industrial Way, Ely, Nevada; and September 20, at the BLM Battle Mountain District Office, 50 Bastian Road, Battle Mountain, Nevada. Approximate meeting times are 8 a.m. to 4 p.m. However, meetings could end earlier if discussions and presentations conclude before 4 p.m. All meetings will include a public comment period at approximately 10 a.m.

FOR FURTHER INFORMATION CONTACT: Lesli Ellis-Wouters, Public Affairs Officer, Elko District Office, 3900 E. Idaho St., Elko, NV 89801. Telephone: (775) 753–0386. Email: *lellis@blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Nevada. Topics for discussion at each meeting will include, but are not limited to:

- April 19 (Elko)—Rangeland Health Assessments, Battle Mountain Resource Management Plan, greater sage-grouse conservation, and recreation;
- July 19 and 20 (Ely)—field tour to Spring Valley Wind/Falcon-Gonder/Online (SWIP) transmission lines and greater sage-grouse leks;
- September 20 (Battle Mountain)—tour of Shoshone Off-Highway Vehicle trail and wild horse and burro program.

Managers' reports of field office activities will be given at each meeting. The Council may raise other topics at any of the three planned meetings.

Final agendas will be posted on-line at the BLM Northeastern Great Basin Resource Advisory Council Web site at *http://www.blm.gov/nv/st/en/res/resource_advisory.html* and will be published in local and regional media sources at least 14 days before each meeting.

Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, may contact Lesli Ellis-Wouters no later than 10 days prior to each meeting.

Erica Haspiel-Szlosek,

Chief, Office of Communications.

[FR Doc. 2012–6638 Filed 3–19–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000.L10200000.DD0000; HAG 12–0117]

Notice of Public Meeting, John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day-Snake Resource Advisory Council (RAC) will meet as indicated below:

DATES: The business meeting will be held on May 17, 2012. On May 18, 2012, there will be a field trip to the Denny Flat area.

ADDRESSES: The meeting will be held at the Geiser Grand Hotel, located at 1996 Main Street, Baker City, Oregon, on May 17, 2012.

FOR FURTHER INFORMATION CONTACT: Mark Wilkening, Public Affairs Specialist, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218 or email *mwilkeni@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The May 17, 2012, meeting will be held from 8 a.m. to 4:30 p.m. Pacific Daylight Time (PDT) at the Geiser Grand Hotel, in Baker City, Oregon. Topics may include: Blue Mountain Forest Plan, John Day Basin Final, Step-down BLM Vegetation Environmental Impact Statement, Malheur Travel Management, potential update of Deschutes/Ochoco/Crooked River Grassland vegetation plan, updates by Federal managers on litigation, energy projects, and other issues affecting their districts/units and other matters as may reasonably come before the RACs. All RAC meetings are open to the public; time is set aside for oral comments at 1 p.m. on May 17, 2012. Those who verbally address the RAC are asked to provide a *written* statement of their presentation. Unless otherwise approved by the RAC Chair, the public comment period will last no longer than 15 minutes; each speaker may address the RAC for a maximum of five minutes. If reasonable

accommodation is required, please contact the BLM Vale District Office at (541) 473–6218 as soon as possible. Before including your address, phone number, email address, or other personal identifying information in your comments, please 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.

The field trip on May 18 will start at 8 a.m. PDT, and members will be looking at grazing parcels in the Denny Flat area. The field trip should end by 2 p.m.

Donald N. Gonzalez,

BLM Vale District Manager.

[FR Doc. 2012–6639 Filed 3–19–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Notice of Public Scoping Meetings on an Environmental Impact Statement for Proposed Outer Continental Shelf Gulf of Mexico Eastern Planning Area Oil and Gas Lease Sales 225 and 226

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of public scoping meetings and request for comments.

SUMMARY: The Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2012–2017 (Proposed Program) schedules two potential lease sales, Proposed Lease Sales 225 and 226, to accommodate anticipated industry interest in the portion of the Gulf of Mexico (GOM) Eastern Planning Area (EPA) that is not currently subject to the Congressionally-mandated leasing moratorium. This notice describes the public scoping process that BOEM is initiating in preparation for completing an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) relating to these two proposed sales. While it is necessary to commence the presale information gathering process before finalizing the Five-Year OCS Oil and Gas Leasing Program for 2012–2017 in order to conform to the schedule in the Proposed Program, this scoping and EIS process will be terminated in the event that Lease Sales 225 and 226 are not included in the Final Program.

Pursuant to the regulations implementing the procedural provisions of the NEPA of 1969, as amended (42 U.S.C. 4321 *et seq.* [1988]), BOEM will hold public scoping meetings to solicit information to assist in a determination of the significant issues to be addressed and their scope, and to identify mitigating measures and alternatives. This information will be used in the preparation of an EIS to evaluate the potential environmental effects of proposed Lease Sales 225 and 226. BOEM has planned five scoping meetings in April 2012 to provide opportunities for public participation and comment as part of the process for evaluating proposed Lease Sales 225 and 226. BOEM also will use and coordinate the NEPA public comment process to satisfy the requirement for public involvement under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), as provided for in 36 CFR 800.2(d)(3).

Throughout the scoping process, Federal, State, Tribal, and local governments and the general public have the opportunity to aid BOEM in determining the significant issues, reasonable alternatives, and potential mitigating measures to be analyzed in the EIS, as well as to provide additional information. Possible alternatives for analysis may represent a range of levels of activities, including: (1) The proposed action (holding the Lease Sale); (2) taking no action (canceling or postponing the sale); (3) defining appropriate restrictions on oil and gas activities based on environmental resources that are present; and/or (4) defining temporal or spatial work windows to accommodate the existing use of OCS space important to other critical national missions. Additional alternatives developed through scoping and NEPA evaluation will be considered and may also be evaluated. BOEM will receive statements, oral and written, at the venues listed below. All persons wishing to speak will have the opportunity to do so. Time limits may be set on speakers to allow time for all speakers to participate. The following public scoping meetings are planned for proposed Lease Sales 225 and 226:

- *Tuesday, April 3, 2012, Tallahassee, Florida:* Tallahassee Community College, 444 Appleyard Drive, Tallahassee, Florida; at 1 p.m. EDT;
- *Wednesday, April 4, 2012, Panama City Beach, Florida:* Wyndham Bay Point Resort, 4114 Jan Cooley Drive, Panama City Beach, Florida; two meetings, the first beginning at 1 p.m. CDT and the second beginning at 6 p.m. CDT;
- *Thursday, April 5, 2012, Mobile, Alabama:* Five Rivers—Alabama's Delta Resource Center, 30945 Five Rivers Boulevard, Spanish Fort, Alabama; at 1 p.m. CDT; and
- *Monday, April 9, 2012, New Orleans, Louisiana:* BOEM, GOM OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana; at 1 p.m. CDT.

Procedures for submitting written comments via mail and electronically are also detailed below.

SUPPLEMENTARY INFORMATION: Proposed Lease Sales 225 and 226 are tentatively scheduled for 2014 and 2016 under the Proposed Program. The previous lease sale in the EPA, Lease Sale 224, was held on March 19, 2008. The EIS that will be prepared subsequent to this scoping process will analyze an area in the EPA that was addressed in *Gulf of Mexico OCS Oil and Gas Lease Sale 224: Eastern Planning Area, Final Supplemental Environmental Impact Statement* (OCS EIS/EA MMS 2007–060), plus a 109,977-acre triangular area located immediately south of the Lease Sale 224 area. The area for proposed Lease Sales 225 and 226 covers approximately 657,905 acres in the EPA and is south of eastern Alabama and western Florida; the nearest point of land to the lease sale area is 125 miles north to Florida. The Call for Information and Nominations/Notice of Intent to prepare an EIS was published in the **Federal Register** on November 18, 2011. This **Federal Register** notice is not an announcement to hold the proposed lease sales, but it is a continuation of information gathering and an early step in the environmental review process required by NEPA. The comments received during the scoping meetings and public comment period will help form the content of the EIS and will be summarized in the presale documentation prepared prior to holding a lease sale.

Comments: In addition to, or in lieu of participation in the scoping meetings listed above, all interested parties, including Federal, State, Tribal, and local governments and the general public, may submit written comments on the scope of the EIS, significant issues that should be addressed, alternatives that should be considered, potential mitigating measures and the types of oil and gas activities of interest in the proposed lease sale area.

Written scoping comments may be submitted in one of the following two ways:

1. In written form enclosed in an envelope labeled ''Scoping for Proposed EPA Lease Sales 225 and 226'' and mailed (or hand delivered) to Mr. Gary

D. Goeke, Chief, Regional Assessment Section, Office of Environment (MS 5410), BOEM, GOM OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394; or

2. Electronically to the BOEM email address: *boemegomeis@BOEM.gov*.

Petitions, although accepted, do not generally provide more weight or useful information than a single comment to assist in scoping. Please include your name and address as part of your submittal; BOEM does not consider anonymous comments. BOEM makes all comments, including the names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that BOEM withhold their name and/or address from the public record; this request will be honored to the extent allowable by law. If you wish your name and/or address to be withheld, you must state your preference prominently at the beginning of your comment. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

DATES: Comments should be submitted no later than May 4, 2012 to the address or email address specified above.

FOR FURTHER INFORMATION CONTACT: For information on the EIS, public scoping meetings, the submission of comments, or BOEM's policies associated with this notice, please contact Mr. Gary D. Goeke, Chief, Regional Assessment Section, Office of Environment (MS 5410), BOEM, GOM OCS Region, 1201 Elmwood Park Boulevard, New Orleans, LA 70123–2394, telephone (504) 736–3233.

Dated: March 14, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–6724 Filed 3–19–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0059

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR part 735—Grants for Program Development and Administration and Enforcement, 30 CFR part 885 — Grants for Certified States and Indian Tribes, and 30 CFR part 886—State and Tribal Reclamation Grants. This collection request has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by April 19, 2012, in order to be assured of consideration.

ADDRESSES: Please send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, via email to *OIRA_Docket@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240, by telefax to (202) 219–3276, or by email to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review this collection on the Internet by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collections of information contained in 30 CFR part 735—Grants for Program Development and Administration and Enforcement, 30 CFR part 886—State and Tribal Reclamation Grants, and 30 CFR part 885—Grants for Certified States and Indian Tribes. OSM is requesting a 3-year term of approval for each information collection activity.

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. Responses are required to receive a benefit of grant funding. The OMB control number for 30 CFR parts 735, 885, 886 and the corresponding forms OSM–47, OSM–49, and OSM–51 that require grant submittals are currently approved under OMB control number 1029–0059.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on November 15, 2011 (76 FR 70753). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Parts 735, 885 and 886.

OMB Control Number: 1029–0059.

Summary: State and Tribal reclamation and regulatory authorities are requested to provide specific budget and program information as part of the grant application and reporting processes authorized by the Surface Mining Control and Reclamation Act.

Bureau Form Numbers: OSM–47, OSM–49 and OSM–51.

Frequency of Collection: Once and annually.

Description of Respondents: State and Tribal reclamation and regulatory authorities.

Total Annual Responses: 136.

Total Annual Burden Hours: 892 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the addresses listed in **ADDRESSES**. Please refer to OMB control number 1029–0059 in your correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 12, 2012.

Andrew F. DeVito,

Chief,Division of Regulatory Support.

[FR Doc. 2012–6655 Filed 3–19–12; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0035

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for surface and underground mining permit applications—minimum requirements for information on environmental resources, has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost. This information collection activity was previously approved by OMB and assigned control number 1029–0035.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by April 19, 2012, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax to (202) 395–5806 or by email to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 203—SIB, Washington, DC 20240, by telefax to (202) 219–3276, or by email to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review this information collection request on the Internet by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in 30 CFR Parts 779 and 783—Surface and Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources. OSM is requesting a 3-year term of approval for the information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0035. Responses are required to obtain a benefit for this collection.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on November 28, 2011 (76 FR 72972). One comment was received. The commenter suggested that there is a connection between coal mine drilling and earthquakes, and that coal companies should be required to report recent earthquakes in the area where drilling is proposed to occur.

Earthquakes range from extremely small and virtually unnoticeable events to catastrophic events that cause considerable damage. Unlike oil and gas drilling operations, coal mining is typically undertaken at a much shallower depth, and without injection of great volumes of water to fracture (frack) the rock strata. Therefore, OSM's engineers consider it virtually impossible for coal mine drilling to cause a reportable earthquake. To be certain, we checked with the United States Geological Survey to determine if there is any evidence of coal mine drilling causing earthquakes. We found no mention of coal mine drilling causing earthquakes of any size. In conclusion, we have determined that the comment is not supported by available scientific information and therefore does not warrant conducting national rulemaking to request earthquake data in the permit area.

This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Parts 779 and 783—Surface and Underground Mining Permit Applications—Minimum Requirements for Environmental Resources.

OMB Control Number: 1029–0035.

SUMMARY: Applicants for surface and underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed mining activities. The information will be used by the regulatory authority to determine if the applicant can comply with environmental protection performance standards.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 219 coal mining operators and 24 state regulatory authorities.

Total Annual Responses: 2,175.

Total Annual Burden Hours: 188,820.

Total Annual Non-Wage Burden Cost: $0.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the addresses listed in **ADDRESSES.** Please refer to the appropriate OMB control number in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 12, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012–6654 Filed 3–19–12; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–007]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 20, 2012 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–472 (Third Review) (Silicon Metal from China). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 30, 2012.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 13, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–6809 Filed 3–16–12; 4:15 pm]

BILLING CODE;P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–008]

Government In the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 21, 2012 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 731–TA–313, 314, 317, and 379 (Third Review) (Brass Sheet and Strip from France, Germany, Italy, and Japan). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before April 13, 2012.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 14, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–6810 Filed 3–16–12; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances, Notice of Application, Cerilliant Corporation

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on July 21, 2011, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
4-methyl-N-methylcathinone (1248)	I
1–Pentyl-3-(1-naphthoyl)indole (7118)	I
1–Butyl-3-(1-naphthoyl)indole (7173)	I
1-[2-(4–Morpholinyl)-ethyl]-3-(1-naphthoyl)indole (7200)	I
5-(1,1–Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (7297)	I
5-(1,1–Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]phenol (7298)	I
3,4-methylenedioxypyrovalerone (7535)	I
3,4-methylenedioxy-N-methylcathinone (7540)	I
Desomorphine (9055)	I

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 19, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: March 8, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–6701 Filed 3–19–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances, Notice of Application; Mylan Technologies Inc.,

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing

a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a) (2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on October 7, 2011, Mylan Technologies Inc., 110 Lake Street, Saint Albans, Vermont 05478, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Methylphenidate (1724)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically-manufactured FDF to foreign markets.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 19, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: March 8, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–6699 Filed 3–19–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on January 5, 2012, Capricorn Pharma Inc., 6900 English Muffin Way, Unit A, Frederick, Maryland 21703, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Fentanyl (9801), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically manufactured FDF. This analysis is required to allow the company to export domestically manufactured FDF to foreign markets.

In reference to the import of Fentanyl (9801), the authorization for the import of this basic class of controlled substance, if approved, would be granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage form for commercial distribution in the United States.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 19, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: March 8, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–6697 Filed 3–19–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances, Notice of Registration; Johnson Matthey, Inc., Pharmaceutical Materials

By Notice dated December 2, 2011, and published in the **Federal Register** on December 12, 2011, 76 FR 77253, Johnson Matthey, Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Coca Leaves (9040)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Noroxymorphone (9668)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances as raw materials, to be used in the manufacture of bulk controlled substances, for distribution to its customers. In regard

to the non-narcotic raw material, the company plans to import gram amounts to be used as reference standards for sale to its customers.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate, 72 FR 3417 (2007). Regarding all other basic classes of controlled substances, no comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Johnson Matthey, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Johnson Matthey, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: March 8, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–6722 Filed 3–19–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application; Cody Laboratories, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 27, 2012, Cody Laboratories, Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Thebaine (9333)	II

The company plans to manufacture the listed controlled substances as bulk intermediates for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than May 21, 2012.

Dated: March 8, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–6721 Filed 3–19–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application; Cayman Chemical Company

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 27, 2012, Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
4-methyl-N-methylcathinone (1248).	I
Gamma Hydroxybutyric Acid (2010).	I
Mescaline (7381)	I
N-Benzylpiperazine (7493)	I
3,4-methylenedioxypyrovalerone (7535).	I
3,4-methylenedioxy-N-methylcathinone (7540).	I

The company plans to manufacture the above listed controlled substances to supply these materials to the research and forensics community for drug testing and analysis.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than May 21, 2012.

Dated: March 8, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–6705 Filed 3–19–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration; Johnson Matthey Inc.

By Notice dated November 18, 2011, and published in the **Federal Register** on November 28, 2011, 76 FR 72974, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

No comments or objections have been received. DEA has considered the

factors in 21 U.S.C. 823(a), and determined that the registration of Johnson Matthey Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Johnson Matthey Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: March 8, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–6720 Filed 3–19–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration; Johnson Matthey Pharmaceutical Materials Inc.

By Notice dated November 18, 2011, and published in the **Federal Register** on November 28, 2011, 76 FR 72974, Johnson Matthey Pharmaceutical Materials Inc., Pharmaceutical Service, 25 Patton Road, Devens, Massachusetts 01434, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Hydrocodone (9193)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II

The company plans to utilize this facility to manufacture small quantities of the listed controlled substances in bulk and to conduct analytical testing in support of the company's primary manufacturing facility in West Deptford, New Jersey. The controlled substances manufactured in bulk at this facility will be distributed to the company's customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Johnson Matthey Pharmaceutical Materials Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Johnson Matthey Pharmaceutical Materials Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: March 8, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–6703 Filed 3–19–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration; Noramco Inc. (GA)

By Notice dated November 21, 2011, and published in the **Federal Register** on November 29, 2011, 76 FR 73679, Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Morphine-N-oxide (9307)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Noramco Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Noramco Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: March 8, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–6698 Filed 3–19–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration; Halo Pharmaceutical Inc.

By Notice dated December 2, 2011, and published in the **Federal Register** on December 14, 2011, 76 FR 77850, Halo Pharmaceutical Inc., 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

Dihydromorphine is an intermediate in the manufacture of Hydromorphone and is not for commercial distribution.

The company plans to manufacture Hydromorphone HCL for sale to other manufacturers and for the manufacture of other controlled substance dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Halo Pharmaceutical Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Halo Pharmaceutical Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: March 8, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–6696 Filed 3–19–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Permit-Required Confined Spaces Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Permit-Required Confined Spaces Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before April 19, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the DOL–OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Under the authority granted by the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.,* the OSHA published at 29 CFR 1910.146 a safety standard for general industry regulating permit-required confined spaces, including requirements for developing and maintaining inspection records used by employers and employees whenever entry is made into permit-required confined spaces. This information collection is subject to the PRA.

A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0203. The current OMB approval is scheduled to expire on March 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 14, 2011 (76 FR 77850).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0203. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Permit-Required Confined Spaces Standard.

OMB Control Number: 1218–0203.

Affected Public: Private sector—Businesses or Other For-Profits.

Total Estimated Number of Respondents: 209,045.

Total Estimated Number of Responses: 8,644,934.

Total Estimated Annual Burden Hours: 1,433,443.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 14, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–6678 Filed 3–19–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Job Openings and Labor Turnover Survey

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) revision titled, ''Job Openings and Labor Turnover Survey,'' (JOLTS) to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before April 19, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the DOL–BLS, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The JOLTS collects data on job vacancies, labor hires, and labor separations. The data can be used as demand-side indicators of labor shortages. These indicators of labor shortages at the national level greatly enhance policy makers' understanding of imbalances between the demand and supply of labor. Presently there is no other economic indicator of labor demand with which to assess the presence of labor shortages in the U.S. labor market. The availability of unfilled jobs is an important measure of job market tightness, symmetrical to unemployment measures. This submission has been characterized as a revision, because of minor edits to some of the cover letters, the addition of two new postcard reminders (email and fax), an update to the BLS confidentiality pledge, and the discontinuation of information collected in order to perform response analysis for two industries. This research has been performed. The JOLTS program plans to perform response analysis again sometime in the future and will seek an appropriate burden increase at that time.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0170. The current OMB approval is scheduled to expire on March 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 10, 2011 (76 FR 70165).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should reference OMB Control Number 1220–0170. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: Job Openings and Labor Turnover Survey (JOLTS).

OMB Control Number: 1220–0170.

Affected Public: Private Sector—Businesses or Other For-Profits and Nor-For-Profit Institutions; Federal Government; and State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 10,825.

Total Estimated Number of Responses: 129,900.

Total Estimated Annual Burden Hours: 21,650.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 14, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–6711 Filed 3–19–12; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Longshore and Harbor Workers' Compensation; Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs (OWCP) is soliciting comments concerning the proposed collection: Request for Earnings Information (LS–426). A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 21, 2012.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0701, fax (202) 693–1447, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the

Longshore and Harbor Workers' Compensation Act (LHWCA). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend the Longshore Act's coverage to certain other employees.

The Secretary of Labor is authorized, under the Act, to make rules and regulations to administer the Act and its extensions. Pursuant to the LHWCA, injured employees shall receive compensation in an amount equal to 66⅔ per centum of their average weekly wage. Form LS–426, Request for Earnings Information, is used by district offices to collect wage information from injured workers to assure payment of compensation benefits to injured workers at the proper rate. This information is needed for determination of compensation benefits in accordance with section 10 of the LHWCA. This information collection is currently approved for use through June 30, 2012.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval of this information collection in order to carry out its responsibility to assure payment of compensation benefits to injured workers at the proper rate.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Request for Earnings Information.

OMB Number: 1240–0025.

Agency Number: LS–426.

Affected Public: Individuals or households.

Total Respondents: 1,100.

Total Annual Responses: 1,100.

Estimated Total Burden Hours: 275.

Estimated Time per Response: 15 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $528.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 14, 2012.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S Department of Labor.

[FR Doc. 2012–6602 Filed 3–19–12; 8:45 am]

BILLING CODE 4510–CF–P

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Fund Access for Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Funding Opportunity.

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786; 12 CFR 705.

SUMMARY: The National Credit Union Administration (NCUA) is issuing a Notice of Funding Opportunity (NOFO) to invite eligible credit unions to submit applications for participation in the Community Development Revolving Loan Fund (CDRLF) Loan Program, subject to funding availability. The CDRLF serves as a source of financial support, in the form of both loans and technical assistance grants, for credit unions serving predominantly low-income members. It also serves as a source of funding to help low-income designated credit unions (LICUs) respond to emergencies arising in their communities.

DATES: The application open period is from May 22, 2012 thru December 31, 2012. Funds may be exhausted prior to this deadline, at which time the program/funds will no longer be available.

ADDRESSES: Submit electronic applications via email to OSCUIAPPS@ncua.gov, or via facsimile to 703–519–4088.

FOR FURTHER INFORMATION CONTACT: The Office of Small Credit Union Initiatives, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6610.

SUPPLEMENTARY INFORMATION:

I. Description of Funding Opportunity

The purpose of the CDRLF is to assist specially designated credit unions in providing basic financial services to their low-income members to stimulate economic activities in their communities. Through the CDRLF, NCUA provides financial support in the form of loans and technical assistance grants to LICUs. These funds help improve and expand the availability of financial services to these members. The CDRLF also serves as a source of funding to help LICUs respond to emergencies. NCUA's Office of Small Credit Union Initiatives (OSCUI) administers the CDRLF.

There are two components to the CDRLF, the Loan Program and the Technical Assistance Grant (TAG) Program. The Loan Program is primarily the subject of this NOFO.

Additional information about the TAG Program, including current funding initiatives, amount of funds available, funding priorities, permissible uses of funds, funding limits, deadlines and other pertinent details, are periodically published in NCUA Letters to Credit Unions and posted on the NCUA Web site (*http://www.ncua.gov/Resources/CUs/Dev/Pages/Loans.aspx*).

A. *Program Regulation:* Part 705 of NCUA's regulations implements the CDRLF. 12 CFR 705. A revised Part 705 was published on November 2, 2011. 76 FR 67583. Additional requirements are found at 12 CFR Parts 701 and 741. Applicants should review these regulations in addition to this NOFO. Each capitalized term in this NOFO is more fully defined in the regulations, the loan application, and the loan agreement. For the purposes of this NOFO, an Applicant is a Qualifying Credit Union that submits a complete Application to NCUA under the CDRLF Loan Program.

B. *Funds Availability:* Congress has not made an appropriation to the CDRLF for loans for Fiscal Years 2012–2013. NCUA expects to lend approximately $11 million under this NOFO, derived from appropriated and earned funds. Monies for additional loans come from scheduled loan

amortizations. NCUA reserves the right to: (i) Award more or less than the amount cited above; (ii) fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFO; and (iii) reallocate funds from the amount that is anticipated to be available under this NOFO to other CDRLF programs, particularly if NCUA determines that the number of awards made under this NOFO is fewer than projected.

II. Description of Loan Program

CDRLF loans are made to LICUs that meet the requirements in the program regulation and this NOFO, subject to funds availability. CDRLF loans are generally made at lower than market interest rates.

A. *Eligibility Requirements:* The regulations specify the requirements a credit union must meet in order to be eligible to apply for assistance under this NOFO. See 12 CFR 705. Following are additional requirements for participating in the Loan Program under this NOFO. In short, an Applicant must:

○ Be a Qualifying Credit Union (QCU);

○ Meet the underwriting standards and program requirements specified in the Regulations and this NOFO; and

○ Complete and submit an Application (see Section III. of this NOFO for additional information).

1. *Low Income Credit Union Designation:* A credit union must be a LICU, or equivalent in the case of a Qualifying State-chartered Credit Union, in order to participate in the CDRLF. Requirements for obtaining the designation are found at 12 CFR 701.34.

B. *Permissible Uses of Funds:* NCUA will consider requests for funds consistent with the purpose of the CDRLF Program. 12 CFR 705.1. A non-exhaustive list of examples of permissible uses or projects of loan proceeds are contained in § 705.4 of the regulation, and include: (i) Development of new products or services for members including new or expanded share draft or credit card programs; (ii) Partnership arrangements with community based service organizations or government agencies; (iii) Loan programs, including, but not lmited to, micro business loans, payday loan alternatives, education loans, and real estate loans; (iv) Acquisition, expansion or improvement of office space or equipment, including branch facilities, ATMs, and electronic banking facilities; and (v) Operational programs such as security and disaster recovery.

NCUA will consider other proposed uses of funds that in its sole discretion it determines are consistent with the purpose of the CDRLF Program, the requirements of the regulations, and this NOFO.

C. *Terms:* The specific terms and conditions governing a loan will be established in the loan documents each Participating Credit Union will sign prior to disbursement of funds. Following are the general loan terms under the program.

1. *Maximum Loan Amount:* NCUA expects that most loans made under this NOFO will be in an amount less than or equal to $300,000. NCUA has determined that loans of this size will help maximize allocation of this limited resource among many credit unions. However, NCUA will consider funding requests in excess of $300,000 from Applicants that demonstrate the need and capability to effectively deploy such funding; and have a high probability of realizing significant impact, while maintaining financial and operational soundness. NCUA may consider other factors for the approval of funding requests in excess of $300,000 and will be assessed on a case-by-case basis. See Section III and IV of this NOFO for additional information.

2. *Maturity:* Loans will generally mature in five years. A credit union may request a shorter loan period, but in no case will the term exceed five years.

3. *Interest:* The interest rate on loans is governed by the CDRLF Loan Interest Rate Policy, which can be found on NCUA's Web site at *http://www.ncua.gov/Resources/CUs/Dev/Pages/Loans.aspx.*

4. *Repayment:* All loans made under the CDRLF must be repaid to NCUA regardless of how they are accounted for by the Participating Credit Union.

(a) *Principal:* The entire principal is due at maturity.

(b) *Interest:* Interest is due in semi-annual payments beginning six months after the initial distribution of the loan.

(c) *Principal Prepayment:* There is no penalty for principal prepayment. Principal prepayments may be made as often as monthly.

D. *Conditions:*

1. *Loan Agreements:* Each Participating Credit Union under this NOFO must enter into agreement with NCUA before NCUA will disburse loan funds. The agreement documents include, for example, a promissory note, loan agreement, security agreement (if applicable). For further information, see Section VI. of this NOFO.

2. *Matching Funds:* Part 705.5(g) of NCUA's regulations describe the overall requirements for matching funds. NCUA, in its sole discretion, may require matching funds of an Applicant, on a case-by-case basis depending on the financial condition of the Applicant. NCUA anticipates that most Applicants will not be required to obtain matching funds. However, each Applicant should address in the Application its strategy for raising matching funds if NCUA determines matching funds are required (see 12 CFR Part 705 and the Application for additional information).

(a) *Matching Funds Requirements:* The specific terms and covenants pertaining to any matching funds requirement will be provided in the loan agreement of the Participating Credit Union. Following, are general matching requirements. NCUA, in its sole discretion, may amend these requirements depending upon its evaluation of the Applicant, but in no case will the amended requirements be greater than the conditions listed below.

(i) The amount of matching funds required must generally be in an amount equal to the loan amount.

(ii) Matching funds must be from non-governmental member or nonmember share deposits.

(iii) Any loan monies matched by nonmember share deposits are not subject to the 20% limitation on nonmember deposits under § 701.32 of NCUA's regulations.

(iv) Participating Credit Unions must maintain the outstanding loan amount in the total amount of share deposits for the duration of the loan. Once the loan is repaid, nonmember share deposits accepted to meet the matching requirement are subject to § 701.32 of NCUA's regulations.

(b) *Criteria for Requiring Matching Funds:* NCUA will use the following criteria to determine whether to require an Applicant to have matching funds as a condition of its loan.

(i) CAMEL Composite Rating;

(ii) CAMEL Management Component Rating;

(iii) CAMEL Asset Quality;

(iv) Regional Director Concurrence; and

(v) Net Worth Ratio.

(c) *Documentation of Matching Funds:* NCUA may contact the matching funds source to discuss the matching funds and the documentation that the Applicant has provided. If NCUA determines that any portion of the Applicant's matching funds is ineligible under this NOFO, NCUA, in its sole discretion, may permit the Applicant to offer alternative matching funds as a substitute for the ineligible matching funds. In this case: (i) the Applicant must provide acceptable alternative matching funds documentation within 10 business days of NCUA's request.

3. *Compliance with Past Agreements:* In evaluating funding requests under

this NOFO, NCUA will consider an Applicant's record of compliance with past agreements, including any deobligation of funds. NCUA, in its sole discretion, will determine whether to consider an Application from an Applicant with a past record of noncompliance, including any deobligation (i.e. removal of unused awards) of funds.

(a) *Default Status:* If an Applicant is in default of a previously executed agreement with NCUA, NCUA will not consider an Application for funding under this NOFO.

(b) *Undisbursed Funds:* NCUA will not consider an Application if the Applicant is a prior awardee under the CDRLF Program and has unused grant awards as of the date of Application.

III. Application Requirements

A. *Application Form:* The application and related documents can be found on NCUA's Web site at *http://www.ncua.gov/Resources/CUs/Dev/Pages/Loans.aspx* or at *www.ncua.gov* by entering ''CDRLF Loan Application'' as the keywords in the search function. NCUA will confirm receipt of Applications that are received by email or facsimile.

B. *Minimum Application Content:* Each Applicant must complete and submit the following sections of the Application.

- ❑ Part A: Applicant Information
- ❑ Part B: Funding Request
- ❑ Part D: Certifications

1. *DUNS Number:* Based on an Office of Management and Budget (OMB) policy directive effective October 31, 2003, credit unions must have a Data Universal Numbering System (DUNS) number issued by Dun and Bradstreet (D&B) in order to be eligible to receive funding from the CDRLF. NCUA will not consider an Application that does not include a valid DUNS number. Such an Application will be deemed incomplete and will be declined. Information on how to obtain a DUNS number may be found on D&B's Web site at *http://fedgov.dnb.com/webform* or by calling D&B, toll-free, at 1–866–705–5711.

2. *Employer Identification Number:* Each Application must include a valid and current Employer Identification Number (EIN) issued by the U.S. Internal Revenue Service (IRS). NCUA will not consider an application that does not include a valid and current EIN. Such an Application will be deemed incomplete and will be declined. Information on how to obtain a EIN may be found on the IRS's Web site at *www.irs.gov.*

3. *Abbreviated Application:* An Applicant requesting a loan amount of $300,000 or less is permitted to submit a short application form that limits the amount of required narrative responses. The required narratives will address the proposed use of funds; the credit union's ability to obtain matching funds, if required; and how the credit union will assess the impact of the funding.

4. *Narrative Responses:* Each Application must include the narratives listed below. Applicants must adhere to page limitations contained in the Application instructions. NCUA will not read or consider narrative comments beyond the page limits specified. Additionally, NCUA will read only information requested in the Application and will not read attachments that have not been requested in this NOFO or the Application.

(a) *Use of Funds:* Each Applicant must submit a narrative describing how it intends to use the loan proceeds. The narrative should demonstrate that the loan will enhance the products and services the credit union provides to its members. It also should describe how those enhanced products and services will support the economic development of the community served by the credit union.

(b) *Matching Funds:* Submit a narrative describing its strategy for raising matching funds from non-federal sources if matching funds are required.

5. *Large Loans:* An Applicant requesting a loan in excess of $300,000 is required to submit an application form that contains additional narrative comments supporting such request. The additional narrative consists of a business plan.

(a) *Business Plan:* As detailed in Part 705 of NCUA's regulations, the business plan must: Describe the community's need for financial products and services and the Applicant's need for funding; summarize the services, financial products, and services provided by the Applicant; describe the Applicant's involvement with other entities; describe the credit union's marketing strategy to reach members and the community; and include financial projections.

6. *Non-federally Insured Applicants:*

(a) *Additional Application Requirements:* Each Applicant that is a non-federally insured, state-chartered credit union must submit additional application materials. These additional materials are more fully described in § 705.6(b)(3) of NCUA's regulations and in the Application.

(b) *Examination by NCUA:* Non-federally insured, state-chartered credit unions must agree to be examined by NCUA. The specific terms and covenants pertaining to this condition will be provided in the loan agreement of the Participating Credit Union.

C. *Submission of Application:* Under this NOFO, Applications must submit through one of the following methods:

(a) *Email submission: OSCUIAPPS@ncua.gov.*

(b) Facsimile submission: 703–519–4088.

IV. Application Review

A. *Review Process:*

1. *Eligibility and Completeness Review:* NCUA will review each Application to determine whether it is complete and that the Applicant meets the eligibility requirements described in the Regulations and Section II. of this NOFO. An incomplete Application or one that does not meet the eligibility requirements will be declined without further consideration.

2. *Substantive Review:* After an Applicant is determined eligible and its Application is determined complete, NCUA will conduct a substantive review in accordance with the criteria and procedures described in the Regulations and this NOFO. NCUA reserves the right to contact the Applicant during its review for the purpose of clarifying or confirming information contained in the Application. If so contacted, the Applicant must respond within the time specified by NCUA or NCUA, in its sole discretion, may decline the application without further consideration.

3. *Evaluation and Scoring:* The evaluation criteria are more fully described in § 705.6 of NCUA's regulations. NCUA will evaluate each Application that receives a substantive review on the four criteria categories described in the regulation: Financial Performance, Compatibility, Feasibility, and Examination Information and Concurrence from Regional Director of Qualifying Credit Unions.

(a) *Assessment of Impact:* The Compatibility criteria will take into consideration the extent of community need and projected impact of the funding on the Applicant's members and community.

(b) *Effective Strategy:* The Feasibility criteria will take into consideration the quality of the Applicant's strategy and its capacity to execute the strategy as demonstrated by its past performance,

partnering relationships, and other relevant factors.

(c) *Evaluating Prior Award Performance:* For prior participants of the CDRLF Program, loans may not be awarded if the participant: (i) Is noncompliant with any active award; (ii) failed to make timely loan payments to NCUA during fiscal years prior to the date of Application; and (iii) had an award deobligated (i.e. removal of unused awarded funds) during fiscal years prior to the date of Application.

4. *Input from Examiners:* NCUA will not approve an award to a credit union for which its NCUA regional examining office or State Supervisory Agency (SSA), if applicable, indicates it has safety and soundness concerns. If the NCUA regional office or SSA identifies a safety and soundness concern, OSCUI, in conjunction with the regional office or SSA, will assess whether the condition of the Applicant is adequate to undertake the activities for which funding is requested, and the obligations of the loan and its conditions. NCUA, in its sole discretion, may defer decision on funding an Application until the credit union's safety and soundness conditions improve.

V. Award Process

A. *Award Selection:* NCUA will make its award selections based on a consistent scoring system where each applicant will receive an individual score. NCUA will consider the impact of the funding. In addition, NCUA may consider the geographic diversity of the Applicants in its funding decisions. When loan demand is high applications will be ranked based on the aforementioned.

B. *Notice of Award:* NCUA will notify each Applicant of its funding decision. Notification will generally be by email. Applicants that are approved for funding will also receive instructions on how to proceed with disbursement of the loan.

VI. Disbursement of Funds

A. *Loan Agreement:* Each Applicant selected to receive a loan under this NOFO must sign a Loan Agreement and a Promissory Note in order to receive a disbursement of funds. The Loan Agreement will include the terms and conditions of funding, including but not limited to the: (i) Loan amount; (ii) interest rate; (iii) repayment requirements; (iv) accounting treatment; (v) impact measures; and (vi) reporting requirements.

1. *Failure to Sign Agreement:* NCUA, in its sole discretion, may rescind a loan offer if the Applicant fails to return the signed loan documents and/or any other requested documentation, within the time specified by NCUA.

2. *Multiple Disbursements:* NCUA may determine, in its sole discretion, to fund a loan in multiple disbursements. In such cases, the process for disbursement will be specified by NCUA in the Loan Agreement.

VII. Post-Award Requirements

A. *Reporting Requirements:* Annually, each Participating Credit Union will submit an annual report to NCUA. The report will address the Participating Credit Union's use of the loan funds; the impact of funding; and explanation of any failure to meet objectives for use of proceeds, outcome, or impact. NCUA, in its sole discretion, may modify these requirements. However, such reporting requirements will be modified only after notice to affected credit unions.

1. *Report Form:* The annual report form will be available on NCUA's Web site. The loan agreement will describe the requirements more fully. A Participating Credit Union is responsible for timely and complete submission of the report. NCUA will use such information to monitor each Participating Credit Union's compliance with the requirements of its loan agreement and to assess the impact of the CDRLF Program.

VIII. Urgent Requests for Funding

A. *Funding Requests:* Consistent with § 705.7 of NCUA's regulations, NCUA will consider requests for funding on an emergency basis to eligible credit unions. To allow for the Agency to respond with maximum efficiency, such requests will be handled on a case-by-case basis. NCUA, in its sole discretion, will determine what information an eligible credit union must submit, the timeframe for such submission, and how to evaluate such requests.

1. *Contacting NCUA:* To request assistance under this provision, contact OSCUI as listed below.

IX. Agency Contacts

A. *Methods of Contact:* For further information, contact NCUA as follows:

Email: OSCUIAPPS@ncua.gov.

Telephone: 703–518–6610 (not a toll free number).

B. *Information Technology Support:* People who have visual or mobility impairments that prevent them from using NCUA's Web site should call (703) 518–6610 for guidance (this is not a toll free number).

By the National Credit Union Administration Board on March 14, 2012.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 2012–6610 Filed 3–19–12; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0070]

Updated Aging Management Criteria for Reactor Vessel Internal Components of Pressurized Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) requests public comment on draft license renewal interim staff guidance (LR–ISG), LR–ISG–2011–04, ''Updated Aging Management Criteria for PWR Reactor Vessel Internal Components.'' This draft LR–ISG revises the guidance in the Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants (SRP–LR) and Generic Aging Lessons Learned (GALL) Report for the aging management of stainless steel structures and components exposed to treated borated water.

DATES: Submit comments by May 21, 2012. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0070.

You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0070. 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: Mr. James Medoff, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2715; email: *James.Medoff@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0070 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0070.
- *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.* Draft LR–ISG–2011–04 is available electronically under ADAMS Accession No. ML12004A149. The GALL Report and SRP–LR are available under ADAMS Accession Nos. ML103490041 and ML103490036, respectively.
- *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.
- *NRC's Interim Staff Guidance Web Site:* The LR–ISG documents are also available online under *http://www.nrc.gov/reading-rm/doc-collections/isg/license-renewal.html.*

B. Submitting Comments

Please include Docket ID NRC–2012–0070 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Background

The NRC issues LR–ISGs to communicate insights and lessons learned and to address emergent issues not covered in license renewal guidance documents, such as the GALL Report and SRP–LR. In this way, the NRC staff and stakeholders may use the guidance in an LR–ISG document before it is incorporated into a formal license renewal guidance document revision. The NRC staff issues LR–ISG in accordance with the LR–ISG Process, Revision 2 (ADAMS Accession No. ML100920158); for which a notice of availability was published in the **Federal Register** on June 22, 2010 (75 FR 35510).

The NRC staff has determined that existing guidance in the SRP–LR and GALL Report needs to be revised for PWR reactor vessel internal components. The guidance document changes that are proposed in draft LR–ISG–2011–04 are based on the conclusions of the NRC's revised safety evaluation (ADAMS Accession No. ML11308A770).

Proposed Action

By this action, the NRC is requesting public comments on draft LR–ISG–2011–04. This LR–ISG proposes certain revisions to NRC guidance in the SRP–LR and GALL Report. The NRC staff will make a final determination regarding issuance of the LR–ISG after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 13th day of March, 2012.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Acting Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–6694 Filed 3–19–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0061]

Biweekly Notice: Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 23 to March 7, 2012. The last biweekly notice was published on March 6, 2012 (77 FR 13369).

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0061.

You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0061. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; *email: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0061 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0061.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0061 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible online at 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 requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the

applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital 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 agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through 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 the NRC's 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 agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded

pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 21, 2011.

Description of amendment request: The amendments would revise Technical Specifications (TSs) 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' 3.5.4, ''Refueling Water Storage Tank (RWST),'' and 3.6.6, ''Containment Spray System.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes delete superseded TS requirements following the implementation of NRC approved modifications. As such, they do not adversely affect accident initiators or precursors nor do they alter the design assumptions, conditions, or configurations of the facility. The proposed changes do not alter or prevent the ability of Structures, Systems, and Components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. In review of the discussion above, it can be concluded that the probability or consequences of any accident previously evaluated will not be affected.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This amendment request will not impact the accident analyses. The proposed changes delete superseded TS requirements following the implementation of NRC approved modifications. As such, they will not alter the requirements of any of the subject SSCs or their function during accident conditions. No new or different accidents will result from the proposed changes. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or any changes in methods governing normal plant operation. The changes do not alter assumptions made in the safety analyses. The proposed changes are consistent with the safety analyses assumptions. In review of the discussion above, it can be concluded that these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes delete superseded TS requirements following the implementation of NRC approved modifications. As such, they do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analyses acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis. The proposed changes do not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. In review of the discussion above, it can be concluded that the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Nancy Salgado.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Entergy Nuclear Operations, Inc., Docket Nos. 50–155 and 72–043 (ISFSI), Big Rock Point Plant, Charlevoix County, Michigan

Entergy Nuclear Operations, Inc., Docket Nos. 50–003, 50–247 and 50–286, Indian Point Nuclear Generating Units 1, 2 and 3, Westchester County, New York

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 13, 2011.

Description of amendment request: The amendments would approve changes to the Quality Assurance Program Manual (QAPM) and Technical Specifications (TSs) for the above specified plants. The proposed changes standardize unit staff qualification requirements for the Entergy fleet. Certain changes to the QAPM are a reduction in commitment and, in accordance with 10 CFR 50.54(a)(4), NRC approval is required prior to implementation. The related TS changes for unit staff qualifications are requested in accordance with 10 CFR 50.90.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes involve the revision or relocation of administrative requirements associated with unit staff qualifications and will not impact the design, operation, testing, performance, or reliability of any plant system or component. The TS changes will require plants currently required to be qualified per ANSI [American National Standards Institute] N18.1–1971 to be qualified to the later standard of ANSI/ANS [American Nuclear Society] 3.1–1978. The changes do not affect licensed operator qualifications or training, which will continue to comply with applicable regulations. Qualification requirements for the Shift Technical Advisor (STA) are revised to comply with a later standard that provides more prescriptive qualifications and ensures that the STA maintains an active status. The changes do not affect operating procedures or operator response to any accidents previously evaluated in the Updated Final Safety Analysis Report (UFSAR).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment is administrative in nature and does not introduce any credible new failure mechanisms, malfunctions, or accident initiators. The changes will not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, introduce any new accident initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment involves the revision or relocation of administrative requirements associated with unit staff qualifications. The proposed change is administrative in nature and does not involve any physical changes to the plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change 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 the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorneys for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, LA 70113 (for River Bend Station, Unit 1, Arkansas Nuclear One, Units 1 and 2, Grand Gulf Nuclear Station, Unit 1, and Waterford Steam Electric Station, Unit 3); and William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601 (for Big Rock Point Plant (ISFSI), James A. Fitzpatrick Nuclear Power Plant, Indian Point Nuclear Generating Units 1, 2, and 3, Palisades Nuclear Plant, Pilgrim Nuclear Power Station, and Vermont Yankee Nuclear Power Station).

NRC Branch Chief: Michael T. Markley.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible online through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: August 12, 2011, supplemented by letter dated October 20, 2011.

Brief description of amendment: The amendment revised TS 3.8.3, ''Diesel Fuel Oil and Starting Air,'' by relocating the current stored diesel fuel oil numerical volume requirements from the Technical Specification to the TS Bases consistent with Technical Specification Task Force TSTF–501.

Date of issuance: February 24, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 188.

Facility Operating License No. NPF–43: Amendment revised the Technical Specifications and License.

*Date of initial notice in **Federal Register:*** October 4, 2011 (76 FR 61394).

The supplemental letter dated October 20, 2011 did not change staff's original proposed no significant hazards consideration determination as published in the initial **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2012.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373, LaSalle County Station, Unit 1, LaSalle County, Illinois

Date of application for amendment: October 12, 2011, as supplemented by letter(s) dated January 30, 2012, and February 13, 2012.

Brief description of amendment: The amendment request proposed changes to the Technical Specifications (TSs) to revise Section 2.1.1, ''Reactor Core SLs'' minimum critical power ratio safety limit (MCPR SL) from ≥ 1.11 to ≥ 1.13 for two-loop recirculation operation and from ≥ 1.12 to ≥ 1.15 for a single-loop recirculation operation.

Date of issuance: March 1, 2012.

Effective date: As of the date of issuance and shall be implemented after Cycle 14 is completed and prior to the operation of Cycle 15.

Amendment No.: 205.

Facility Operating License Nos. NPF–11: The amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** January 3, 2012 (77 FR 139).

The January 30, 2012, and February 13, 2012, supplements contained clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration (NSHC) determination.

The Commission's related evaluation of the amendment and final NSHC determination is contained in a Safety Evaluation dated March 1, 2012.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendment: February 21, 2011, as supplemented by letter dated July 21, 2011.

Brief description of amendment: Selected figures and values from the technical specifications (TSs) are being relocated to the Core Operating Limits Report (COLR), including TS Figure 2.1–1 cited in TS 2.1.1, selected portions of Note 1 on Overtemperature Δ T and Note 3 on Overpower Δ T cited in TS Table 2.2–1, TS Figure 3.1–1 cited in TS 3/4.1.1.1, Shutdown Margin value cited in TS 3/4.1.1.2, Moderator Temperature Coefficient values cited in TS 3/4.1.1.3, and Departure from Nucleate Boiling values cited in TS 3.2.5. The description of the COLR in TS 6.9.1.7 is also revised to reflect these changes. The affected TS figures and technical limits cited above are only being relocated to the COLR and are not being changed under this license amendment.

Date of issuance: February 23, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 3—247 and Unit 4—243.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications and Surveillance Requirements.

Date of initial notice in ***Federal Register:*** May 31, 2011 (76 FR 31374). The supplement dated July 21, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 23, 2012.

No significant hazards consideration comments received: No.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: February 23, 2011, as supplemented by letters dated April 20, August 15, November 1, 2011, and February 3, 2012.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) by relocating specific surveillance frequencies to a licensee-controlled program with the guidance of Nuclear Energy Institute (NEI) 04–10, ''Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies.'' The amendment adopted NRC-approved Technical Specification Task Force (TSTF)–425, Revision 3, ''Relocate Surveillance Frequencies to Licensee Control—RITSTF [Risk-Informed TSTF] Initiative 5b.'' When implemented, TSTF–425 relocates most periodic frequencies of TS surveillances to a licensee-controlled program, the Surveillance Frequency Control Program, and provides requirements for the new program in the Administrative Controls section of the TSs.

Date of issuance: February 24, 2012.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 280.

Renewed Facility Operating License No. DPR–49: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** May 17, 2011 (76 FR 28474).

The supplemental letters dated April 20, August 15, November 1, 2011 and February 3, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2012.

No significant hazards consideration comments received: No.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: April 21, 2011.

Description of amendment request: The amendment revised operability requirements for the leakage detection systems, eliminated redundant Technical Specification (TS) requirements, and revised the TS actions to include conditions and required actions for inoperable leakage detection systems similar to those in NUREG 1431, ''Standard Technical Specifications—Westinghouse Plants.'' The amendment also incorporated the requirements of TSTF–513, Revision 3, ''Revise [Pressurized Water Reactor] Operability Requirements and Actions for [Reactor Coolant System] Leakage Instrumentation.''

Date of issuance: February 23, 2012.

Effective date: As of its date of issuance and shall be implemented within 90 days.

Amendment No.: 129.

Facility Operating License No. NPF–86: The amendment revised the TS and the License.

Date of initial notice in ***Federal Register:*** August 9, 2011 (76 FR 48913).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 2012.

No significant hazards consideration comments received: No.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: November 17, 2011.

Description of amendment request: The proposed change revises Technical Specification 3.3.3.5, ''Remote Shutdown System Table 3.3–9,'' by removing the location information of transfer switches, control circuits, and instruments.

Date of issuance: February 28, 2012.

Effective date: As of its date of issuance and shall be implemented within 30 days.

Amendment No.: 130.

Facility Operating License No. NPF–86: The amendment revised the TS and the License.

*Date of initial notice in **Federal Register:*** December 27, 2011 (76 FR 80976).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 2012.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: May 2, 2011.

Brief description of amendment: This license amendment revised the Technical Specifications (TSs) 3.4.6.1, ''RCS [Reactor Coolant System] Leakage Detection Systems,'' to define a new time limit for restoring inoperable RCS leakage detection instrumentation to operable status, establish alternate methods of monitoring RCS leakage when monitors are inoperable, and to reflect the requested changes and more accurately reflect the contents of the facility design bases related to the operability of the RCS leakage detection instrumentation.

Date of issuance: February 22, 2012.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 186.

Renewed Facility Operating License No. NPF–12: Amendment revises the License and TSs.

*Date of initial notice in **Federal Register:*** July 12, 2011 (76 FR 40941).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 2012.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, Docket No. 50–395, Virgil C. Summer, Nuclear Station Unit 1, Jenkinsville, South Carolina

Date of application for amendment: April 18, 2011, and supplemented by letter dated September 26, 2011.

Brief description of amendment: This amendment revised the VCSNS Technical Specification Table 4.3–2 for the ''Engineered Safety Feature Actuation System Instrumentation'' to allow the surveillance frequency to be expanded from quarterly to every 18 months or refueling for the specific Westinghouse type AR relays used as Solid State Protection System slave relays or auxiliary relays.

Date of Issuance: March 6, 2012.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No: 187.

Renewed Facility Operating License No. NPF–12: Amendment revised the Licenses and Technical Specifications.

*Date of initial notice in **Federal Register:*** August 16, 2011 (76 FR 50763).

The licensee's supplemental letter contained clarifying information, did not change the scope of the original license amendment request, did not change the NRC staff's initial proposed finding of no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 2012.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendment: March 3, 2011.

Brief description of amendment: The amendments revised the Technical Specifications (TS) 3.3.1 Reactor Trip System Instrumentation Table 3.3.1–1 and TS 3.3.2 Emergency System Feature Actuation System Table 3.3.2–1. Specifically, the change incorporates the Technical Specification Task Force Traveler TSTF–493–A, ''Clarify Application of Setpoint Methodology for LSSS [limiting safety system setting] Function. The setpoint methodology incorporates revised (more conservative) calculations associated with the P–14, Steam Generator Water Level High-High instrument setpoint and associated allowable value. Also, the amendments contain administrative changes. Specifically, the amendment correct a typographical error on TS Table 3.3.1–1, page 9 of 9, and deletes an expired allowance provided by TS Table 3.3.2–1, Note J.

Date of issuance: February 27, 2012.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: Unit 1—165 and Unit 2—147.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the licenses and the technical specifications.

*Date of initial notice in **Federal Register:*** May 24, 2011 (re-noticed on July 12, 2011).

The supplements dated August 12, 2011, and December 9, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in Safety Evaluation dated February 27, 2012.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: July 19, 2010, and supplemented by additional information dated September 9, 2010, January 26, 2011, and May 16, 2011, contained clarifying information only and did not change the initial no significant hazards determination or expand the scope of the initial application.

Brief description of amendment: The proposed amendments revise Technical Specification 5.6.5.b, ''Core Operating Limits Report (COLR),'' to include Appendix C, ''Qualification of the Westinghouse WRB–2M CHF Correlation in the Dominion VIPRE–D Computer Code.'' This would allow NAPS to use the VIPRE–D/WRB–2M and VIPRE–D/W–3 correlation pairs to perform licensing calculations with Westinghouse RFA–2 fuel in the cores.

Date of issuance: February 29, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: Unit 1—266 and Unit 2—247.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments changed the licenses and the technical specifications.

*Date of initial notice in **Federal Register:*** July 26, 2011 (76 FR 44618).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 29, 2012.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: October 21, 2010, as supplemented by letter dated June 23, 2011, and August 22, 2011, contained clarifying information only and did not change the initial no significant hazards determination or expand the scope of the initial application.

Brief description of amendment: The proposed amendments revised Technical Specification 5.6.5.b, ''Core Operating Limits Report (COLR),'' to permit the use of the ''Westinghouse Best Estimate—Large Break Loss-of-Coolant Accident (BE–LBLOCA) Evaluation Methodology using the Automated Statistical Treatment of Uncertainty Method (ASTRUM)'' for the analysis of LBLOCA.

Date of issuance: February 29, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: Unit 1—267 and Unit 2—248.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments changed the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** November 30, 2010 (75 FR 74097).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 29, 2012.

No significant hazards consideration comments received: No.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 8th day of March 2012.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–6261 Filed 3–19–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286; NRC–2008–0672]

License Renewal Application for Indian Point Nuclear Generating Units 2 and 3; Entergy Nuclear Operations, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; intent to prepare supplement to final SEIS.

SUMMARY: On April 23, 2007, Entergy Operations, Inc. (Entergy), submitted to the U.S. Nuclear Regulatory Commission (NRC) an application for renewal of Facility Operating Licenses DPR–26 and DPR–64 for an additional 20 years of operation at Indian Point Nuclear Generating Units 2 and 3 (IP2 and IP3). The current operating licenses for IP2 and IP3 expire on September 28, 2013, and December 12, 2015, respectively. The purpose of this document is to inform the public that the NRC will be preparing a supplement to the final Supplemental Environmental Impact Statement (SEIS) to address information on aquatic impacts in accordance with the NRC's regulations.

ADDRESSES: Please refer to Docket ID NRC–2008–0672, when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0672. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *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.
- *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.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Green, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1627; email: *Kimberly.Green@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Entergy submitted an application for renewal of Facility Operating Licenses DPR–26 and DPR–64 for an additional 20 years of operation at IP2 and IP3. Approximately 24 miles north of New York City, IP2 and IP3 are located in Westchester County in the Village of Buchanan, New York.

The current operating licenses for IP2 and IP3 expire on September 28, 2013, and December 12, 2015, respectively. The application for renewal, dated April 23, 2007, was submitted pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Part 54, which included an environmental report (ER).

On December 3, 2010, the NRC staff issued its final SEIS, documenting its final analysis and recommendation on the proposed action—renewal of the operating licenses for IP2 and IP3. The final SEIS is available in ADAMS under package Accession No. ML103360205.

This document is being published in accordance with the National Environmental Policy Act and the NRC's regulations found at 10 CFR Part 51. The purpose of this document is to inform the public that the NRC will be preparing a supplement to the final SEIS to address information on aquatic impacts in accordance with the NRC's regulations found at 10 CFR 51.92.

Subsequent to the issuance of the final SEIS, the NRC staff identified three types of new information regarding aquatic impacts that necessitate changes to the staff's findings in the final SEIS. The new information consists of (1) entrainment and impingement field data units of measure; (2) a new thermal study that characterizes the thermal plume of cooling water discharges from IP2 and IP3; and (3) new developments concerning the staff's section 7 consultation under the Endangered Species Act of 1973, as amended, with the National Marine Fisheries Service regarding endangered species.

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, Entergy submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Part 51 and is available in ADAMS under Accession No. ML071210530. In addition, the ER is available for public inspection at the White Plains Public Library located at 100 Martine Avenue, White Plains, NY 10601; the Hendrick Hudson Free Library located at 185 Kings Ferry Road, Montrose, NY 10548; and the Field Library located at 4 Neslon Avenue, Peekskill, NY 10566.

Dated at Rockville, Maryland, this 13th day of March, 2012.

For the Nuclear Regulatory Commission.

David J. Wrona,

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–6666 Filed 3–19–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards: Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the

Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on April 12–14, 2012, 11545 Rockville Pike, Rockville, Maryland.

Thursday, April 12, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Selected Chapters of the Safety Evaluation Report (SER) with Open Items Associated with the Calvert Cliffs Unit 3 Combined License (COL) Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Unistar Nuclear Energy regarding selected chapters of the NRC staff's Safety Evaluation Report (SER) with open items associated with the Calvert Cliffs Unit 3 Combined License (COL) application. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

10:15 a.m.–11:45 a.m.: Spent Fuel Pool Scoping Study (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the current scoping study on spent fuel pools subjected to seismic events.

12:45 p.m.–2:15 p.m.: Final Safety Evaluation Report Associated with the License Renewal Application for the Columbia Generating Station (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Energy Northwest regarding the final safety evaluation report associated with the license renewal application for the Columbia Generating Station.

2:30 p.m.–4 p.m.: Risk-Informed Regulatory Framework for New Reactors (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Industry regarding a draft Commission Paper on risk-informed regulatory framework for new reactors.

4 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. The Committee will also discuss a proposed report on extremely low probability of rupture and a response to the January 24, 2012, EDO letter regarding the COL application for Levy Nuclear Plant Units 1 and 2. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

Friday, April 13, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Draft Final NUREG–1921, ''Fire Human Reliability Analysis (HRA) Guidelines'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Industry regarding draft final NUREG–1921 on fire HRA guidelines.

10:15 a.m.–11:45 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

11:45 a.m.–12 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

1 p.m.–2 p.m.: Staff Assessment of Responses to NRC Bulletin 2011–01, ''Mitigating Strategies'' (Open)—The Committee will hear presentations by and hold discussions with the NRC staff regarding their assessment of the responses received addressing NRC Bulletin 2011–01, ''Mitigating Strategies.''

2:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. The Committee will also discuss a proposed report on extremely low probability of rupture and a response to the January 24, 2012, EDO letter regarding the COL application for Levy Nuclear Plant Units 1 and 2. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

Saturday, April 14, 2012 Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

11:30 a.m.–12 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Antonio Dias, Cognizant ACRS Staff (Telephone: 301–415–6805, Email: *Antonio.Dias@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are

available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: March 14, 2012.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2012–6667 Filed 3–19–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of March 19, 26, April 2, 9, 16, 23, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 19, 2012

There are no meetings scheduled for the week of March 19, 2012.

Week of March 26, 2012—Tentative

Tuesday, March 27, 2012

9 a.m. Briefing on License Renewal for Research and Test Reactors (Public Meeting); (Contact: Jessie Quichocho, 301–415–0209).

This meeting will be Webcast live at the Web address—*www.nrc.gov.*

Week of April 2, 2012—Tentative

Tuesday April 3, 2012

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting); (Contact: Cindy Flannery, 301–415–0223).

This meeting will be Webcast live at the Web address—*www.nrc.gov.*

Week of April 9, 2012—Tentative

Tuesday, April 10, 2012

9 a.m. Briefing on the Final Report of the Blue Ribbon Commission on America's Nuclear Future (Public Meeting); (Contact: Alicia Mullins, 301–492–3351).

This meeting will be Webcast live at the Web address—*www.nrc.gov.*

Week of April 16, 2012—Tentative

There are no meetings scheduled for the week of April 16, 2012.

Week of April 23, 2012—Tentative

Tuesday, April 24, 2012

9 a.m. Briefing on Part 35 Medical Events Definitions—Permanent Implant Brachytherapy (Public Meeting); (Contact: Michael Fuller, 301–415–0520).

This meeting will be Webcast live at the Web address—*www.nrc.gov.*

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: March 15, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–6796 Filed 3–16–12; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29981; File No. 812–14007]

Capital Research and Management Company, et al.; Notice of Application

March 14, 2012.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940, as amended (the ''Act''), for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: American Funds Insurance Series (''AFIS''), Capital Research and Management Company (''CRMC''), and American Funds Distributors, Inc. (''AFD'').

DATES: *Filing Dates* The application was filed on February 13, 2012, and amended on March 5, 2012 and March 9, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 9, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: CRMC, 333 South Hope Street, Los Angeles, California 90071.

FOR FURTHER INFORMATION CONTACT: Peter Allen, Law Clerk, at (202) 551–6986, Mark N. Zaruba, Attorney-Advisor, at (202) 551–6878, or Dalia Osman Blass, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. AFIS is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. CRMC, a Delaware corporation, is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). CRMC or another Adviser (as defined below) will serve as investment adviser to each Fund of Funds (as defined below). AFD is a California corporation, registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), and will serve as the distributor for the initial Fund of Funds.

2. Applicants request the exemption to the extent necessary to permit any existing or future series of AFIS and any other existing or future registered open-end investment company or series thereof that (i) is advised by CRMC or any person controlling, controlled by or under common control with CRMC (any such adviser or CRMC, an ''Adviser''); [1] (ii) invests in other registered open-end investment companies (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act; and (iii) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each a ''Fund of Funds''), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[2] Applicants also request that the order exempt AFD and any entity that now or in the future acts as principal underwriter, or broker or dealer if registered under the Exchange Act with respect to the transactions described in the application.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Funds of Funds will comply with rule 12d1–2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

6. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of directors will review the advisory fees charged by the Fund of Funds' Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6613 Filed 3–19–12; 8:45 am]

BILLING CODE 8011–01–P

[1] Any other Adviser will also be registered under the Advisers Act.

[2] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the requested order will do so only in accordance with the terms and condition in the application.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29980; File No. 812–13955]

Columbia Funds Master Investment Trust, LLC, et al.; Notice of Application

March 13, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Columbia Funds Master Investment Trust, LLC; Columbia Funds Series Trust; Columbia Funds Series Trust I; Columbia Funds Series Trust II; Columbia Funds Variable Insurance Trust; Columbia Funds Variable Insurance Trust I; Columbia Funds Variable Series Trust II (each a ''Trust'' and collectively, the ''Trusts''); Columbia Management Investment Advisers, LLC (''Columbia Management''); and Columbia Management Investment Distributors, Inc. (the ''Distributor'').

FILING DATES: The application was filed on September 8, 2011, and amended on February 28, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 9, 2012 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: 225 Franklin Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. The Trusts are organized as Delaware statutory trusts, Delaware limited liability companies or Massachusetts business trusts, and are registered with the Commission as open-end management investment companies. The existing Funds of Funds (as defined below) are series of certain of the Trusts, each of which operates as a ''fund of funds.'' Columbia Management, a Minnesota limited liability company, is an indirect wholly owned subsidiary of Ameriprise Financial, Inc. and serves as investment adviser to the existing Funds of Funds and the Underlying Funds (as defined below) in which those Funds of Funds invest. Columbia Management is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (''Advisers Act''). The Distributor, a Delaware corporation, is an affiliate of Columbia Management and a broker-dealer registered under the Securities Exchange Act of 1934, as amended (''Exchange Act''), that serves as distributor for the existing Funds of Funds and the Underlying Funds.

2. Applicants request the exemption to the extent necessary to permit any existing or future registered open-end management investment company or series thereof that (i) is advised by Columbia Management or an investment adviser controlling, controlled by or under common control with Columbia Management (each, including Columbia Management, an ''Adviser'' and collectively, the ''Advisers'');[1] (ii) is part of the same ''group of investment companies'' as defined in section 12(d)(1)(G) of the Act, as the Trusts; (iii) invests in shares of other registered open-end investment companies (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act; and (iv) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each a ''Fund of Funds'') to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[2] Applicants also request that the order exempt any entity that now or in the future acts as principal underwriter or broker or dealer (if registered under the Exchange Act), with respect to the transactions described in the application.

3. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of trustees will review the advisory fees charged by the Fund of Funds' Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis:

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company and companies controlled by it to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) the acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section

[1] Any other Adviser will also be registered under the Advisers Act.

[2] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Funds of Funds will comply with rule 12d1–2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition:

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6612 Filed 3–19–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 22, 2012 at 1 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, March 22, 2012 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: March 15, 2012.

Lynn Powalski,

Deputy Secretary.

[FR Doc. 2012–6766 Filed 3–16–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66584; File No. SR–Phlx–2012–26]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Equity Options Fees

March 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 29, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section II of the Exchange's Fee Schedule entitled ''Equity Options Fees.''

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section II [3] of the Exchange's Fee Schedule to: (i) Amend non-Penny Pilot [4] option transaction fees for electronically-delivered Broker-Dealer and Firm orders; (ii) amend rebates paid for electronically-delivered Customer orders; and (iii) increase Market Maker [5] and Firm fees on certain electronically-delivered Customer transactions, in order to attract additional order flow to the Exchange and subsidize the cost of offering rebates to increase market participation through increased liquidity.

The Exchange currently does not distinguish between non-electronically and electronically-delivered [6] Firm transactions in Section II of the Fee Schedule. The Exchange, however, currently does categorize its Market Maker and Broker-Dealer fees by non-electronically and electronically-delivered orders. At this time, the Exchange proposes to create separate fees for non-electronically versus electronically-delivered Firm orders in further recognition of the distinction between the floor order entry model and the electronic model and also in response to competition along the same lines. The Exchange currently assesses the following fees for Firms in Section II of the Fee Schedule:

	Firm
Options Transaction Charge (Penny Pilot)	.25
Options Transaction Charge (non-Penny Pilot)	.25
Options Surcharge in RUT, MNX and NDX	.15
Options Surcharge in BKX	.10
FLEX Options	.10
Cabinet Options	.10

The Exchange proposes to assess the same fees for non-electronically and electronically-delivered Firm orders with the exception of the options transaction charge for a non-Penny Pilot which is electronically-delivered. The Exchange proposes to amend the current $.25 per contract transaction Firm fee for a non-Penny Pilot, electronically-delivered options order to $.40 per contract. Section II of the Fee Schedule would be amended to reflect the Firm transaction charges as follows:

%	Firm	
	Electronic	Non-electronic
Options Transaction Charge (Penny Pilot)	.25	.25
Options Transaction Charge (non-Penny Pilot)	.40	.25
Options Surcharge in RUT, MNX and NDX	.15	.15
Options Surcharge in BKX	.10	.10
FLEX Options	.10	.10
Cabinet Options	.10	.10

The Exchange also proposes to increase the current Broker-Dealer electronically-delivered, non-Penny Pilot options transaction fee from $0.45 per contract to $.50 per contract. The Exchange believes that increasing both the Firm and Broker-Dealer transaction charges for electronically-delivered, non-Penny Pilot Options will allow the Exchange to compete more effectively by subsidizing rebates offered on electronically-delivered Customer orders.

The Exchange also proposes to amend the current rebate applicable to Customer Complex Orders [7] that are electronically-delivered. The Exchange currently pays a rebate of $0.05 per contract for Customer Complex Orders that are electronically-delivered. The Exchange proposes to increase this rebate to $0.07 per contract and apply the rebate to all Customer orders (simple and Complex Orders) that are electronically-delivered provided the member has an average daily volume of 50,000 contracts or greater in a given month. PIXL Orders [8] and QCC Orders [9] would be ineligible for the rebate and excluded from the calculation of the 50,000 contracts. The Exchange believes that this rebate will encourage members to transact a greater number of orders and attract Customer order flow.

Finally, the Exchange proposes to amend the current fees which are

[3] Section II of the Fee Schedule includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are Multiply Listed.

[4] Non-Penny refers to options classes not in the Penny Pilot. The Penny Pilot was established in January 2007; and in October 2009, it was expanded and extended through June 30, 2012. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR–Phlx–2009–91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR–Phlx–2009–94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR–Phlx–2010–12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010) (SR–Phlx–2010–65) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62616 (July 30, 2010), 75 FR 47664 (August 6, 2010) (SR–Phlx–2010–103) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 63395 (November 30, 2010), 75 FR 76062 (December 7, 2010) (SR–Phlx–2010–167) (notice of filing and immediate effectiveness extending the Penny Pilot); and 65976 (December 15, 2011), 76 FR 79247 (December 21, 2011) (SR–Phlx–2011–172) (notice of filing and immediate effectiveness extending the Penny Pilot). *See also* Exchange Rule 1034.

[5] The term ''Market Maker'' is utilized herein to describe fees and rebates applicable to Specialists, Registered Options Traders, Streaming Quote Traders and Remote Streaming Quote Traders.

[6] A transaction resulting from an order that was electronically delivered utilizes Phlx XL II. *See* Exchange Rules 1014 and 1080. Electronically delivered orders do not include orders delivered through the Floor Broker Management System. A transaction resulting from an order that is non-electronically-delivered is represented on the trading floor by a floor broker. *See* Exchange Rule 1063. All orders will be either electronically or non-electronically delivered.

[7] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[8] A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (''Initiating Order'') provided it submits the PIXL order for electronic execution into the PIXL Auction (''Auction'') pursuant to Rule 1080. *See* Exchange Rule 1080(n).

[9] A QCC Order is comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. *See* Rule 1080(o). *See also* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (''QCTs'') that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of Regulation NMS). Floor QCC Orders are not electronically submitted. A Floor QCC Order must: (i) be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (''NBBO''); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. *See* Rule 1064(e). *See also* Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR–Phlx–2011–56).

assessed on Market Makers and Firms that are on the contra-side of an electronically-delivered and executed Customer Complex Order. Currently, the Exchange assesses Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer Complex Order; and (ii) have reached the Monthly Market Maker Cap,[10] a $0.05 per contract fee. The Exchange is proposing to increase the fee assessed to Market Makers from $0.05 to $0.07 per contract and assess the fee on orders that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Market Maker Cap, excluding PIXL Orders. The increased fee would therefore apply to all Customer orders (both simple and Complex Orders). The Exchange is proposing the same amendment to the Monthly Firm Fee Cap.[11] Currently, the Exchange assesses Firms that (i) are on the contra-side of an electronically-delivered and executed Customer Complex Order; and (ii) have reached the Monthly Firm Fee Cap, a $0.05 per contract fee. The Exchange likewise proposes to assess Firms that (i) are on the contra-side of an electronically-delivered and executed Customer order (both simple and Complex Orders); and (ii) have reached the Monthly Firm Fee Cap, an increased fee of $0.07 per contract, excluding PIXL Orders.[12] The Exchange believes that these increased fees assessed on Market Makers and Firms will allow the Exchange to continue to subsidize the rebates it offers to attract greater liquidity and Customer order flow to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(4) of the Act[14] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities. The Exchange also believes that it is an equitable allocation of reasonable rebates among Exchange members and other persons using its facilities.

The Exchange believes that its proposal to amend both the Firm and Broker-Dealer transaction charges for electronically-delivered, non-Penny Pilot Options is reasonable because these fees are within the range of fees assessed by other Exchanges. NYSE Arca, Inc. (''NYSE Arca'') assesses Firms and Broker-Dealers a $0.50 per contract fee for electronic orders.[15] The Exchange also proposes to assess Firms and Broker-Dealers these transaction fees in order to subsidize the rebates the Exchange pays members to incentivize liquidity.

The Exchange believes that its proposal to assess Firms and Broker-Dealers increased transaction fees for electronically-delivered, non-Penny Pilot Options is equitable and not unfairly discriminatory because the fees proposed for Firms and Broker-Dealers are within the range of fees assessed by the Exchange in Section I of the Fee Schedule.[16] Firms and Broker Dealers are assessed a $0.45 per contract Fee for Removing Liquidity when transacting a Single contra-side order in a Select Symbol.[17] In addition, these fees would be assessed uniformly to all Firms and Broker-Dealers. The Exchange also believes that it is equitable and not unfairly discriminatory to assess Market Makers transacting electronically-delivered, non-Penny Pilot Options a lower fee[18] as compared to Firms and Broker-Dealers because Market Makers have burdensome quoting obligations[19] to the market which do not apply to Firms and Broker-Dealers. Customers are not assessed a fee for transacting non-Penny Pilot Options. The Exchange believes that not assessing Customers a fee for electronically-delivered, non-Penny Pilot Options benefits all market participants, because of the increased liquidity such Customer order flow brings to the Exchange. Also, Professionals continue to be assessed a higher fee as compared to Customers in non-Penny Pilot Options. This fee is the same rate ($0.20 per contract) as the Professional fee for Penny Pilot Options.

The Exchange believes that its proposal to increase the current rebate paid for Customer Complex Orders from $0.05 to $0.07 per contract is reasonable because the Exchange is also expanding the rebate to apply to all Customer orders (both simple and Complex Orders), which are electronically-delivered.[20] The Exchange's proposal also limits the rebate to a member who has an average daily volume of 50,000 contracts or greater in a given month. The Exchange believes that this proposed rebate is reasonable because it seeks to incentivize members to transact a greater number of Customer orders, which in turn benefits all market participants because of the increased liquidity such orders bring to the market. Similar to current fees on the NASDAQ Options Market LLC (''NOM''), the Exchange is proposing to offer a rebate based on a certain volume criteria.[21] In particular, the Exchange believes the 50,000 contracts volume threshold is reasonable because the requirement to transact an average daily volume of at least 50,000 contracts or greater in a given month, should incentivize members to transact a greater number of orders on the Exchange to obtain the benefit of the rebate. The Exchange believes that the volume threshold should incentivize members to increase liquidity at the Exchange, thereby benefitting all market participants. Similar to this proposal, the Chicago Board Options Exchange Incorporated (''CBOE'') offers a volume incentive program. CBOE credits each Trading Permit Holder (''TPH'') a certain per contract amount based on the volume of customer contracts the TPH executes electronically at CBOE in multiply-listed option classes (excluding qualified contingent cross

[10] Market Makers are currently subject to a Monthly Market Maker Cap of $550,000. The trading activity of separate Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations.

[11] Firms are subject to a maximum fee of $75,000 (''Monthly Firm Fee Cap''). Firm equity option transaction fees and QCC Transaction Fees in the aggregate, for one billing month, may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, short stock interest and reversal and conversion strategy executions are excluded from the Monthly Firm Fee Cap. The Firm equity options transaction fees are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

[12] QCC Orders are assessed a $0.07 Service Fee today, which applies to every contract side of the QCC Order and Floor QCC Order once a Firm or Market Maker has reached the Monthly Firm Fee Cap or Monthly Market Maker Cap, respectively.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] *See* NYSE Arca's Fee Schedule.

[16] Section I of the Fee Schedule, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' applies to Select Symbols which are electronically traded. These Select Symbols are defined in Section I and are Multiply Listed, similar to the options in Section II of the Fee Schedule.

[17] *See* Section I of the Exchange's Fee Schedule.

[18] Market Makers are assessed a fee of $0.23 per contract for electronically-delivered, non-Penny Pilot Options.

[19] *See* Exchange Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[20] Today the rebate of $0.05 per contract is paid for a Customer Complex Order that is electronically-delivered.

[21] NOM currently has a tiered rebate with certain volume criteria for Customer orders in Penny Pilot Options. *See* Chapter XV, Section 2 entitled ''NASDAQ Options Market—Fees.''

trades).[22] The Exchange's proposal to exclude PIXL and QCC Orders from the rebate and volume threshold calculation is reasonable, equitable and not unfairly discriminatory because PIXL and QCC Orders have the opportunity to receive rebates today,[23] and the Exchange is paying the rebate uniformly to its members.

The Exchange believes that its proposal to offer a rebate of $0.07 per contract for Customer orders that are electronically-delivered, provided a member has an average daily volume of 50,000 contracts or greater in a given month, is equitable and not unfairly discriminatory because the Exchange is seeking to further incentivize members to send additional Customer order flow to the Exchange. Once the volume threshold is met, the Exchange would pay a $0.07 per contract rebate, on all applicable Customer orders, uniformly to members. The Exchange believes that by expanding the rebate to apply to all Customer orders, and not just Complex Orders, and also offering a higher rebate, provides members with an added incentive to successfully take advantage of the rebate by executing a greater number of orders at the Exchange to the benefit of all participants. In addition, the Exchange believes that its proposal to require members to transact an average daily volume of 50,000 contracts or greater in a given month to obtain the rebate is equitable and not unfairly discriminatory because the volume threshold should incentivize members to bring greater liquidity to the Exchange, thereby benefitting all market participants.

The Exchange believes that the proposed Firm and Market Maker fees of $0.07 per contract, when a Firm or Market Maker is on the contra-side of an electronically-delivered and executed Customer order and has reached the respective Monthly Firm Fee Cap or Monthly Market Maker Cap, are reasonable because the fees would continue to defray the cost of paying Customer rebates, which are offered in certain circumstances. Specifically, the Exchange's proposal to increase the fees applicable to Firms and Market Makers from $0.05 to $0.07 per contract and expand the applicable orders to all Customer orders, and not just Complex Orders, is reasonable because the Exchange desires to subsidize its proposal to increase the rebate on Customer orders from $0.05 to $0.07 per contract and apply the rebate to all Customer orders, provided a volume threshold is met. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to exclude PIXL Orders because those orders have their own fees and rebates and the Exchange does not believe that additional rebates are required with respect to PIXL Orders.[24] In addition, QCC Orders today pay a Service Fee of $0.07 per side in certain circumstances.[25] Also, the Exchange would uniformly assess the proposed fees on its members.

The Exchange believes that its proposal to assess increased fees of $0.07 per contract on Market Makers and Firms that have reached the respective cap and are on the contra-side of a Customer order is equitable and not unfairly discriminatory because the fees would only be assessed once the applicable cap is reached and would uniformly apply to all Market Makers and Firms that have reached the respective cap. Both Market Makers and Firms benefit from the liquidity which the proposed $0.07 per contract rebate on Customer orders brings to the Exchange, which rebate the proposed fees subsidize. In addition, the proposed fees would apply only in certain circumstances where the Market Maker or Firm is not otherwise subject to transaction fees (because the applicable cap has been reached) and specifically on the contra-side of a Customer order, which is electronically-delivered.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges and rebates it pays must remain competitive with fees and rebates charged/paid by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[26] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2012–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2012–26. This file number should be included on the subject line if email is used. To help the Commission process and review your

[22] *See* CBOE's Fees Schedule. CBOE offers a per contract credit ranging from $.00 to $.20 per contract based on a certain volume threshold which ranges from 0 to 375,001 plus customer contracts per day.

[23] *See* Sections II and IV(A) of the Exchange's Fee Schedule. A PIXL Order will receive the rebate for adding liquidity when executed against contra-side order(s) that respond to the PIXL auction broadcast message as well as when executed against contra-side quotes and unrelated orders on the PHLX book that arrived after the PIXL auction was initiated.

A rebate of $0.07 per contract is paid for all qualifying executed QCC Orders up to 1,000,000 contracts in a month, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend, merger or short stock interest strategy and executions subject to the Reversal and Conversion Cap (as defined in Section II). If a member exceeds 1,000,000 contracts in a month of qualifying executed QCC Orders, a $0.10 rebate will be paid on all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), in that month.

[24] *See* Section IV (A) of the Exchange's Fee Schedule.

[25] *See* Section II of the Exchange's Fee Schedule.

[26] 15 U.S.C. 78s(b)(3)(A)(ii).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2012–26 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6582 Filed 3–19–12; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66590; File No. SR–ISE–2012–12]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to API Fees

March 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 29, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its API or login fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE is proposing to amend its Schedule of Fees regarding the Exchange's API or login fees. ISE currently charges its Members a fee for each login that a Member uses for quoting or order entry, with a lesser charge for logins used for the limited purpose of ''listening'' to broadcast messages.[3] The Exchange currently has the following categories of authorized logins: (1) Quoting, order entry and listening (allowing the user to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters and pulling quotes); (2) order entry and listening (allowing the user to enter orders and perform all other miscellaneous functions, such as setting parameters and pulling quotes (but not quoting)); and (3) listening (allowing the user only to query the system and to respond to broadcast messages).[4] The Exchange notes that quoting, order entry and listening are functionalities available only to Exchange Market Makers, i.e., Primary Market Makers and Competitive Market Makers, while only order entry and listening are functionalities available to non-Market Makers, i.e., Electronic Access Members.

[3] *See* Exchange Act Release No. 53522 (March 20, 2006), 71 FR 14975 (March 24, 2006) (SR–ISE–2006–09).

[4] *Id.*

ISE Market Makers currently receive an allocation of 1.8 million quotes per day per user.[5] If a Market Maker submits more quotes than those allocated, i.e., 1.8 million quotes per day per user as measured on average in a single month, the Market Maker is charged for additional users depending upon the number of quotes submitted. Each month, the total number of quotes submitted by a Market Maker is divided by the number of trading days, resulting in the average quotes per day entered by that Market Maker. This number is then divided by 1.8 million and rounded up to the nearest whole number, resulting in an implied number of users based on quotes. Market Makers are charged on a monthly basis for the greater of a) the greatest number of users that logged into the system, or b) the number of implied users based on quotes.

ISE currently charges Market Makers a standardized fee of $1,000 per month for each quoting session of up to 1.8 million quotes per day, on average for a month, including for any incremental usage. For example, a Market Maker with 10 logins currently pays $10,000 in fees as long as it quotes on average 18 million quotes or less per day. If that Market Maker instead sends an average of 20 million quotes per day during a month, its fees would total $12,000 for a total of 12 sessions, with the extra 2 million quotes per day counting towards two additional sessions.

The Exchange now proposes to lower the quote allowance for each login session from 1.8 million quotes per day to 1.5 million quotes per day, including the quote allowance for each incremental login. The Exchange is not proposing any changes to the fee charged for each login session. The fee for each login session will remain at $1,000 per month. With this proposed rule change, ISE expects to raise revenue to offset the lower quoting volume at the Exchange.

The Exchange has designated this proposal to be operative on March 1, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the

[5] *See* Exchange Act Release No. 64269 (April 8, 2011), 76 FR 20752 (April 13, 2011) (SR–ISE–2011–21).

Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated Members will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms. In other words, the proposed rule change will treat similarly situated Members in the same manner by allocating the same quoting allowance to all Members. The Exchange further believes that its proposal to lower the quote allowance per each login is both equitable and reasonable as it will help the Exchange manage quote message traffic. The Exchange believes that Market Makers are generally quoting more efficiently on the Optimise trading platform and does not believe that lowering the quoting allowance will impact Market Makers adversely from conducting their activity on the Exchange. Further, the Exchange's proposal does not preclude Members from obtaining additional logins if they have a need beyond the quoting allowance allocated per each login.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[8] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–12 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6615 Filed 3–19–12; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66592; File No. SR–BX–2012–018]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the 100MB Connectivity Option and Fee

March 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2012, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate 100MB connectivity between the Exchange and co-located servers, as well as associated fees, as set forth in Exchange Rule 7034(b). The Exchange will implement the proposed change on April 1, 2012. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify Rule 7034(b) to eliminate 100MB connectivity between the Exchange and co-located servers, as well as associated fees.[3] The Exchange currently offers each co-located customer one 100MB connection to the Exchange at no charge; additional connections are available for a $50 one-time installation fee and a monthly fee of $100.[4] Due to the continuous growth of the size of consolidated and proprietary market data feeds, use of 100MB connectivity to the Exchange may result in high data transmission latencies, a loss of data packets, and a reduction in client service satisfaction. As a result, the Exchange proposes to eliminate the 100MB connection option to the Exchange. The proposal to eliminate the 100MB connection option will eliminate potential latencies and loss of data that could occur with lower bandwidths, issues that are potentially damaging to investors.[5]

Currently, there are three co-located customers that utilize 100MB connectivity to the Exchange. All three customers also have larger bandwidth connections to the Exchange. While these customers will need to assess the adequacy of their bandwidth and may need to make adjustments, the Exchange strongly believes that these changes will be beneficial to these customers because they will decrease the risk of latency and data loss. In addition, as the number of customers making use of 100MB connectivity to the Exchange dwindles, maintaining the option would require the Exchange to impose associated fixed costs on a smaller customer base, or upon customers that are not themselves using this legacy connectivity option. The Exchange believes that it is reasonable and equitable to avoid this result by eliminating the option and helping customers migrate to more suitable connections.

To provide all affected customers sufficient time to [sic] from their 100MB connections to larger bandwidths, the Exchange has proposed (in a separate filing) to waive installation fees for 10Gb and 40Gb connectivity until May 31, 2012.[6]

The Exchange also proposes to eliminate the word ''additional'' from the fee schedule in several instances to reflect the elimination of the 100MB connection that was previously offered at no charge.

2. Statutory Basis

The Exchange believes the proposal is consistent with the provisions of Section 6 of the Act[7] in general, and with the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

Removes Impediments and Perfects Mechanism of a Free and Open Market

The Exchange's proposal is designed to eliminate data transmission latencies and loss of data risks that are associated with 100MB connectivity, and thereby provide a more efficient mechanism for trading. Since the migration to a higher bandwidth option will reduce the potential disruption and consequently provide greater efficiency of trading in the marketplace, the effects of this proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system, which in turn will protect investors and the public interest.

Not Unfairly Discriminatory

The proposal to eliminate the 100MB connectivity option applies to all Exchange members that have voluntarily elected this service option. Currently, there are three co-located customers that utilize 100MB connectivity to the Exchange. All three clients also have larger bandwidth connections to the Exchange. While these customers will need to assess the adequacy of their bandwidth and may need to make adjustments, the Exchange strongly believes that these changes will be beneficial to these customers because they will decrease the risk of latency and data loss. In addition, as the number of customers making use of 100MB connectivity to the Exchange dwindles, maintaining the option would require the Exchange to impose associated fixed costs on a smaller customer base, or upon customers that are not themselves using this legacy connectivity option.

To assist co-located customers with migration to larger bandwidths, the Exchange has proposed (in a separate filing) to waive installation fees for 10Gb and 40Gb connectivity until May 31, 2012.[9] Given the ever-increasing size of market data, the Exchange decided to apply the waiver of installation fees only to the 10Gb and 40Gb connection instead of offering the waiver for the next available bandwidth, the 1Gb connection. This will provide the clients the opportunity to migrate to a bandwidth that will more efficiently sustain the client's business needs over a longer period of time. The co-located customers that currently have the 100MB connectivity to the Exchange have until March 31, 2012 to migrate from the 100MB connection to a larger bandwidth. Furthermore, eliminating the 100MB connectivity to the Exchange is consistent with the connections offered by other exchanges,[10] and the Exchange does not believe that it would be unfairly discriminatory to eliminate a connectivity option that is not routinely offered by other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in

[3] All co-location services are provided by NASDAQ Technology Services LLC and pursuant to agreements with the owner/operator of its data center.

[4] *See* Exchange Rule 7034(b), Connectivity to Nasdaq.

[5] The 100MB option that is being eliminated—which is used to connect co-located servers to the Exchange—should be contrasted with a recently introduced option for customers to establish 100MB connections between their co-located servers and select external locations. These external connections are generally combined with other bandwidth options and are not utilized to transmit the same volume of data as the 100MB connection between co-located services and the Exchange. For this reason, the Exchange believes that the same latency and data loss considerations that are prompting it to eliminate the 100MB connection to the Exchange do not apply to the 100MB connection to external locations.

[6] *See* SR–BX–2012–012 (submitted March 2, 2012). The Exchange is not proposing to waive fees for migrating to 1GB connectivity, since the Exchange is concerned that this bandwidth level will prove inadequate for most members in the near future. Accordingly, rather than creating a scenario in which customers face repeated concerns about the adequacy of their bandwidth, the Exchange believes that it is reasonable to use the fee waiver to encourage customers to move to connectivity options that are likely to be adequate for a more extended period.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] *See, supra* note 6.

[10] *See http://www.nyse.com/pdfs/NYSEArca_Equities_Fees.pdf,* page 13, for NYSE Equities, Inc. Fee Schedule where the bandwidth starts at 1Gb. *See also http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf,* page 9, for the International Securities Exchange Fee Schedule where the bandwidth also starts at 1Gb.

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the Exchange believes that eliminating the 100MB connectivity service option will not burden competition since the 100MB connectivity option is not routinely offered by other exchanges. In fact, requiring the Exchange to continue to offer this option would unfairly burden competition by requiring it to incur costs that are not typically incurred by any of its competitors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder.

The Exchange has asked that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii).[13] The Exchange represents that investors and the public interest are best served by waiving the pre-operative delay to minimize potential risks of market disruption associated with the use of lower bandwidth at a time of increasing data traffic. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–018 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6617 Filed 3–19–12; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66595; File No. SR–ISE–2012–11]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Telemarketing Rules

March 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rule 626 (Telephone Solicitation) to revise and add provisions that are substantially similar to Federal Trade Commission (''FTC'') rules that prohibit deceptive and other abusive telemarketing acts or practices.[3] The text of the proposed rule change is available on the Exchange's Web site at *http://www.ise.com,* at the principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change is substantially similar in all material respects to Financial Industry Regulatory Authority, Inc. (''FINRA'') Rule 3230 (Telemarketing), which the Commission recently approved. *See* Securities Exchange Act Release No. 66279 (Jan. 30, 2012), 77 FR 5611 (Feb. 3, 2012) (SR–FINRA–2011–59) (approval order of proposed rule change to adopt telemarketing rule). The proposed rule change amends the name of Rule 626 from *Telephone Solicitation* to *Telemarketing.*

office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—The Exchange proposes to amend Rule 626 (Telephone Solicitation), to revise and add provisions that are substantially similar to FTC rules that prohibit deceptive and other abusive telemarketing acts or practices. Rule 626 requires Members to, among other things, maintain do-not-call lists, limit the hours of telephone solicitation, and not use deceptive and abusive acts and practices in connection with telemarketing. The Commission directed ISE to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (''Prevention Act'').[4] The Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules [5] to prohibit deceptive and other abusive telemarketing acts or practices, unless the Commission determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets, or that existing federal securities laws or Commission rules already provide for such protection.[6]

In 1997, the Commission determined that telemarketing rules promulgated and expected to be promulgated by self-regulatory organizations, together with the other rules of the self-regulatory organizations, the federal securities laws and the Commission's rules thereunder, satisfied the requirements of the Prevention Act because, at the time, the applicable provisions of those laws and rules were substantially similar to the FTC's telemarketing rules.[7] Since 1997, the FTC has amended its telemarketing rules in light of changing telemarketing practices and technology.[8]

As mentioned above, the Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[9] In May 2011, Commission staff directed ISE to conduct a review of its telemarketing rule and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules.[10] Commission staff had concerns ''that the [self-regulatory organization] rules overall have not kept pace with the FTC's rules, and thus may no longer meet the standards of the [Prevention] Act.'' [11]

The proposed rule change, as directed by the Commission staff, amends and adopts provisions in Rule 626 that are substantially similar to the FTC's current rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.[12]

Telemarketing Restrictions

The proposed rule change amends the telemarketing restrictions in Rule 626(a) to provide that no Member or associated person [13] may make an outbound telephone call [14] to: (1) Any person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's locations; (2) any person that previously has stated that he or she does not wish to receive any outbound telephone calls made by or on behalf of the Member [15]; or (3) any person who has registered his or her telephone number on the FTC's national do-not-call registry.

The proposed rule change is substantially similar to the FTC's provisions regarding abusive telemarketing acts or practices.[16] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[17]

Caller Disclosures

The proposed rule change amends Rule 626(b) to delete the phrase ''for the purpose of telemarketing,'' which concept is included in the proposed definition of ''outbound telephone

[4] 15 U.S.C. 6101–6108.

[5] 16 CFR 310.1–.9. The FTC adopted these rules under the Prevention Act in 1995. *See* Federal Trade Commission, Telemarketing Sales Rule, 60 FR 43842 (Aug. 23, 1995).

[6] 15 U.S.C. 6102.

[7] *See Telemarketing and Consumer Fraud and Abuse Prevention Act; Determination that No Additional Rulemaking Required,* Securities Exchange Act Release No. 38480 (Apr. 7, 1997), 62 FR 18666 (Apr. 16, 1996). The Commission also determined that some provisions of the FTC's telemarketing rules related to areas already extensively regulated by existing securities laws or activities not applicable to securities transactions. *See id.*

[8] *See, e.g.,* Federal Trade Commission, *Telemarketing Sales Rule,* 73 FR 51164 (Aug. 29, 2008) (amendments to the Telemarketing Sales Rule relating to prerecorded messages and call abandonments); and Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) (amendments to the *Telemarketing Sales Rule* establishing requirements for sellers and telemarketers to participate in the national do-not-call registry).

[9] *See supra* note 6.

[10] *See* Letter from Robert W. Cook, Director, Division of Trading and Markets, Securities and Exchange Commission, to Gary Katz, President and Chief Executive Officer of International Securities Exchange, LLC (May 12, 2011).

[11] *Id.*

[12] The proposed rule change is also substantially similar to FINRA Rule 3230. *See supra* note 3.

[13] An ''associated person'' or ''person associated with a Member'' means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member. *See* Rule 100(a)(3).

[14] An ''outbound telephone call'' is a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A ''telemarketer'' is any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. A ''customer'' is any person who is or may be required to pay for goods or services through telemarketing. A ''donor'' means any person solicited to make a charitable contribution. A ''person'' is any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. ''Telemarketing'' means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call. *See* proposed Rule 626(n)(l1), (16), (17), (20), and (21); *see also* FINRA Rule 3230(m)(1l), (14), (16), (17), and (20); and 16 CFR 310.2(f), (1), (n), (v), (w), (cc), and (dd).

[15] This restriction was previously included under Rule 626(e). *See* the discussion below under *Member's Firm-Specific Do-Not-Call List.*

[16] *See* 16 CFR 310.4(b)(1)(iii)(A) and (B) and (c); *see also* FINRA Rule 3230(a). The proposed rule change also deletes language in Rule 626(a) regarding the purpose of an outbound telephone call and the definition of telemarketing, which are now included in the proposed definitions of those terms. *See* proposed Rule 626(n)(16) and (21) and *supra* note 14.

[17] *See* Federal Trade Commission, Telemarketing Sales Rule, 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, Telemarketing Sales Rule, 60 FR 43842 (Aug. 23, 1995) at 43855.

call.'' [18] The proposed rule change also provides that the telephone number that a caller provides to a person as the number at which the caller may be contacted may not be a 900 number or any other number for which charges exceed local or long-distance transmission charges.[19]

Exceptions

The proposed rule change amends Rule 626(a) to provide that the prohibition in paragraph (a)(1) [20] does not apply to outbound telephone calls by a Member or an associated person if:

(1) The Member has received that person's express prior written consent;

(2) The Member has an established business relationship [21] with the person; or

(3) the person is a broker or dealer.

This amendment deletes the exception related to existing customers and replaces it with the exception for proposed defined term ''established business relationships,'' the definition of which is substantially similar to the FTC's definition of that term.[22]

Member's Firm-Specific Do-Not-Call List

The proposed rule change reletters Rule 626(e) as 626(c) and provides that, each Member must make and maintain a centralized list of persons who have informed the Member or any of its associated persons that they do not wish to receive outbound telephone calls. The proposed rule change replaces the term ''solicitations'' with the proposed term ''outbound telephone calls,'' the definition of which is substantially similar to the FTC's definition of that term.[23] The proposed rule change also deletes the prohibition on making outbound telephone calls to persons on the Member's firm-specific do-not-call list and moves this prohibition to proposed Rule 626(a)(2), as described above.

Proposed Rule 626(c) adopts procedures that Members must institute to comply with Rule 626(a) and (b) prior to engaging in telemarketing. These procedures must meet the following minimum standards:

(1) Members must have a written policy for maintaining their firm-specific do-not-call lists.

(2) Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the Member's firm-specific do-not-call list.

(3) If a Member receives a request from a person not to receive calls from that Member, the Member must record the request and place the person's name, if provided, and telephone number on its firm-specific do-not-call list at the time the request is made.[24]

(4) Members or associated persons making an outbound telephone call must make the caller disclosures set forth in Rule 626(b).

(5) In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the Member making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the call and the product being advertised.

(6) A Member making outbound telephone calls must maintain a record of a person's request not to receive further calls.

Inclusion of this requirement to adopt these procedures will not create any new obligations on Members, as they are already subject to identical provisions under FCC telemarketing regulations.[25]

Do-Not-Call Safe Harbors

Proposed Rule 626(d) provides for certain exceptions to the telemarketing restrictions set forth in proposed Rule 626(a)(3), which prohibits outbound telephone calls to persons on the FTC's national do-not-call registry.

First, proposed Rule 626(d)(1) provides that a Member or associated person making outbound telephone calls will not be liable for violating proposed Rule 626(a)(3) if:

(1) The Member has an established business relationship with the called person; however, a person's request to be placed on the Member's firm-specific do-not-call list terminates the established business relationship exception to the national do-not-call registry provision for that Member even if the person continues to do business with the Member;

(2) The Member has obtained the person's prior express written consent, which must be clearly evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act [26]) between the person and the Member that states that the person agrees to be contacted by the Member and includes the telephone number to which the calls may be placed; or

(3) The Member or associated person making the call has a personal relationship [27] with the called person.

The proposed rule change is substantially similar to the FTC's provision regarding an exception to the prohibition on making outbound telephone calls to persons on the FTC's Do-not-call registry.[28] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[29]

Second, proposed Rule 626(d)(2) provides that a Member or associated

[18] *See* proposed Rule 626(n)(16) and *supra* note 14.

[19] *See* proposed Rule 626(b); *see also* FINRA Rule 3230(d)(4). The proposed rule change is substantially similar to the FCC regulations regarding call disclosures. *See* 47 CFR 64.1200(d)(4).

[20] The proposed rule change amends Rule 626(a) to provide that the exception in that paragraph will apply only to the prohibition in proposed paragraph (a)(1) and will no longer apply to the requirement in paragraph (b) regarding caller disclosures. The Exchange believes that even if a Member satisfies the exception in paragraph (a), the Member should still make the caller disclosures required by paragraph (b) to the called person to ensure that the called person receives sufficient information regarding the purpose of the call.

[21] An ''established business relationship'' is a relationship between a Member and a person if (i) the person has made a financial transaction or has a security position, a money balance, or account activity with the Member or at a clearing firm that provides clearing services to the Member within the 18 months immediately preceding the date of an outbound telephone call; (b) the Member is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or (c) the person has contacted the Member to inquire about a product or service offered by the Member within the three months immediately preceding the date of an outbound telephone call. A person's established business relationship with a Member does not extend to the Member's affiliated entities unless the person would reasonably expect them to be included. Similar, a person's established business relationship with a Member's affiliate does not extend to the Member unless the person would reasonably expect the Member to be included. The term ''account activity'' includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the Member. The term ''broker-dealer of record'' refers to the broker or dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer. *See* proposed Rule 626(n)(1), (4), and (12); *see also* 16 CFR 310.2(o) and FINRA Rule 3230(m)(1), (4), and (12).

[22] *See id.; see also* FINRA Rule 3230(a).

[23] *See* 16 CFR 310.4(b)(1)(iii)(A) and *supra* note 14; *see also* FINRA Rule 3230(a)(2).

[24] Members must honor a person's do-not-call request within a reasonable time from the date the request is made, which may not exceed 30 days from the date of the request. If these requests are recorded or maintained by a party other than the Member on whose behalf the outbound telephone call is made, the Member on whose behalf the outbound telephone call is made will still be liable for any failures to honor the do-not-call request.

[25] *See* 47 CFR 64.1200(d); *see also* FINRA Rule 3230(d).

[26] 15 U.S.C. 7001 *et seq.*

[27] The term ''personal relationship'' means any family member, friend, or acquaintance of the person making an outbound telephone call. *See* proposed Rule 626(n)(18); *see also* FINRA Rule 3230(m)(18).

[28] *See* 16 CFR 3l0.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(b).

[29] *See* Federal Trade Commission, Telemarketing Sales Rule, 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, Telemarketing Sales Rule, 60 FR 43842 (Aug. 23, 1995) at 43854.

person making outbound telephone calls will not be liable for violating proposed Rule 626(a)(3) if the Member or associated person demonstrates that the violation is the result of an error and that as part of the Member's routine business practice:

(l) The Member has established and implemented written procedures to comply with Rule 626(a) and (b);

(2) The Member has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the preceding clause;

(3) The Member has maintained and recorded a list of telephone numbers that it may not contact in compliance with Rule 626(c); and

(4) The Member uses a process to prevent outbound telephone calls to any telephone number on the Member's firm-specific do-not-call list or the national do-not-call registry, employing a version of the national do-not-call registry obtained from the FTC no more than 31 days prior to the date any call is made, and maintains records documenting this process.

The proposed rule change is substantially similar to the FTC's safe harbor to the prohibition on making outbound telephone calls to persons on the FTC's national do-not-call registry.[30] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[31]

Wireless Communications

Proposed Rule 626(e) clarifies that the provisions set forth in Rule 626 are applicable to Members and associated persons making outbound telephone calls to wireless telephone numbers.[32]

Outsourcing Telemarketing

Proposed Rule 626(f) states that if a Member uses another entity to perform telemarketing services on its behalf, the Member remains responsible for ensuring compliance with Rule 626. The proposed rule change also provides that an entity or person to which a Member outsources its telemarketing services must be appropriately registered or licensed, where required.[33]

Billing Information

The proposed rule change reletters Rule 626(f) as Rule 626(g) and provides that, for any telemarketing transaction, no Member or associated person may submit billing information[34] for payment without the express informed consent of the customer. Proposed Rule 626(g) requires that each Member or associated person must obtain the express informed consent of the person to be charged and to be charged using the identified account.

If the telemarketing transaction involves preacquired account information[35] and a free-to-pay conversion[36] feature, the Member or associated person must:

(1) Obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number; and

(3) Make and maintain an audio recording of the entire telemarketing transaction.

For any other telemarketing transaction involving preacquired account information, the Member or associated person must:

(1) Identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number.

The proposed rule change is substantially similar to the FTC's provision regarding the submission of billing information.[37] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[38]

Caller Identification Information

Proposed Rule 626(h) provides that Members that engage in telemarketing must transmit caller identification information[39] and are explicitly prohibited from blocking caller identification information. The telephone number provided must permit any person to make a do-not-call request during normal business hours. These provisions are similar to the caller identification provision in the FTC rules.[40] Inclusion of these caller identification provisions in this proposed rule change will not create any new obligations on Members, as they are already subject to identical provisions under FCC telemarketing regulations.[41]

Unencrypted Consumer Account Numbers

Proposed Rule 626(i) prohibits a Member or associated person from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The proposed rule change is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.[42] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[43] Additionally, the proposed rule change defines ''unencrypted'' as not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The proposed definition is substantially similar to the view taken by the FTC.[44]

Abandoned Calls

Proposed Rule 626(j) prohibits a Member or associated person from abandoning[45]any outbound telephone call. The abandoned calls prohibition is subject to a ''safe harbor'' under proposed Rule 626(j)(2) that requires a Member or associated person:

(1) To employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive

[30] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(c).

[31] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[32] *See also* FINRA Rule 3230(e).

[33] *See also* FINRA Rule 3230(f).

[34] The term ''billing information'' means any data that enables any person to access a customer's or donor's account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. *See* proposed Rule 626(n)(3).

[35] The term ''preacquired account information'' means any information that enables a Member or associated person to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. *See* proposed Rule 626(n)(19).

[36] The term ''free-to-pay conversion'' means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. *See* proposed Rule 626(n)(13).

[37] *See* 16 CFR 310.4(a)(7); *see also* FINRA Rule 3230(i).

[38] *See* Federal Trade Commission, Telemarketing Sales Rule, 68 FR 4580 (Jan. 29, 2003) at 4616.

[39] Caller identification information includes the telephone number and, when made available by the Member's telephone carrier, the name of the Member.

[40] *See* 16 CFR 310.4(a)(8); *see also* FINRA Rule 3230(g).

[41] *See* 47 CFR 64.1601 (e).

[42] *See* 16 CFR 310.4(a)(6); *see also* FINRA Rule 3230(h).

[43] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4615.

[44] *See id.* at 4616.

[45] An outbound telephone call is ''abandoned'' if the called person answers it and the call is not connected to a Member or associated person within two seconds of the called person's completed greeting.

30-day period or portion thereof that the campaign continues;

(2) For each outbound telephone call placed, to allow the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(3) Whenever a Member or associated person is not available to speak with the person answering the outbound telephone call within two seconds after the person's completed greeting, promptly to play a prerecorded message stating the name and telephone number of the Member or associated person on whose behalf the call was placed; and

(4) To maintain records documenting compliance with the ''safe harbor.'' The proposed rule change is substantially similar to the FTC's provisions regarding abandoned calls.[46] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[47]

Prerecorded Messages

Proposed Rule 626(k) prohibits a Member or associated person from initiating any outbound telephone call that delivers a prerecorded message without a person's express written agreement[48] to receive such calls. The proposed rule change also requires that all prerecorded outbound telephone calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the ''safe harbor'' for abandoned calls under proposed Rule 626(j)(2). The proposed rule change is substantially similar to the FTC's provisions regarding prerecorded messages.[49] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[50]

Credit Card Laundering

Proposed Rule 626(m) prohibits credit card laundering, the practice of depositing into the credit card system[51] a sales draft that is not the result of a credit card transaction between the cardholder[52] and the Member. Except as expressly permitted, the proposed rule change prohibits a Member or associated person from:

(1) Presenting to or depositing into the credit card system for payment, a credit card sales draft[53] generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the Member;

(2) Employing, soliciting, or otherwise causing a merchant,[54] or an employee, representative or agent of the merchant to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the Member; or

(3) Obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement[55] or the applicable credit card system.

The proposed rule change is substantially similar to the FTC's provision regarding credit card laundering.[56] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[57]

Definitions

Proposed Rule 626(n) adopts the following definitions, which are substantially similar to the FTC's definitions of these terms: ''acquirer,'' ''billing information,'' ''caller identification service,'' ''cardholder,'' ''charitable contribution,'' ''credit,'' ''credit card,'' ''credit card sales draft,'' ''credit card system,'' ''customer,'' ''donor,'' ''established business relationship,'' ''free-to-pay conversion,'' ''merchant,'' ''merchant agreement,'' ''outbound telephone call,'' ''person,'' ''preacquired account information,'' ''telemarketer,'' and ''telemarketing.[58]'' The FTC provided a discussion of each definition when they were adopted pursuant to the Prevention Act.[59]

State and Federal Laws

The proposed rule change amends Rule 626, Interpretation and Policy .01[60] to remind Members and associated persons that engage in telemarketing that they also are subject to the requirements of relevant state and federal laws and rules, including the Prevention Act, the TCPA,[61] and the rules of the FCC relating to telemarketing practices and the rights of telephone consumers.[62]

Announcement in Regulatory Circular

The Exchange will announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 90 days following the effective date. The implementation date will be no later

[46] *See* 16 CFR 310.4(b)(1)(iv) and (b)(4); *see also* FINRA Rule 3230(j).

[47] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4641.

[48] The express written agreement must: (a) have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the Member to place prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the Member; and (d) include the person's telephone number and signature (which may be obtained electronically under the E–Sign Act).

[49] *See* 16 CFR 310.4(b)(1)(v); *see also* FINRA Rule 3230(k).

[50] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 73 FR 51164 (Aug. 29, 2008) at 51165.

[51] The term ''credit card system'' means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term ''credit card'' means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. The term ''credit'' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. *See* proposed Rule 626(n)(7), (8), and (10).

[52] The term ''cardholder'' means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. *See* proposed Rule 626(n)(6).

[53] The term ''credit card sales draft'' means any record or evidence of a credit card transaction. *See* proposed Rule 626(n)(9).

[54] The term ''merchant'' means a person who is authorized under written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. The term ''acquirer'' means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. A ''charitable contribution'' means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund. *See* proposed Rule 626(n)(2) and (14).

[55] The term ''merchant agreement'' means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or charitable contribution. *See* proposed Rule 626(n)(15).

[56] *See* 16 CFR 3 10.3(c); *see also* FINRA Rule 3230(1).

[57] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43852.

[58] *See* proposed Rule 626(n)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), (20), and (21); and 16 CFR 310.2(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (v), (w), (x), (cc), and (dd); *see also* FINRA Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20). The proposed rule change also adopts definitions of ''account activity,'' ''broker-dealer of record,'' and ''personal relationship'' that are substantially similar to FINRA's definitions of these terms. *See* proposed Rule 626(n)(1), (4), (14) and (18) and FINRA Rule 3230(m)(1), (4), (14) and (18); *see also* 47 CFR 64.1200(t)(14) (FCC's definition of ''personal relationship'').

[59] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43843; and Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (Jan. 29, 2003) at 4587.

[60] *See also* FINRA Rule 3230, Supplementary Material .01, *Compliance with Other Requirements.*

[61] *See* 47 U.S.C. 227.

[62] *See* 47 CFR 64.1200.

than 180 days following the effective date.

Basis—The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[63] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[64] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change will prevent fraudulent and manipulative acts and protect investors and the public interest by continuing to prohibit Members from engaging in deceptive and other abusive telemarketing acts or practices. Additionally, the proposed rule change removes impediments to and perfects the mechanism for a free and open market and a national market system, because it provides consistency among telemarketing rules of national securities exchanges and FINRA, therefore making it easier for investors to comply with these rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[65] of the Act and Rule 19b–4(f)(6)[66] thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including the proposed rule change, consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–ISE–2012–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–ISE–2012–11 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6619 Filed 3–19–12; 8:45 am]

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[63] 15 U.S.C. 78f(b).

[64] 15 U.S.C. 78f(b)(5).

[65] 15 U.S.C. 78s(b)(3)(A).

[66] 17 CFR 240.19b–4(f)(6).

[67] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66597; File No. SR–ISE–2012–17]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Transaction Fees

March 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend certain transaction fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction charges and credits to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in a number of options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees are applicable to regular and complex orders executed in the Select Symbols. The maker/taker fees for complex orders in the Select Symbols also apply to all symbols that are in the Penny Pilot program.[4] The Exchange also currently assesses maker/taker fees for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (Non-Select Penny Pilot Symbols)[5] and for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[6]

For complex orders in the Select Symbols, the Exchange currently charges a ''taker'' fee of: (i) $0.32 per contract for ISE Market Maker,[7] Market Maker Plus,[8] Firm Proprietary and Customer (Professional)[9] orders; and (ii) $0.36 per contract for Non-ISE Market Maker[10] orders. Priority Customer[11] orders are not charged a ''taker'' fee for complex orders in the Select Symbols. For complex orders in these same symbols, the Exchange currently charges a ''maker'' fee of: (i) $0.10 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.20 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a ''maker'' fee for complex orders in these symbols.

For complex orders in the Non-Select Penny Pilot Symbols, the Exchange currently charges a ''taker'' fee of: (i) $0.30 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.35 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a ''taker'' fee for complex orders in the Non-Select Penny Pilot Symbols. For complex orders in these same symbols, the Exchange currently charges a ''maker'' fee of: (i) $0.10 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.20 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a ''maker'' fee for complex orders in these symbols.

For complex orders in the Non-Penny Pilot Symbols, the Exchange currently charges a ''taker'' fee of: (i) $0.60 per contract for ISE Market Maker, Firm Proprietary and Customer (Professional) orders; and (ii) $0.65 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a ''taker'' fee for complex orders in the Non-Penny Pilot Symbols. For complex orders in these same symbols, the Exchange currently charges a ''maker'' fee of $0.10 per contract for ISE Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) orders. Priority Customer orders are not charged a ''maker'' fee for complex orders in these symbols.

The Exchange now proposes to increase the ''taker'' fee for complex orders in the Select Symbols and in the Non-Select Penny Pilot Symbols to (i) $0.34 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.38 for Non-ISE Market Maker orders. With this proposed fee change, the Exchange seeks to standardize the ''taker'' fee charged for complex orders in the Select Symbols and in the Non-Select Penny Pilot Symbols. The Exchange also proposes to increase the ''taker'' fee for complex orders in the Non-Penny Pilot Symbols to (i) $0.70 per contract for Market Maker, Firm Proprietary and Customer (Professional) orders; and (ii) $0.75 per contract for Non-ISE Market Maker orders.

Additionally, ISE Market Makers who remove liquidity from the complex order book by trading with orders that are preferenced to them are currently charged as follows: (i) In the Select Symbols, $0.30 per contract; (ii) in the Non-Select Penny Pilot Symbols, $0.28 per contract; and (iii) in the Non-Penny Pilot Symbols, $0.58 per contract. With the proposed increase to the ''taker'' fees for complex orders in the Select Symbols, the Non-Select Penny Pilot Symbols and the Non-Penny Pilot Symbols noted above, the Exchange also proposes to increase the fee charged to ISE Market Makers who remove liquidity in these symbols as follows: (i) To $0.32 per contract in the Select Symbols and in the Non-Select Penny Pilot Symbols (thereby, once again, standardizing the fee charged to ISE Market Makers who remove liquidity from the complex order book by trading with orders that are preferenced to them in both the Select Symbols and the Non-Select Penny Pilot Symbols); and (ii) to $0.68 per contract in the Non-Penny Pilot Symbols.

For responses to special orders in the Non-Penny Pilot Symbols,[12] ISE

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] *See* Exchange Act Release Nos. 65021 (August 3, 2011), 76 FR 48933 (August 9, 2011) (SR–ISE–2011–45); and 65550 (October 13, 2011), 76 FR 64984 (October 19, 2011) (SR–ISE–2011–65).

[5] *See* Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72).

[6] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); and 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06).

[7] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[8] A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics during that month. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's stated criteria.

[9] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[10] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (''Exchange Act''), registered in the same options class on another options exchange.

[11] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[12] A response to a special order is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order

currently charges $0.60 per contract for Customer (Professional), Firm Proprietary and ISE Market Maker orders. For Non-ISE Market Maker orders, this fee is currently $0.65 per contract. The Exchange now proposes to increase the fee for responses to special orders in the Non-Penny Pilot Symbols to $0.70 per contract for Customer (Professional Orders), Firm Proprietary and ISE Market Maker orders, and to $0.75 per contract for Non-ISE Market Maker orders.

The Exchange notes that it currently provides rebates that are applicable to complex orders in the Select Symbols, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols. The Exchange is not proposing any changes to these rebates in this filing.[13]

With this proposed rule change, the Exchange also seeks to increase the ''taker'' fee for certain customer orders that remove liquidity in the Select Symbols. The Exchange currently charges a ''taker'' fee of $0.15 per contract for regular, or non-complex, Priority Customer orders in the Select Symbols, regardless of size. The Exchange now proposes to increase the ''taker'' fee for regular, or non-complex, Priority Customer orders in the Select Symbols, regardless of size, from $0.15 per contract to $0.20 per contract.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act[14] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act[15] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to interact with and respond to certain types of orders.

The Exchange believes that its proposal to assess a $0.34 per contract ''taker'' fee for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders in the Select Symbols and in the Non-Select Penny Pilot Symbols that are subject to the Exchange's maker/taker fees is reasonable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes and in some cases, is lower that the fees assessed by other exchanges. For example, NASDAQ OMX PHLX, Inc. (''PHLX'') recently announced a proposed fee increase to $0.37 per contract for removing liquidity in complex orders for Specialist orders and to $0.38 per contract for Firm and Professional orders.[16] Therefore, while ISE is proposing a fee increase for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders, the resulting fee remains lower than the fee proposed by PHLX for similar orders. ISE's proposed increase for Non-ISE Market Maker orders to $0.38 per contract will result in both exchanges charging a similar rate for these orders.[17]

The Exchange further believes it is reasonable and equitable to charge ISE Market Maker, Firm Proprietary and Customer (Professional) orders a ''taker'' fee of $0.70 per contract ($0.75 per contract for Non-ISE Market Maker orders) for complex orders in the Non-Penny Pilot Symbols because the Exchange is seeking to recoup the cost associated with paying a rebate of $0.50 per contract to Priority Customers. The Exchange believes it is reasonable and equitable to charge ISE Market Maker, Firm Proprietary and Customer (Professional) orders a fee of $0.70 per contract ($0.75 per contract for Non-ISE Market Maker orders) when such members are responding to special orders because a response to a special order is akin to taking liquidity, thus the Exchange is proposing to [sic] an identical fee for taking liquidity in the Non-Penny Pilot Symbols. The Exchange has historically maintained a differential in the fees it charges ISE Market Makers from those it charges to Non-ISE Market Makers. The Exchange believes it is reasonable and equitable to treat these two groups of market participants differently because each has different commitments and obligations to the Exchange. ISE Market Makers, in particular, have quoting obligations and pay the Exchange non-transaction fees. Non-ISE Market Makers do not have any such obligations or financial commitments.

The Exchange believes that it is reasonable and equitable to provide a two cent discount to ISE Market Makers on preferenced orders as an incentive for them to quote in the Complex Order Book. The Exchange notes that PHLX currently provides a similar two cent discount. Accordingly, ISE Market Makers who remove liquidity in the Select Symbols and in the Non-Select Penny Pilot Symbols from the Complex Order Book will be charged $0.32 per contract when trading with orders that are preferenced to them. ISE Market Makers who remove liquidity in the Non-Penny Pilot Symbols from the Complex Order Book will be charged $0.68 per contract when trading with orders that are preferenced to them. ISE notes that with this proposed fee change, the Exchange, while increasing this fee, will maintain the same two cent differential that is also currently in place at PHLX.[18]

While the Exchange is not proposing any change in this filing[19] to the rebates that are currently applicable to complex orders in the Select Symbols, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols, the Exchange believes that it is reasonable and equitable to continue to provide a rebate for Priority Customer complex orders when these orders trade with non-Priority Customer orders in the Complex Order Book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that this proposed rule change will continue to attract additional complex order business while at the same time create standardization in complex order pricing across symbols that make up the majority of the daily volume in options trading.

The Exchange further believes that the Exchange's maker/taker fees are not unfairly discriminatory because the fee structure is consistent with fee structures that exist today at other options exchanges. Additionally, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other option exchanges. The Exchange operates in a highly competitive market

Mechanism and Price Improvement Mechanism. This fee applies to Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) interest.

[13] The Exchange has submitted a separate proposed rule change that proposes changes to the rebate programs currently in place at the Exchange for complex orders and proposes to adopt volume-based tiered rebates for Priority Customer complex orders. *See* SR–ISE–2012–18.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] *See* PHLX Options Trader Alert #2012–14 at *http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2012–14.*

[17] *Id.*

[18] *Id.*

[19] *See* supra note 13.

in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. With this proposed fee change, the Exchange believes it remains an attractive venue for market participants to trade complex orders.

The Exchange also believes that its proposal to assess a $0.20 per contract ''taker'' fee for all regular, or non-complex, Priority Customer orders in the Select Symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. The proposed fee is substantially lower than the $0.39 per contract fee currently charged by PHLX for Customer orders that remove liquidity in a number of symbols that are subject to that exchange's maker/taker fees.[20] Therefore, while ISE is proposing a fee increase, the resulting fee remains lower than the fee currently charged by PHLX. Further, the proposed increase will bring this fee closer to the fee the Exchange currently charges to other market participants that employ a similar trading strategy. The Exchange also notes, however, that with this proposed rule change, the fee charged to regular, or non-complex, Priority Customer orders will remain lower (as it historically has always been) than the fee currently charged by the Exchange to other market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[21] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–17 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6621 Filed 3–19–12; 8:45 am]

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[20] *See* PHLX Fee Schedule at *http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66600; File No. SR–NYSE–2012–07]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Certain Changes to the Transaction Fees and Credits Within the New York Stock Exchange Price List

March 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2012, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposing certain changes to the transaction fees and credits within its Price List, which the Exchange proposes to become operative on March 1, 2012. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing certain changes to the transaction fees and credits within its Price List, which the Exchange proposes to become operative on March 1, 2012.[3]

Member Organizations

The Exchange proposes the following changes to the transaction fees and credits in the Price List that are applicable to member organizations:

• Member organizations currently receive a credit of $0.0015 per-share per-transaction that adds liquidity, both displayed and non-displayed, to the NYSE. The Exchange proposes that the existing $0.0015 per-share credit remain applicable to a member organization's transactions that add liquidity to the NYSE, except for a member organization's Non-Displayed Reserve Order transactions that add liquidity to the NYSE, for which a lower credit of $0.0010 per-share will apply.[4]

• A member organization's charges for executions at the opening are currently capped at $10,000 per-month per-member organization.[5] The Exchange proposes to increase the cap to $15,000 per-month per-member organization.

• A member organization is currently charged $0.00085 per-share per-transaction for a Market At-The-Close (''MOC'') Order or a Limit At-The-Close (''LOC'') Order,[6] unless the member organization executes an average daily trading volume (''ADV'') of MOC and LOC Orders on the NYSE in the relevant calendar month of at least 14 million shares, in which case the member organization is charged $0.00055 per-share per-transaction for MOC and LOC Orders. The Exchange proposes to increase the fee for MOC and LOC Orders for member organizations that do not reach the 14 million threshold to $0.00095.[7]

• Member organizations are currently charged $0.0023 per-share for all other transactions that are not otherwise specified in the Price List (i.e., when taking liquidity from the NYSE). The Exchange proposes that this $0.0023 rate only apply to non-Floor broker transactions.[8] The Exchange also proposes to charge non-Floor broker member organizations that add specified amounts of liquidity to the NYSE above their normal amount (''step-up'') a lower rate of $0.0022 per-share per-transaction.[9] This lower rate would apply to a non-Floor broker member organization whose ADV that adds liquidity to the NYSE during the billing month (''Adding ADV'') [10] is at least the greater of (i) the member organization's January 2012 Adding ADV (''Baseline ADV'') plus 0.075% of consolidated average daily volume in NYSE-listed securities during the billing month (''NYSE CADV'') or (ii) the member organization's Baseline ADV plus 20%.[11]

Additionally, if a member organization's ratio of Baseline ADV-to-total ADV during January 2012 is less than 10%, the $0.0022 rate would only apply to the member organization's shares that are executed in an amount up to and including 0.75% of NYSE CADV. The current rate of $0.0023 per-share would apply to the member organization's remaining shares that are executed, unless the member organization's Adding ADV is greater than its Baseline ADV by at least 0.25% of NYSE CADV.[12]

• The Price List contains several rates applicable to member organization transactions with a per-share price of less than $1.00. Except for those transactions that are free or that result in a credit, the Price List generally specifies that the applicable rate is the lesser of (i) 0.3% of the total dollar value of the transaction or (ii) the same rate that would apply if the price per-share was not below $1.00.[13] The Exchange proposes that, except for those that are currently free or that result in a credit, the rate for these transactions with a per-share price of less than $1.00 be 0.3% of the total dollar value of the transaction.

Floor Brokers

The Exchange proposes the following changes to the transaction fees and credits in the Price List that are applicable to Floor brokers:

• Floor brokers are currently charged $0.0029 per-share for orders that are routed from the NYSE and executed in another market. Other member organizations are charged $0.0030 per-share for orders that are routed from the

[3] Unless stated otherwise, the fees and credits discussed herein are not applicable to transactions with a per-share price of less than $1.00.

[4] *See* NYSE Rule 13 (Definitions of Orders). A Non-Displayed Reserve Order is a limit order that is not displayed, but remains available for potential execution against all incoming automatically executing orders until executed in full or cancelled.

[5] *See* footnote 2 within the Price List.

[6] *See* NYSE Rule 13. The Exchange proposes a technical change to conform the use of the terms MOC and LOC throughout the Price List, where applicable.

[7] The Exchange is not proposing to change the existing $0.00055 fee for member organizations that do reach the 14 million share threshold.

[8] As described below, Floor brokers would instead be charged $0.0022 per-share for their other transactions that are not otherwise specified in the Price List.

[9] The Exchange proposes to amend the Price List to reflect that the current $0.0023 rate would apply (i) only to non-Floor broker transactions and (ii) only if the lower rate of $0.0022 proposed herein does not apply.

[10] The Exchange proposes to specify, with respect to this proposed lower rate, that calculations of Adding ADV would exclude early closing days as well as any liquidity added by a Designated Market Maker (''DMM'').

[11] For example, assume that a particular member organization's Baseline ADV was five million shares and that NYSE CADV during the billing month was four billion shares. To qualify for the lower rate, the member organization would need to have an Adding ADV during the billing month that is at least the greater of (i) eight million shares (i.e., five million Baseline ADV plus three million step-up (0.075% X four billion NYSE CADV)) or (ii) six million shares (i.e., five million Baseline ADV plus one million step-up (120% of Baseline ADV)). The Exchange recognizes that a firm that becomes a member organization after January 2012 would have a Baseline ADV of zero. In this regard, a new member organization would need to have an Adding ADV during the billing month of at least three million shares (i.e., zero Baseline ADV plus three million step-up (0.075% X four billion NYSE CADV)) for the $0.0022 rate to apply.

[12] Continuing with the example above, if the member organization maintains a ratio of Baseline ADV-to-total ADV during January 2012 of less than 10%, the $0.0022 rate would apply to the member organization's first 30 million shares that are executed (i.e., 0.75% X four billion NYSE CADV) and the current $0.0023 rate would apply to the member organization's remaining shares that are executed, unless the member organization's Adding ADV is greater than 15 million shares (i.e., five million Baseline ADV plus 10 million step-up (0.25% X four billion NYSE CADV)), in which case the $0.0022 rate would apply to all of the member organization's shares that are executed. The Exchange recognizes that a firm that becomes a member organization after January 2012 would have a ratio of Baseline ADV-to-total ADV during January 2012 that is zero. In this regard, the $0.0022 rate would apply only to the new member organization's first 30 million shares that are executed, unless the new member organization's Adding ADV is greater than 10 million, in which case the $0.0022 rate would apply to all of the new member organization's shares that are executed.

[13] The Exchange notes that this is explicit where the Price Lists specifies that the routing fee applicable to securities with a per-share price below $1.00 is the lesser of (i) 0.3% of the total dollar value of the transaction or (ii) the routing fee that would be applicable if the price per-share was not below $1.00. In contrast, this is inherent where, for example, the Price List specifies that the fee applicable to MOC and LOC executions in securities with a per-share price below $1.00 is the lesser of (i) 0.3% of the total dollar value of the transaction or (ii) $0.00085—the same MOC/LOC fee that would be applicable if the price per-share was not below $1.00.

NYSE and executed in another market.[14] The Exchange proposes to charge Floor brokers the same $0.0030 rate as other member organizations. Accordingly, the Exchange proposes to remove from the Price List the text that differentiates between the routing fees for Floor brokers and other member organizations.

• Floor brokers are currently charged $0.0023 for all other transactions that are not otherwise specified in the Price List (i.e., when taking liquidity from the NYSE). As referenced above, the Exchange proposes to decrease this fee to $0.0022 for all other Floor broker transactions.

DMMs

The Exchange proposes the following changes to the transaction fees and credits in the Price List that are applicable to DMMs:

• Except for executions at the opening, which are free, DMMs are currently charged $0.0015 per-share per-transaction that removes liquidity from the Exchange. The Exchange proposes to increase this fee to $0.0023 per-share per-transaction.

• DMMs currently receive a rebate of $0.0005 per-share for executions at the close. The Exchange proposes to modify this rate so that DMM executions at the close are free.

• DMMs are currently eligible for rebates of $0.0025 per-share when adding liquidity in More Active Securities [15] if the DMM meets the More Active Securities Quoting Requirement.[16] DMMs are also eligible for rebates of $0.0030 per-share when adding liquidity in More Active Securities when the DMM meets both (i) the More Active Securities Quoting Requirement and (ii) the More Active Securities Quoted Size Ratio Requirement [17] when providing liquidity that is 20% or less of the NYSE's total intraday adding liquidity in each such security for that month.[18] DMMs are eligible for a rebate of $0.0026 per-share for added incremental liquidity over 20% of the NYSE's total intraday adding liquidity in each such security for that month.

The Exchange proposes a new rebate of $0.0026 per-share when adding liquidity in More Active Securities if (i) the DMM meets both the More Active Securities Quoting Requirement and the More Active Securities Quoted Size Ratio Requirement and (ii) the DMM's providing liquidity is 10% or less of the NYSE's total intraday adding liquidity in each such security for that month.[19] The current $0.0030 per-share rebate would be applicable for securities in which the DMM's providing liquidity is more than 10% but less than or equal to 20% of the NYSE's total intraday adding liquidity in each such security for that month. Additionally, the Exchange proposes to increase the existing $0.0026 per-share rebate to $0.0029 and that this rebate be applicable for securities in which the DMM's providing liquidity is more than 20% of the NYSE's total intraday adding liquidity in each such security for that month.[20]

SLPs

The Exchange proposes the following changes to the transaction fees and credits in the Price List that are applicable to SLPs:

• SLPs are eligible for credits when adding liquidity to the NYSE.[21] The amount of the credit is determined by the ''tier'' that the SLP qualifies for, which is based on the SLP's level of quoting and the ADV of liquidity added by the SLP in assigned securities. The credits currently range from $0.0015 per-share per-transaction for the lowest tier (tier 4) to $0.0022 per-share per-transaction for the highest tier (tier 1).[22] The Exchange proposes to apply a credit within each tier for executions of Non-Displayed Reserve Orders that would be $0.0005 less than the current credit, which, going forward, would be applicable to the SLP's other executions that add liquidity to the NYSE.[23]

• The Exchange proposes that the existing tier 1 credit, which is currently $0.0022 per-share per-transaction, be increased to $0.0024 per-share per-transaction.[24]

Crossing Session II

Crossing Session II (''CSII'') runs on the Exchange from 4 p.m. to 6:30 p.m. Eastern Time and handles member organization crosses of a basket of securities of aggregate-priced buy and sell orders.[25] A fee of $0.0001 per-share currently applies to both sides of a CSII execution, and a cap of $50,000 per-month in CSII execution fees is applicable per-member organization. The Exchange proposes to increase the CSII fee to $0.0002 per-share for each side of the transaction and increase the monthly cap on CSII fees to $100,000.

General

The Exchange proposes to include a reference within the Price List to the last date on which the Price List was amended.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[26] in general, and furthers the objectives of Section 6(b)(4) of the Act,[27] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members,

[14] DMMs and Supplemental Liquidity Providers (''SLPs'') are also charged a $0.0030 per-share routing fee.

[15] ''More Active Securities'' are those with an ADV in the previous month equal to or greater than one million shares.

[16] A DMM meets the ''More Active Securities Quoting Requirement'' when a More Active Security has a stock price of $1.00 or more and the DMM quotes at the National Best Bid or Offer (''NBBO'') in the applicable security at least 10% of the time in the applicable month.

[17] *See* footnote 7 within the Price List. A DMM meets the ''More Active Securities Quoted Size Ratio Requirement'' when the DMM Quoted Size for an applicable month is 15% of the NYSE Quoted Size. The Exchange proposes a technical change to specify that the DMM Quoted Size for the applicable month must be ''at least'' 15% of the NYSE Quoted Size. The ''NYSE Quoted Size'' is calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO. The ''DMM Quoted Size'' is calculated by multiplying the average number of shares of the applicable security quoted at the NBBO by the DMM by the percentage of time during which the DMM quoted at the NBBO.

[18] The NYSE total intraday adding liquidity is totaled monthly and includes all NYSE adding liquidity, excluding NYSE open and NYSE close volume, by all NYSE participants, including SLPs, customers, Floor brokers and DMMs.

[19] The Exchange proposes to remove duplicative language describing ''NYSE total intraday adding liquidity.'' The Exchange also proposes to make certain non-substantive changes to renumber the existing $0.0030 and $0.0026 rebates as ''(b)'' and ''(c),'' respectively.

[20] The Exchange notes that the proposed $0.0029 per-share rebate would be applicable to all of the member organization's adding liquidity in each such security for that month, not just the incremental liquidity that is more than 20% of the NYSE's total intraday adding liquidity.

[21] SLP credits are not applicable to executions of securities with a per-share price of $1.00 or more at the close.

[22] The rate applicable to executions of securities with a per-share price of less than $1.00 is $0.0005.

[23] For example, if an SLP's executions fall within tier 3, then the existing $0.0020 tier 3 rate would remain applicable to the SLP's executions that add liquidity other than executions of Non-Displayed Reserve Orders, for which a rate of $0.0015 would apply.

[24] Consistent with the proposed differentiation between executions of Non-Displayed Reserve Orders and other executions, the Exchange proposes that the tier 1 SLP credit for executions of Non-Displayed Reserve Orders that add liquidity be $0.0019 per-share per-transaction. To qualify for tier 1, an SLP must (i) meet or exceed the 10% quoting requirement in an assigned security pursuant to NYSE Rule 107B, and (ii) add liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate and, for each assigned SLP security, add liquidity of more than 2.5% of NYSE CADV for that assigned SLP security in the applicable month.

[25] *See* NYSE Rules 900–907.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4).

issuers and other persons using its facilities. The proposed rule change is equitably allocated and not unfairly discriminatory because it applies uniformly to all similarly situated member organizations.

Specifically, the Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it is intended to incentivize member organizations to submit additional amounts of displayed liquidity to the Exchange during the trading day. For example, the proposed higher credits applicable to member organization executions other than Non-Displayed Reserve Orders would incentivize member organizations to instead provide displayed liquidity on the Exchange. This would similarly be true with respect to providing a larger credit to SLP executions other than executions of Non-Displayed Reserve Orders.

The Exchange further believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it is intended to incentivize member organizations to submit additional liquidity to the Exchange during the trading day, regardless of whether such liquidity is displayed or non-displayed. For example, the proposal to increase the credit provided for tier 1 SLP transactions would incentivize SLPs to provide greater liquidity on NYSE in their assigned securities. Similarly, the proposed lower fee for removing liquidity for member organizations that ''step-up'' is intended to incentivize member organizations to submit specified amounts of liquidity to the Exchange during the trading day above their normal amounts submitted to the Exchange. The Exchange further believes that the proposed step-up concept is reasonable, equitable and not unfairly discriminatory because it is substantially similar to the manner in which other exchanges apply more favorable transaction rates for members that increase the amount of liquidity their transactions provide on those exchanges.[28] The Exchange notes that non-Floor brokers would be required to step-up to qualify for the lower rate, whereas the lower rate would apply to Floor broker transactions without the attendant step-up requirement. The Exchange believes that this is reasonable, equitable and not unfairly discriminatory because Floor brokers generally submit orders to the Exchange in an agency capacity, while other member organizations can choose to submit orders in an agency or principal capacity, or both. Floor brokers therefore have less flexibility with respect to actively determining to add increased amounts of liquidity on the Exchange.

Increasing the current fee for MOC and LOC Orders with a per-share price of $1.00 or more is also reasonable, equitable and not unfairly discriminatory because these fees would be less than the fees charged by the Exchange's primary competitors. Also, changing the rate for DMM executions at the close, from a $0.0005 rebate to free, is reasonable, equitable and not unfairly discriminatory because it would further align the DMM closing rate with the rate applicable to other member organizations. The Exchange believes that increasing the cap for transactions at the opening is reasonable, equitable and not unfairly discriminatory because a member organization that reaches the cap would continue to be charged a marginal rate for its transactions at the opening that is lower than the $0.0005 rate that would be applicable without the cap (i.e., once a member organization reaches the cap, its per-transaction rate thereafter will be zero and its marginal rate will decrease for each additional transaction at the open thereafter). The Exchange also believes that increasing the fee for CSII transactions and the monthly cap that is currently applicable thereto is reasonable, equitable and not unfairly discriminatory because the rate would continue to be less than the rate applicable to executions of MOC and LOC Orders and,[29] generally, because it would more closely align the CSII rate with the other rates within the Price List,[30] while maintaining a cap for member organizations that are particularly active during CSII. The Exchange further believes that the aspects of the proposed rule change that encourage liquidity on the Exchange are reasonable, equitable and not unfairly discriminatory because they would apply uniformly to all similarly situated member organizations and because they would contribute to price discovery on the Exchange and benefit investors generally.

The proposed change to the Floor broker charge for routing orders to away markets and the Floor broker charge for all other transactions not otherwise specified in the Price List (i.e., when taking liquidity from the NYSE) is reasonable, equitable and not unfairly discriminatory because, taken together, they are not expected to materially increase or decrease the net fees charged to Floor brokers in the aggregate. Additionally, the Exchange believes that the proposed change to the rates for member organization executions with a per-share price of less than $1.00 is reasonable, equitable and not unfairly discriminatory because it would simplify the Price List. Due to the limited number of securities that trade on the Exchange at a price below $1.00 and the resulting limited number of executions on the Exchange with a per-share price of less than $1.00,[31] the Exchange does not anticipate that this change would have a more than negligible impact on transaction fees charged to member organizations.[32] Furthermore, the Exchange notes that the rate of 0.3% of the total dollar value of the transaction would remain consistent with the pricing limitations for securities with a per-share price of less than $1.00 under Rule 610(c) under Regulation NMS.[33]

The Exchange believes that the proposed increase in the DMM rate for transactions that remove liquidity from the Exchange is reasonable, equitable and not unfairly discriminatory because it would align the DMM rate for removing liquidity with the rate applicable to certain other member organizations.

The Exchange has also proposed a new rebate of $0.0026 per-share when adding liquidity in More Active Securities if the DMM meets both the More Active Securities Quoting Requirement and the More Active Securities Quoted Size Ratio Requirement when providing liquidity that is 10% or less of the NYSE's total intraday adding liquidity in each such security for that month. Accordingly, the current $0.0030 per-share rebate would be applicable for securities in which the DMM's providing liquidity is more than 10% but less than or equal to 20% of the NYSE's total intraday adding liquidity in each such security

[28] *See, e.g.,* the ''Step Up Tiers'' within the NYSE Arca Equities, Inc. Fee Schedule.

[29] For example, the proposed rate of $0.0002 would continue to be substantially less than the rate for executions of MOC and LOC Orders, which is currently $0.00055 or $0.00085 per transaction, with the latter rate proposed to be $0.00095.

[30] For example, except for transactions that are free, both the current and proposed CSII rate of $0.0001 and $0.0002, respectively, are substantially less than the next lowest fee within the Price List (i.e., the $0.0005 rate for transactions at the opening).

[31] The Exchange notes that securities for which the average closing price reported on the consolidated tape is less than $1.00 over a consecutive 30 trading-day period are subject to being delisted from the Exchange. *See* Section 802.01C (Price Criteria for Capital or Common Stock) of the NYSE Listed Company Manual.

[32] The Exchange notes that, depending on the value of the transaction, this change could result in either an increase or decrease in the rate per-transaction.

[33] 17 CFR 242.610(c).

for that month. The Exchange recognizes that the rebate for a DMM whose providing liquidity is currently 10% or less of the NYSE's total intraday adding liquidity will decrease from $0.0030 to $0.0026. The Exchange believes that this change is reasonable, equitable and not unfairly discriminatory because it would result in rebates being applied that are more representative of the amount of liquidity added by the particular DMM. In this regard, the Exchange believes that a DMM that meets both the More Active Securities Quoting Requirement and the More Active Securities Quoted Size Ratio Requirement is likely to also be providing liquidity that is reasonably close to, but not greater than, 10% of the NYSE's total intraday adding liquidity in each such security for that month. In contrast, the Exchange believes that a DMM whose providing liquidity is greater than 10% of the NYSE's total intraday adding liquidity would be adding liquidity above the amount associated with meeting both the More Active Securities Quoting Requirement and the More Active Securities Quoted Size Ratio Requirement. Accordingly, the Exchange considers it reasonable, equitable and not unfairly discriminatory to provide a higher rebate for a DMM whose providing liquidity is greater than 10% of the NYSE's total intraday adding liquidity in each such security for that month.

The Exchange notes that the current $0.0026 per-share rebate would no longer be applicable only to the incremental liquidity that is more than 20% of the NYSE's total intraday adding liquidity in each such security for that month. In this regard, the Exchange believes that the proposal to increase the rebate to $0.0029 is reasonable, equitable and not unfairly discriminatory because it would balance the effect of the rate applying on a cumulative basis, as opposed to incrementally.

The Exchange also believes that the technical amendments proposed herein would better assist member organizations and others that view the Price List in determining the fees and credits that are applicable on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [34] of the Act and subparagraph (f)(2) of Rule 19b–4 [35] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2012–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSE–2012–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2012–07 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6709 Filed 3–19–12; 8:45 am]

BILLING CODE 8011–01–P

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(2).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66599; File No. SR–NYSEAmex–2012–17]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Fee Changes Relating to Trading Nasdaq Securities Pursuant to Unlisted Trading Privileges

March 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2012, NYSE Amex LLC (''NYSE Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2012 Price List (''Price List'') for certain fees relating to trading securities listed on the Nasdaq Stock Market LLC (''Nasdaq securities'') pursuant to unlisted trading privileges (''UTP''). The text of the proposed rule change is available at the Exchange, *www.nyse.com,* and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List for certain fees relating to trading Nasdaq securities pursuant to UTP. The amended pricing will become operative on March 1, 2012.

Currently, market participants and Designated Market Makers (''DMMs'') are charged a fee of $0.0004 per share for orders in Nasdaq securities with a share price of $1 or more and a fee of 0.20% of total dollar value of the transaction for orders in Nasdaq securities with a share price below $1 traded pursuant to UTP that take liquidity. Under the proposal, the fee will be $0.0027 per share for orders with a share price of $1 or more that take liquidity and 0.30% of total dollar value of the transaction for orders with a share price below $1 that take liquidity.

Currently, market participants and DMMs are charged a fee of $0.0025 per share for orders in Nasdaq securities with a share price of $1 or more and a fee of 0.20% of total dollar value of the transaction for orders in Nasdaq securities with a share price below $1 that route to other markets. Under the proposal, the fee will be $0.0027 per share for such orders with a share price of $1 or more and .30% of total dollar value of the transaction for such orders with a share price below $1.

Market participants, other than DMMs and Supplemental Liquidity Providers (''SLPs''), that provide liquidity in Nasdaq securities with a share price of $1 or more traded pursuant to UTP are currently paid a rebate of $0.0010 per share. Under the proposal, such market participants will be paid a rebate of $0.0030 per share.

Currently, for orders in Nasdaq securities with a share price of $1 or more traded pursuant to UTP that provide liquidity, DMMs are paid a rebate of $0.0020 per share, SLPs that meet their quoting requirements pursuant to NYSE Amex Rule 107B are paid a rebate of $0.0011 per share, and SLPs that do not meet their quoting requirements are paid a rebate of $0.0010 per share. Under the proposal, the rebate for such orders will be $0.0031 per share for DMMs, $0.0031 per share for SLPs that meet their quoting requirements, and $0.0030 per share for SLPs that provide liquidity but do not meet their quoting requirements.[3]

Currently, market participants and SLPs are paid a rebate of $0.0020 per share for executions of displayed liquidity in Nasdaq securities with a share price of $1 or more when they are adding liquidity in orders that originally display a minimum of 2,000 shares with a trading price of at least $5.00 per share, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares. Under the proposal, market participants and SLPs will be paid a rebate of $0.0036 per share for executions of displayed liquidity in Nasdaq securities with a share price of $1 or more when they are adding liquidity in orders that originally display a minimum of 2,000 shares with a trading price of at least $5.00 per share, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares.

Currently, DMMs receive a rebate of $0.0020 per share in Nasdaq securities with a share price of $1 or more traded pursuant to UTP for executions of the displayed portions of s-Quotes that provide liquidity and display 2,000 shares or more at the time of execution with a trading price of at least $5.00 per share. Under the proposal, DMMs will be paid a rebate of $0.0036 per share for executions of the displayed portions of s-Quotes that provide liquidity and display 2,000 shares or more at the time of execution with a trading price of at least $5.00 per share.

The Exchange also proposes a technical change to remove language in the Price List that references reduced fees for market participants that meet certain average daily executed volume requirements; those reduced fees were eliminated in September 2011 and this text was inadvertently not removed at that time.[4] The Exchange proposes to include a reference within the Price List to the last date on which the Price List was amended.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated market participants will be charged or credited the same amount and access to the Exchange's market is offered on fair and non-discriminatory terms.

With respect to the increased credits for providing liquidity, the Exchange believes that the credits will attract more volume to the Exchange from participants that are seeking to lower their overall transaction costs and thereby will result in a more competitive market in the trading of Nasdaq securities pursuant to UTP. The Exchange further believes that the increases in the fees for DMMs, SLPs, and market participants for taking liquidity are appropriate in light of the increase in credits for providing liquidity. The Exchange also believes that it is reasonable not to increase the credits for providing liquidity in Nasdaq securities with a share price below $1 because there are only a small number of issues that trade below $1, these shares are thinly traded, and increased credits could have the potential of being greater than the spread, creating an inappropriate incentive to trade.

The Exchange believes that raising the fee for routing to other markets for

[3] The Exchange notes that the proposed rebates will be the same as the rebates that were in place prior to September 1, 2011. *See* Securities Exchange Act Release No. 65283 (September 7, 2011), 76 FR 56850 (September 14, 2011) (SR–NYSEAmex–2011–67).

[4] *See id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

orders in Nasdaq securities with a share price of $1 or more to $0.0027 is reasonable because the fee is lower than the fee previously charged by the Exchange [7] and lower than routing fees charged by other markets, including BATS BYX with its CYCLE routing fee of $0.0028 per share.[8] The Exchange believes that raising the fee for routing to other markets for orders in Nasdaq securities with a share price below $1 to 0.30% of total dollar value of the transaction is reasonable because it will cover the costs associated with routing orders away from the Exchange.

With respect to the increase in rebates to DMMs, SLPs, and market participants for providing liquidity in 2,000 or more share orders for securities priced at $5 or more, the Exchange believes that the proposed rebates are fair given that the Exchange is increasing the fee for taking liquidity. The Exchange believes the fee change will attract more displayed liquidity, lower transaction costs, and improve overall trading.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The Exchange believes that the proposed rule change reflects this competitive environment because it will broaden the conditions under which customers may qualify for higher liquidity provider credits.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [9] of the Act and subparagraph (f)(2) of Rule 19b–4 [10] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSEAmex–2012–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEAmex–2012–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEAmex–2012–17 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6708 Filed 3–19–12; 8:45 am]

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[7] *See supra* note 4.

[8] *See* BATS BYX Exchange Fee Schedule, *available at http://batstrading.com/resources/regulation/rule_book/BYX_Fee_Schedule.pdf.*

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66596; File No. SR–ISE–2012–18]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Rebates for Certain Complex Orders

March 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to increase certain rebate amounts for certain complex orders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction charges and credits to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in a number of options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees are applicable to regular and complex orders executed in the Select Symbols. The maker/taker fees for complex orders in the Select Symbols also apply to all symbols that are in the Penny Pilot program.[4] The Exchange also currently assesses maker/taker fees for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'') [5] and for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[6] Maker/taker fees (and rebates) for complex orders are assessed on the following order-type categories: ISE Market Maker,[7] Market Maker Plus,[8] Firm Proprietary, Customer (Professional),[9] Non-ISE Market Maker,[10] and Priority Customer.[11] The Exchange is proposing to increase certain rebates for certain complex orders, as follows.

In the Select Symbols, the Exchange currently provides a rebate of $0.30 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex orderbook. In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange, the Exchange is proposing to increase the base amount of that rebate to $0.32 per contract. Additionally, the Exchange is proposing to increase the amount of that rebate even further, on a month-by-month and Member-by-Member basis, if such Member achieves a certain average daily volume (ADV) of Priority Customer complex order contracts executed during the calendar month, as follows: if the Member achieves an ADV of 75,000 Priority Customer complex order contracts, the rebate amount shall be $0.33 per contract per leg; if the Member achieves an ADV of 125,000 Priority Customer complex order contracts, the rebate amount shall be $0.34 per contract per leg. The highest rebate amount achieved by the Member for the current calendar month shall apply retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex orderbook executed by the Member during such calendar month.

In the Non-Select Penny Pilot Symbols, the Exchange currently provides a rebate of $0.25 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex orderbook. In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange, the Exchange is proposing to increase the base amount of that rebate to $0.26 per contract. Additionally, the Exchange is proposing increase [sic] the amount of that rebate even further, on a month-by-month and Member-by-Member basis, if such Member achieves a certain average daily volume (ADV) of Priority Customer complex order contracts executed during the calendar month, as follows: if the Member achieves an ADV of 75,000 Priority Customer complex order contracts, the rebate amount shall be $0.28 per contract per leg; if the Member achieves an ADV of 125,000 Priority Customer complex order contracts, the rebate amount shall be $0.30 per contract per leg. The highest rebate amount achieved by the Member for the current calendar month shall apply retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex orderbook executed by the Member during such calendar month.

In the Non-Penny Pilot Symbols, the Exchange currently provides a rebate of $0.50 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex orderbook. In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange, the Exchange is proposing to increase the base amount of that rebate to $0.52 per contract. Additionally, the Exchange is proposing increase [sic] the amount of that rebate even further, on a month-by-month and Member-by-Member basis, if such Member achieves a certain average daily volume (ADV) of Priority Customer complex order contracts executed during the calendar month, as follows: if the Member achieves an ADV of 75,000 Priority Customer complex order contracts, the rebate amount shall be $0.54 per contract per leg; if the Member achieves an ADV of 125,000 Priority Customer complex order contracts, the rebate amount shall be

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] *See* Exchange Act Release Nos. 65021 (August 3, 2011), 76 FR 48933 (August 9, 2011) (SR–ISE–2011–45); and 65550 (October 13, 2011), 76 FR 64984 (October 19, 2011) (SR–ISE–2011–65).

[5] *See* Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72).

[6] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); and 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06).

[7] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[8] A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics during that month. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's stated criteria.

[9] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[10] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (''Exchange Act''), registered in the same options class on another options exchange.

[11] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

$0.56 per contract per leg. The highest rebate amount achieved by the Member for the current calendar month shall apply retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex orderbook executed by the Member during such calendar month.

Finally, the Exchange does not currently provide a rebate for Priority Customer complex orders when these orders trade against quotes or orders in the regular orderbook. In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange, the Exchange is proposing to provide a rebate of $0.06 per contract, per leg, for Priority Customer complex orders, regardless of size, when these orders trade against quotes or orders in the regular orderbook. This rebate shall apply in the Select Symbols, Non-Select Penny Pilot Symbols, and Non-Penny Pilot Symbols. For the avoidance of doubt, this rebate is not included in the ADV incentive program described above for Priority Customer complex orders executed in the complex orderbook.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act [13] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to interact with and respond to certain types of orders.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides these types of rebates, and is now merely proposing to increase those rebate amounts. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The Exchange is also establishing a volume-based incentive program, designed to encourage Members to send their Priority Customer complex orders to the Exchange. The concept of a volume-based incentive program is not novel. The Exchange notes that it currently has other incentive programs to promote and encourage growth in specific business areas. For example, the Exchange has lower fees (or no fees) for customer orders; [14] and tiered pricing that reduces rates for ISE Market Makers based on the level of business they bring to the Exchange.[15] This proposed rule change targets a particular segment in which the Exchange seeks to attract greater order flow. The Exchange also has a volume-based rebate program in place for Qualified Contingent Cross (''QCC'') and Solicitation orders, which gives Members who trade a minimum of 200,000 qualifying contracts in QCC and Solicitation orders on the Exchange a benefit by way of a rebate. This program is similar to the proposed program in that once a Member reaches an established volume threshold, all of the trading activity in the specified order type by that Member will be subject to the corresponding rebate.

The Exchange also believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade against quotes or orders in the regular orderbook because paying a rebate, in those instances, would also attract additional order flow to the Exchange. The Exchange notes that the rebate amount is the same for all symbols, including Select Symbols, Non-Select Penny Pilot Symbols, and Non-Penny Pilot Symbols.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that increasing its complex order rebates will attract additional complex order business.

The Exchange further believes that the Exchange's complex order rebates are not unfairly discriminatory because the fee structure is consistent with fee structures that exist today at other options exchanges. Additionally, the Exchange believes that the proposed rebates are fair, equitable and not unfairly discriminatory because the proposed rebates are consistent with price differentiation that exists today at other option exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. With this proposed rebate change, the Exchange believes it remains an attractive venue for market participants to trade complex orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[16] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] For example, the customer fee is $0.00 per contract for products other than Singly Listed Indexes, Singly Listed ETFs and FX Options. For Singly Listed Options, Singly Listed ETFs and FX Options, the customer fee is $0.18 per contract. The Exchange also currently has an incentive plan in place for certain specific FX Options which has its own pricing. *See* ISE Schedule of Fees.

[15] The Exchange currently has a sliding scale fee structure that ranges from $0.01 per contract to $0.18 per contract depending on the level of volume a Member trades on the Exchange in a month.

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–18 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6620 Filed 3–19–12; 8:45 am]

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66593; File No. SR–Phlx–2012–30]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the 100MB Connectivity Option and Fee

March 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate 100MB connectivity between the Exchange and co-located servers, as well as associated fees, as set forth in the Phlx Fee Schedule, Section X(b). The Exchange will implement the proposed change on April 1, 2012. The text of the proposed rule change is available at *http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the Phlx Fee Schedule, Section X(b) to eliminate 100MB connectivity between the Exchange and co-located servers, as well as associated fees.[3] The Exchange currently offers each co-located customer one 100MB connection to the Exchange at no charge; additional connections are available for a $50 one-time installation fee and a monthly fee of $100.[4] Due to the continuous growth of the size of consolidated and proprietary market data feeds, use of 100MB connectivity to the Exchange may result in high data transmission latencies, a loss of data packets, and a reduction in client service satisfaction. As a result, the Exchange proposes to eliminate the 100MB connection option to the Exchange. The proposal to eliminate the 100MB connection option will eliminate potential latencies and loss of data that could occur with lower bandwidths, issues that are potentially damaging to investors.[5]

Currently, there are four co-located customers that utilize 100MB connectivity to the Exchange. All four customers also have larger bandwidth connections to the Exchange. While these customers will need to assess the adequacy of their bandwidth and may need to make adjustments, the Exchange strongly believes that these changes will be beneficial to these customers because they will decrease the risk of latency and data loss. In addition, as the number of customers making use of 100MB connectivity to the Exchange dwindles, maintaining the option would require the Exchange to impose associated fixed costs on a smaller customer base, or upon customers that are not themselves using this legacy connectivity option. The Exchange

[3] All co-location services are provided by NASDAQ Technology Services LLC and pursuant to agreements with the owner/operator of its data center.

[4] *See* Exchange Fee Schedule, Section X(b), Connectivity to Nasdaq.

[5] The 100MB option that is being eliminated—which is used to connect co-located servers to the Exchange—should be contrasted with a recently introduced option for customers to establish 100MB connections between their co-located servers and select external locations. These external connections are generally combined with other bandwidth options and are not utilized to transmit the same volume of data as the 100MB connection between co-located services and the Exchange. For this reason, the Exchange believes that the same latency and data loss considerations that are prompting it to eliminate the 100MB connection to the Exchange do not apply to the 100MB connection to external locations.

believes that it is reasonable and equitable to avoid this result by eliminating the option and helping customers migrate to more suitable connections.

To provide all affected customers sufficient time to migrate from their 100MB connections to larger bandwidths, the Exchange has proposed (in a separate filing) to waive installation fees for 10Gb and 40Gb connectivity until May 31, 2012.[6]

The Exchange also proposes to eliminate the word ''additional'' from the Fee Schedule in several instances to reflect the elimination of the 100MB connection that was previously offered at no charge.

2. Statutory Basis

The Exchange believes the proposal is consistent with the provisions of Section 6 of the Act[7] in general, and with the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

Removes Impediments and Perfects Mechanism of a Free and Open Market

The Exchange's proposal is designed to eliminate data transmission latencies and loss of data risks that are associated with 100MB connectivity, and thereby provide a more efficient mechanism for trading. Since the migration to a higher bandwidth option will reduce the potential disruption and consequently provide greater efficiency of trading in the marketplace, the effects of this proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system, which in turn will protect investors and the public interest.

Not Unfairly Discriminatory

The proposal to eliminate the 100MB connectitivity [sic] option applies to all Exchange members that have voluntarily elected this service option. Currently, there are four co-located customers that utilize 100MB connectivity to the Exchange. All four clients also have larger bandwidth connections to the Exchange. While these customers will need to assess the adequacy of their bandwidth and may need to make adjustments, the Exchange strongly believes that these changes will be beneficial to these customers because they will decrease the risk of latency and data loss. In addition, as the number of customers making use of 100MB connectivity to the Exchange dwindles, maintaining the option would require the Exchange to impose associated fixed costs on a smaller customer base, or upon customers that are not themselves using this legacy connectivity option.

To assist co-located customers with migration to larger bandwidths, the Exchange has proposed (in a separate filing) to waive installation fees for 10Gb and 40Gb connectivity until May 31, 2012.[9] Given the ever-increasing size of market data, the Exchange decided to apply the waiver of installation fees only to the 10Gb and 40Gb connection instead of offering the waiver for the next available bandwidth, the 1Gb connection. This will provide the clients the opportunity to migrate to a bandwidth that will more efficiently sustain the client's business needs over a longer period of time. The four co-located customers that currently have the 100MB connectivity to the Exchange have until March 31, 2012 to migrate from the 100MB connection to a larger bandwidth. Furthermore, eliminating the 100MB connectivity to the Exchange is consistent with the connections offered by other exchanges,[10] and the Exchange does not believe that it would be unfairly discriminatory to eliminate a connectivity option that is not routinely offered by other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the Exchange believes that eliminating the 100MB connectivity service option will not burden competition since the 100MB connectivity option is not routinely offered by other exchanges. In fact, requiring the Exchange to continue to offer this option would unfairly burden competition by requiring it to incur costs that are not typically incurred by any of its competitors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.

The Exchange has asked that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii).[13] The Exchange represents that investors and the public interest are best served by waiving the pre-operative delay to minimize potential risks of market disruption associated with the use of lower bandwidth at a time of increasing data traffic. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

[6] *See* Securities Exchange Act Release No. 66429 (February 21, 2012)(SR–Phlx–2012–20). The Exchange is not proposing to waive fees for migrating to 1GB connectivity, since the Exchange is concerned that this bandwidth level will prove inadequate for most members in the near future. Accordingly, rather than creating a scenario in which customers face repeated concerns about the adequacy of their bandwidth, the Exchange believes that it is reasonable to use the fee waiver to encourage customers to move to connectivity options that are likely to be adequate for a more extended period.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] *See, supra* note 6.

[10] *See http://www.nyse.com/pdfs/NYSEArca_Equities_Fees.pdf,* page 13, for NYSE Equities, Inc. Fee Schedule where the bandwidth starts at 1Gb. *See also http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf,* page 9, for the International Securities Exchange Fee Schedule where the bandwidth also starts at 1Gb.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx-2012–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx-2012–30 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6618 Filed 3–19–12; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66591; File No. SR–NASDAQ–2012–036]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the 100MB Connectivity Option and Fee

March 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate 100MB connectivity between the Exchange and co-located servers, as well as associated fees, as set forth in NASDAQ Rule 7034(b). The Exchange will implement the proposed change on April 1, 2012. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify Rule 7034(b) to eliminate 100MB connectivity between the Exchange and co-located servers, as well as associated fees.[3] NASDAQ currently offers each co-located customer one 100MB connection to the Exchange at no charge; additional connections are available for a $50 one-time installation fee and a monthly fee of $100.[4] Due to the continuous growth of the size of consolidated and proprietary market data feeds, use of 100MB connectivity to the Exchange may result in high data transmission latencies, a loss of data packets, and a reduction in client service satisfaction. As a result, the Exchange proposes to eliminate the 100MB connection option to the Exchange. The proposal to eliminate the 100MB connection option will eliminate potential latencies and loss of data that could occur with lower bandwidths, issues that are potentially damaging to investors.[5]

Currently, there are seven co-located customers that utilize 100MB connectivity to the Exchange. All seven clients also have larger bandwidth connections to the Exchange. While these customers will need to assess the adequacy of their bandwidth and may need to make adjustments, NASDAQ strongly believes that these changes will be beneficial to these customers because they will decrease the risk of latency and data loss. In addition, as the number of customers making use of 100MB connectivity to the Exchange dwindles, maintaining the option would require NASDAQ to impose associated

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] All co-location services are provided by NASDAQ Technology Services LLC and pursuant to agreements with the owner/operator of its data center.

[4] *See* Exchange Rule 7034(b), Connectivity to Nasdaq. All co-location services are provided by NASDAQ Technology Services LLC.

[5] The 100MB option that is being eliminated—which is used to connect co-located servers to the Exchange—should be contrasted with a recently introduced option for customers to establish 100MB connections between their co-located servers and select external locations. These external connections are generally combined with other bandwidth options and are not utilized to transmit the same volume of data as the 100MB connection between co-located servers and the Exchange. For this reason, the Exchange believes that the same latency and data loss considerations that are prompting it to eliminate the 100MB connection to the Exchange do not apply to the 100MB connection to external locations.

fixed costs on a smaller customer base, or upon customers that are not themselves using this legacy connectivity option. NASDAQ believes that it is reasonable and equitable to avoid this result by eliminating the option and helping customers migrate to more suitable connections.

To provide all affected customers sufficient time to migrate from their 100MB connections to larger bandwidths, the Exchange has proposed (in a separate filing) to waive installation fees for 10Gb and 40Gb connectivity until May 31, 2012.[6]

The Exchange also proposes to eliminate the word ''additional'' from the fee schedule in several instances to reflect the elimination of the 100MB connection that was previously offered at no charge.

2. Statutory Basis

The Exchange believes the proposal is consistent with the provisions of Section 6 of the Act[7] in general, and with the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

Removes Impediments and Perfects Mechanism of a Free and Open Market

The Exchange's proposal is designed to eliminate data transmission latencies and loss of data risks that are associated with 100MB connectivity, and thereby provide a more efficient mechanism for trading. Since the migration to a higher bandwidth option will reduce the potential disruption and consequently provide greater efficiency of trading in the marketplace, the effects of this proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system, which in turn will protect investors and the public interest.

Not Unfairly Discriminatory

The proposal to eliminate the 100MB connectivity option applies to all Exchange members that have voluntarily elected this service option. Currently, there are seven co-located customers that utilize 100MB connectivity to the Exchange. All seven clients also have larger bandwidth connections to the Exchange. While these customers will need to assess the adequacy of their bandwidth and may need to make adjustments, NASDAQ strongly believes that these changes will be beneficial to these customers because they will decrease the risk of latency and data loss. In addition, as the number of customers making use of 100MB connectivity to the Exchange dwindles, maintaining the option would require NASDAQ to impose associated fixed costs on a smaller customer base, or upon customers that are not themselves using this legacy connectivity option.

To assist co-located customers with migration to larger bandwidths, the Exchange has proposed (in a separate filing) to waive installation fees for 10Gb and 40Gb connectivity until May 31, 2012.[9] Given the ever-increasing size of market data, the Exchange decided to apply the waiver of installation fees only to the 10Gb and 40Gb connection instead of offering the waiver for the next available bandwidth, the 1Gb connection. This will provide the clients the opportunity to migrate to a bandwidth that will more efficiently sustain the client's business needs over a longer period of time. The co-located customers that currently have the 100MB connectivity to the Exchange have until March 31, 2012 to migrate from the 100MB connection to a larger bandwidth. Furthermore, eliminating the 100MB connectivity to NASDAQ is consistent with the connections offered by other exchanges,[10] and NASDAQ does not believe that it would be unfairly discriminatory to eliminate a connectivity option that is not routinely offered by other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the Exchange believes that eliminating the 100MB connectivity service option will not burden competition since the 100MB connectivity option is not routinely offered by other exchanges. In fact, requiring NASDAQ to continue to offer this option would unfairly burden competition by requiring it to incur costs that are not typically incurred by any of its competitors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.

The Exchange has asked that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii).[13] The Exchange represents that investors and the public interest are best served by waiving the pre-operative delay to minimize potential risks of market disruption associated with the use of lower bandwidth at a time of increasing data traffic. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

[6] *See* Securities Exchange Act Release No. 66428 (February 21, 2012)(SR–NASDAQ–2012–028). The Exchange is not proposing to waive fees for migrating to 1GB connectivity, since the Exchange is concerned that this bandwidth level will prove inadequate for most members in the near future. Accordingly, rather than creating a scenario in which customers face repeated concerns about the adequacy of their bandwidth, NASDAQ believes that it is reasonable to use the fee waiver to encourage customers to move to connectivity options that are likely to be adequate for a more extended period.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] *See, supra* note 6.

[10] *See http://www.nyse.com/pdfs/NYSEArca_Equities_Fees.pdf,* page 13, for NYSE Equities, Inc. Fee Schedule where the bandwidth starts at 1Gb. *See also http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf,* page 9, for the International Securities Exchange Fee Schedule where the bandwidth also starts at 1Gb.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2012–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–036 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6616 Filed 3–19–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66589; File No. SR–ISE–2012–13]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Route-Out Fee for Priority Customer Orders

March 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 29, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to adopt a fee related to the execution of Priority Customer orders subject to linkage handling. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to adopt a fee related to the execution of Priority Customer[3] orders subject to linkage handling.

On August 31, 2009, the Exchange implemented the new Options Order Protection and Locked/Crossed Market Plan (''Distributive Linkage'') and the use of Intermarket Sweep Orders (''ISOs''). Consistent with Distributive Linkage and pursuant to ISE rules, the Exchange's Primary Market Makers (''PMMs'') have an obligation to address customer[4] orders when there is a better market displayed on another exchange. ISE's PMMs meet this obligation via the use of ISOs. In meeting their obligations, PMMs may incur fees when they send ISOs, especially when sending ISOs to exchanges that charge ''taker'' fees. To minimize the PMM's financial burden and help offset such fees, the ISE amended its schedule of fees on October 1, 2009 to adopt a rebate for the PMM of $0.20 per contract on all ISO orders sent to an away exchange (regardless of the fee charged by the exchange where the ISO order sent away was executed).[5]

With the costs associated with servicing Priority Customer orders that must be executed at another exchange coupled with the cost of funding the existing fee credit, the Exchange believes it is appropriate to charge a fee for these orders. Therefore, the Exchange now proposes to charge Priority Customer orders a fee of $0.25 per contract for executions that result from the PMM routing ISOs to another exchange in a limited number of symbols. Specifically, the proposed fee will only be charged for Priority Customer orders that are routed to an away exchange in symbols that are subject to the Exchange's modified maker/taker pricing model. These symbols, which currently number 101,

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to ISE Rule 100(37A), a Priority Customer is a person or entity that is not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account.

[4] Pursuant to ISE Rule 1900(f) of the Distributive Linkage rules, a customer is an individual or organization that is not a broker-dealer.

[5] *See* Securities and Exchange Act Release No. 60791 (October 5, 2009), 74 FR 52521 (October 13, 2009) (SR–ISE–2009–74).

are identified on the Exchange's Schedule of Fees as Select Symbols. The proposed fee change will allow the Exchange to equitably assess reasonable fees incurred for processing such orders, and permit the Exchange to recoup administrative and other costs. Under this proposed rule change, Priority Customer orders that are routed out to another exchange will be charged $0.25 per contract instead of the standard taker fee applicable to the Select Symbols.

The Exchange notes that it currently has a similar fee and credit for Customer (Professional) orders. Specifically, the Exchange currently charges PMMs a fee of $0.45 per contract for executions of Customer (Professional) orders that are routed to one or more exchanges in connection with Distributive Linkage, and also provides PMMs with a credit equal to the fee charged by the destination exchange for such Customer (Professional) orders, but not more than $0.45 per contract.[6] This routing fee and credit applies to all the symbols that are traded on the Exchange.

The Exchange also proposes to make two clarifying changes to its Schedule of Fees related to ISO fees and credits previously adopted by the Exchange under SR–ISE–2009–74 and SR–ISE–2010–26. First, as noted above, the $0.20 per contract fee credit adopted in SR–ISE–2009–74 applies to all the symbols that are traded on the Exchange, including the Select Symbols. The Exchange has been providing this credit to PMMs since the inception of the Exchange's modified maker/taker pricing model. For the sake of clarity, the Exchange proposes to add language on page 20 of its Schedule of Fees that specifically references the credit, as follows: ''Intermarket Sweep Order Credit for Priority Customer—A fee credit of $0.20 per contract applies to Primary Market Makers (PMM)—for classes in which it serves as a PMM—that send an Intermarket Sweep Order to other exchanges.'' The proposed language is almost identical to the language that currently appears on page 5 of the Exchange's Schedule of Fees.

Second, again, as noted above, the $0.45 per contract fee and credit adopted in SR–ISE–2010–26 currently applies to all the symbols that are traded on the Exchange, including the Select Symbols. And the Exchange has been charging this fee and providing a corresponding credit when PMMs address their obligations under Distributive Linkage and route these orders for executions to an away exchange. Again, for the sake of clarity, the Exchange proposes to add language on page 20 of its Schedule of Fees that specifically references both the fee and the credit, respectively, as follows: ''Intermarket Sweep Order Fee for Customer (Professional)—A fee of $0.45 per contract applies to executions of orders from persons who are not broker/dealers and who are not Priority Customers that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan'' and ''Intermarket Sweep Order Credit for Customer (Professional)—Primary Market Makers will receive a credit equal to the fee charged by a destination market, but not more than $0.45 per contract, for executing orders from persons who are not broker/dealers and who are not Priority Customers.'' The proposed language for both the fee and the credit is identical to the language that currently appears on page 5 of the Exchange's Schedule of Fees.

The Exchange has designated this proposal to be operative on March 1, 2012.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes charging a route-out fee for Priority Customer orders is reasonable if doing so provides the Exchange the ability to recover the costs of funding a credit the Exchange provides to its PMMs, who, in the course of meeting their obligation, are incurring a financial burden. The Exchange further believes it is equitable and reasonable to assess the proposed fee to recoup costs associated with routing Priority Customer orders to away markets. The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory because the fees would be uniformly applied to all Priority Customer orders. ISE notes that a number of other exchanges currently charge a variety of routing related fees associated with customer and non-customer orders that are subject to linkage handling. The Exchange further notes that the fees proposed herein are substantially lower than the level of fees charged by some of the Exchange's competitors.[7]

Further, the Exchange believes it is equitable, reasonable and not unfairly discriminatory to note on its Schedule of Fees, to provide clarity, that the fees and credits adopted in SR–ISE–2009–74 and SR–ISE–2101–26 and which, as a result have already been established on the Exchange, are applicable to the Select Symbols. Since the Exchange has applied these fees and credits to all the symbols traded on the Exchange, including the Select Symbols, since the inception of these fees and credits, noting them on the Exchange's Schedule of Fees will simply add more clarity to the Exchange's Schedule of Fees and promote further transparency on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[8] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[6] *See* Securities and Exchange Act Release No. 61855 (April 6, 2010), 75 FR 19441 (April 14, 2010) (SR–ISE–2010–26).

[7] *See* NASDAQ OMX PHLX Fee Schedule, Section V.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–13 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6614 Filed 3–19–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: 60-day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before May 21, 2012.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Eric Eide, Innovation and Technology Analyst, Office of Technology, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Eric Eide, Innovation and Technology, *mailto:202-205-7507%20%20gail.hepler@sba.gov* 202–205–7576 *eric.eide@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: The National Defense Reauthorization Act of 2012 (Pub. L. 112–81, Section 5001) contains the SBIR/STTR Reauthorization Act of 2011 (Reauthorization Act), which amends the Small Business Act. The legislation extends and broadens a requirement for the Small Business Administration (SBA) to maintain searchable, electronic databases that include pertinent information concerning each SBIR and STTR awards made through the programs. The legislation contains a new data reporting requirement from companies concerning their potential ownership by venture capital, hedge fund, and private equity firms. Additional data fields will be collected from applicants and awardees concerning applicant demographics and company information (such as number of employees, additional funding received). These new data reporting requirements supplement demographic and company information already collected from awardees (such as women or minority owned, award amount information, research abstract, Principal Investigator's name, etc). The legislation differentiates between data that is available to the public and data that is available to the government only. SBA is required to collect this information and report on it annually to Congress.

Title: ''Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. Individuals and small businesses may be applicants and awardees''

Description of Respondents: Respondents include individuals, and small businesses, that are participating in the SBIR and STTR programs. Individuals and small businesses may be applicants and awardees.

Form Number: N/A.

Annual Responses: 13,500.

Annual Burden: 38,500.

Curtis B. Rich,

Acting Chief, Administrative Information Branch.

[FR Doc. 2012–6702 Filed 3–19–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13031 and #13032]

North Carolina Disaster #NC–00043

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of North Carolina dated 03/12/2012.

Incident: Severe Storms and Tornadoes.

Incident Period: 03/03/2012.

Effective Date: 03/12/2012.

Physical Loan Application Deadline Date: 05/11/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 12/12/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cherokee.

Contiguous Counties:

North Carolina: Clay, Graham, Macon.

Georgia: Fannin, Union.
Tennessee: Monroe, Polk.
The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13031C and for economic injury is 130320.

The States which received an EIDL Declaration # are North Carolina, Georgia, Tennessee.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 12, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–6682 Filed 3–19–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13037 and #13038]

Alaska Disaster #AK–00024

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Alaska dated 03/13/2012.

Incident: 2012 Prince William Sound Winter Storm.

Incident Period: 01/06/2012 through 01/10/2012.

Effective Date: 03/13/2012.

Physical Loan Application Deadline Date: 05/14/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 12/13/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Chugach Reaa.

Contiguous Counties:

Alaska: City and Borough of Yakutat, Copper River Reaa, Kenai Peninsula Borough, Matanuska-Susitna Borough, Municipality of Anchorage.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.125
Homeowners Without Credit Available Elsewhere	2.063
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13037B and for economic injury is 130380.

The State which received an EIDL Declaration # is Alaska.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 13, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–6669 Filed 3–19–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13033 and #13034]

Kansas Disaster # KS–00062

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Kansas dated 03/12/2012.

Incident: Severe Storms and a Tornado.

Incident Period: 02/28/2012 through 02/29/2012.

Effective Date: 03/12/2012.

Physical Loan Application Deadline Date: 05/11/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 12/12/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Wabaunsee.

Contiguous Counties:

Kansas: Geary, Lyon, Morris, Osage, Pottawatomie, Riley, Shawnee.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere 4.000..	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13033 B and for economic injury is 13034 0.

The State which received an EIDL Declaration # is Kansas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 12, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–6683 Filed 3–19–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13039 and #13040]

Ohio Disaster #OH–00032

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Ohio dated 03/13/2012.

Incident: Tornadoes, High Winds and Flooding.

Incident Period: 03/02/2012.

Effective Date: 03/13/2012.

Physical Loan Application Deadline Date: 05/14/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 12/13/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clermont.

Contiguous Counties:

Ohio: Brown, Clinton, Hamilton, Warren.

Kentucky: Bracken, Campbell, Pendleton.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13039 C and for economic injury is 13040 0.

The States which received an EIDL Declaration # are Ohio, Kentucky.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 13, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–6684 Filed 3–19–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13029 and #13030]

Kentucky Disaster Number KY–00044

AGENCY: U.S. Small Business Administration.

ACTION: ACTION:

Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–4057–DR), dated 03/06/2012.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 02/29/2012 through 03/03/2012.

Effective Date: 03/13/2012.

Physical Loan Application Deadline Date: 05/07/2012.

EIDL Loan Application Deadline Date: 12/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the Commonwealth of Kentucky, dated 03/06/2012 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Grayson, Larue, Ohio, Russell, Trimble.

Contiguous Counties: (Economic Injury Loans Only):

Kentucky: Adair, Breckinridge, Butler, Casey, Clinton, Cumberland, Daviess, Edmonson, Green, Hancock, Hardin, Hart, Marion, Mclean, Muhlenberg, Nelson, Oldham, Taylor, Wayne.

Indiana: Clark.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–6700 Filed 3–19–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13035 and #13036]

Indiana Disaster #IN–00041

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–4058–DR), dated 03/09/2012.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 02/29/2012 through 03/03/2012.

Effective Date: 03/09/2012.

Physical Loan Application Deadline Date: 05/08/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 12/10/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/09/2012, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Clark, Jefferson, Ripley, Scott, Warrick, Washington.

Contiguous Counties (Economic Injury Loans Only): Indiana:

Crawford, Dearborn, Decatur, Dubois,

Floyd, Franklin, Gibson, Harrison, Jackson, Jennings, Lawrence, Ohio, Orange, Pike, Spencer, Switzerland, Vanderburgh.

Kentucky:

Carroll, Daviess, Henderson, Jefferson, Oldham, Trimble.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13035C and for economic injury is 130360.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–6670 Filed 3–19–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13029 and #13030]

Kentucky Disaster Number KY–00044

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–4057–DR), dated 03/06/2012.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 02/29/2012 through 03/03/2012.

Effective Date: 03/09/2012.

Physical Loan Application Deadline Date: 05/07/2012.

EIDL Loan Application Deadline Date: 12/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the Commonwealth of Kentucky, dated 03/06/2012 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Bath, Campbell, Carroll, Grant, Martin, Montgomery, Rowan.

Contiguous Counties: (Economic Injury Loans Only):

Indiana: Jefferson, Switzerland.

Kentucky: Bourbon, Clark, Fleming, Gallatin, Henry, Lewis, Nicholas, Owen, Pike, Scott, Trimble.

West Virginia: Mingo.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–6686 Filed 3–19–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13029 and #13030]

Kentucky Disaster Number KY–00044

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–4057–DR), dated 03/06/2012.

Incident: Severe Storms, Tornadoes, Straight-Line Winds, and Flooding.

Incident Period: 02/29/2012 Through 03/03/2012.

Effective Date: 03/09/2012.

Physical Loan Application Deadline Date: 05/07/2012.

EIDL Loan Application Deadline Date: 12/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the Commonwealth of Kentucky, dated 03/06/2012 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Magoffin, Wolfe.

Contiguous Counties: (Economic Injury Loans Only):

Kentucky: Breathitt, Knott, Lee.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–6688 Filed 3–19–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7811]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, April 24, 2012, in Room 6103 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the forty-third Session of the International Maritime Organization's (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) to be held at the IMO Headquarters, United Kingdom, April 30–May 4, 2012.

The primary matters to be considered include:

Validation of model training courses.

Development of an e-navigation strategy implementation plan.

Development of training standards for recovery systems.

Preparation of guidelines for the implementation of the medical standards of the 2010 amendments.

Development of guidance for the implementation of the 2010 Manila amendments.

Role of the human element.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Ms. Zoe Goss, by email at *zoe.a.goss@uscg.mil,* by phone

at (202) 372–1425, by fax at (202) 372–1926, or in writing at Commandant (CG–52), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126 not later than April 17, 2012, 7 days prior to the meeting. Requests made after April 17, 2012 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.*

Dated: March 9, 2012.

Brian Robinson,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2012–6737 Filed 3–19–12; 8:45 am]

BILLING CODE 4710–09–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in ''**DATES**.''

DATES: January 1, 2012, through January 31, 2012.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; email: *rcairo@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f):

1. Chief Oil & Gas, LLC, Pad ID: Kaufmann Drilling Pad #1, ABR–201201001, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: January 4, 2012.

2. Cabot Oil & Gas Corporation, Pad ID: MacDowallR P1, ABR–201201002, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: January 4, 2012.

3. Chief Oil & Gas, LLC, Pad ID: Yoder Drilling Pad #1, ABR–201201003, Leroy Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: January 4, 2012.

4. Chesapeake Appalachia, LLC, Pad ID: Redbone, ABR–201201004, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 4, 2012.

5. Chesapeake Appalachia, LLC, Pad ID: Raimo, ABR–201201005, Monroe Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 4, 2012.

6. Chesapeake Appalachia, LLC, Pad ID: Kathryn, ABR–201201006, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 4, 2012.

7. Chesapeake Appalachia, LLC, Pad ID: Fox, ABR–201201007, Mehoopany Township, Wyoming County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 4, 2012.

8. Chesapeake Appalachia, LLC, Pad ID: Ridenour, ABR–201201008, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 4, 2012.

9. Chesapeake Appalachia, LLC, Pad ID: Elwell, ABR–201201009, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 4, 2012.

10. Citrus Energy Corporation, Pad ID: Macialek 1 Pad, ABR–201201010, Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: January 6, 2012.

11. Southwestern Energy Production Company, Pad ID: FLICKS RUN, ABR–201201011, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: January 9, 2012.

12. Southwestern Energy Production Company, Pad ID: CHILSON–JENNINGS, ABR–201201012, Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: January 9, 2012.

13. Chief Oil & Gas, LLC, Pad ID: Bailey Drilling Pad #1, ABR–201201013, Overton Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: January 9, 2012.

14. Pennsylvania General Energy Co. LLC, Pad ID: COP Tract 356 Pad J, ABR–201201014, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.000 mgd; Approval Date: January 10, 2012.

15. EXCO Resources (PA), Inc., Pad ID: Budman Well Pad, ABR–201201015, Franklin Township, Lycoming County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: January 11, 2012.

16. Range Resources—Appalachia, LLC, Pad ID: Cornhill C Unit 1H–5H, ABR–201201016, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: January 13, 2012.

17. Range Resources—Appalachia, LLC, Pad ID: Corson, Eugene 1H–6H, ABR–201201017, Anthony Township, Lycoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: January 13, 2012.

18. Atlas Resources, LLC, Pad ID: Rhodes Well Pad, ABR–201201018, Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 3.600 mgd; Approval Date: January 18, 2012.

19. Atlas Resources, LLC, Pad ID: Perry Well Pad, ABR–201201019, Mill Creek Township, Lycoming County, Pa.; Consumptive Use of Up to 3.600 mgd; Approval Date: January 18, 2012.

20. Range Resources—Appalachia, LLC, Pad ID: Ogontz Fishing Club 41H–44H, ABR–201201020, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: January 23, 2012.

21. SWEPI LP, Pad ID: Jones 276, ABR–201201021, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: January 25, 2012.

22. SWEPI LP, Pad ID: Tolbert 263, ABR–201201022, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: January 25, 2012.

23. Carrizo (Marcellus), LLC, Pad ID: Trecoske North Pad, ABR–201201023, Silver Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.100 mgd; Approval Date: January 25, 2012.

24. Carrizo (Marcellus), LLC, Pad ID: Trecoske South Pad, ABR–201201024, Silver Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.100 mgd; Approval Date: January 25, 2012.

25. Southwestern Energy Production Company, Pad ID: HEBDA–VANDERMARK, ABR–201201025, Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: January 27, 2012.

26. Southwestern Energy Production Company, Pad ID: TONYA WEST, ABR–201201026, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: January 27, 2012.

27. Southwestern Energy Production Company, Pad ID: GOOD, ABR–201201027, Jackson and Cogan House Townships, Lycoming County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: January 27, 2012.

28. Chesapeake Appalachia, LLC, Pad ID: Burkhart, ABR–201201028, Forks Township, Sullivan County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 30, 2012.

29. Chesapeake Appalachia, LLC, Pad ID: Calmitch, ABR–201201029, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 30, 2012.

30. Carrizo (Marcellus), LLC, Pad ID: EP Bender B (CC–03) Pad (2), ABR–201201030, Reade Township, Cambria County, Pa.; Consumptive Use of Up to 2.100 mgd; Approval Date: January 30, 2012.

31. SWEPI LP, Pad ID: Barner 709, ABR–201201031, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: January 30, 2012.

32. Seneca Resources Corporation, Pad ID: DCNR 100 Pad L, ABR–201201032, Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: January 31, 2012.

33. Chesapeake Appalachia, LLC, Pad ID: Warburton, ABR–201201033, Forks Township, Sullivan County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 31, 2012.

34. Chesapeake Appalachia, LLC, Pad ID: SGL289C, ABR–201201034, West Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 31, 2012.

35. Chesapeake Appalachia, LLC, Pad ID: Hemlock Valley, ABR–201201035, Pike Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 31, 2012.

36. Chesapeake Appalachia, LLC, Pad ID: Manahan, ABR–201201036, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 31, 2012.

37. Chesapeake Appalachia, LLC, Pad ID: Messersmith, ABR–201201037, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 31, 2012.

38. Chesapeake Appalachia, LLC, Pad ID: Lyon, ABR–201201038, Tuscarora Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: January 31, 2012.

39. Chief Oil & Gas, LLC, Pad ID: Myers Unit Drilling Pad #1, ABR–201201039, Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: January 31, 2012.

40. Chief Oil & Gas, LLC, Pad ID: Hurley Drilling Pad #1, ABR–201201040, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: January 31, 2012.

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: March 9, 2012.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2012–6704 Filed 3–19–12; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Assessment: Jessamine County and Madison County, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent (NOI).

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that FHWA will prepare an Environmental Assessment (EA) to determine the need for a Finding of No Significant Impact (FONSI) or an Environmental Impact Statement (EIS)/Record of Decision (ROD) for a new connector between US 27 in Jessamine County, KY and 1–75 in Madison County, KY. This project will adhere to the requirements of Section 6002 of SAFETEA–LU. The purpose of the 1–75 Connector project is to improve regional access and east-west connectivity. Comments on the scope of the EA for the proposed project should be forwarded no later than May 1, 2012.

FOR FURTHER INFORMATION CONTACT: Federal Highway Administration, Kentucky Division: Mr. Ian Chidister, Environmental Specialist, 330 West Broadway, Frankfort, KY 40601. Ian may be reached by phone at 502–223–6730, or by email at *Ian.Chidister@dot.gov.* For additional information, contact Ananias Calvin, P.E., Project Manager for the Kentucky Transportation Cabinet, at (859) 246-2355 or via email at *Ananias.Calvin@ky.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kentucky Transportation Cabinet (KYTC), will prepare an EA to determine the need for a Finding of No Significant Impact (FONSI) or an Environmental Impact Statement (EIS)/Record of Decision (ROD) for a new connector between US 27 in Jessamine County, KY and 1–75 in Madison County, KY. The study area extends from the proposed Eastern Nicholasville Bypass (US 27) to 1–75 near the KY 627 Interchange, including a new crossing at the Kentucky River. The nearest alternate connection between the two routes is Man O' War Boulevard in Lexington, KY. KY 169 also provides a rural route between Nicholasville, KY and Richmond, KY; however, the only Kentucky River crossing on this route is provided by the Valley View Ferry, an automobile-only ferry service that provides cross river service during limited service hours.

The objective of this study is to identify alternative corridors for the 1–75 Jessamine County Connector while considering environmental, social, engineering, costs and other factors in the project vicinity. This study will conform to Kentucky's environmental guidance and the SAFETEA–LU Section 6002 requirements.

Environmental Issues: Possible environmental impacts include effects to historical properties or farmland; increased noise; viewshed impacts; impacts to water resources, flood plains, prime farmland, sensitive biological species and their habitat; land use compatibility impacts; community impacts; and impacts to agricultural lands.

Alternatives: The EA will consider alternatives that include the No-Build (Do Nothing) Alternative as well as a range of build alternatives on new alignment.

Public and Agency Participation: FHWA encourages broad participation in the EA process and review of the resulting environmental documents. Comments, questions, and suggestions related to the project and potential socioeconomic and environmental concerns are invited from all interested agencies and the public at large to ensure that the full range of issues related to the proposed action and all reasonable alternatives are considered and all significant issues are identified. These comments, questions, and suggestions should be forwarded to either phone number or email address listed above.

Early Coordination Letters will be sent to the appropriate Federal, State and local agencies in the Spring of 2012 describing the project, following a project kick-off coordinated through a media news release. An invitation letter will be sent to potential Cooperating Agencies, Participating Agencies, and Section 106 Consulting Parties inviting the agencies to officially take part in the study, encouraging agency comments and suggestions concerning the proposed project, and further defining

the roles of Agencies. The draft purpose and need for the project will be developed and preliminary alternatives identified. The agencies, stakeholders, and public will have an opportunity to review and comment on this information. The purpose and need and preliminary alternatives will be available for public review during a Citizens' Advisory Committee Meeting and Public Workshop. Public notice will be given as to the time and place of the meetings. Agencies and the public will also have an opportunity to comment on various study findings, including: (1) Definition of purpose and need; (2) establishment of screening criteria; (3) screening of initial alternatives; (4) selection of final alternatives; and (5) for the review of environmental documentation. Citizens' Advisory Committee meetings and public meetings will be conducted regularly as the project moves forward to secure input from key stakeholders as decisions are made.

Notices of availability for the purpose and need and identification of preliminary alternatives, evaluation and screening of preliminary alternatives, and identification of final alternatives will be provided through direct mail, email, the project Web site available at *www.I–75connector.com,* and other media. Notification also will be sent to Federal, State, local agencies, persons and organizations that submit comments or questions. Precise schedules and locations for public meetings will be announced in the local news media and the project Web site. Interested individuals and organizations may request to be included on the mailing list for distribution of meeting announcements and associated information.

Other Approvals for Federal Permits: The following approvals for federal permits are anticipated to be required: the Navigational Permit Application from the US Coast Guard and the Section 404 Permit from the Army Corps of Engineers. Additionally, a Section 401 Permit may be required from the Kentucky Energy and Environment Cabinet.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to the program)

Authority: 23 U.S.C. 315; 23 CFR 771.123; 49 CFR 1.48.

Issued on: March 12, 2012.

Jose Sepulveda,

Division Administrator, Federal Highway Administration, Frankfort, Kentucky.

[FR Doc. 2012–6651 Filed 3–19–12; 8:45 am]

BILLING CODE 4910–22–M

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35571]

Amtrak's Petition for Determination of PRIIA Section 209 Cost Methodology

AGENCY: Surface Transportation Board.

ACTION: Adoption of methodology to establish and allocate costs for state-supported Amtrak routes.

SUMMARY: Notice is hereby given of the adoption of a methodology to establish and allocate costs for state-supported Amtrak routes. Amtrak developed this methodology in consultation with affected states, pursuant to Section 209 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). Following consultations, the affected states agreed to adoption of the methodology, with the exception of Indiana. Indiana advised Amtrak that it did not accept the proposed methodology, but did not offer any explanation for its decision. In light of Indiana's decision, Amtrak subsequently filed its petition with the Board, seeking adoption of the methodology.

By decision served on March 15, 2012, the Board finds that the methodology meets the requirements of PRIIA Section 209(a) and should be implemented by Amtrak in accordance with PRIIA Section 209(c). The methodology is a single, nationwide standardized methodology for establishing and allocating the operating and capital costs among the states and Amtrak, associated with the trains operated on the routes subject to PRIIA Section 209(a). Upon review of the methodology and the facts and circumstances surrounding its development, the Board concludes that the methodology will: (1) Ensure equal treatment in the provision of like services of all states and groups of states; and (2) allocate to each route the costs incurred only for the benefit of that route and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than one route. The decision will become effective on April 14, 2012. The entire Board decision is available on the Board's Web site at *www.stb.dot.gov.*

This decision will not significantly affect either the human environment or the conservation of energy resources.

Decided: March 13, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–6604 Filed 3–19–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Renewal; Comment Request; Anti-Money Laundering Programs for Various Financial Institutions

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, we invite comment on a proposed renewal, without change, to information collections found in existing regulations requiring money services businesses, mutual funds, operators of credit card systems, dealers in precious metals, stones, or jewels, and certain insurance companies to develop and implement written anti-money laundering programs reasonably designed to prevent those financial institutions from being used to facilitate money laundering and the financing of terrorist activities. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before May 21, 2012.

ADDRESSES: Written comments should be submitted to: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Attention: Anti-Money Laundering Program Comments. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov,* again with a caption, in the body of the text, ''Attention: Anti-Money Laundering Program Comments.''

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (Not a toll free call).

FOR FURTHER INFORMATION CONTACT: Financial Crimes Enforcement Network, Regulatory Policy and Programs Division at (800) 949–2732, option 6.

SUPPLEMENTARY INFORMATION:

Abstract: FinCEN exercises regulatory functions primarily under the Currency and Financial Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001 and other legislation. This legislative framework is commonly referred to as the ''Bank Secrecy Act'' (''BSA'').[1] The Secretary of the Treasury has delegated to the Director of FinCEN the authority to implement, administer and enforce compliance with the BSA and associated regulations.[2] Pursuant to this authority, FinCEN may issue regulations requiring financial institutions to keep records and file reports that ''have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.'' [3] Additionally, FinCEN is authorized to impose regulations to maintain procedures to ensure compliance with the BSA and FinCEN's implementing regulations, or to guard against money laundering, which includes imposing anti-money laundering (''AML'') program requirements on financial institutions.[4]

Regulations implementing section 5318(h)(1) of the Act are found in part at 31 CFR 1022.210, 1024.210, 1025.210, 1027.210, 1028.210, and 1029.210. In general, the regulations require financial institutions, as defined in 31 U.S.C. 5312(a)(2) and 31 CFR 1010.100 to establish, document, and maintain anti-money laundering programs as an aid in protecting and securing the U.S. financial system.

1. *Titles:* Anti-money laundering programs for money services businesses (31 CFR 1022.210), Anti-money laundering programs for mutual funds (31 CFR 1024.210), Anti-money laundering programs for operators of credit card systems (31 CFR 1028.210).

Office of Management and Budget (OMB) Control Number: 1506–0020.

Abstract: Money services businesses (31 CFR 1022.210), mutual funds 31 CFR 1024.210), and operators of credit card systems (31 CFR 1028.210) are required to develop and implement written anti-money laundering programs. A copy of the written program must be maintained for five years.

Current Action: This action incorporates providers of prepaid access (31 CFR 1022.210(d)(iv)) into existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: Estimated Number of Respondents: 327,206.
31 CFR 1022.210(except (d)(iv)) = 252,100.
31 CFR 1022.210(d)(iv) = 72,100
31 CFR 1024.210 = 3,000.
31 CFR 1028.210 = 6.

Estimated Number of Responses: 2,838,406.
31 CFR 1022.210(except (d)(iv)) = 252,100.
31 CFR 1024.210 = 3,000.
31 CFR 1028.210 = 6.
31 CFR 1022.210(d)(iv) = 2,583,300.[5]

Estimated Number of Hours: 341,216.
Estimated at one hour per respondent.
31 CFR 1022.210(except (d)(iv)) = 252,100.
31 CFR 1024.210 = 3,000.
31 CFR 1028.210 = 6.
Two minutes per response.
31 CFR 1022.210(d)(iv) = 86,110.

2. *Title:* Anti-money laundering programs for dealers in precious metals, precious stones, or jewels (31 CFR 1027.210).

OMB Control Number: 1505–0030.

Abstract: Dealers in precious metals, stones, or jewels are required to establish and maintain written anti-money laundering programs. A copy of the written program must be maintained for five years.

Current Action: There is no change to existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: Estimated Number of Respondents = 20,000.

Estimated Number of Responses = 20,000.

Estimated Number of Hours = 20,000.

3. *Title:* Anti-money laundering programs for insurance companies (31 CFR 1025.210) and non-bank residential mortgage lenders and originators (31 CFR 1029.210).

OMB Control Number: 1506–0035.

Abstract: Insurance companies and non-bank residential mortgage lenders and originators are required to establish and maintain written anti-money laundering programs. A copy of the written program must be maintained for five years.

Current Action: This change incorporates non-bank residential mortgage lenders and originators to existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: Estimated Number of Respondents = 1,200 (Insurance).

Estimated Number of Respondents = 31,000 (Non-bank residential mortgage lender and originators).

Estimated Number of Responses = 1,200 (Insurance).

Estimated Number of Responses = 31,000 (Non-bank residential mortgage lender and originators).

Estimated Number of Hours = 1,200 (Insurance).

Estimated Number of Hours = 93,000 (Non-bank residential mortgage lender and originators. 3 hours for initial establishment of AML program).

Total Burden Hours: 94,200.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments:[6]

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

[1] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto, with implementing regulations at 31 CFR Chapter X. *See* 31 CFR 1010.100(e).

[2] Treasury Order 180–01 (Sept. 26, 2002).

[3] 31 U.S.C. 5311.

[4] 31 U.S.C. 5318(a) and (h).

[5] Reflects the addition of providers of prepaid access renewal program.

[6] The listed burden for providers of prepaid access and non-bank mortgage lenders and originators were recently approved by OMB and are presented for information only.

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: February 13, 2012.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–6478 Filed 3–19–12; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing and Designation of Critical Habitat for the Chiricahua Leopard Frog; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2010–0085;4500030114]

RIN 1018–AX12

Endangered and Threatened Wildlife and Plants; Listing and Designation of Critical Habitat for the Chiricahua Leopard Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the Chiricahua leopard frog (*Lithobates chiricahuensis*) under the Endangered Species Act of 1973, as amended (Act). In total, we are designating approximately 10,346 acres (4,187 hectares) as critical habitat for the Chiricahua leopard frog in Apache, Cochise, Gila, Graham, Greenlee, Pima, Santa Cruz, and Yavapai Counties, Arizona; and Catron, Grant, Hidalgo, Sierra, and Socorro Counties, New Mexico. In addition, because of a taxonomic revision of the Chiricahua leopard frog, we reassessed the status of and threats to the currently described species *Lithobates chiricahuensis* and are listing the currently described species as threatened.

DATES: This rule is effective on April 19, 2012.

ADDRESSES: This final rule and the associated final economic analysis and final environmental assessment are available on the Internet at *http://www.regulations.gov.* Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; telephone 602–242–0210; facsimile 602–242–2513.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; by telephone (602/242–0210); or by facsimile (602/242–2513). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss in this final rule only those topics directly relevant to the listing and development and designation of critical habitat for the Chiricahua leopard frog under the Act (16 U.S.C. 1531 *et seq.*). For more information on the biology and ecology of the Chiricahua leopard frog refer to the final listing rule (67 FR 40790; June 13, 2002) or our April 2007 final recovery plan, which are available from the Arizona Ecological Services Field Office (see **ADDRESSES** section). For information on Chiricahua leopard frog critical habitat, refer to the proposed rule to reassess the listing status and propose critical habitat for the Chiricahua leopard frog published in the **Federal Register** on March 15, 2011 (76 FR 14126). Information on the associated draft economic analysis for the proposed rule to designate critical habitat was published in the **Federal Register** on September 21, 2011 (76 FR 58441).

Previous Federal Actions

We published a proposed rule to list the Chiricahua leopard frog as threatened in the **Federal Register** on June 14, 2000 (65 FR 37343). We published a final rule listing the species as threatened on June 13, 2002 (67 FR 40790). Included in the final rule was a special rule (see 50 CFR 17.43(b)) to exempt operation and maintenance of livestock tanks on non-Federal lands from the section 9 take prohibitions of the Act. The special rule remains in place and is not affected by this final rule, except that we are making an editorial change to revise the heading of 50 CFR 17.43(b) to reflect the currently described species *Lithobates chiricahuensis.* For further information on actions associated with listing the species, please see the final listing rule (67 FR 40790; June 13, 2002).

In a May 6, 2009, order from the Arizona District Court, the Secretary of the Interior was required to publish a critical habitat prudency determination for the Chiricahua leopard frog and, if found prudent, a proposed rule to designate critical habitat by December 8, 2010. Because of unforeseen delays related to species taxonomic issues, which required an inclusion of a threats analysis, we requested a 3-month extension to the court-ordered deadlines for both the proposed and final rules. On November 24, 2010, the extension was granted and new deadlines of March 8, 2011, for the proposed rule and March 8, 2012, for the final rule were established for completing and submitting the critical habitat rules to the **Federal Register**.

We published a proposed rule to reassess the listing status and propose critical habitat for the Chiricahua leopard frog in the **Federal Register** on March 15, 2011 (76 FR 14126) with a request for public comments. On September 21, 2011, we made available the draft environmental assessment and draft economic analysis for the proposed designation of critical habitat and reopened the public comment on the proposed rule (76 FR 58441).

Summary of Comments and Recommendations

We requested written comments from the public on the reassessment of listing status and proposed designation of critical habitat for the Chiricahua leopard frog during two comment periods. The first comment period associated with the publication of the proposed rule (76 FR 14126) opened on March 15, 2011, and closed on May 16, 2011. We also requested comments on the reassessment of listing status, proposed critical habitat designation, associated draft economic analysis, and associated draft environmental assessement during a comment period that opened September 21, 2011, and closed on October 21, 2011 (76 FR 58441). We did not receive any requests for a public hearing. We also contacted appropriate Federal, Tribal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule, draft economic analysis, and draft environmental assessment during these comment periods.

During the first comment period, we received 48 submissions from the public. During the second comment period, we received 14 submissions. Most submissions addressed the proposed critical habitat designation, the draft environmental assessment, or the draft economic analysis, while others provided no substantive information useful to the development of this final rule. All substantive information provided during comment periods has either been incorporated directly into this final rule or is addressed below. Comments we received were grouped into six general issues specifically relating to the proposed critical habitat designation for the Chiricahua leopard frog, and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR

34270), we solicited expert opinions from four knowledgeable individuals with scientific expertise that included familiarity with the species or taxa, the geographic region in which the species occurs, and conservation biology principles. We received responses from one of the peer reviewers.

We reviewed all comments we received from the peer reviewer for substantive issues and new information regarding critical habitat for the Chiricahua leopard frog. The peer reviewer generally concurred with our methods and conclusions, and provided additional suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

Comment 1: The peer reviewer suggested we provide clarification on the geographic range and distribution of the species by defining what is meant by the term ''major drainage'' and how their current and historical distribution regarding ''localities'' relate to these areas.

Our Response: The term ''major drainage'' refers to rivers that are large and are perennial or were historically perennial. Examples of major drainages include the upper Gila, Verde, Salt, and San Pedro Rivers, etc. Because habitat for the Chiricahua leopard frog could include a variety of wetted environments, we use the term ''localities'' to incorporate habitat including stock tanks, streams, cienegas, and other similar areas in a general sense so as to avoid an unnecessarily inclusive description of occupied or formerly occupied habitat. A more detailed account of the species' current and historical distribution can be found in the original listing of the species in 2002 (67 FR 40790) and in the 2007 recovery plan (Service 2007).

Comment 2: The peer reviewer and others suggested various editorial changes to the final rule.

Our Response: We evaluated all of the suggested editorial changes, and we incorporated them, as appropriate, into this final rule.

Comment 3: The peer reviewer stated that our discussion of dispersal habitat focuses on protection of areas to facilitate movement among local populations and asked how longer distance dispersal corridors will be protected (e.g., among populations in different habitat units) to maintain the species throughout its range.

Our Response: We treated dispersal habitat within the context of our current knowledge of the species' natural history, and in particular, its dispersal capabilities. This rationale is provided in our discussion of the ''1–3–5 rule'' in the *Dispersal* section below.

Comment 4: The peer reviewer stated that the rationale for each primary constituent element (PCE) is clear, but requiring critical habitat units to meet all of these relatively narrow criteria may be too restrictive. The peer reviewer also stated that other areas that contain most of the elements and have high restoration potential for ''missing'' elements should also be considered.

Our Response: We used the best scientific information available in determining the PCEs for the Chiricahua leopard frog. The PCEs are the elements of physical or biological features that together provide for a species' life-history processes and are essential to the conservation of the species. We amended the PCEs after the publication of the proposed rule, and included the amended PCEs in our September 21, 2011, publication (76 FR 58441). In designating critical habitat, we based our evaluation of areas on those that contain the physical or biological features essential to the conservation of the Chiricahua leopard frog and which may require special management. In this designation, we include only areas that contain one or more of the PCEs, and note within each unit description the special management actions needed for that unit.

Comment 5: The peer reviewer stated that it appeared as though the recovery plan formed the basis for the proposed critical habitat units and suggested making this clear in the beginning of the section entitled ''*Criteria Used To Identify Critical Habitat.*''

Our Response: In this final rule, we emphasize the use of the recovery plan in the designation of critical habitat.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from the States regarding the proposal to designate critical habitat for the Chiricahua leopard frog are addressed below.

Comment 6: In the discussion of climate change, it was stated that Chiricahua leopard frog ''can often withstand drying of stock tanks for 30 days or more.'' Caution should be used in making this claim as it is an untested hypothesis. Chiricahua leopard frogs may appear during the rainy season at a site that has been dry for 30 days or fewer, but they may have recolonized the site from another occupied site within the metapopulation.

Our Response: We exercised caution in expressing our understanding of the Chiricahua leopard frogs' ability to withstand drought by amending this passage to state, ''Because of their evolutionary history, southwestern leopard frogs may be able to withstand drying of stock tanks for a longer period of time than nonnative species that evolved in wetter climates in the eastern United States, which could provide southwestern leopard frog a selective advantage.''

Comment 7: Under PCE 1(h), the absence of the organism *Batrachochytrium dendrobatidis* (chytrid fungus) is impossible to know with certainty.

Our Response: We amended the PCEs after the publication of the proposed rule and included the amended PCEs in our September 21, 2011, publication (76 FR 58441). The amended PCEs, while providing necessary specificity, are general enough to account for the inherent level of uncertainty that pertains to the presence or absence of *Batrachochytrium dendrobatidis.* PCE 1(d) currently states, ''Absence of chytridiomycosis, or if present, then environmental, physiological, and genetic conditions are such that allow persistence of Chiricahua leopard frogs.'' This change applies the best scientific and commercial data available in addressing a known, serious threat to the Chiricahua leopard frog.

Comment 8: We received a recommendation to state the level of uncertainty that exists regarding the current knowledge of how exactly the defined metapopulations function in reality, compared to how we describe metapopulations.

Our Response: Our current understanding of metapopulations is an amalgamation of past field observations, the literature, and how unoccupied, but suitable, habitat can contribute to the metapopulation dynamic. Inevitably and over time, it is the species itself, in the wild, which will define the configuration of any given metapopulation, which may or may not comport with our current understanding of existing metapopulations. We have revised the language in this final rule to better describe our understanding of metapopulation function.

Comment 9: One comment stated that Peña Blanca Lake should not be included as critical habitat because the long-term persistence of Chiricahua leopard frogs there, in the wake of planned warm-water fish stockings, remains uncertain. Therefore, the lake is

not essential to the conservation of the species.

Our Response: Peña Blanca Lake currently meets the definition of critical habitat as defined in section 3 of the Act because it occurs within the geographical area occupied by the species at the time it was listed, in accordance with the Act, and it has the features essential to the conservation of the species and which may require special management considerations or protection. Our rationale for retaining this unit's designation is provided below in the ''Final Critical Habitat Designation'' section.

Comment 10: Trail Tank in the Crouch, Gentry, and Cherry Creeks, and Parallel Canyon Unit have had a history of bullfrog (*Lithobates catesbeianis*) occupation and no previous records of Chiricahua leopard frog. It should be excluded from critical habitat. Bullfrog eradication efforts in 2010 proved unsuccessful.

Our Response: We view Trail Tank as an important component to critical habitat in the Crouch, Gentry, and Cherry Creeks, as well as Parallel Canyon Unit, because of their potential to support a robust population of Chiricahua leopard frogs in a unit where occupied sites tend to be of small size with small numbers of frogs. While we acknowledge that May 2010 bullfrog removal efforts were unsuccessful at Trail Tank, additional removal efforts occurred in May of 2011, and appear to have been successful. Our discussion of Trail Tank, in our rationale for designating the Crouch, Gentry, and Cherry Creeks, and Parallel Canyon Unit as critical habitat, is provided below under ''Final Critical Habitat Designation.''

Public Comments

General Comments Issue 1: Expansion of Critical Habitat

Comment 11: Expand designation of critical habitat to include 8 miles of Cienega Creek north of the confluence of Cienega Creek and Empire Gulch, which is important flood plain habitat where ephemeral sinkholes and semi-permanent marshes exist.

Our Response: In the Las Cienegas National Conservation Area Unit, we designated areas where the Chiricahua leopard frog maintained breeding populations, or was suspected to, at the time of listing or currently. Our records do not indicate the recommended area of expansion meets these predetermined criteria. Furthermore, should this area support breeding populations in the future, ongoing management of the area should be commensurate with their persistence.

Comment 12: Designate critical habitat in springs, and intermittent or perennial (or both) streams, on a more landscape- or watershed-level to better address the risk of habitat fragmentation, offer more connectedness for metapopulation dynamics, protect habitat, and manage against nonnatives to achieve the necessary landscape-level opportunity to recover the Chiricahua leopard frog. One commenter suggested that we designate critical habitat for all sites that have been occupied since 1990.

Our Response: As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of the Chiricahua leopard frog and may require special management considerations or protection, and areas outside of the geographical area occupied at the time of listing that are essential for the conservation of the species. We also relied heavily on the recovery criteria formulated in collaboration and outlined in the 2007 recovery plan for the Chiricahua leopard frog. The suggestions identified immediately above were not specifically commensurate with these criteria and were therefore not used in the designation process.

Comment 13: A commenter requested expansion of critical habitat in the eastern slope of the Santa Rita Mountains and in the vicinity of the proposed Rosemont Mine to include California Tank, East Tank, and Upper Enzenberg, Box, Sycamore, Sawmill, and Gardner Canyons, because these sites were either occupied at the time of listing, are currently occupied, or may be essential to the conservation of the species.

Our Response: We are not aware of any records that document breeding of the Chiricahua leopard frog at these sites. The lack of historical records that document breeding in these areas may demonstrate that, while they may be important for metapopulation dynamics as demonstrated by intermittent occupation over time, they may not be suitable as breeding habitat and therefore are not essential to the conservation of the species. Therefore, these sites are not included in our critical habitat designation because they do not meet the definition of critical habitat under the Act for the Chiricahua leopard frog.

Comment 14: Expand critical habitat designation in the Left Prong of Dix Creek Unit within the Right and Left Prongs of Dix Creek to include the following tanks: Draw Tank, Bull Canyon Tank, Bobby Tank, Middle Tank, Rattlesnake Gap Tank, Rattlesnake Tank No. 1, Rattlesnake Tank No. 2, and Buckhorn Tank. Connect the designations along the drainages between the above tanks with extant populations from the Rattle Snake Gap Complex, then continue up Dix Creek Left Prong proposed critical habitat, and continue upstream through Bull Canyon and unnamed drainages to connect occupied or seasonal habitats or both. It is also recommended to include the short segment of Dix Creek Right Prong/Left Prong confluence up the Right Prong of Dix Creek to Sycamore Canyon. Further, it is recommended that the Service designate critical habitat from Highway 78 southward along Coal Creek to include habitat where frogs may retreat seasonally or during periods of low water availability. The commenter noted that both lowland leopard frogs (*Lithobates yavapaiensis*) and Chiricahua leopard frogs were identified in surveys, and not all observations of leopard frogs in this area were identified to species.

Our Response: Please see our response to Comments 12.

Comment 15: Expand critical habitat designation into the tributary adjacent to and west of Three Forks near the Campbell Blue and Coleman Creeks Unit.

Our Response: Please see our response to Comments 12.

Comment 16: Expand critical habitat designation in the Peloncillo Mountains Unit on the Diamond A Ranch, Western Division (Canoncito Ranch) to include more dispersal habitat.

Our Response: The Diamond A Ranch, Western Division (Canoncito Ranch) in the Peloncillo Mountains Unit is excluded as designated critical habitat under section 4(b)(2) of the Act. Please review our rationale and analysis for this exclusion under the section ''Exclusions'' below.

Comment 17: Expand critical habitat designation in the following units: Garcia Tank, Buenos Aires National Wildlife Refuge Central Tanks, Bonita, Upper Turner, and Mojonera Tanks, Sycamore Canyon, and Peña Blanca Lake and Spring and associated tanks to include the California Gulch, Ruby, Chimney Canyon, Arivaca Lake, and Airvaca Cienega to protect Chiricahua leopard frogs against nonnative predators.

Our Response: Please see our response to Comments 12.

General Comments Issue 2: Exclusion or Reduction of Critical Habitat

Comment 18: The High Lonesome Well Unit does not provide any more conservation benefit than a zoo and should not be considered critical habitat.

Our Response: We reevaluated the High Lonesome Well Unit and have determined that it does not meet the definition of critical habitat, because it does not have the physical or biological features that are essential for the conservation of the species. After further evaluation, the unit does not contain the terrestrial habitat that provides opportunities for foraging and basking, and that is immediately adjacent to or surrounding breeding aquatic and riparian habitat, which is a component of primary constituent element 1. Therefore, we have removed the High Lonesome Well Unit from this final critical habitat designation.

Comment 19: The West Fork Gila River Unit is within the Gila Wilderness Area on the Gila National Forest, and designating it as critical habitat provides no further conservation value for the species. In addition, this population is known to have chytridiomycosis, and the most recent surveys in 2009 failed to detect any Chiricahua leopard frogs, therefore precluding this unit from meeting PCE (1).

Our Response: We carefully reviewed the best available scientific and commercial data and concluded that the West Fork Gila River Unit both meets the definition of critical habitat described in the ''Critical Habitat'' section below and meets the goals and objectives outlined in the final recovery plan for this species. In addition, the commenter provides no rationale to indicate the unit does not meet the definition of critical habitat or does meet exclusion criteria under section 4(b)(2) of the Act. Please review our rationale and analysis for designating this unit under the section ''Final Critical Habitat Designation'' below.

Comment 20: The threat of chytridiomycosis in the Ash and Bolton Springs Unit makes it unsuitable as critical habitat.

Our Response: The Ash and Bolton Springs Unit meets the definition of critical habitat under the Act for the Chiricahua leopard frog because it was occupied at the time of listing and contains the features essential to the conservation of the species and requires special management considerations or protection. Not all PCEs are currently present, or required to be present, for a given unit to meet the definition of critical habitat under the Act. The commenter provides no additional rationale to indicate the unit does not meet the definition of critical habitat or does meet exclusion criteria under section 4(b)(2) of the Act.

Comment 21: The proposal speaks to a dry section of the West Fork dividing the proposed segment: ''the Upper West Fork is divided into two perennial segments by a 1.2-mi (2.0-km) long ephemeral reach between Turkeyfeather Creek and Whiskey Creek.'' Whiskey Creek is upstream of the proposed segment of stream, and this statement is not relevant to the proposal. In addition, Turkeyfeather Creek was not occupied at time of listing, and there are no historic records from the ephemeral stream. The only intermittent part of the stream is at the spring itself and extending approximately 0.10 mi downstream of the spring. The outflow from the spring is captured in a small cement spring box with a 1-inch pipe extending out of the box as an overflow. The flow from the spring seldom makes it to Turkeyfeather Creek itself. We do not believe that Turkeyfeather Creek is suitable habitat for the frog.

Our Response: White Creek was mistakenly identified as Whiskey Creek in our proposed rule. This has been corrected in this final rule. Our records indicate that the area within this unit as described was occupied at the time of listing and has the features essential to the conservation of the species and which may require special management considerations or protection to minimize impacts to existing threats. No further justification as to why the unit does not meet the definition of critical habitat or does meet exclusion criteria under section 4(b)(2) of the Act was provided.

Comment 22: Exclude from critical habitat designation all private lands (Ladder Ranch) in the Seco Creek, Cuchillo Negro Warm Springs and Creek, and South Fork Palomas Creek Units.

Our Response: The Ladder Ranch is excluded from designated critical habitat under section 4(b)(2) of the Act. Please review our rationale and analysis for this exclusion under the section ''Exclusions'' below.

Comment 23: North Tank and Rosewood Tank Unit should be excluded from critical habitat designation because including them represents adverse effects to the grazing operation on the Magoffin Ranch, and is a disincentive to promote conservation of endangered and threatened species within the ranching community.

Our Response: The Magoffin Ranch (North Tank and Rosewood Tank Unit) is excluded as designated critical habitat under section 4(b)(2) of the Act. Please review our rationale and analysis for this exclusion under the section ''Exclusions'' below.

Comment 24: All critical habitat should be excluded in Recovery Unit 1 (Tumacacori-Atascosa-Pajarito Mountains, Arizona and Mexico) and portions of Recovery Unit 2 (Santa Rita-Huachuca-Ajos Bavispe, Arizona and Mexico).

Our Response: We carefully reviewed the best available scientific and commercial data and concluded that critical habitat we are designating within Recovery Units 1 and 2 both meets the definition of critical habitat described in the ''Critical Habitat'' section below and meets the goals and objectives outlined in the final recovery plan for this species. No further justification as to why these units do not meet the definition of critical habitat or do meet exclusion criteria under section 4(b)(2) of the Act was provided. Please review our rationale and analysis for designating these units under the section ''Final Critical Habitat Designation'' below.

Comment 25: The Concho Bill and Deer Creek Unit is not essential to the conservation of the Chiricahua leopard frog.

Our Response: We carefully reviewed the best available scientific and commercial data and concluded that the Concho Bill and Deer Creek Unit both meets the definition of critical habitat described in ''Critical Habitat'' section below and meets the goals and objectives outlined in the final recovery plan for this species. In addition, the commenter provided no rationale to indicate the unit does not meet the definition of critical habitat or does meet exclusion criteria under section 4(b)(2) of the Act. Please review our rationale and analysis for designating this unit under the section ''Final Critical Habitat Designation'' below.

General Comments Issue 3: Threats Analysis

Comment 26: Chiricahua leopard frogs are sensitive to cadmium and copper above certain levels according to Little and Calfee (2008, pp. 6–10). The Service should differentiate potential effects to the species from the footprint of the Rosemont Mine versus the general area of the mine. We are concerned that Eastern Slope of the Santa Rita Mountains and Las Cienegas National Conservation Area Units might be adversely affected by pollution from Rosemont Mine, once in operation.

Our Response: We agree that Chiricahua leopard frogs are vulnerable to effects from contaminants associated

with mining operations and provide discussion on this issue under the section ''*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.''* If the Rosemont Mine begins operation, potential effects to, and legal protections, for the Chiricahua leopard frog will be evaluated, in accordance with applicable provisions under the Act, at that time, and are not constrained to the footprint of the proposed mine.

Comment 27: In discussing chytrid presence in the Seco Creek Unit, it was stated that ''no frogs have tested positive since then (i.e., 2001)''. More accurately, in June 2007, a single sample (out of 7) from Artesia Well and a single sample (out of 9) from LM Bar Well tested positive for chytrid. Both of these were considered ''weak positive'' by the laboratory and may have been false positives. Extensive testing since then has failed to produce additional positive tests.

Our Response: We have updated our analysis and discussion of this unit to reflect this information.

Comment 28: The proposed rule stated that within the West Fork Gila River Unit '' * * * nonnative predators are present, including fish, crayfish, and bullfrogs. Even though a cooperative restoration project between the Service, the U.S. Forest Service, and New Mexico Department of Game and Fish is underway to restore native fish and remove nonnative predatory fish in this unit, the frog population is currently threatened by nonnative predators and chytridiomycosis (Service 2009, pp. 15–16).'' This statement is incorrect; there are no nonnative predatory fish (Gila trout and speckled dace are the only fish present), there are no crayfish, and there are no bullfrogs in the unit.

Our Response: We have updated our analysis and discussion of this unit to reflect this information.

Comment 29: Periodic Chiricahua leopard frog die-offs resulting from chytridiomycosis have not been observed in the Las Cienegas National Conservation Area Unit. They probably do occur, and probably are a key factor, but it is also possible that other factors are responsible for the rarity of the Chiricahua leopard frog in the Cienega Creek bottomlands.

Our Response: The final recovery plan notes the presence of chytridiomycosis in Cienega Creek (Service 2007, p. 61). We have amended our discussion of this unit to remove the statement regarding periodic die-offs.

Comment 30: Effects of climate change are downplayed in the proposed rule, with significant effects predicted for winter precipitation. Warmer and dryer conditions will force more contact between Chiricahua leopard frogs and nonnative predators, to the detriment of Chiricahua leopard frogs.

Our Response: We used the best available scientific and commercial data to inform our analysis of the effects of climate change on the Chiricahua leopard frog, including the inherent uncertainty that pertains to evaluating the effects of climate change. The effects of climate change are inextricably related to effects from other threats and are difficult to predict or interpret without more definitive data of higher resolution. This discussion was expanded upon in this final rule. Please review our analysis below of the potential effects of climate change under listing Factor E, ''*Other Natural or Manmade Factors Affecting Its Continued Existence''* below.

Comment 31: The Service falsely relied on Fleischner (1994), Belsky (1999), and Jones (2000) on describing the effects of livestock grazing on Chiricahua leopard frogs. These studies discuss uncontrolled grazing when grazing in endangered and threatened species' habitat is controlled.

Our Response: These studies detail potential effects of grazing to habitat. We evaluated the effects of grazing on the Chiricahua leopard frog both historically and present day. We appreciate the conservation actions undertaken by the ranching community and those partnerships we have formed in furthering the goals and objectives of Chiricahua leopard frog conservation and recovery, and we recognize the intrinsic value of their continued participation in this effort.

Comment 32: Regarding the Scotia Canyon, Beatty's Guest Ranch (excluded), and Carr Barn Pond Units, the copper mine in Cananea, Sonora, pumps 10,000 to 12,000 acre feet of groundwater and then redirects surplus water into the Rio Sonora basin which flows to Hermosillo, Sonora. This should be discussed.

Our Response: We understand (although not specifically stated) the implication of groundwater pumping on potential effects to surface flows to the upper San Pedro River. However, these units do not rely on surface flow in the upper San Pedro River for their water supply and are, therefore, unaffected by groundwater pumping activities in Mexico.

Comment 33: The Service should focus on the threat of (Chiricahua leopard frog) surveyors spreading the chytrid fungus.

Our Response: Several precautions are listed in the final recovery plan (Service 2007, Appendix G), such as dedicating equipment, disinfecting equipment, etc., which are taught at annual survey training workshops, required as permit stipulations, and followed by surveyors to prevent the accidental spread of chytrid fungus. These precautions are also mandated as permit conditions for those with section 10(a)(1)(A) permits authorized by the Service. Whatever small risk may be associated with this form of disease transmission, it is countered by the important data collected by the surveys themselves, in helping meet the conservation and recovery goals for the species.

Comment 34: The Service should clearly define what is meant by ''poor'' livestock management.

Our Response: We consider poor livestock management to mean grazing conducted in a manner not in accordance with approved allotment management plans or otherwise considered adverse to maintaining natural habitat characteristics. We have updated this discussion below in Factor A, ''*The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range''* of this final rule.

Comment 35: If Chiricahua leopard frogs do not persist in water affected by livestock feces, what steps will be required by livestock producers with waters that support the species? What about elk feces?

Our Response: We did not state that Chiricahua leopard frogs do not persist in water affected by livestock feces. We stated that Chiricahua leopard frogs likely do not persist in waters severely polluted with cattle feces (Service 2007, p. 34). We understand that in most circumstances where frogs occur in tanks actively used by livestock, livestock feces are likely present in the water, and frogs are not appreciably affected by their presence. We also acknowledge the potential that in tanks that have limited water and are subjected to intense livestock activity, adverse affects to the Chiricahua leopard frog are likely from concentrated amounts of livestock feces, which could limit a population's persistence. We are not aware of any Chiricahua leopard frog populations that are adversely affected as a result of elk feces, but presume similar adverse effects are likely under the same rationale. Furthermore, we are not requiring ranchers to manage their livestock tanks specifically with this factor in mind, but rather prefer to pursue opportunities to work with the ranching community to meet both the needs of the species and the needs of their livestock operations.

General Comments Issue 4: General Biology

Comment 36: The Service must analyze whether Chiricahua leopard frogs along Mogollon Rim are a separate species.

Our Response: We specifically discuss issues pertinent to Chiricahua leopard frog taxonomy under the ''*Species Information''* section below. Since the publication of the proposed rule, Hekkala *et al.* (2011) published a phylogenetic analysis of the (considered extinct) Vegas Valley leopard frog (*Lithobates fisheri*) and other North American Ranidae (North American frogs of the same family) DNA and placed *L. fisheri* within Chiricahua leopard frog (*Lithobates chiricahuensis*) (using archival and contemporary nuclear and mitochondrial DNA). Hekkala *et al.* (2011) ascribed the northwestern-most populations of *L. chiricahuensis* from the Mogollon Rim to *L. fisheri,* although specific populations were not identified. Populations of *L. chiricahuensis* outside this zone were not recommended for taxonomic revision. Data likely support ascribing all known populations of *L. chiricahuensis* to *L. fisheri,* although Hekkala *et al.* (2011) did not make that recommendation. The phylogenetic tree in Hekkala *et al.* (2011; Fig. 2b.) is a subset of a larger phylogenetic tree that is still under construction by genetic researchers. As a subset, the resolution of the data is not sufficient to support recognizing individual populations of *L. chiricahuensis* as *L. fisheri* at this time. Completion of ongoing rangewide research, with sufficient genetic resolution, of the more comprehensive phylogeny of western leopard frogs is expected to be available in 3 to 4 years and will provide additional information for analysis necessary to make informed management or listing decisions.

Comment 37: The proposed rule states, '' * * * the maximum distance moved by a telemetered Chiricahua leopard frog in New Mexico was 2.2 mi (3.5 km) in one direction along a drainage.'' In a New Mexico State Wildlife Grant Report entitled, ''Distribution and Movement of Chiricahua leopard frog on the Ladder Ranch and adjacent National Forest Lands, Sierra County, New Mexico,'' authored by Carter Kruse and Bruce Christman in 2005, it was reported that a single frog moved at least 3.1 mi (5 km), one way during a 3-day rain event in the Seco drainage (page 18), which is substantially farther than discussed in the proposed rule.

Our Response: We did not receive a copy of this report, and we therefore are unable to verify its findings. However, upon receipt of this reference, we will add this information to our current understanding of the species' dispersal capabilities. However, for this final critical habitat rule, no changes have been made based on this information.

Comment 38: Specifically, on page 14151, the proposed rule states that ''Chiricahua leopard frogs are known to breed at all of the above mentioned wells except Sawmill and Johnson Wells * * * Frogs were extant at Davis Well, LM Bar Well, North Seco Well, Pague Well, and Sucker Ledge at the time of listing.'' We offer two corrections: Chiricahua leopard frog reproduction has been documented at Johnson Well each of the last 3 years, and Chiricahua leopard frogs were extant and breeding at Fish Well, in addition to the other sites listed, at the time of listing.

Our Response: The sites noted by the commenter are on the Ladder Ranch which is excluded as critical habitat under section 4(b)(2) of the Act and discussed below under ''Exclusions.''

Comment 39: Chiricahua leopard frogs in the Las Cienegas National Conservation Area Unit are less than 6 miles (10 km) from the nearest recently occupied site in the Eastern Slope of the Santa Rita Mountains Unit. In the 1970s, a key study site for the Chiricahua leopard frog was halfway between the nearest recently occupied sites. Thus, 35 years ago or less, there were likely metapopulation dynamics active between these units.

Our Response: While, historically, such a metapopulation dynamic is feasible, we do not possess records to verify such a dynamic. Therefore, we consider the Eastern Slope of the Santa Rita Mountains Unit as a disjunct metapopulation and the Las Cienegas National Conservation Area Unit as an isolated population because of the distance between the nearest occupied sites between units is more than 8.0 mi (13 km) straight-line distance away, which is not within a reasonable dispersal distance for the Chiricahua leopard frog.

Comment 40: How do the 43 proposed units (39 designated units) correspond to the 85 percent reduction in occupied sites (in reference to statements made in the final listing rule and subsequent Service documents regarding rangewide reductions in occupied habitat), and how will the critical habitat designation achieve the recovery criteria in the recovery plan?

Our Response: Under section 3(5)(A)(ii) of the Act, we have authority to designate specific areas outside the geographic areas occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination that such areas are essential for the conservation of the species. In this final designation, we have identified two units that were not known to be occupied at the time of listing, but which we consider essential for the conservation of the species. Also, the recovery criteria in the final recovery plan (Service 2007, p. 55) for the Chiricahua leopard frog was an important factor in our methodology used to designate critical habitat. In order to meet recovery criteria outlined in the recovery plan, we designated multiple critical habitat units in each recovery unit.

General Comments Issue 5: PBFs, PCEs, and Special Management

Comment 41: The Service should reconsider whether the buffer zones proposed are to protect PCEs from effects caused by livestock grazing or from those posed by airborne pollution.

Our Response: At this time, we feel that applying a buffer zone to protect against the effects of livestock grazing would be arbitrary, because we do not know how large to make the buffer to protect from those effects. However, in ponds designated as critical habitat, most of which are impoundments for watering cattle or other livestock, designated critical habitat extends for 20 ft (6.1 m) beyond the high water line or to the boundary of the riparian and upland vegetation edge, whichever is greatest. We used this 20-ft (6.1-m) extension because the frogs are commonly found foraging and basking within 20 feet of the shoreline of tanks. In regards to effects posed by airborne pollution, no reasonable spatial distance is guaranteed to protect PCEs from airborne pollutants by the very nature of their movement vector. Therefore, we did not consider airborne pollution as a determinant in describing buffer areas.

Comment 42: Regarding the PCE that requires, ''Emergent and or submerged vegetation, root masses, undercut banks, fractured rock substrates, or some combination thereof; but emergent vegetation does not completely cover the surface of water bodies,'' this PCE is not clearly essential in our experience, as sites with minimal vegetation cover can support substantial Chiricahua leopard frog populations. Under the PCE that requires, ''Absence of chytridiomycosis, or if chytridiomycosis is present, then conditions that allow persistence of Chiricahua leopard frogs with the disease (e.g., water temperatures that do not drop below 20 °C (68 °F), pH of greater than 8

during at least part of the year),'' the temperature conditions stated are vague and not clearly in line with observations, as we have populations where temperatures do drop below these values for several months per year.

Our Response: According to our review of the best available scientific and commercial data and the opinion of species experts, the importance of available cover (*i.e.,* emergent and or submerged vegetation, root masses, undercut banks, fractured rock substrates) for the Chiricahua leopard frog cannot be overstated. Available cover is a fundamental component in the defensive behavior of the species, provides varied thermoregulation opportunities, is an important consideration in maintaining an invertebrate prey base, and also serves as substrate for egg mass deposition. In the presence of nonnative species, adequate cover becomes even more critical to an individual frogs' survival. With respect to temperature conditions specified in the proposed rule, we eliminated temperature-specific conditions in an amended PCE as stated under the ''*Primary Constituent Elements for the Chiricahua Leopard Frogs''* section below.

Comment 43: The Service should focus on promoting disturbance in riparian habitat, such as controlled grazing, in order to accommodate the native species' advantage to a disturbance regime in riparian habitat.

Our Response: In the context of evaluating the response of native species versus nonnative species to disturbance regimes in riparian habitat, we consider, in an evolutionary context, disturbance from natural hydrological processes (such as flooding). Native riparian species have evolved in the presence of dynamic hydrologic processes over millions of years, and it is these hydrological disturbance events that prepare seedbeds and provide conditions for germination for native riparian species. For purposes of this critical habitat designation, the concept of promoting disturbance in riparian habitat via controlled grazing in order to accommodate native species is not substantially useful information.

Comment 44: The PBFs and PCEs should include considerations for a landscape of appropriate size free from known or likely populations of nonnative species highly deleterious to populations of the Chiricahua leopard frog.

Our Response: We considered both the importance of space for individual and population growth and for normal behavior, and sites for breeding, reproduction, or rearing (or development) of offspring in our development of the PBFs 1 through 5 and PCEs 1 and 2. Special management that will result from critical habitat designation, such as nonnative species control, should promote these habitat characteristics on a local level, if not landscape level. Such landscape-level management against nonnatives has already proven successful in several areas within Recovery Units 1 and 2.

Comment 45: Why did you change PCE (1)(a) to remove the minimum of 6.0 foot in diameter and 20 inches in depth for breeding pools and ponds?

Our Response: During periods of drought, or less than average rainfall, breeding sites may not hold water long enough for individuals to complete metamorphosis, but they would still be considered essential breeding habitat in non-drought years. Regardless of the effects of drought on any given breeding site, we are aware of pools that fall short of the 6.0 foot in diameter and 20 inches in depth criteria that have regularly contained breeding populations in most years, such as the West Prong Gentry Creek in Recovery Unit 5. These sites still provide important habitat for the species.

Comment 46: If Chiricahua leopard frogs are to persist in Peña Blanca Lake after stocking with predatory nonnative fish species, the vegetation should be controlled to prevent suitable habitat for bullfrogs.

Our Response: We note that the designation of critical habitat for the Chiricahua leopard frog does not require this specific management, nor does any other critical habitat designation require management. Subsequent to draining and dredging Peña Blanca Lake, a concerted effort began in 2008 to clear the area of bullfrogs. The effort appears to be successful, and Chiricahua leopard frogs have benefited. We agree that, if bullfrogs were to successfully recolonize Peña Blanca Lake, shoreline habitat complexity would make their elimination difficult if not impossible without another draining and dredging effort. However, management of this area will continue to concentrate on preventing bullfrogs from recolonizing the area and eliminating those that do recolonize in habitat suitable for these efforts. Furthermore, in a May 2011, section 7 consultation for sportfish stocking of the lake, conservation measures were established that require shoreline habitat to be managed in a manner to retain its complexity, which will provide some level of protection to resident Chiricahua leopard frogs from potential predation from sportfish.

General Comments Issue 6: Legal/Policy/Economics

Comment 47: Designating critical habitat might place a burden on ranching.

Our Response: 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. Also, we conducted an economic analysis of this critical habitat designation, including analyzing the impacts to ranching. Even though there may be some incremental costs to livestock management entities, because of costs related to section 7 consultations in regards to grazing on Forest Service lands, we have found no significant economic impacts are likely to result from this designation (Industrial Economics 2012, pp. ES–5, A–3, A–7).

Comment 48: The Service should consider the cumulative impact of listings and critical habitat designations in New Mexico on private agricultural producers.

Our Response: For listing actions, the Act requires that we make determinations ''solely on the basis of the best available scientific and commercial data available'' (16 U.S.C. 1533(b)(1)(A). So, we do not conduct economic or environmental analyses or environmental assessments when making listing determinations. However, for critical habitat designations, including this one, we are required to prepare draft and final economic analyses and environmental assesessment rules. However, we are required and have prepared draft and final economic analysis and environmental assessment documents, which consider the impacts of critical habitat designation. Those documents consider impacts to private agricultural producers in Arizona and New Mexico and have generally found no significant economic or environmental impacts due to this critical habitat designation. The final economic analysis and final environmental assessment are available on the Internet at *http://www.regulations.gov.*

In regards to considering the cumulative impact of listings and critical habitat designations, in 2001, the U.S. Tenth Circuit Court of Appeals instructed the Service to conduct a full analysis of all of the economic impacts of proposed critical habitat, regardless of whether those impacts are attributable co-extensively to other causes. Since that decision, however, courts in other cases have held that an incremental analysis of impacts stemming solely from the critical habitat rulemaking is proper. Most recently, in 2010, the U.S. Ninth Circuit Court of Appeals came to similar conclusions during its review of critical habitat designations. In order to address the divergent opinions of the courts and provide the most complete information to decision-makers, the economic analysis for this rule describes the baseline protections afforded the Chiricahua leopard frog absent critical habitat designation, and monetizes the potential incremental impacts precipitated specifically by the designation of critical habitat for the species.

Comment 49: The Service should invite coordination with local governmental entities in affected counties relative to any further development of proposed rules.

Our Response: We place a high priority on coordinating with local and State governments within the framework of relevant federal laws. However, we do not understand exactly what the commenter's expectations are regarding coordination with local governmental entities in affected counties relative to any further development of proposed rules. The Act does not delineate a unique role of coordination with counties. However, when proposed rules are developed, we invite and encourage comments from affected counties during the open public comment period.

Comment 50: Designating critical habitat will incentivize landowners to allow bullfrogs to take over stock tanks or allow tanks to dry up when not in use to alleviate regulatory burden. Instead the Service should not designate critical habitat and allow landowners to move frogs around to tanks suitable for occupation.

Our Response: The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. See our response to comments 47 and 53.

Comment 51: In ponds proposed as critical habitat, most of which are impoundments for watering cattle or other livestock, proposed critical habitat extends for 20 ft (6.1 m) beyond the high water line or to the boundary of the riparian and upland vegetation edge, whichever is greatest. This definition of critical habitat, as it applies to private landowners, is vague and therefore unenforceable.

Our Response: The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. See our response to comment 47.

Comment 52: Please do not let critical habitat designation negatively affect the ongoing environmental education program at Brown Canyon Ranch.

Our Response: One of the benefits to designating critical habitat is its value in educating the public on endangered and threatened species conservation. The designation of critical habitat in Brown Canyon will not impact the environmental education program at Brown Canyon Ranch. Alternatively, designating critical habitat may prove beneficial to these purposes, and the Service supports and promotes such positive endeavors.

Comment 53: Control of nonnatives is difficult, if not impossible, in many circumstances, but working with private landowners could help further the goal if critical habitat were not designated.

Our Response: As previously stated, the designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Also, critical habitat designation does not require property owners to undertake affirmative actions to promote the recovery of the species. However, the majority of Chiricahua leopard frog habitat and localities are on Federal lands, mostly lands managed by the U.S. Forest Service. We believe that building partnerships and promoting voluntary cooperation of landowners are essential to improving the status of species on non-Federal lands, and are necessary for implementing recovery actions, such as reestablishing listed species and restoring and protecting habitat.

Comment 54: Designation of critical habitat could diminish private land value.

Our Response: In this final critical habitat designation, only 26 percent of the lands designated as critical habitat are private lands, and there is no evidence that designation of critical habitat in this case will diminish land values (Industrial Economics 2012, p. 2–17). We acknowledge that public attitudes about the limits or restrictions that critical habitat may impose can cause real economic effects to property owners, regardless of whether such limits are likely. Thus, there may be a stigma effect on a property that is designated as critical habitat due to perceived limitations or restrictions, which may result in a lower market value than an identical property that is not within the boundaries of critical habitat. However, we have no evidence that private land values will diminish with this designation. In fact, we believe that, because this designation may increase protection of scenic habitat, there may be aesthetic values resulting in increased properties values (Industrial Economics 2012, p. 2–17).

Comment 55: We recommend the Service consider working with private landowners proactively in conservation and recovery versus enforcing restrictions, etc.

Our Response: The Service has a long history of working proactively with private and public land managers to further conservation and recovery goals for this species while simultaneously accounting for their multiple-use and/or commercial needs of these lands. Examples of such relationships are numerous but perhaps none are more pertinent that those discussed in detail under the section ''Exclusions'' below.

Comment 56: The proposed rule does not meet Data Quality Act standards, because it ignores the best scientific information available and bases many of its conclusions on supposition and speculation about the future.

Our Response: In accordance with section 4 of the Act, we are required to use, and we used, the best available scientific and commercial information to make this critical habitat decision. Further, we followed the criteria, established procedures, and guidance from 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. As such, we relied upon primary and original sources of information in this designation of critical habitat.

In order to meet these ''best available scientific and commercial information'' standards, we found information from many different sources, including the recovery plan, 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. Also, in accordance with our peer review policy published on July 1, 1994 (59 FR

34270), we solicited expert opinions from knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. Additionally, we requested comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the proposed rule. Comments and information we received helped inform this final rule.

In conclusion, we believe that we have used the best available scientific and commercial information for the listing and designation of critical habitat for the Chiricahua leopard frog.

Comment 57: The Service stated that while Hermann et al. (2009, pp. 12–17) indicates that Chiricahua leopard frogs do not currently suffer from a lack genetic variability, it does not preclude the possibility that individual populations may suffer from genetic or demographic problems. This speculation is a violation of the Data Quality Act.

Our Response: The statement that ''* * * it does not preclude the possibility that individual populations may suffer from genetic or demographic problems'' pertains to the inherent level of uncertainty of how changes in the species' status and threats may influence population genetics in the foreseeable future. The Service's use of this information does not result in speculation by the Service.

Comment 58: The Services' presumption that there are ''future'' threats clearly fails to pass Data Quality Act standards, because that presumption is based solely on speculation and surmise contradicted by the best scientific and commercial information available.

Our Response: See our response to comment 56.

Comment 59: The designation of 5,200 acres of land in Arizona may place an economic burden on the livestock and mining industries in Arizona and may also risk discouraging private partnerships that could further recovery of the species.

Our Response: We discuss how the designation of critical habitat may or may not affect the responsibilities of land owners and managers under the ''*Background''* under the section ''Critical Habitat'' heading below. We recommend review of this section for clarification of the actual, versus perceived, effects of critical habitat designation. Also, we conducted an economic analysis of this designation, and found that even though there may be some incremental costs to livestock management entities related to section 7 consultations, no significant economic impacts on livestock and mining industries are likely to result from this designation (Industrial Economics 2012, pp. ES–5, A–3, A–7).

Comment 60: We are concerned that the conservation efforts for the Chiricahua leopard frog will become another Service action where new rules are put in place that limit or restrict ''multiple use'' of land and resources. Throughout Apache County, once productive private, State, or Federal land has become so encumbered with use restrictions, requirements, and liabilities that the natural resources they once provided are no longer economically available or contributing to the local economy.

Our Response: 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.

Comment 61: The Apache County Board of Supervisors requests we coordinate with them to discuss the consistencies, conflicts, opportunities for coordination, and coordinated monitoring associated with this rulemaking.

Our Response: We accepted comments on the proposed rule, draft economic analysis, and draft environmental assessment during two comment periods for a total of 90 days. As such, we complied with all requirements for public participation in our rulemaking process, under the Act and the Administrative Procedures Act (5 U.S.C. Subchapter II).

Economic Analysis

Comment 62: The Service should provide a detailed assessment about who will bear the costs in ''management changes, use reduction, or loss of property rights, such as depreciation of land values.'' The comment also suggested that the Service conduct a takings implication assessment to analyze the effects of critical habitat designation on land and water rights where appropriate.

Response: The draft economic analysis (DEA) discusses potential direct and indirect impacts of the Chiricahua leopard frog critical habitat designation in Chapters 2 and 4. In Chapter 2, the analysis discusses the possibility that the designation might affect property values both positively and negatively. Because of the extensive conservation efforts already in place for the Chiricahua leopard frog, and because the Service is already excluding portions of 10 critical habitat units (due to existing leopard frog protections in these areas), neither direct nor indirect property value impacts are anticipated to result from the designation. The analysis finds that any impacts to property value or other property rights would occur regardless of critical habitat designation and are therefore not attributable to the Chiricahua leopard frog designation.

Comment 63: One comment noted that the DEA erroneously stated that the Chiricahua leopard frog was listed as endangered rather than threatened in 2002.

Response: This is corrected in the final economic analysis (FEA).

Comment 64: The DEA states that the Service is considering portions of nine critical habitat units for exclusion, when in fact portions of 10 critical habitat units are being considered. With the addition of Unit 43 (Palomas) to the proposed rule, the Ladder Ranch lands within this unit are also being considered for exclusion (as stated in the draft environmental assessment).

Response: This is corrected in the FEA.

Comment 65: The DEA did not adequately address potential impacts on local businesses. The analysis also focused almost exclusively on the administrative costs to the Federal agencies for consultation related to the designation of critical habitat, and did not examine the potential impact to local economies already struggling with high unemployment and widespread poverty. Finally, the DEA must analyze, fully disclose, and explain how the rule may impact local businesses.

Response: Appendix A of the DEA considers potential impacts of the critical habitat designation on small entities and the energy industry. The DEA considers publicly available information in estimating the incremental costs of the proposed critical habitat designation on small entities, including any information about potential impacts to local communities.

Environmental Assessment

Comment 66: The potential impacts of climate change are complicated and overly downplayed in the draft environmental assessment.

Response: We have added a discussion of climate change in section 1.8.1 of the final environmental assessment.

Comment 67: A proposed open pit copper mine seriously threatens both units 8 and 9.

Response: In September 2011, Coronado National Forest published a draft environmental impact statement (EIS) on the proposed mine. Using information from that EIS, we added section 3.11 Mining to the final environmental assessment to address potential impacts.

Comment 68: One commenter felt that we should elevate the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) analysis to the level of an EIS.

Response: The level of impacts to the environment from this critical habitat designation do not rise to the level of significance to trigger the requirement to produce an EIS.

Comment 69: One commenter quotes from the Service's Handbook on NEPA Policies and Responsibilities: ''We encourage public scoping for an Environmental Assessment, because it helps satisfy NEPA's purposes in section 101(b).''

Response: In the proposed rule to designate critical habitat, dated March 15, 2011, and published in the **Federal Register** (76 FR 14126), we requested public review and comment on several aspects of the proposed designation, including a draft environmental assessment. Also, we conducted public outreach efforts, including posting information on the Service's National, Regional, and Field Office Web sites.

Comment 70: One commenter suggested that the draft environmental assessment did not have sufficient information on the impacts of the proposed designation, and that the Secretary of the Interior should defer making a designation of critical habitat until such time as this information is available.

Response: The commenter does not suggest what necessary information is lacking. The Act requires us to use the best available scientific and commercial data in making decisions. We believe this standard was met, and we are finalizing the critical habitat designation.

Comment 71: One commenter suggested that the draft environmental assessment does not meet the requisite Data Quality Act of 2000 standards. Instead it blatantly ignored scientific information and based many of its conclusions on supposition and speculation.

Response: The commenter does not cite the ways the document violates the Data Quality Act, or the scientific information that has been ignored. We believe that the draft environmental assessment relied on the best available scientific and commercial information. It based its conclusions on a reasonable assessment of the likely frequency, nature, and outcomes of incremental section 7 consultations, and discussed these in chapters 3 through 5.

Comment 72: The draft environmental assessment uses the term ''unknown'' more than 18 times, yet page 96 of the draft environmental assessment concludes that ''The impacts do not pose any uncertain, unique, or unknown risks.'' With the number of unknown details listed throughout the draft environmental assessment and the overly general nature of this NEPA document, it is clear that there are unknown risks that the conclusion on page 96 of the draft environmental assessment fails to recognize.

Response: The commenter's examples fall into two categories of unknowns: (1) The number of section 7 consultations likely to be conducted in the future affecting a given resource, agency, or activity (accounting for 9 of the 17 specific instances mentioned); and (2) the specific details and locations of such projects (accounting for 8 of the 17 specific instances mentioned). Given the consultation histories that are relevant (and cited throughout the draft environmental assessment), we do not believe that the frequency or nature of likely consultations will be such to cause significant impacts, regardless of whether or not the precise number and nature of those consultations can be predicted.

Comment 73: The Service should correct the draft environmental assessment by including data that support analysis of the effects of implementing critical habitat. The analysis should focus on the effects of critical habitat on each proposed critical habitat unit.

Response: The designation of critical habitat itself does not produce direct impacts on the natural environment, nor does it directly impose limits on land management activities on private property. Its impacts occur through consultations conducted with Federal agencies (and, rarely, non-Federal project proponents who request Federal funding or authorization) under section 7 of the Act. For this reason, we feel it is appropriate to focus the impact discussion on the effects that critical habitat designation will have on the number, types, and outcomes (including conservation measures, project modifications, costs, or delays) of consultations. Please see the final environmental assessment for more information.

Comment 74: There is a lack of actual environmental consequence determinations for each of the proposed critical habitat units. Per NEPA, the definition of effects clearly considers the ecological component to be the backbone of effects determinations.

Response: The designation of critical habitat is intended to provide for the protection of the physical or biological features essential to the conservation of a listed species. Impacts from critical habitat designation occur through the outcomes of new, re-initiated, or expanded consultations under section 7 of the Act, rather than through direct physical impacts on the ground. For this reason, we feel it is appropriate to focus the impact discussion in the environmental assessment on the effects critical habitat designation will have on the number, types, and outcomes of consultations.

Comment 75: One commenter suggested that the Service revise the environmental assessment to provide information about how the implementation of the proposed critical habitat will change the ecosystems that make up the proposed critical habitat areas. If it is determined that there will be no change in the environment conditions of the various proposed critical habitat areas due to the critical habitat designation, or that no true benefits will be realized from designating critical habitat, then the Service should select the ''No Action'' alternative and not burden the public with the cost of unnecessary Federal actions.

Response: We do not believe that ecological impacts will occur because of this critical habitat designation. The benefits of critical habitat include public awareness of Chiricahua leopard frog presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for Chiricahua leopard frogs due to the protection from adverse modification or destruction of critical habitat.

Summary of Changes From Proposed Rule

In the March 15, 2011, proposed rule (76 FR 14126), we proposed to designate approximately 11,136 acres (4,510 hectares) in 40 units as critical habitat

for the Chiricahua leopard frog. Then, in September 21, 2011 (76 FR 58441), we proposed approximately 331 acres (133 hectares) in three additional units, and amended the PCEs to provide more clarification by making them more objective and measurable. In this final listing rule, we are designating approximately 10,386 acres (4,187 hectares) as critical habitat in 39 units for the Chiricahua leopard frog.

We have fewer units in this final rule because we exclude the Pasture 9 Tank Unit, Beatty's Guest Ranch Unit, and Ramsey and Brown Canyons Unit under the provisions of section 4(b)(2) of the Act (see the unit descriptions under the Final Critical Habitat Designation section and the Exclusion section, below). Also, we reevaluated the High Lonesome Well Unit, and we have determined that it does not meet the definition of critical habitat (see our response to comment 18, above, and the unit description under the Final Critical Habitat Designation section, below). Therefore, we have removed the High Lonesome Well Unit from this final critical habitat designation.

Threatened Status for the Chiricahua Leopard Frog

Background

Due to a taxonomic revision of the Chiricahua leopard frog, we reassessed the status of and threats to the currently described species. It is our intent to discuss below only those topics directly relevant to the listing of the Chiricahua leopard frog as threatened in this section of the final rule. For more information on the Chiricahua leopard frog, refer to the final listing rule published in the **Federal Register** on June 13, 2002 (67 FR 40790) and the species' recovery plan (Service 2007).

Species Information

Description

When we listed the Chiricahua leopard frog as a threatened species on June 13, 2002 (67 FR 40790), we recognized the scientific name as *Rana chiricahuensis.* Since that time, the genus name *Lithobates* was proposed by Frost *et al.* (2006, p. 249) and adopted by the Society for the Study of Amphibians and Reptiles in their most recent listing of scientific and standard English names of North American amphibians and reptiles north of Mexico (Crother 2008, p. 7). With the publication of this final rule, we officially accept the new scientific name of the Chiricahua leopard frog as *Lithobates chiricahuensis.*

In addition, the Ramsey Canyon leopard frog (*Lithobates subaquavocalis*), found on the eastern slopes of the Huachuca Mountains, Cochise County, Arizona, has recently been subsumed into *L. chiricahuensis* (Crother 2008, p. 7) and was noted by the Service as part of the listed entity in a 90-day finding on 192 species from a petition to list 475 species (74 FR 66866; December 16, 2009). Goldberg *et al.* (2004, pp. 313–319) examined the relationships between the Ramsey Canyon leopard frog (*L. subaquavocalis*) and the Chiricahua leopard frog (*L. chiricahuensis*). Genetic analysis showed no evidence that Ramsey Canyon leopard frog was a separate species from the Chiricahua leopard frog (Goldberg *et al.* 2004, p. 315). The Society for the Study of Amphibians and Reptiles later adopted these leopard frogs as the same species, *L. chiricahuensis* (Crother 2008, p. 7). Therefore, we no longer recognize the Ramsey Canyon leopard frog (*L. subaquavocalis*) as a distinct species and consider it to be synonymous with the Chiricahua leopard frog (*L. chiricahuensis*). In this final rule, we present our analysis of the threats to the species given this taxonomic revision to determine if it is appropriate to list the Chiricahua leopard frog as threatened throughout its range (see Summary of Factors Affecting the Species below).

Northern populations of the Chiricahua leopard frog in the Mogollon Rim region of east-central Arizona east to the eastern bajada of the Black Range in New Mexico are physically separated from populations to the south. Previous work had suggested these two separate divisions might be distinct species (Platz and Grudzien 1999, p. 51). Goldberg *et al.* (2004, p. 315) demonstrated that frogs from these two regions showed a 2.4 percent average divergence in mitochondrial DNA sequences. However, more recent work using both mitochondrial DNA and nuclear microsatellites from frog tissues throughout the range of the species provides no evidence of multiple taxa within what we now consider to be the Chiricahua leopard frog (Herrman *et al.* 2009, p. 18).

The Chiricahua leopard frog is distinguished from other members of the leopard frog complex by a combination of characters, including a distinctive pattern on the rear of the thigh consisting of small, raised, cream-colored spots or tubercles (wart-like projections) on a dark background; folds on the back and sides that, towards the rear, are interrupted and deflected towards the middle of the body; stocky body proportions; relatively rough skin on the back and sides; eyes that are positioned relatively high on the head; and often green coloration on the head and back (Platz and Mecham 1979, p. 347.1; Degenhardt *et al.* 1996, pp. 85–87). The species also has a distinctive call consisting of a relatively long snore of 1 to 2 seconds in duration (Platz and Mecham 1979, p. 347.1; Davidson 1996, tracks 58, 59). Overall body lengths of adults range from approximately 2.1 inches (in) (5.3 centimeters (cm)) to 5.4 in (13.7 cm) (Platz and Mecham 1979, p. 347.1; Stebbins 2003, pp. 236–237).

Life History

The life history of the Chiricahua leopard frog can be characterized as a complex life cycle, consisting of eggs and larvae that are entirely aquatic and adults who are primarily aquatic but may be terrestrial at times. Females attach spherical masses of fertilized eggs, ranging in number from 300 to 1,485 eggs, to submerged vegetation (Sredl and Jennings 2005, p. 547). Egg masses of Chiricahua leopard frogs have been reported in all months, but reports of egg laying (oviposition) in June and November through January are uncommon (Zweifel 1968, pp. 45–46; Frost and Bagnara 1977, p. 449; Frost and Platz 1983, p. 67; Scott and Jennings 1985, p. 16; Sredl and Jennings 2005, p. 547). Frost and Platz (1983, p. 67) divided egg-laying activity into two distinct periods with respect to elevation. Populations at elevations below 5,900 feet (ft) (1,798 meters (m)) tend to lay eggs from spring through late summer, with most activity taking place before June. Populations above 5,900 ft (1,798 m) bred in June, July, and August. Scott and Jennings (1985, p. 16) found a similar seasonal pattern of reproductive activity in New Mexico (February through September), as did Frost and Platz (1983, p. 67), although they did not note elevational differences. Additionally, Scott and Jennings (1985, p. 16) noted reduced egg laying in May and June. Zweifel (1968, p. 45) noted that breeding in the early part of the year appeared to be limited to sites where water temperatures do not get too low, such as spring-fed sites. Chiricahua leopard frogs at warm springs may lay eggs year-round due to elevated water temperatures as compared to most breeding habitat (Scott and Jennings 1985, p. 16).

Eggs hatch in approximately 8 to 14 days depending on temperature (Sredl and Jennings 2005, p. 547). After hatching, tadpoles remain in the water, where they feed and grow. Tadpoles turn into juvenile frogs in 3 to 9 months (Sredl and Jennings 2005, p. 547). Juvenile frogs are typically 1.4 to 1.6 in (35 to 40 millimeters (mm)) in overall body length. Males reach sexual

maturity at 2.1 to 2.2 in (5.3 to 5.6 cm), a size they can attain in less than a year (Sredl and Jennings 2005, p. 548).

The diet of the Chiricahua leopard frog includes primarily invertebrates such as beetles, true bugs, and flies, but fish and snails are also taken (Christman and Cummer 2006, pp. 9–18). An adult was documented eating a hummingbird in southeastern Arizona (Field *et al.* 2003, p. 235). Chiricahua leopard frogs can be found active both day and night, but adults tend to be active more at night than juveniles (Sredl and Jennings 2005, p. 547). Chiricahua leopard frogs presumably experience very high mortality (greater than 90 percent) in the egg and early tadpole stages, high mortality when the tadpole turns into a juvenile frog, and then relatively low mortality when the frogs are adults (Zug *et al.* 2001, p. 303; Service 2007, pp. C10–C12). Under ideal conditions, Chiricahua leopard frogs may live as long as 10 years in the wild (Platz *et al.* 1997, p. 553).

Geographical Range and Distribution

The range of the Chiricahua leopard frog includes central and southeastern Arizona; west-central and southwestern New Mexico; and in Mexico, northeastern Sonora, the Sierra Madre Occidental of northwestern and west-central Chihuahua, and possibly as far south as northern Durango (Platz and Mecham 1984, p. 347.1; Degenhardt *et al.* 1996, p. 87; Sredl and Jennings 2005, p. 546; Brennan and Holycross 2006, p. 44; Lemos-Espinal and Smith 2007, pp. 287, 579; Rorabaugh 2008, p. 32). The distribution of the species in Mexico is unclear due to limited survey work and the presence of closely related taxa (especially *Lithobates lemosespinali* (no common name)) in the southern part of the range of the Chiricahua leopard frog. Based on 2010 data, the species still occurs in most major drainages in Arizona and New Mexico where it occurred historically; the exception to this is the Little Colorado River drainage in Arizona. In Arizona and New Mexico, the species likely occurs at about 14 and 16 to 19 percent of its historical localities, respectively (Service 2007, p. 6).

Habitat

Within its geographical range, breeding populations of this species historically inhabited a variety of aquatic habitats (Service 2007, p. 3); however, the species is now limited primarily to headwater streams and springs, and livestock tanks into which nonnative fish, bullfrogs, crayfish (*Orconectes virilis*), and barred tiger salamanders (*Ambystoma mavortium mavortium*) have not yet invaded or been introduced, or where the numbers of nonnative predators are low and habitats are complex, allowing Chiricahua leopard frogs to coexist with these species (Service 2007, p. 15). The large valley-bottom cienegas (mid-elevation wetland communities typically surrounded by relatively arid environments), rivers, and lakes where the species occurred historically are populated with nonnative predators at densities with which the Chiricahua leopard frog cannot coexist.

Dispersal

Although one of the most aquatic of southwestern leopard frogs (Degenhardt *et al.* 1996, p. 86), Chiricahua leopard frogs are known to move among aquatic sites, and such movements are crucial for conserving metapopulations. A metapopulation is a set of local populations that interact via individuals moving between local populations (Hanski and Gilpin 1991, p. 7). If local populations are extirpated through drought, disease, or other factors, the populations can be recolonized via dispersal from adjacent populations. Hence, the long-term viability of metapopulations may be enhanced over that of isolated populations, even though local populations experience periodic extirpations. To determine whether metapopulation structure exists in a specific group of local populations, the dispersal capabilities of the frog must be understood. Based on a review of available information, the recovery plan (Service 2007, pp. D–2, D–3, K–3) provides a rule of thumb on dispersal capabilities. Chiricahua leopard frogs are reasonably likely to disperse 1.0 mile (mi) (1.6 kilometers (km)) overland, 3.0 mi (4.8 km) along ephemeral or intermittent drainages (water existing only briefly), and 5.0 mi (8.0 km) along perennial water courses (water present at all times of the year), or some combination thereof not to exceed 5.0 mi (8.0 km). This is often referred to as the ''1–3–5 rule'' of dispersal. It should be noted that inevitably and over time, it is the species itself, in the wild, which will define the configuration of any given metapopulation. Ultimately, the resultant configuration of persistent wild metapopulations may or may not comport with our current understanding of metapopulation dynamics. We will continue to examine metapopulation dynamics of wild populations and make management recommendations or modifications as required, over time.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists). A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. The final listing rule for the Chiricahua leopard frog (67 FR 40790; June 13, 2002) contained a discussion of these five factors, as did the proposed listing rule (65 FR 37343; June 14, 2000). Threats discussed in the previous listing rules are still affecting the Chiricahua leopard frog today. Please refer to these rules or the Chiricahua leopard frog recovery plan (Service 2007, pp. 18–45) for a more detailed analysis of the threats affecting the species. Because we no longer recognize the Ramsey Canyon leopard frog as a distinct species and consider it to be synonymous with the Chiricahua leopard frog, we reanalyzed factors relevant to the entire listed entity below. However, because all the threats from the previous rules still apply, we provide a summary of those below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The recovery plan lists the following threats to habitat or range of the Chiricahua leopard frog: Mining, including mining-related contaminants; other contaminants; dams; diversions; stream channelization; groundwater pumping; woodcutting; urban and agricultural development; road construction; grazing by livestock and elk; climate change; and altered fire regimes (Service 2007, pp. 31–37). Although these threats are widespread and varied, a threats assessment that was accomplished as part of the recovery plan showed chytridiomycosis and predation by nonnative species as consistently more important threats than these habitat-based factors (Service 2007, pp. 20–27).

Chiricahua leopard frogs are fairly tolerant of variations in water quality, but likely do not persist in waters severely polluted with cattle feces

(Service 2007, p. 34), or runoff from mine tailings or leach ponds (Rathbun 1969, pp. 1–3; U.S. Bureau of Land Management 1998, p. 26; Service 2007, p. 36). Furthermore, variation in pH, ultraviolet radiation, and temperature, as well as predation stress, can alter the potency of chemical effects (Akins and Wofford 1999, p. 107; Monson *et al.* 1999, pp. 309–311; Reylea 2004, pp. 1081–1084). Chemicals may also serve as a stressor that makes frogs more susceptible to disease, such as chytridiomycosis (see discussion under Factor C below) (Parris and Baud 2004, p. 344). The effects of pesticides and other chemicals on amphibians can be complex because of indirect effects on the amphibian environment, direct lethal and sublethal effects on individuals, and interactions between contaminants and other factors associated with amphibian decline (Sparling 2003, pp. 1101–1120; Reylea 2008, pp. 367–374).

A copper mine (the Rosemont Mine) has been proposed in the northeastern portion of the Santa Rita Mountains, Pima County, Arizona (Recovery Unit 2), the footprint of which includes several sites recently occupied by Chiricahua leopard frogs. Recent research indicates that Chiricahua leopard frog tadpoles are sensitive to cadmium and copper above certain levels (Little and Calfee 2008, pp. 6–10), making the introduction of copper into Chiricahua leopard frog habitat a possible significant threat. A draft environmental impact statement was prepared by the U.S. Forest Service in September 2011, which confirmed that Chiricahua leopard frogs could be adversely affected by direct and indirect impacts of the mining operation, including effects from mercury, cadmium, and selenium contamination (U.S. Forest Service 2011, p. 396).

The continued threat of wildfire has never been more visible than that represented by the 2011 fire season in Arizona. A minimum of five wildfires occurred in Arizona that adversely affected the status of the Chiricahua leopard frog. The largest wildfire in Arizona State history, the Wallow Fire, started in the White Mountains on May 28, 2011. The Wallow Fire consumed 538,049 acres (217,741 ha), including in the area around Cambell Blue and Coleman Creeks. The Horseshoe II Fire started on May 8, 2011, grew to 222,954 acres (90,226 ha), and affected the majority of land area in the Chiricahua Mountains. We are not certain how occupied habitat in Cave Canyon will respond to such a widespread fire and subsequent precipitation events. The Murphey Complex and Greaterville fires both occurred in the spring of 2011, potentially affecting designated critical habitat in the Santa Rita Mountains (Florida Canyon and Eastern Slope of the Santa Mountains Units) and Pajarito Mountains (Sycamore Canyon and Peña Blanca Lake and Spring and Associated Tanks Units), respectively.

On June 12, 2011, the Monument Fire started 4 miles east of Hereford, Arizona, ultimately consuming 30,526 acres (12,353 ha) and significantly affecting a portion of the Huachuca Mountains, including the Beatty Guest Ranch in Miller Canyon. On June 27, 2011, over 120 adult and larvae Chiricahua leopard frogs were salvaged from the Beatty Guest Ranch in anticipation of destructive floods and sedimentation that occurred shortly thereafter, filling with sediment the ponds that formerly contained a robust population of Chiricahua leopard frogs. Chiricahua leopard frogs persist on Beatty Guest Ranch but only as a small fraction of their former numbers in habitat that has been severely adversely affected and faces an uncertain future.

The Southwest Endangered Species Act Team (2008, pp. iii–IV–5) published ''Chiricahua leopard frog (*Lithobates* [*Rana*] *chiricahuensis*) considerations for making effects determinations and recommendations for reducing and avoiding adverse effects,'' which includes detailed descriptions of how many different types of projects, including fire management, construction, native fish recovery, and livestock management projects, may affect the frog and its habitat. This document, in addition to the recovery plan (Service 2007, pp. 31–37), can be referenced for more information about habitat-related threats. Habitat-related threats to the Chiricahua leopard frog, while not the most important factors threatening the species, currently affect and will continue to affect the species in the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Even though the final listing rule (67 FR 40790; June 13, 2002) discussed over-collection for the pet trade as a possible threat, we have no information that leads us to believe that overutilization for commercial, recreational, scientific, or educational purposes is currently a threat to the Chiricahua leopard frog, or will become a threat in the future.

C. Disease and Predation

The threats assessment conducted during the preparation of the recovery plan (Service 2007, pp. 18–45) found that disease (chytridiomycosis) and predation by nonnative species (bullfrogs, crayfish, fish, and barred tiger salamanders) are the most significant threats to the Chiricahua leopard frog.

Disease

In some areas, Chiricahua leopard frog populations are known to be seriously affected by chytridiomycosis. Chytridiomycosis is an introduced fungal skin disease caused by the organism *Batrachochytrium dendrobatidis* or ''*Bd.*'' Voyles *et al.* (2009) hypothesized that *Bd* disrupts normal regulatory functioning of frog skin, and evidence suggests that electrolyte depletion and osmotic imbalance that occur in amphibians with severe chytridiomycosis are sufficient to cause mortality. This disease has been associated with numerous population extirpations, particularly in New Mexico, and with major die-offs in other populations of Chiricahua leopard frogs (Service 2007, p. 26).

Predation

Prior to the invasion of predatory, nonnative species (bullfrog, crayfish, fish species) into perennial waters, the Chiricahua leopard frog was historically found in a variety of aquatic habitat types. Today, leopard frogs in the southwestern United States are so strongly impacted by harmful nonnative species, which are most prevalent in perennial waters, that the leopard frogs' occupied niche is increasingly restricted to the uncommon environments that do not contain these nonnative predators, and these environments now tend to be ephemeral and unpredictable. Witte *et al.* (2008, p. 378) found that sites with disappearances of Chiricahua leopard frogs were 2.6 times more likely to have introduced crayfish than were control sites. Unfortunately, few sites with bullfrogs were included in the Witte *et al.* (2008, pp. 375–383) study, and at many sites, there was no identification of the species of fish present.

Summary of Factor C

Overall, the Chiricahua leopard frog has made modest population gains in Arizona in spite of disease and predation, but is apparently declining in New Mexico because of these threats (Service 2011, pp. 25–27). We consider disease, specifically chytridiomycosis, and predation by nonnative species to have significant impacts on Chiricahua leopard frog populations now, and we anticipate those impacts will continue in the future.

D. Inadequacy of Existing Regulatory Mechanisms

The Chiricahua leopard frog is currently listed as a threatened species (67 FR 40790; June 13, 2002) with a special rule (see 50 CFR 17.43(b)) to exempt operation and maintenance of livestock tanks on non-Federal lands from the section 9 take prohibitions of the Act. Even with regulatory protections of the Act currently in place, nonnative species used for fishing baits in Chiricahua leopard frog habitats pose a significant threat to the Chiricahua leopard frog; use of these nonnative species as fishing baits presents a vehicle for the distribution of these often predatory or competitive bait species into frog habitat and for the dissemination of deadly diseases to the frog. Picco and Collins (2008, pp. 1585–1587) found tiger salamanders infected with chytridiomycosis in Arizona bait shops, and tiger salamanders infected with ranavirus (a genus of viruses known to effect amphibians and reptiles) in Arizona, New Mexico, and Colorado bait shops. Furthermore, they found that 26 to 67 percent of anglers released tiger salamanders bought as bait into the waters where they fish, and 4 percent of bait shops released tiger salamanders into the wild after they were housed in shops with infected animals, despite the fact that release of live salamanders is prohibited by Arizona Revised Statute 17–371. This study shows how current wildlife laws and regulations fail to prevent the spread of amphibian diseases via the tiger salamander bait trade. Even though the Chiricahua leopard frog is currently listed under the Act as a threatened species, additional regulation or increased enforcement of existing regulations or both are needed to stem the spread of amphibian diseases via use of live salamanders as bait. Therefore, we consider the inadequacy of current regulatory mechanisms to prevent the spread of amphibian diseases via the bait trade to be a threat to the Chiricahua leopard frog now and in the future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Populations

Among the potential threats in this category discussed in the Chiricahua leopard frog recovery plan (Service 2007, pp. i–M–17) and the final listing rule (67 FR 40790; June 13, 2002), are genetic and stochastic effects that manifest in small populations. Specifically, small populations are vulnerable to extirpation due to random variations in age structure and sex ratios, as well as from disease or other natural events that a larger population is more likely to survive. Inbreeding depression and loss of genetic diversity in small populations can also reduce the fitness of individuals and the ability of a population to adapt to change. The recent genetic study revealed no systemic lack of genetic diversity within the Chiricahua leopard frog as a species (Herrmann *et al.* 2009, pp. 12–17). In fact, populations were quite variable; up to 16 different genetic groupings were found. This does not preclude the possibility that individual populations may suffer from genetic or demographic problems, but the study shows the species retains good genetic variability.

Climate Change

The Chiricahua leopard frog recovery plan (Service 2007, pp. 40–43) describes anticipated effects of climate change on the Chiricahua leopard frog. The plan cited literature indicating that temperatures rose in the 20th century and warming is predicted to continue over the 21st century (Service 2007, pp. 40–43). Climate models are less certain about predicted trends in precipitation, but the southwestern United States is expected to become warmer and drier. Since the recovery plan was prepared, the Intergovernmental Panel on Climate Change (IPCC) (2007, pp. 1–8) published a report stating that global warming is occurring and that precipitation patterns are being affected.

According to the IPCC report, global mean precipitation is anticipated to increase, but not uniformly (IPCC 2007, p. 8). In the American Southwest and elsewhere in the middle latitudes, precipitation is expected to decrease. There is also high confidence that many semi-arid areas like the western United States will suffer a decrease in water resources due to climate change, as a result of less annual mean precipitation and reduced length of snow season and snow depth (IPCC 2007, p. 8). Although most climate models predict a drying trend in the 21st century in the southwestern United States, these predictions are less certain than predicted warming trends. The models do not predict summer precipitation well, and typically at least half of precipitation within the range of the Chiricahua leopard frog occurs in the summer months (Brown 1982, pp. 58–62; Guido 2008, p. 5). Furthermore, there have been no trends either in summer rainfall over the last 100 years in Arizona (Guido 2008, pp. 3–5), or since 1955 in annual precipitation in the western United States (van Mantgem *et al.* 2009, p. 523). On the other hand, all severe, multi-year droughts in the southwestern United States and northwestern Mexico have been associated with La Niña events (Seager *et al.* 2007, p. 3), during which sea surface temperatures in the tropical Pacific decline. Climate models predict that drought driven by La Niña events will be deeper and more profound than any during the last several hundred years (Seager *et al.* 2007, p. 3).

Drought has likely contributed to loss of Chiricahua leopard frog populations since the species was originally listed in 2002, and has likely affected the species historically. Drought conditions in the southwestern United States have arisen over time, and can range from short term to long term in duration. Stock tank populations are particularly vulnerable to loss, because they tend to dry out during periods of below normal precipitation. These trends are likely to continue, but the situation is complicated by interactions with other factors. For example, the effects of drought cannot be separated from the effects of nonnative species, because drought will affect those predators as well as populations of Chiricahua leopard frogs. The interaction between predators and drought resistance of frog habitats is often a delicate balance. Stock tanks are likely an important habitat for Chiricahua leopard frogs in part because these sites dry out periodically, which rids them of most aquatic predators. Because of their evolutionary history, southwestern leopard frogs may be able to withstand drying of stock tanks for a longer period of time than nonnative species that evolved in wetter climates in the eastern United States, which could provide southwestern leopard frogs a selective advantage. However, if stock tanks remain dry for extended periods of time, neither leopard frogs nor introduced predators may be capable of persisting. Drought will reduce habitats of both leopard frogs and introduced predators, but exactly how that will affect the Chiricahua leopard frog will probably be site-specific. Chiricahua leopard frogs can often withstand drying of stock tanks for short to moderate periods of time, whereas fish and bullfrogs may not (Service 2011; p. 29). At this time, it is difficult to predict how drought will impact the overall species' status, but Chiricahua leopard frog sites could be buffered from the effects of drought by occupying sites that have alternative supplies of water, such as wells. Even though drought may contribute to loss of site-specific populations, we do not consider short to moderate periods of drought that causes stock tanks to dry out to be a threat to the species or its

habitat. However, we consider prolonged drought that appreciably affects habitat on a regional scale to be a threat to the species.

Additionally, the effects of chytridiomycosis on frogs are related to water temperature. Sites where Chiricahua leopard frogs coexist with the disease are typically at lower elevations and are warmer sites (Service 2007, p. 26). As a result, if temperatures increase as predicted, it is possible that more populations will be able to persist with the disease. Thus climate change, particularly in the form of increased water temperatures, may not pose an impact to the Chiricahua leopard frog into the future.

Summary of Factor E

The Chiricahua leopard frog recovery plan (Service 2007) describes genetic and stochastic effects that manifest in small populations and the anticipated effects of climate change on the Chiricahua leopard frog as potential threats to the species. Herrmann *et al.*'s recent genetic study (2009, pp. 12–17), however, revealed no systemic lack of genetic diversity within Chiricahua leopard frog populations. Moreover, the effects of climate change are inextricably related to effects from other threats and are difficult to predict or interpret without more definitive data of higher resolution. Therefore, we are unable to conclusively state that climate change, in and of itself, will adversely affect the Chiricahua leopard frog in the foreseeable future. However, long-term periods of drought can be a factor affecting the species' continued existence that poses significant impacts to the Chiricahua leopard frog's habitat now and in the future.

Listing Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Chiricahua leopard frog. In summary, the most significant threats to the Chiricahua leopard frog include the effects of the disease chytridiomycosis, which has been associated with major die-offs in some populations of Chiricahua leopard frogs (Service 2007, pp. B8–B88), predation by nonnative species (Factor C), and drought (Factor E). According to the June 13, 2002, final listing rule (67 FR 40790) and 2007 recovery plan, additional factors affecting the species include degradation and loss of habitat as a result of water diversions and large-scale groundwater pumping, livestock management practices (such that grazing is not in accordance with approved allotment management plans or otherwise considered adverse to maintaining natural habitat characteristics), altered fire regimes due to fire suppression, mining, contaminants, agricultural development, and other human activities; and inadequate regulatory mechanisms regarding introduction of nonnative bait species (Factors A and D) (67 FR 40790, June 13, 2002; Sredl and Jennings 2005, pp. 546–549; Service 2007, pp. B1–B88).

Since the time of listing, the species has made modest population gains in Arizona as a result of cooperative head-starting (rearing frogs in captivity from eggs through metamorphosis) campaigns and active partnerships and cooperation in management of occupied habitat. However the Chiricahua leopard frog continues to decline in New Mexico. Overall in the United States, the status of the Chiricahua leopard frog is improving. The status and trends for the species are unknown in Mexico. A recovery program is underway in the United States, and reestablishment of populations, creation of refugial populations, and habitat enhancement and creation have helped stabilize or improve the status of the species in some areas (Service 2011, pp. 6–9). Although progress has been made to secure some existing populations and establish new populations (Service 2011, pp. 6–9), the status of the species continues to be affected by threats such that the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Due primarily to ongoing conservation measures and the existence of relatively robust populations and metapopulations, we have determined that the species is not in immediate danger of extinction (i.e., on the brink of extinction) (Service 2011, p. 30). However, because we believe that the present threats are likely to continue in the future (such as chytrid fungus and nonnative predators spreading and increasing in prevalence and range, and affecting more populations of the leopard frog, thus increasing the threats in the foreseeable future), we have determined that the Chiricahua leopard frog is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, we determine that the Chiricahua leopard frog meets the definition of a threatened species under the Act.

Special Rule Under Section 4(d) of the Act

The June 13, 2002, final rule (67 FR 40790) listing the Chiricahua leopard frog as threatened included a special rule as defined under section 4(d) of the Act to ease the general take prohibitions for livestock use at or maintenance activities of livestock tanks located on private, State, or Tribal lands (see 50 CFR 17.43(b)). Under section 4(d) of the Act, the Secretary may publish a special rule that modifies the standard protections for threatened species in the Service's regulations at 50 CFR 17.31, which implement section 9 of the Act, with special measures that are determined to be necessary and advisable to provide for the conservation of the species. Based on changes made to the listed entity, we reevaluated the existing 4(d) rule to see if its measures are still necessary and advisable to the conservation of the species and appropriate to apply in the expanded range of the species. We determined that the measures of the 4(d) rule are appropriate and should be applied to the whole range. Therefore, we are not changing any conditions of the June 13, 2002, special rule, and it shall remain in effect as identified in our regulations at 50 CFR 17.43(b). We are, however, making an editorial change to 50 CFR 17.43(b) to revise the paragraph's heading to reflect to currently described species *Lithobates chiricahuensis.*

The special rule replaces the Act's general prohibitions against take of the Chiricahua leopard frog with special measures tailored to the conservation of the species on all non-Federal lands. Through the maintenance and operation of the stock tanks for cattle, habitat is provided for the leopard frogs; hence there is a conservation benefit to the species. Under the special rule, take of Chiricahua leopard frog caused by livestock use of or maintenance activities at livestock tanks located on private, State, or Tribal lands would be exempt from section 9 of the Act. A livestock tank is defined as an existing or future impoundment in an ephemeral drainage or upland site constructed primarily as a watering site for livestock. The rule targets tanks on private, State, and Tribal lands to encourage landowners and ranchers to continue to maintain these tanks as they provide habitat for the frogs. Livestock use and maintenance of tanks on Federal lands will be addressed through the section 7 process. When a Federal action, such as permitting livestock grazing on Federal lands, may affect a listed species, consultation between us and the action agency is required under section 7 of the Act. The conclusion of consultation may include mandatory changes in livestock programs in the form of measures to minimize take of a

listed animal or to avoid jeopardizing the continued existence of a listed species.

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, and local agencies; private organizations; and individuals. The Act provides for possible cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed wildlife are discussed in Effects of Critical Habitat Designation and are further discussed, in part, below.

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 being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may 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 Department of Defense, U.S. Fish and Wildlife Service, U.S. Forest Service, and Bureau of Land Management; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; 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, codified at 50 CFR 17.21 for endangered wildlife and 50 CFR 17.31 for threatened wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species and 50 CFR 17.32 for threatened wildlife. You may obtain permits 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 will or will 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 listing on proposed and ongoing activities within the range of the listed species. 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) Unauthorized release of nonnative species that compete with or prey upon the Chiricahua leopard frog within the States of Arizona or New Mexico.

(3) The unauthorized release of biological control agents that attack any life stage of this species.

(4) Unauthorized modification of the channel or water flow of any stream or water body in which the Chiricahua leopard frog is known to occur.

(5) Unauthorized activities that result in the introduction or spread of the chytrid fungus.

(6) Unauthorized recreational activities.

(7) Unauthorized livestock grazing.

(8) Unauthorized construction and maintenance of roads and utility corridors or various types of development.

(9) Unauthorized fire suppression, fuels management, or use of prescribed fire.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, P.O. Box 1306, Albuquerque, NM 87103; telephone: 505–248–6633; facsimile: 505–248–6788.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features;

(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 under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the

requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or 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 together provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species 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 and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derived the specific physical or biological features (PBFs) required for the Chiricahua leopard frog from the studies of this species' habitat, ecology, and life history as described below. These needs are identified in the species' recovery plan (Service 2007), particularly in the Habitat Characteristics and Ecosystems section of Part 1: Background (pp. 15–18); in the Recovery Strategy in Part 11: Recovery (pp. 49–51); in Appendix C—Population and Habitat Viability Analysis (pp. C8–C35); and in Appendix D—Guidelines for Establishing and Augmenting Chiricahua Leopard Frog Populations, and for Refugia and Holding Facilities (pp. D2–D5). Additional insight is provided by Degenhardt *et al.* (1996, pp.

85–87), Sredl and Jennings (2005, pp. 546–549), and Witte *et al.* (2008, pp. 5–8). We have determined that Chiricahua leopard frogs require the physical or biological features described below.

Space for Individual and Population Growth and for Normal Behavior

Generally, Chiricahua leopard frogs need aquatic breeding and overwintering sites, both in the context of metapopulations and as isolated populations. Based upon our understanding of the best available science, a metapopulation should consist of at least four local populations that exhibit regular recruitment, three of which are continually in existence. Local populations should be arranged in geographical space in such a way that no local population will be greater than 5.0 mi (8.0 km) from at least one other local population during some part of the year unless facilitated dispersal is planned (Service 2007, p. K–3). Movement of frogs among local populations is reasonably certain to occur if those populations are separated by no more than 1.0 mi (1.6 km) overland, 3.0 mi (4.8 km) along ephemeral or intermittent drainages, 5.0 mi (8.0 km) along perennial water courses, or some combination thereof not to exceed 5.0 mi (8.0 km) (the ''1–3–5 rule'' of dispersal, see *''Dispersal''* in the Threatened Status for the Chiricahua Leopard Frog section above). Metapopulations should include at least one large, healthy subpopulation (e.g., at least 100 adults) in order to achieve an acceptable level of viability as a larger unit. If aquatic habitats can be managed for persistence through drought periods (e.g., supplying water via a pipeline or a well, lining a pond), overall metapopulation viability may be achievable with a smaller number of individuals per subpopulation (e.g., 40 to 50 adults) (Service 2007, p. K–3).

Isolated breeding populations are also necessary for the conservation of the frog because they buffer against disease and disease organisms that can spread rapidly through a metapopulation as infected individuals move among aquatic sites. An isolated, but robust, breeding population should be beyond the reasonable dispersal distance (see *''Dispersal''* in the Threatened Status for the Chiricahua Leopard Frog section) from other Chiricahua leopard frog populations, contain at least 60 adults, and exhibit a diverse age class distribution that is relatively stable over time. A population of 40 to 50 adults can also be robust or strong if it resides in a drought-resistant habitat (Service 2007, p. K–5). At least two metapopulations and one isolated robust population are needed in each Recovery Unit to meet the recovery criteria in the recovery plan (Service 2007, p. 53).

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Chiricahua leopard frogs are fairly tolerant of variations in water quality, but likely do not persist in waters severely polluted with cattle feces (Service 2007, p. 34) or runoff from mine tailings or leach ponds (Rathbun 1969, pp. 1–3; U.S. Bureau of Land Management 1998, p. 26; Service 2007, p. 36). Furthermore, variation in pH, ultraviolet radiation, and temperature, as well as predation stress, can alter the potency of chemical effects (Akins and Wofford 1999, p. 107; Monson *et al.* 1999, pp. 309–311; Reylea 2004a, pp. 1081–1084). Chemicals may also serve as a stressor that makes frogs more susceptible to disease, such as chytridiomycosis (Parris and Baud 2004, p. 344). The effects of pesticides and other chemicals on amphibians can be complex because of indirect effects on the amphibian environment, direct lethal and sublethal effects on individuals, and interactions between contaminants and other factors associated with amphibian decline (Sparling 2003, pp. 1101–1120; Reylea 2008, pp. 367–374).

Cover or Shelter

Chiricahua leopard frogs are most often encountered in or very near water, generally at breeding locations. Only rarely are they found very far from water. They can be found basking or foraging in riparian vegetation and on open banklines out to the edge of riparian vegetation. These upland areas provide essential foraging and basking sites. A combination of open ground and vegetation cover is desirable for basking and foraging, respectively. Vegetation in these areas provide habitat for prey species and protection from terrestrial predators (those living on dry land). In particular, Chiricahua leopard frogs use these upland areas during the summer rainy season.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Aquatic breeding habitat is essential for providing space, food, and cover necessary to sustain all life stages of Chiricahua leopard frogs. Suitable breeding habitat consists of permanent or nearly permanent aquatic habitats from about 3,200 to 8,900 ft (975 to 2,715 m) elevation with deep (greater than 20 in (0.5 m)) pools in which nonnative predators are absent or occur at such low densities and in complex habitats to allow persistence of Chiricahua leopard frogs (Service 2007, pp. 15–18, D–3). Included are cienegas or springs, pools, livestock tanks, lakes, reservoirs, streams, and rivers. Sites as small as 6.0-ft (1.8-m) diameter steel troughs can serve as important breeding sites, particularly if that population is part of a metapopulation that can be recolonized from adjacent sites if extirpation occurs. Some of the most robust extant breeding populations are in earthen livestock watering tanks. Absence of the disease chytridiomycosis is crucial for population persistence in some regions, particularly in west-central New Mexico and at some other locales, as well. However, some populations persist with the disease (e.g., sites between Interstate 19 and the Baboquivari Mountains, Arizona) with few noticeable effects on demographics or survivorship. Persistence with disease is enhanced in warm springs and at lower elevations with warmer water (Service 2007, pp. 22–27, B67).

To be considered essential breeding habitat, water must be persistent enough to support breeding, tadpole development to metamorphosis (change into a frog), and survival of frogs. Tadpole development lasts 3 to 9 months, and some tadpoles overwinter (Sredl and Jennings 2005, p. 547). Juvenile and adult frogs need moisture for survival, including sites for hibernation. Overwintering sites of Chiricahua leopard frogs have not been investigated; however, hibernacula (shelter occupied during winter by inactive animals) of related species include sites at the bottom of well-oxygenated ponds, burial in mud, or moist caves (Service 2007, p. 17). Given these requirements, sites that dry out for 1 month or more will not provide essential breeding or overwintering habitat. However, occasional drying for short periods (less than 1 month) may be beneficial in that the Chiricahua leopard frogs can survive, but nonnative predators, particularly fish, and in some cases, bullfrogs and barred tiger salamanders, may be eliminated during the dry period (Service 2007, p. D3). Water quality requirements at breeding sites include having a pH equal to or greater than 5.6 (Watkins-Colwell and Watkins-Colwell 1998, p. 64), salinities less than 5 parts per thousand (Ruibal 1959, pp. 318–319), and very little chemical pollutants, including but not limited to heavy metals, pesticides, mine runoff, and fire retardants, where the pollutants do not exceed the tolerance of Chiricahua leopard frogs (Rathbun 1969, pp. 1–3; U.S. Bureau of

Land Management 1998, p. 26; Boone and Bridges 2003, pp. 152–167; Calfee and Little 2003, pp. 1527–1531; Sparling 2003, pp. 1109–1111; Relyea 2004b, pp. 1741–1746; Service 2007, p. 36; Little and Calfee 2008, pp. 6–10). White (2004, pp. 53–54, 73–79, 136–140) provides specific pesticide use guidelines for minimizing impacts to the Chiricahua leopard frog.

Essential aquatic breeding sites require some open water. Chiricahua leopard frogs can be eliminated from sites that become entirely overgrown with cattails (*Typha* sp.) or other emergent plants. At the same time, Chiricahua leopard frogs need some emergent or submerged vegetation, root masses, undercut banks, fractured rock substrates, or some combination thereof as refugia from predators and extreme climatic conditions (Sredl and Jennings 2005, p. 547). In essential breeding habitat, if nonnative crayfish, predatory fish, bullfrogs, or barred tiger salamanders are present, they occur only as rare dispersing individuals that do not breed, or are at low enough densities in habitats that are complex and with abundant escape cover (e.g., aquatic and emergent vegetation cover, diversity of moving and stationary water) that persistence of both Chiricahua leopard frogs and nonnative species can occur (Sredl and Howland 1995, pp. 383–384; Service 2007, pp. 20–22, D3; Witte *et al.* 2008, pp. 7–8).

Habitats That Are Protected From Disturbance or Are Representative of the Historical, Geographical, and Ecological Distribution of the Chiricahua Leopard Frog

In some areas, Chiricahua leopard frog populations are known to be seriously affected by the fungal skin disease chytridiomycosis. This disease has been associated with numerous population extirpations, particularly in Recovery Unit 6 in New Mexico (Service 2007, pp. 5–6, 24–27). The Chiricahua leopard frog appears to be less susceptible to mortality from the disease in warmer waters, which may occur at lower elevations. The precise temperature that affects survivorship in the presence of the fungus is unknown. Survivorship in the presence of *Bd* may depend on a variety of factors; however, at Cuchillo Negro Warm Springs, Sierra County, New Mexico, Chiricahua and plains leopard frogs (*Lithobates blairi*) become uncommon to nonexistent where winter water temperatures drop below about 20 degrees Celsius (°C) (68 degrees Fahrenheit (°F)) (Christman 2006a, p. 8). A pH of greater than 8 during at least part of the year may also limit the ability of the disease to be an effective pathogen (Service 2007, pp. 26–27). Furthermore, based on experience in Arizona, particularly the Huachuca Mountains, if Chiricahua leopard frogs are absent for a period of months or years, the disease may drop out of the system or become scarce enough that frogs can persist again if reestablished. Essential breeding habitats either lack chytridiomycosis or include conditions such as warmer waters or lower elevations that allow for persistence of Chiricahua leopard frogs with the disease.

Dispersal Habitat

Dispersal habitat provides routes for connectivity and gene flow among local populations within a metapopulation, which enhances the likelihood of persistence and allows for recolonization of sites that are lost due to drought, disease, or other factors (Hanski and Gilpin 1991, pp. 4–6; Service 2007, p. 50). Detailed studies of dispersal and metapopulation dynamics of Chiricahua leopard frogs have not been conducted; however, Jennings and Scott (1991, pp. 1–43) noted that maintenance of corridors used by dispersing juveniles and adults that connect separate populations may be critical to conserving populations of frogs. As a group, leopard frogs are surprisingly good at dispersal. In Michigan, young northern leopard frogs (*Lithobates pipiens*) commonly move up to 0.5 mi (0.8 km) from their birthplace, and three young males established residency up to 3.2 mi (5.2 km) away from where they were born (Dole 1971, p. 221). Movement may occur via dispersal of frogs or passive transport of tadpoles along stream courses. The maximum distance moved by a radio-telemetered Chiricahua leopard frog in New Mexico was 2.2 mi (3.5 km) in one direction along a drainage (Service 2007, p. 18). In 1974, Frost and Bagnara (1977, p. 449) noted passive or active movement of Chiricahua and plains leopard frogs for 5 mi (8 km) or more along East Turkey Creek in the Chiricahua Mountains, Arizona. In August 1996, Rosen and Schwalbe (1998, p. 188) found up to 25 young adult and subadult (fully metamorphosed but not sexually mature) Chiricahua leopard frogs at a roadside puddle in the San Bernardino Valley, Arizona. They believed that the only possible origin of these frogs was a stock tank located 3.5 mi (5.5 km) away. In September 2009, 15 to 20 Chiricahua leopard frogs were found at Peña Blanca Lake, west of Nogales. The nearest likely source population was Summit Reservoir, a straight line distance of 3.1 mi (4.9 km) overland or approximately 4.4 mi (7.0 km) along intermittent drainages (Service 2010b, pp. 7–8).

Movements away from water do not appear to be random. Streams are important dispersal corridors for young northern leopard frogs (Seburn *et al.* 1997, pp. 68–70). Displaced northern leopard frogs will return to their place of origin, and may use olfactory, visual, or auditory cues, and possibly celestial orientation, as guides (Dole 1968, pp. 395–398; 1972, pp. 275–276; Sinsch 1991, pp. 542–544). Based on this and other information (Service 2007, pp. 12–14) and as noted in the Dispersal section above, Chiricahua leopard frogs are reasonably likely to disperse 1.0 mi (1.6 km) overland, 3.0 mi (4.8 km) along ephemeral or intermittent drainages, 5.0 mi (8.0 km) along perennial (continuous) water courses, or some combination thereof not to exceed 5.0 mi (8.0 km). Dispersal habitat must provide corridors through which Chiricahua leopard frogs can move among aquatic breeding sites in metapopulations. These dispersal habitats will often be drainages connecting aquatic breeding sites, and may include ephemeral, intermittent, and perennial waters that are not suitable for breeding. The most likely dispersal routes may include combinations of ephemeral, intermittent, and perennial drainages, as well as uplands. Some vegetation cover for protection from predators, and aquatic sites that can serve as buffers against desiccation (drying) and stop-overs for foraging (feeding), are desirable along dispersal routes. A lack of barriers that would block dispersal is critical. Features on the landscape likely to serve as partial or complete barriers to dispersal include cliff faces and urban areas (Service 2007, p. D–3), reservoirs 50 acres (ac) (20 hectares (ha)) or more in size that are stocked with nonnative fish or other nonnative predators, highways, major dams, walls, or other structures that physically block movement (Andrews *et al.* 2008, pp. 124–132; Eigenbrod *et al.* 2009, pp. 32–40; 75 FR 12818, March 17, 2010). The effects of highways on frog dispersal can be mitigated with frog fencing (barriers to movement that may redirect individuals to preferred passageways) and culverts (Service 2007, pp. I7–I8). Unlike some other species of leopard frogs, Chiricahua leopard frogs have only rarely been found in association with agricultural fields; hence, agriculture may also serve as a barrier to movement.

Primary Constituent Elements for the Chiricahua Leopard Frog

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Chiricahua leopard frog in areas occupied at the time of listing, focusing on the features' PCEs. We consider PCEs to be the elements of the physical or biological features that provide for a species' life-history processes, 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 Chiricahua leopard frog are:

(1) Aquatic breeding habitat and immediately adjacent uplands exhibiting the following characteristics:

(a) Standing bodies of fresh water (with salinities less than 5 parts per thousand, pH greater than or equal to 5.6, and pollutants absent or minimally present), including natural and manmade (e.g., stock) ponds, slow-moving streams or pools within streams, off-channel pools, and other ephemeral or permanent water bodies that typically hold water or rarely dry for more than a month. During periods of drought, or less than average rainfall, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they would still be considered essential breeding habitat in non-drought years.

(b) Emergent and/or submerged vegetation, root masses, undercut banks, fractured rock substrates, or some combination thereof, but emergent vegetation does not completely cover the surface of water bodies.

(c) Nonnative predators (e.g., crayfish, bullfrogs, nonnative fish) absent or occurring at levels that do not preclude presence of the Chiricahua leopard frog.

(d) Absence of chytridiomycosis, or if present, then environmental, physiological, and genetic conditions are such that allow persistence of Chiricahua leopard frogs.

(e) Upland habitats that provide opportunities for foraging and basking that are immediately adjacent to or surrounding breeding aquatic and riparian habitat.

(2) Dispersal and nonbreeding habitat, consisting of areas with ephemeral (present for only a short time), intermittent, or perennial water that are generally not suitable for breeding, and associated upland or riparian habitat that provides corridors (overland movement or along wetted drainages) for frogs among breeding sites in a metapopulation with the following characteristics:

(a) Are not more than 1.0 mile (1.6 kilometers) overland, 3.0 miles (4.8 kilometers) along ephemeral or intermittent drainages, 5.0 miles (8.0 kilometers) along perennial drainages, or some combination thereof not to exceed 5.0 miles (8.0 kilometers).

(b) In overland and nonwetted corridors, provide some vegetation cover or structural features (e.g., boulders, rocks, organic debris such as downed trees or logs, small mammal burrows, or leaf litter) for shelter, forage, and protection from predators; in wetted corridors, provide some ephemeral, intermittent, or perennial aquatic habitat.

(c) Are free of barriers that block movement by Chiricahua leopard frogs, including, but not limited to, urban, industrial, or agricultural development; reservoirs that are 50 acres (20 hectares) or more in size and contain nonnative predatory fish, bullfrogs, or crayfish; highways that do not include frog fencing and culverts; and walls, major dams, or other structures that physically block movement.

With the exception of impoundments, livestock tanks, and other constructed waters, 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.

With this 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 elements of the features, the primary constituent elements, that support the life-history processes of the species. Because not all life-history functions require both PCEs 1 and 2, not all areas designated as critical habitat will contain both PCEs. Each of the areas designated in this rule has been determined to contain one or both of the PCEs.

Under our regulations, we are required to identify the PCEs within the geographical area occupied by the Chiricahua leopard frog at the time of listing that are essential to the conservation of the species and which may require special management considerations or protections. The PCEs are laid out in a specific spatial arrangement and quantity determined to be essential to the conservation of the species. All designated critical habitat units are within the species' historical geographical range in the United States and contain one or both PCEs to support life-history functions. In addition, all but one designated critical habitat unit, Carr Barn Pond, are currently occupied by Chiricahua leopard frogs. Carr Barn Pond was occupied at the time of listing and currently contains PCE 1 to support life-history functions essential for the conservation of the species. This unit is needed as a future site for frog colonization or reestablishment, and Chiricahua leopard frogs can persist in this unit with a reasonable level of effort to control nonnative predators.

Special Management Considerations or Protections

When designating critical habitat, we assess the physical or biological features within the geographical area occupied by the species at the time of listing that contain features that are essential to the conservation of the species and which may require special management considerations or protection.

All areas designated as critical habitat will require some level of management to address the current and future threats to the Chiricahua leopard frog and to maintain or restore the PCEs. Special management in aquatic breeding sites will be needed to ensure that these sites provide water quantity, quality, and permanence or near permanence; cover; and absence of extraordinary predation and disease that can affect population persistence. In dispersal habitat, special management will be needed to ensure frogs can move through those sites with reasonable success. The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the Chiricahua leopard frog. Federal activities that may affect areas outside of critical habitat are still subject to review under section 7 of the Act if they may affect the Chiricahua leopard frog because effects to the species and its critical habitat must be considered independently. The prohibitions of section 9 of the Act also continue to apply both inside and outside of designated critical habitat.

A detailed discussion of activities influencing the Chiricahua leopard frog and its habitat can be found in the final listing rule (67 FR 40790; June 13, 2002) and the recovery plan (Service 2007, pp. 18–45). The recovery plan also contains recovery-unit-specific threat assessments (Service 2007, pp. B1–B88). Activities that may warrant special management of the physical or biological features that define essential habitat (appropriate quantity and distribution of PCEs) for the Chiricahua leopard frog include, but are not limited to, introduction of nonnative predators;

introduction or spread of chytridiomycosis; inappropriate livestock grazing; water diversions and development; construction and maintenance of roads and utility corridors; fire suppression, fuels management, and prescribed fire. These activities have the potential to affect the PCEs if they are conducted within or adjacent to designated units.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of the Chiricahua leopard frog and require special management considerations or protection, and specific areas outside of the geographical area occupied at the time of listing that are essential for the conservation of the species. We also relied heavily on the recovery criteria outlined in the 2007 recovery plan for the Chiricahua leopard frog (Service 2007, pp. 31–37). Areas occupied at the time of listing are identified and described in Rorabaugh (2010, pp. 7–17) and information cited therein for Arizona, and for New Mexico in Jennings (1995, pp. 10–21), Painter (2000, pp. 10–21), and the final listing rule at 67 FR 40793 (June 13, 2002). We have also reviewed available information that pertains to the habitat requirements of this species. The following were particularly useful: Degenhardt *et al.* (1996, pp. 85–87), Sredl and Jennings (2005, pp. 546–549), Service (2007, pp. 15–18, 47–48), and Witte *et al.* (2008, pp. 5–8).

Units occupied at the time of listing include the specific areas occupied by Chiricahua leopard frogs in June 2002, that contain sufficient PCEs to support life-history functions essential for the conservation of the species. Included are sites where the species was breeding as well as areas where dispersing individuals were present, and other sites for which the breeding status was unknown. If metapopulation structure was known or suspected, dispersal habitats connecting breeding populations within metapopulations are also designated.

Sites not known to be occupied at the time of listing in June 2002 are also designated as critical habitat if we have determined them to be essential to the conservation of the species. Specifically, we assessed whether they are needed to meet the following recovery criterion from the recovery plan: at least two metapopulations located in different drainages (defined here as USGS 10-digit Hydrologic Units) plus at least one isolated and robust population occurring in each Recovery Unit and exhibiting long-term persistence and stability (even though local populations may go extinct in metapopulations; Service 2007, p. 53). If sites are needed to meet that criterion, they are designated as critical habitat in this rule. At the time of listing, one of the units being designated as critical habitat was unoccupied, and for 10 additional units, their occupancy status was unknown (discussed below under Final Critical Habitat Designation). For purposes of this designation of critical habitat, the 10 units with unknown occupancy at the time of listing are being considered unoccupied at the time of listing. However, all 11 of these units are currently occupied and contain one or both PCEs. The specific areas defined by these units, which were unoccupied or not known to be occupied at the time of listing, are being designated as critical habitat because they are considered to be essential to the conservation of the species, will help meet the population goals in the recovery criterion discussed above, contain the PCEs, and currently contain known breeding populations of Chiricahua leopard frogs, which are relatively scarce (33 populations in Arizona and 20 to 23 in New Mexico).

Recovery planning is focused on these existing breeding populations and building on them with habitat rehabilitation and population reestablishments to construct metapopulations and isolated robust populations needed to meet the recovery criterion. Such work is underway in all Recovery Units, but is further along in some than others. In particular, Recovery Units 1 (Tumacacori-Atascosa-Pajarito Mountains, Arizona and Sonora), 2 (Santa Rita-Huachuca-Ajos Bavispe, Arizona and Sonora), 3 (Chiricahua Mountains-Malpai Borderlands-Sierra Madre), 4 (Pinaleño-Galiuro-Dragoon Mountains, Arizona), 5 (Mogollon Rim—Verde River, Arizona), and 8 (Black-Mimbres-Rio Grande, New Mexico) are moving towards meeting the above-cited recovery criterion, and metapopulations and isolated, robust populations have been or are being identified (Rorabaugh 2010, pp. 17–30; Service 2010a, pp. 2–7; 2010b, pp. 2–9). In these Recovery Units, unoccupied sites have sometimes been identified by the Service, in cooperation with the recovery team steering committees and local recovery groups, where population reestablishment is needed to complete a metapopulation or to establish an isolated, robust population (Rorabaugh 2010, pp. 17–30; Service 2010a, pp. 2–7; 2010b, pp. 2–9). As previously noted, the Carr Barn Pond unit is the only unoccupied site being designated as critical habitat.

Identification of such recovery sites in Recovery Units 6 (White Mountains-Upper Gila, Arizona and New Mexico) and 7 (Upper Gila-Blue River, Arizona and New Mexico) is more difficult, because less progress in recovery has been made in these areas. The recovery plan identifies management areas, which are areas within Recovery Units with the greatest potential for successful recovery actions and threat alleviation (Service 2007, p. 49). Within Recovery Units 6 and 7, critical habitat is being designated at specific sites within management areas with the greatest potential for building metapopulations and isolated, robust populations. As in other Recovery Units, existing breeding populations were considered to be either subpopulations in metapopulations or isolated, robust populations. Metapopulations were identified with these existing breeding populations at sites occupied at the time of listing that contain PCEs sufficient to support life-history functions essential for the conservation of the species, and at an unoccupied site with one or more PCEs or the potential to support PCEs with a reasonable level of restoration work or special management. In metapopulations, all of these sites are within reasonable dispersal distance (the ''1–3–5 rule'' described above) of each other. In Recovery Unit 7, enough sites could not be found that meet the definition of critical habitat to construct two metapopulations and one isolated, robust population. Similarly, in Recovery Unit 6, one metapopulation exists, plus several isolated populations, but we have not been able to find aquatic sites that meet the definition of critical habitat to build a second metapopulation. In particular, other aquatic sites, some of which were occupied at the time of listing, lack the PCEs sufficient to support life-history functions essential for the conservation of the species, primarily due to presence of chytridiomycosis, which is a very serious threat in Recovery Unit 6. This Recovery Unit will require further investigation, and habitat restoration or creation may be needed to provide additional habitat for breeding Chiricahua leopard frog populations that can contribute to meeting the population goals in the recovery criterion discussed above.

Also, included in this critical habitat designation are dispersal corridors

between sites within a metapopulation. These corridors were selected as the most likely routes for dispersal of frogs among sites, based on reasonable dispersal distances along perennial and ephemeral or intermittent drainages, or via overland routes where PCE 2 is present. Our selection of routes assumes perennial drainages are better dispersal corridors than ephemeral or intermittent drainages, and the ephemeral or intermittent drainages are better dispersal corridors than overland routes. We also assume that, if all else is equal, the shorter the route the more likely Chiricahua leopard frogs will successfully disperse. In addition, we considered the presence of waterfalls, steep slopes, and other obstacles that may be difficult for a frog to negotiate.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for Chiricahua leopard frogs. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger 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.

We are designating as critical habitat lands that we have determined were occupied at the time of listing that require special management considerations or protection, and contain sufficient physical or biological features to support life-history processes essential for the conservation of the species. We are also designating lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of Chiricahua leopard frogs.

Units are designated based on sufficient elements of physical or biological features being present to support Chiricahua leopard frog life processes. Some units contain all of the identified elements of physical or biological features and support multiple life processes. Some segments contain only some elements of the physical or biological features necessary to support the Chiricahua leopard frog's particular use of that habitat.

Final Critical Habitat Designation

We are designating 39 units as critical habitat for the Chiricahua leopard frog. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the species. All 39 units we are designating as critical habitat are within the species' geographical range, including areas occupied at the time of listing and areas not known to be occupied at the time of listing but identified as essential for the conservation of the species (Platz and Mecham 1984, p. 347.1). Table 1 below shows the specific occupancy status of each unit at the time of listing and currently, based on the most recent data available. The approximate area of each designated critical habitat unit is shown in Table 2. The 39 areas designated as critical habitat are grouped by Recovery Unit.

TABLE 1—OCCUPANCY OF CHIRICAHUA LEOPARD FROG BY CRITICAL HABITAT UNITS

Critical habitat unit	Occupied at time of listing?	Currently occupied?
Recovery Unit 1 (Tumacacori-Atascosa-Pajarito Mountains, Arizona and Mexico)		
Twin Tanks and Ox Frame Tank Unit	No*	Yes.
Garcia Tank Unit	Yes	Yes.
Buenos Aires NWR Central Tanks Unit	Yes	Yes.
Bonita, Upper Turner, and Mojonera Tanks Unit	Yes	Yes.
Sycamore Canyon Unit	Yes	Yes.
Peña Blanca Lake and Spring and Associated Unit Tanks	Yes	Yes.
Recovery Unit 2 (Santa Rita-Huachuca-Ajos Bavispe, Arizona and Mexico)		
Florida Canyon Unit	No*	Yes.
Eastern Slope of the Santa Rita Mountains Unit	No*	Yes.
Las Cienegas National Conservation Area Unit	Yes	Yes.
Scotia Canyon Unit	No	Yes.
Carr Barn Pond Unit	Yes	No.
Ramsey and Brown Canyons Unit	Yes	Yes.
Recovery Unit 3 (Chiricahua Mountains-Malpai Borderlands-Sierra Madre, Arizona, New Mexico, and Mexico)		
Peloncillo Mountains Unit	Yes	Yes.
Cave Creek Unit	Yes	Yes.
Leslie Creek Unit	Yes	Yes.
Recovery Unit 4 (Piñaleno-Galiuro-Dragoon Mountains, Arizona)		
Deer Creek Unit	Yes	Yes.
Oak Spring and Oak Creek Unit	No*	Yes.
Dragoon Mountains Unit	Yes	Yes.
Recovery Unit 5 (Mogollon Rim-Verde River, Arizona)		
Buckskin Hills Unit	Yes	Yes.
Crouch, Gentry, and Cherry Creeks, and Parallel Canyon Unit	Yes	Yes.

TABLE 1—OCCUPANCY OF CHIRICAHUA LEOPARD FROG BY CRITICAL HABITAT UNITS—Continued

Critical habitat unit	Occupied at time of listing?	Currently occupied?
Ellison and Lewis Creeks Unit	No*	Yes.
Recovery Unit 6 (White Mountains-Upper Gila, Arizona and New Mexico)		
Concho Bill and Deer Creek Unit	No*	Yes.
Campbell Blue and Coleman Creeks Unit	Yes	Yes.
Tularosa River Unit	Yes	Yes.
Deep Creek Divide Area Unit	Yes	Yes.
Main Diamond Creek Unit	Yes	Yes.
Beaver Creek Unit	No*	Yes.
Kerr Canyon Unit	Yes	Yes.
West Fork Gila River Unit	Yes	Yes.
Recovery Unit 7 (Upper Gila-Blue River, Arizona and New Mexico)		
Left Prong of Dix Creek Unit	No*	Yes.
Rattlesnake Pasture Tank and Associated Tanks Unit	No*	Yes.
Coal Creek Unit	No*	Yes.
Blue Creek Unit	Yes	Yes.
Recovery Unit 8 (Black-Mimbres-Rio Grande, New Mexico)		
Seco Creek Unit	Yes	Yes.
Alamosa Warm Springs Unit	Yes	Yes.
Cuchillo Negro Warm Springs and Creek Unit	Yes	Yes.
Ash and Bolton Springs Unit	Yes	Yes.
Mimbres River Unit	Yes	Yes.
South Fork Palomas Creek Unit	Yes	Yes.

*Occupancy unknown at time of listing. However, for purposes of this designation of critical habitat, these units are classified as unoccupied at the time of listing.

TABLE 2—CRITICAL HABITAT UNITS FOR THE CHIRICAHUA LEOPARD FROG

[Area estimates reflect all land within critical habitat unit boundaries. Note that grazing allotments are not considered in private ownership.]

Critical habitat unit	Land ownership by type acres (hectares)			Size of unit in acres (hectares)
	Federal	State	Private	
Recovery Unit 1 (Tumacacori-Atascosa-Pajarito Mountains, Arizona and Mexico)				
Twin Tanks and Ox Frame Tank Unit	0	1.3 (0.5)	0.4 (0.2)	1.7 (0.7)
Garcia Tank Unit	0.7 (0.3)	0	0	0.7 (0.3)
Buenos Aires NWR Central Tanks Unit	1,720 (696)	0	0	1,720 (696)
Bonita, Upper Turner, and Mojonera Tanks Unit	201 (81)	0	0	201 (81)
Sycamore Canyon Unit	262 (106)	0	7 (3)	269 (109)
Peña Blanca Lake and Spring and Associated Tanks Unit	202 (82)	0	0	202 (82)
Recovery Unit 1 Total	2,385.7 (965.3)	1.3 (0.5)	7.4 (3.2)	2,394.4 (969.0)
Recovery Unit 2 (Santa Rita-Huachuca-Ajos Bavispe, Arizona and Mexico)				
Florida Canyon Unit	4 (2)	0	0	4 (2)
Eastern Slope of the Santa Rita Mountains Unit	172 (70)	0	14 (6)	186 (76)
Las Cienegas National Conservation Area Unit	1,364 (552)	186 (75)	0	1,550 (627)
Scotia Canyon Unit	70 (29)	0	0	70 (29)
Carr Barn Pond Unit	0.6 (0.3)	0	0	0.6 (0.3)
Ramsey and Brown Canyons Unit	58 (24)	0	44 (18)	102 (42)
Recovery Unit 2 Total	1,668.6 (677.3)	186 (75)	58 (24)	1,912.6 (776.3)
Recovery Unit 3 (Chiricahua Mountains-Malpai Borderlands-Sierra Madre, Arizona, New Mexico, and Mexico)				
Peloncillo Mountains Unit	366 (148)	0	0	366 (148)
Cave Creek Unit	234 (95)	0	0	234 (95)
Leslie Creek Unit	26 (11)	0	0	26 (11)
Recovery Unit 3 Total	626 (253)	0	0	626 (253)

TABLE 2—CRITICAL HABITAT UNITS FOR THE CHIRICAHUA LEOPARD FROG—Continued

[Area estimates reflect all land within critical habitat unit boundaries. Note that grazing allotments are not considered in private ownership.]

Critical habitat unit	Land ownership by type acres (hectares)			Size of unit in acres (hectares)
	Federal	State	Private	
Recovery Unit 4 (Piñaleno-Galiuro-Dragoon Mountains, Arizona)				
Deer Creek Unit	17 (7)	69 (28)	34 (14)	120 (49)
Oak Spring and Oak Creek Unit	27 (11)	0	0	27 (11)
Dragoon Mountains Unit	74 (30)	0	0	74 (30)
Recovery Unit 4 Total	118 (48)	69 (28)	34 (14)	221 (89)
Recovery Unit 5 (Mogollon Rim-Verde River, Arizona)				
Buckskin Hills Unit	232 (94)	0	0	232 (94)
Crouch, Gentry, and Cherry Creeks, and Parallel Canyon Unit	334 (135)	64 (26)	6 (3)	404 (164)
Ellison and Lewis Creeks Unit	83 (34)	0	15 (6)	98 (40)
Recovery Unit 5 Total	649 (263)	64 (26)	21 (8)	734 (297)
Recovery Unit 6 (White Mountains-Upper Gila, Arizona and New Mexico)				
Concho Bill and Deer Creek Unit	17 (7)	0	0	17 (7)
Campbell Blue and Coleman Creeks Unit	174 (70)	0	0	174 (70)
Tularosa River Unit	335 (135)	0	1,575 (637)	1,910 (772)
Deep Creek Divide Area Unit	408 (165)	0	102 (41)	510 (206)
Main Diamond Creek Unit	53 (21)	0	0 (0)	53 (21)
Beaver Creek Unit	132 (54)	0	25 (10)	157 (64)
Kerr Canyon Unit	19 (8)	0	6 (2)	25 (10)
West Fork Gila River Unit	177 (72)	0	0	177 (72)
Recovery Unit 6 Total	1,315 (532)	0	1,708 (690)	3,023 (1,222)
Recovery Unit 7 (Upper Gila-Blue River, Arizona and New Mexico)				
Left Prong of Dix Creek Unit	13 (5)	0	0	13 (5)
Rattlesnake Pasture Tank and Associated Tanks Unit	59 (24)	0	0	59 (24)
Coal Creek Unit	7 (3)	0	0	7 (3)
Blue Creek Unit	24 (10)	0	12 (5)	36 (15)
Recovery Unit 7 Total	103 (42)	0	12 (5)	115 (47)
Recovery Unit 8 (Black-Mimbres-Rio Grande, New Mexico)				
Seco Creek Unit	66 (27)	0	0	66 (27)
Alamosa Warm Springs Unit	0.2 (0.1)	25 (10)	54 (22)	79.2 (32.1)
Cuchillo Negro Warm Springs and Creek Unit	3 (1)	3 (1)	0	6 (2)
Ash and Bolton Springs Unit	0	0	49 (20)	49 (20)
Mimbres River Unit	0	0	1,097 (444)	1,097 (444)
South Fork Palomas Creek Unit	23 (9)	0	0	23 (9)
Recovery Unit 8 Total	92.2 (37.1)	28 (11)	1,200 (486)	1,320.2 (534.1)
Total	6,958 (2,816)	348 (141)	3,040 (1,230)	10,346 (4,187)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units below, and reasons why they meet the definition of critical habitat for the Chiricahua leopard frog. Unless indicated otherwise below, the physical or biological features of critical habitat in stream and riverine lotic (actively moving water) systems are contained within the riverine and riparian ecosystems formed by the wetted channel and adjacent floodplains within 328 lateral ft (100 lateral m) on either side of bankfull stage. Bankfull stage is generally considered to be that level of stream discharge reached just before flows spill out onto the adjacent floodplain. The discharges that occur at bankfull stage, in combination with the range of flows that occur over a length of time, govern the shape and size of the river channel (Rosgen 1996, pp. 2–2 to 2–4; Leopold 1997, pp. 62–63, 66). The use of bankfull stage and 328 ft (100 m) on either side recognizes the naturally dynamic nature of riverine systems and recognizes that floodplains are an integral part of the stream ecosystem.

Ephemeral drainages (containing water for only brief periods) designated as critical habitat for dispersal corridors among breeding sites in metapopulations will, in some cases, be less distinct than the stream or river

reaches where Chiricahua leopard frogs breed. Nonetheless, these ephemeral drainages will still be defined by wetland plant species, denser or taller specimens of upland species, channel characteristics such as sandy or gravelly soils that contrast with upland soils, the presence of cut banks, or some combination of these. Where dispersal corridors cross uplands, designated critical habitat is 328 ft (100 m) wide, the centerline of which is the line delineated on our critical habitat maps and legal descriptions.

In ponds designated as critical habitat, most of which are impoundments for watering cattle or other livestock, designated critical habitat extends for 20 ft (6.1 m) beyond the high water line or to the boundary of the riparian and upland vegetation edge, whichever is greatest. Chiricahua leopard frogs are commonly found foraging and basking within 20 feet of the shoreline of tanks. In addition, designated critical habitat extends upstream from ponds from the extent of the boundary for 328 ft (100 m) from the high water line. The designated critical habitat extends to 328 ft (100 m) upstream because there is often a riparian drainage coming into the tank, and Chiricahua leopard frogs are likely moving along those drainages. Also, the high water line is defined as that water level which, if exceeded, results in overflow of the pond. In most cases, this is the elevation of the spillway (dam) in livestock impoundments.

Recovery Unit 1 (Tumacacori-Atascosa-Pajarito Mountains, Arizona and Mexico)

Twin Tanks and Ox Frame Tank Unit

This unit consists of 1.3 ac (0.5 ha) of lands owned by the Arizona State Land Department and 0.4 ac (0.2 ha) of private lands in the Sierrita Mountains, Pima County, Arizona. Twin Tanks is on lands owned and managed by the Arizona State Land Department and consists of two tanks in proximity to each other as well as a drainage running between them. Ox Frame Tank is on private lands.

Occupancy of these livestock tanks at the time of listing is unknown, as they were not surveyed for frogs until 2007. We consider this unit to have been unoccupied at the time of listing for the purpose of this critical habitat designation. We have determined this unit to be essential to the conservation of the species because these sites are important breeding sites for recovery. Twin Tanks held more than 1,000 frogs in 2008, and is a robust breeding population. Ox Frame and Twin tanks are too far apart (4.3 mi (7.0 km) overland) across rugged terrain to expect frogs to move between these sites. Hence, these tanks serve as isolated populations. The Twin Tanks area is less than 0.5 mi (0.8 km) upslope of active mining at Freeport McMoRan's Sierrita Copper Mine and could be affected from expansion of mining activities, creation of aerial pollutants that could affect water chemistry or quality, and possible effects to the frog's prey base. Addtionally, this unit contains both PCEs 1 and 2.

Both sites are also at risk of introduction of nonnative predators, such as bullfrogs and nonnative crayfish. Presence of chytridiomycosis at these tanks has not been investigated.

Garcia Tank Unit

This unit consists of 0.7 ac (0.3 ha) of Federal land located on the Buenos Aires National Wildlife Refuge (NWR), Pima County, Arizona. It is a double tank; the southwest or downstream impoundment is more dependable at holding water than the upstream tank. However, both parts of the tank are designated as critical habitat. Garcia Tank is designated as critical habitat, because it was occupied at the time of listing and currently contains PCE 1 to support life-history functions essential for the conservation of the species.

A breeding site, Garcia Tank was known to have been occupied in 2002 and 2006. Leopard frogs were noted in 2010, but they were not identified to species (the lowland leopard frog is also known to occur in the area). It is about 3.6 mi (5.8 km) over land across dissected and hilly terrain to the next nearest population at Lower Carpenter Tank. The nearest known populations to the east are on the Coronado National Forest and are more than 9.0 mi (14 km) away. Hence, this site is isolated and is managed as an isolated, robust population. The features essential to the conservation of the species in this unit may require special management considerations or protection to ensure these characteristics persist over time. The greatest threats needing special management are introductions of or colonization by nonnative species, such as bullfrogs and crayfish, and drought that could greatly reduce or eliminate the aquatic habitat. If necessary, in the wake of sustained drought, alternative water supplies or interim measures may be necessary in the form of water hauling or a supply well.

Buenos Aires National Wildlife Refuge (NWR) Central Tanks Unit

This unit, consisting of 1,720 ac (696 ha) of Federal land within the Buenos Aires NWR, Pima County, Arizona, includes former cattle tanks and other waters used as breeding and dispersal sites, plus intervening and connecting drainages and uplands. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains the features essential to the conservation of the species (PCEs 1 and 2 are present).

Breeding sites at permanent or nearly permanent tanks (Carpenter, Rock, State, Triangle, and New Round Hill) support the most stable metapopulation known within the range of the species. Chongo Tank, where a population was established in 2009, may become a sixth breeding site. Seven other tanks support frogs periodically to regularly, and breeding and recruitment likely take place at these tanks in wet cycles (periods marked by successional precipitation events). Frogs occupied Carpenter, Rock, and Triangle Tanks in 2002, at or about the time of listing. Tanks designated for designation include Carpenter, Rock, State, Triangle, New Round Hill, Banado, Choffo, Barrel Cactus, Sufrido, Hito, Morley, McKay, and Chongo Tanks. McKay Tank is a cluster of three tanks, all of which are designated as critical habitat. Also designated as critical habitat are the intervening drainages, including: (1) Puertocito Wash from Triangle Tank north through and including Aguire Lake to New Round Hill Tank, then upstream to the confluence with Las Moras Wash, and upstream in Las Moras Wash to Chongo Tank; (2) an unnamed drainage from Puertocito Wash upstream to McKay Tank; (3) an unnamed drainage from Puertocito Wash upstream to Rock Tank, including Morley Tank, then upstream in an unnamed drainage to the top of that drainage, directly overland to an unnamed drainage, and then upstream to Hito Tank and downstream to McKay Tank; (4) from Sufrido Tank downstream in an unnamed drainage to its confluence with an unnamed drainage running between Rock and Morley tanks; (5) Lopez Wash from Carpenter Tank downstream to Aguire Lake; (6) an unnamed drainage from its confluence with Lopez Wash upstream to Choffo Tank; (7) an unnamed drainage from its confluence with Lopez Wash upstream to State Tank; (8) an unnamed drainage from Banado Tank downstream to its confluence with an unnamed drainage, then upstream in that drainage to Barrel Cactus Tank; and (9) an unnamed drainage from Banado Tank upstream to a saddle, then directly downslope to Lopez Wash.

The features essential to the conservation of the species in this unit

may require special management considerations or protection to alleviate the threats from bullfrogs and disease. In this unit, bullfrogs remain a threat, but efforts are underway to eliminate the last known populations of bullfrogs in the Altar Valley (on the Santa Margarita Ranch to the south of Buenos Aires NWR). Frogs in this area have tested positive for chytridiomycosis, but the disease appears to have little effect on population persistence.

Bonita, Upper Turner, and Mojonera Tanks Unit

This unit includes 201 ac (81 ha) of Federal lands in the Coronado National Forest in the Pajarito and Atascosa Mountains, Santa Cruz County, Arizona. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains the features essential to the conservation of the species (both PCEs 1 and 2).

Two breeding sites (Bonita Tank and Mojonera Tank), combined with a dispersal site or site where breeding and recruitment may occur in wet years (Upper Turner Tank), form the center of a future metapopulation. Three additional waters—Sierra Tank East, Sierra Tank West, and Sierra Well—require special management to increase breeding potential in these areas. Frogs currently occupy Bonita and Mojonera Tanks, and Bonita Tank was occupied at the time of listing. Frogs were last found at Upper Turner Tank in 2004. The occupancy status of Mojonera and Upper Turner Tanks at the time of listing is unknown. The designated critical habitat in this unit also includes intervening drainages, uplands, and ephemeral or intermittent waters as follows: (1) From Upper Turner Tank upstream in an unnamed drainage to its confluence with a minor drainage coming in from the east, then directly upslope in that drainage and east to a saddle, and directly downslope to Bonita Canyon, and upstream in Bonita Canyon to Bonita Tank; and (2) from Mojonera Tank downstream in Mojonera Canyon to a sharp bend where the drainage turns west-northwest, then southeast and upstream in an unnamed drainage to a saddle, downslope through an unnamed drainage to its confluence with another unnamed drainage, upstream in that unnamed drainage to a saddle, and then downstream in an unnamed drainage to Sierra Well, to include Sierra Tank West and Sierra Tank East, then directly overland to Upper Turner Tank.

In this unit, special management is needed because bullfrogs are a continuing threat, and illegal border activity and associated law enforcement have resulted in watershed damage. A road on the berm of Upper Turner Tank is scheduled for improvement to access a surveillance tower operated by U.S. Customs and Border Protection. Special management is also needed because frogs in this region have tested positive for chytridiomycosis, but the disease appears to have little effect on population persistence.

Sycamore Canyon Unit

This unit includes 262 ac (106 ha) of Federal lands in the Coronado National Forest and 7 ac (3 ha) of private lands along Atascosa Canyon through Bear Valley Ranch in the Pajarito and Atascosa Mountains, Santa Cruz County, Arizona. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains the features essential to the conservation of the species (PCEs 1 and 2).

Sycamore Canyon is the only lotic (flowing water) site in Recovery Unit 1 capable of supporting breeding subpopulations of Chiricahua leopard frogs. Most other sites are livestock tanks or impounded springs. Sycamore Canyon, Bear Valley Ranch Tank, Rattlesnake Tank, and Atascosa Canyon downstream of Bear Valley Ranch were all occupied by Chiricahua leopard frogs at the time of listing. The occupancy status of the other sites at the time of listing is unknown. Sycamore Canyon, Yank Tank, North Mesa tank, South Mesa Tank, and Bear Valley Ranch Tank are currently occupied. The current occupancy status of Rattlesnake Tank and Atascosa Canyon downstream of Bear Valley Ranch Tank is unknown. Designated critical habitat includes approximately 6.35 mi (10.23 km) of Sycamore Canyon from Ruby Road to the international border, which supports frogs and breeding, although in the driest months (May and June) the stream dries to pools and tinajas (a term used in the American Southwest for water pockets formed in bedrock depressions that occur below waterfalls or are carved out by spring flow or seepage).

A number of livestock tanks in the unit form a viable metapopulation with Sycamore Canyon. Designated critical habitat includes the following tanks and their connecting drainages: (1) From Yank Tank downstream in an unnamed drainage to Sycamore Canyon; (2) from North Mesa Tank downstream in Atascosa Canyon to its confluence with Peñasco Canyon, then from that confluence downstream in Peñasco Canyon to Sycamore Canyon; (3) from Horse Pasture Spring downstream to Peñasco Canyon; (4) from Bear Valley Ranch Tank downstream in an unnamed drainage to Atascosa Canyon; (5) from South Mesa Tank downstream in an unnamed drainage to Peñasco Canyon; and (6) from Rattlesnake Tank downstream in an unnamed canyon to its confluence with another unnamed drainage, then upstream in that drainage to South Mesa Tank.

Special management is required in this unit because bullfrogs have been a continuing problem, although recent control efforts seem to have eliminated them from Sycamore Canyon. Nonnative green sunfish (*Lepomis cyanellus*) have occasionally been found in Sycamore Canyon as well, and they could prey on larval Chiricahua leopard frogs. Pools critical to survival of frogs and tadpoles through the dry season are sensitive to sedimentation and erosion upstream in the watershed of Sycamore Canyon. The earliest records of chytridiomycosis in Arizona are from Sycamore Canyon (1972). A robust population of Chiricahua leopard frogs persists at this site despite the disease and periodic die-offs. Illegal border activity and associated law enforcement have resulted in many trails and new vehicle routes in the area, as well as trampling in the canyon.

Sycamore Canyon is designated a Research Natural Area by the Coronado National Forest and is closed to livestock grazing. Critical habitat is designated for the Sonora chub (*Gila ditaenia*) in Sycamore Canyon from Hank and Yank Spring (about 0.25 mi (0.40 km) downstream of the Ruby Road crossing) downstream to the international border, and in a 25-ft (7.6-m) strip on both sides of the creek (51 FR 16042; April 30, 1986). Much of this unit also lies within the Pajarita Wilderness area. These designations provide some level of protection to Chiricahua leopard frog habitats in Sycamore Canyon because management for Sonora chub conservation is consistent with that for Chiricahua leopard frogs. However, the Chiricahua leopard frog may require additional measures.

Peña Blanca Lake and Spring and Associated Tanks Unit

This unit includes 202 ac (82 ha) of Federal lands in the Coronado National Forest, Santa Cruz County, Arizona. This area is designated as critical habitat because it was occupied at the time of listing and contains PCEs 1 and 2, which support the life-history functions essential for the conservation of the species.

This unit is a metapopulation that includes Peña Blanca Lake, Peña Blanca Spring, Summit Reservoir, Tinker Tank, Thumb Butte Tank, and Coyote Tank.

These sites were all occupied in 2009. Chiricahua leopard frogs and tadpoles were found in Peña Blanca Lake in 2009 and 2010, after the lake had been drained and then refilled, which eliminated the nonnative predators. However, early in 2010, rainbow trout (*Oncorhynchus mykiss*) were stocked back into the lake, and plans are underway to reestablish a variety of warm water, predatory fish (such as largemouth bass (*Micropterus salmoides*)) in the spring of 2012. Despite the stocking of rainbow trout, Peña Blanca Lake now contains a robust breeding population of Chiricahua leopard frogs, one of the largest single populations throughout its range. In April 2011, surveys of the lake confirmed that Chiricahua leopard frogs remained extant. In September 2011, surveys of the lake estimated the Chiricahua leopard frog population to number between 300 to 500 individuals, which is likely a low estimate, because only a single night survey was performed, and the shoreline habitat was complex, making observations difficult. During that survey, Chiricahua leopard frogs were calling, indicating that fall breeding may have been occurring.

In 2002, Chiricahua leopard frogs were only known to occur at Peña Blanca Spring. Occupancy status at the time of listing for the other sites is unknown. Designated critical habitat also includes: (1) From Summit Reservoir directly southeast to a saddle on Summit Motorway, then downslope to an unnamed drainage and downstream in that drainage to its confluence with Alamo Canyon, then downstream in Alamo Canyon to its confluence with Peña Blanca Canyon, then downstream in Peña Blanca Canyon to Peña Blanca Lake, to include Peña Blanca Spring; (2) from Thumb Butte Tank downstream in an unnamed drainage to its confluence with Alamo Canyon; (3) from Tinker Tank downstream in an unnamed drainage to its confluence with Alamo Canyon, then downstream in Alamo Canyon to the confluence with the drainage from Summit Reservoir; and (4) from Coyote Tank downstream in an unnamed drainage to its confluence with Alamo Canyon, and then downstream in Alamo Canyon to the confluence with the drainage from Tinker Tank, to include Alamo Spring.

Special management is required in this unit because nonnative predators, particularly bullfrogs and sportfish, remain a serious threat. A concerted effort began in 2008 to clear the area of bullfrogs. The effort appears to be successful, and Chiricahua leopard frogs have clearly benefited because their population has grown exponentially in Peña Blanca Lake. However, there is a continuing threat of recolonization or purposeful introduction of bullfrogs, and management of this area will continue to concentrate on preventing bullfrogs from recolonizing the area and eliminating those that do. As discussed, warmwater sportfish at Peña Blanca Lake are scheduled to be stocked in the spring of 2012, which will affect the suitability of the lake as Chiricahua leopard frog habitat. However, in a May 2011, section 7 consultation for sportfish stocking of the lake, conservation measures were established that require shoreline habitat to be managed in a manner to retain its complexity, which will provide some level of protection to resident Chiricahua leopard frogs from potential predation from sportfish. In that consultation, we determined that, given the number of conservation measures (which included managing against bullfrogs and ensuring the persistence of dense shoreline vegetation), the proposed stocking of warmwater fish would not result in adverse modification of this critical habitat unit. Given the robust population of Chiricahua leopard frogs that currently occurs in the lake and protection offered by attributes of existing shoreline habitat, we recognize the value of Peña Blanca Lake as essential for the conservation of Chiricahua leopard frogs, even with the presence of warmwater sportfish. Chiricahua leopard frogs in this region have tested positive for chytridiomycosis; however, the disease appears to have little effect on population persistence.

Recovery Unit 2 (Santa Rita-Huachuca-Ajos Bavispe, Arizona and Mexico)

Florida Canyon Unit

Florida Canyon includes 4 ac (2 ha) of Federal lands in the Coronado National Forest in the Santa Rita Mountains, Pima County, Arizona.

Chiricahua leopard frogs currently occupy this site; however, its occupancy status at the time of listing is unknown. We consider this unit to have been unoccupied at the time of listing for the purpose of this critical habitat designation. We have determined this unit to be essential to the conservation of the species because it can be managed as a breeding population to provide overall stability to the species' status. A single frog was found in 2008, which was augmented with frogs from elsewhere in the Santa Rita Mountains in 2009. The site is too far from other known breeding populations to be part of a metapopulation (the next nearest population is about a 5-mi (8-km) straight-line distance away in Unit 8; hence, it will be managed as an isolated population). PCE 1 is present and was enhanced in 2010, with the addition of a steel tank for breeding. Included in the designation is approximately 1,521 ft (463 m) of Florida Canyon from a silted-in dam to the downstream end of the Florida Workstation property.

The major threat is scarcity of water, particularly during long periods of drought. Also, fire in the watershed could result in scouring and sedimentation in the pools important as habitat for the frog. The addition of a steel tank provides dependable water for breeding that is safe from erosion or sedimentation events. Chyridiomycosis and introduced predators are potential threats, but neither has been recorded at this site.

Eastern Slope of the Santa Rita Mountains Unit

This unit includes 172 ac (70 ha) of Federal lands in the Coronado National Forest and 14 ac (6 ha) of private lands in the Greaterville area in Pima County, Arizona.

Included in the critical habitat designation are two metal troughs in Louisiana Gulch, Greaterville Tank, Los Posos Gulch Tank, and the Granite Mountain Tank complex. The Granite Mountain Tank complex includes two impoundments and a well. All but Los Posos Gulch Tank are currently occupied breeding sites; however, the occupancy status at the time of listing for these sites is unknown. We consider this unit to have been unoccupied at the time of listing for the purpose of this critical habitat designation. We have determined this unit to be essential to the conservation of the species because it represents one of only two known occupied areas that support or likely support breeding activity for the Chiricahua leopard frog in the Santa Rita Mountains. More than 60 Chiricahua leopard frogs were observed at Los Posos Gulch Tank in 2008. It was once thought to be a robust breeding site; however, it dried, and Chiricahua leopard frogs disappeared in 2009. These four sites collectively form a metapopulation. A number of other sites in this region have been found to support dispersing Chiricahua leopard frogs; however, only a few frogs and no breeding have been observed at these sites, so they are thought to represent dispersing frogs. The occupancy status of these other sites at the time of listing is also unknown. Designated critical habitat also includes intervening drainages as follows: (1) From Los Posos

Gulch upstream to a saddle, then downslope in an unnamed drainage to the confluence with another unnamed drainage, then upstream and south in that drainage to a saddle, and downslope through an unnamed drainage to its confluence with Ophir Gulch, then in Ophir Gulch to upper Granite Mountain Tank, to include an ephemeral tank near upper Granite Mountain Tank and a well; (2) from Greaterville Tank downstream in an unnamed drainage to Ophir Gulch; and (3) Louisiana Gulch from the metal tanks upstream to the headwaters of Louisiana Gulch then across a saddle and downslope through an unnamed drainage to its confluence with Ophir Gulch. Additionally, this unit has both PCEs 1 and 2.

The major threat in this unit is limited surface water. The breeding habitat at Louisiana Gulch, although limited to two 6.0-ft (1.8-m) diameter steel tanks, is dependable because it is fed by a well. The other tanks are filled by runoff and susceptible to drying during drought. Nonnative predators and chytridiomycosis are not known to be imminent threats in this area.

Las Cienegas National Conservation Area Unit

This unit is in Pima County, Arizona, and includes 1,364 ac (552 ha) of Bureau of Land Management lands and 186 ac (75 ha) of Arizona State Land Department lands, including an approximate 4.33-mi (6.98-km) reach of Empire Gulch and 1.91 mi (3.08 km) of Cienega Creek, including the Cinco Ponds. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains PCEs 1 and 2 to support life-history functions essential for the conservation of the species. Close to 60 metamorphosed Chiricahua leopard frogs and 400 tadpoles were released to Las Cienegas Natural Conservation Area during the fall of 2011.

At the time of listing, Empire Gulch was occupied. However, the occupancy status of Cinco Ponds at that time is unknown. Currently, Chiricahua leopard frogs are extant at Empire Gulch and Cinco Ponds. Frogs breed in a reach of Empire Gulch near Empire Ranch. This reach includes: (1) Empire Gulch from a pipeline road crossing above the breeding site downstream to Cienega Creek; and (2) Cienega Creek from the Empire Gulch confluence upstream to the approximate end of the wetted reach and where the creek bends hard to the east, to include Cinco Ponds. An enclosed Chiricahua leopard frog facility exists along Empire Gulch and is used to headstart eggs and tadpoles for release to augment the wild population. Frogs may breed periodically at Cinco Ponds. These sites are too far (more than an 8.0-mi (13-km) straight-line distance) from the next nearest population, which is in Eastern Slope of the Santa Rita Mountains; thus, the population(s) in this unit currently acts as an isolated population(s).

Special management is required in this unit to improve habitat, control disease, and remove nonnative species. A collaborative, multi-partner recovery program for the Chiricahua leopard frog is ongoing at Las Cienegas; the program is funded by a substantial grant from the National Fish and Wildlife Foundation. The program focuses on creating opportunities for Chiricahua leopard frog head-starting, improving habitat, and removing nonnative species. Significant progress has been made to eliminate bullfrogs from the area, but bullfrogs are still present and represent a persistent problem. Chiricahua leopard frogs suffer from chytridiomycosis in this unit; however, the Chiricahua leopard frogs are persisting with the disease. Crayfish occur within a few miles and pose a significant threat if they reach Cienega Creek or Empire Gulch.

Empire Gulch and Cienega Creek downstream of its confluence with Empire Gulch is designated critical habitat for the federally endangered Gila chub (*Gila intermedia*) (70 FR 66663; November 2, 2005). The chub and the federally endangered Gila topminnow (*Poeciliopsis occidentalis*) (32 FR 4001; March 11, 1967) occur in Cienega Creek adjacent to Empire Gulch. The Gila topminnow also occurs in Empire Gulch. Neither species occurs in Cinco Ponds. Where these federally listed species occur with the Chiricahua leopard frog, some level of protection may be afforded to Chiricahua leopard frog habitat when a Federal nexus exists for projects that may affect one of these other federally listed species.

Pasture 9 Tank

This was a proposed unit that includes 0.5 ac (0.2 ha), and is a former cattle pond entirely on private lands of the San Rafael Ranch, San Rafael Valley, Santa Cruz County, Arizona. For this final rule, we are excluding all 0.5 ac (0.2 ha) in this unit under section 4(b)(2) of the Act (see *Application of Section 4(b)(2) of the Act,* below). Therefore, this unit is not being designated as critical habitat in this final rule.

Scotia Canyon Unit

This unit includes 70 ac (29 ha) in Scotia Canyon, Huachuca Mountain, Cochise County, Arizona, and is entirely on Federal lands in the Coronado National Forest. Chiricahua leopard frogs were reestablished in this canyon via a translocation in 2009; the last record of a Chiricahua leopard frog in the canyon before that was 1986. Scotia Canyon was not occupied at the time of listing. We consider this unit to be essential to the conservation of the Chiricahua leopard frog because of its potential to host a stable breeding population of Chiricahua leopard frogs in the future and the effort that has been dedicated to the area to mitigate threats posed by nonnative predators. Additionally, this unit has both PCEs 1 and 2.

The unit encompasses an approximate 1.36-mi (2.19-km) reach of the canyon with perennial pools, as well as a perennial travertine (a form of limestone) seep; a spring-fed, perennial impoundment (Peterson Ranch Pond); and an ephemeral impoundment adjacent to Peterson Ranch Pond. There is also a perennial or nearly perennial impoundment in the channel downstream of the travertine seep. Breeding habitat occurs at Peterson Ranch Pond and possibly at other perennial or nearly perennial pools.

Currently, this site is isolated from other populations. Hence this site is managed as an isolated population, but there is some potential for creating connectivity to the metapopulation in Ramsey and Brown Canyons via population reestablishment in Garden Canyon at Fort Huachuca. Scotia Canyon, with its pond and stream habitats, has the potential to host a robust population.

Special management is required in this unit to remove nonnative predators and disease, protect from catastrophic wildlife, and improve aquatic habitat. Scotia Canyon, and sites around it, have been the subject of intensive bullfrog eradication and habitat enhancement work in preparation for the 2009 reestablishment of the Chiricahua leopard frog. However, bullfrog reinvasion is a significant, continuing threat, and other nonnative predators could potentially reach Scotia Canyon via natural or human-assisted releases. In addition, barred tiger salamanders from the Peterson Ranch Pond tested positive for chytridiomycosis in 2009; however, in 2010, the Chiricahua leopard frogs appeared to be persisting in that same pond. Arizona Game and Fish Department biologists and Coronado National Forest staff visited the site on April 5, 2011, and verified the continued presence of salamanders (2 mature brachiates were observed). Nonetheless, disease has resulted in extirpations elsewhere in the Huachuca

Mountains, and is considered a serious threat in Scotia Canyon. Further, heavy fuel loads could result in a catastrophic wildfire, which would have significant detrimental effects on the frog and its aquatic habitats. Finally, a road through the canyon is eroded in places and contributes sediment to the stream; it receives much use by recreationists and U.S. Customs and Border Protection.

The critical habitat designation for the Chiricahua leopard frog largely overlaps that of critical habitat for the endangered *Lilaeopsis schaffneriana* var. *recurva* (Huachuca water-umbel). The occurrence of critical habitat and listed species provide some level of protection to Chiricahua leopard frog habitat in this unit when a Federal nexus exists on a project that may affect the endangered plant *Lilaeopsis schaffneriana* var. *recurva* (Huachuca water-umbel). However, the Chiricahua leopard frog may require additional measures to facilitate conservation and recovery in these areas.

Beatty's Guest Ranch Unit

This was a proposed unit that includes 10 ac (4.0 ha) of private lands in Miller Canyon on the east slope of the Huachuca Mountains, Cochise County, Arizona. For this final rule, we are excluding all 10 ac (4.0 ha) in this unit under section 4(b)(2) of the Act (see *Application of Section 4(b)(2) of the Act,* below). Therefore, this unit is not being designated as critical habitat in this final rule.

Carr Barn Pond Unit

This unit includes 0.6 ac (0.3 ha) of Federal lands in the Coronado National Forest in the Huachuca Mountains, Cochise County, Arizona. Carr Barn Pond is an impoundment with a small, lined pond with water provided from a well. During runoff events, the size of the pond expands considerably and then gradually shrinks back to the lined section.

This unit is designated as critical habitat because it was occupied at the time of listing and currently contains PCE 1 to support life-history functions essential for the conservation of the species.

As with Beatty's Guest Ranch, Ramsey and Brown Canyons, this unit has been the subject of a conservation agreement and much intensive management for the Ramsey Canyon (= Chiricahua) leopard frog. The Coronado National Forest created and now maintains Carr Barn Pond consistent with the Ramsey Canyon (= Chiricahua) leopard frog conservation agreement, to which they are a signatory. This site was occupied at the time of listing and was occupied into 2009, but the population has since been eliminated, probably by chytridiomycosis. This site is too far away (3.4 mi (5.4 km) from Ramsey and Brown Canyons and about 3.0 mi (4.8 km) from Beatty's Guest Ranch by way of a straight-line distance over rugged terrain) to be part of a metapopulation; hence, it is currently considered isolated. There is some potential for connecting it to Scotia Canyon, and Ramsey and Brown Canyons (see discussion above), but additional habitat creation or enhancement and population reestablishment would be needed.

The features essential to the conservation of the species in this unit may require special management considerations or protection to alleviate the threats from nonnative predators and disease. Disease is a serious threat that can be an impediment to viable frog populations. The population has been eliminated after chytridiomycosis die-offs three times. Twice the population has subsequently been reestablished through translocations. Largemouth bass have been introduced illegally into the pond and then removed, and bullfrogs periodically invade the site, but are promptly removed before they breed.

Ramsey and Brown Canyons Unit

This unit includes 44 ac (18 ha) of private lands in Ramsey Canyon and 58 ac (24 ha) of Federal lands in the Coronado National Forest in Brown and Ramsey Canyons, Huachuca Mountains, Cochise County, Arizona. Ramsey Canyon was not occupied at the time of listing but Brown Canyon was; therefore, we treat this unit as occupied. The unit currently contains PCEs 1 and 2 to support life-history functions essential for the conservation of the species.

This unit, along with Beatty's Guest Ranch and Carr Barn Pond, has been managed intensively for Ramsey Canyon (= Chiricahua) leopard frog conservation since 1995. This unit is managed as a metapopulation. Places where Chiricahua leopard frogs have bred and that still retain PCE 1 include Ramsey Canyon, and Trout and Meadow Ponds on private lands owned by The Nature Conservancy. These private lands are excluded from designation as critical habitat in the Ramsey Canyon Box. In Brown Canyon, the Wild Duck Pond, House Pond, and the Brown Canyon Box (on Coronado National Forest lands) are designated as critical habitat.

In addition, this critical habitat unit also includes dispersal sites and corridors for connectivity among breeding ponds as follows: (1) From the eastern boundary of The Nature Conservancy's Bledsoe Parcel in the Ramsey Canyon Preserve downstream to a dirt road crossing of Ramsey Canyon at the mouth of the canyon, excluding The Nature Conservancy's University of Toronto Parcel in the Ramsey Canyon Preserve; (2) Brown Canyon from the Box downstream to the Wild Duck Pond and House Pond on the former Barchas Ranch; and (3) from the dirt road crossing of Ramsey Canyon directly overland to House Pond.

The Ramsey Canyon portion of the unit was not occupied at the time of listing, but Brown Canyon was occupied. Both canyons are currently considered occupied. Chiricahua leopard frogs have bred at the Box in Brown Canyon, although the site is too small to support more than just a few frogs. Special management is required in this unit because recent die-offs associated with chytridiomycosis have significantly reduced populations in both canyons. The House and Wild Duck Ponds, as well as Ramsey Canyon, have a history of chytridiomycosis outbreaks. The Ramsey Canyon population has been eliminated twice and then reestablished; the House and Wild Duck Ponds have also undergone repeated disease-related declines and extirpations followed by reestablishments. The populations tend to persist for months or years after reestablishment only to experience chytridiomycosis outbreaks followed by declines or extirpation.

Additional special management is required in this unit because nonnative species, drying, sedimentation, and fire threaten the frog. Nonnative predators threaten populations at the House and Wild Duck Ponds, where bullfrogs have been found periodically and goldfish (*Carassius auratus auratus*) were once introduced. Those two ponds are buffered against drought and drying by a pipeline from a spring and a windmill. However, the Box in Brown Canyon is subject to low water and drying during drought. That latter population depends upon immigration or active reestablishment for long-term persistence. The Trout and Meadow Ponds in Ramsey Canyon are fed by pipelines; thus the water supply is dependable. The Trout Pond could however be filled in with sediment during a flood. Further, a fire in the watershed could threaten aquatic breeding sites in both canyons.

Lands owned by The Nature Conservancy in Ramsey Canyon are known as the Ramsey Canyon Preserve and are managed for preservation of natural features and species, including the Chiricahua leopard frog. The Ramsey Canyon Preserve is also

enrolled in the Arizona Game and Fish Department's Statewide Safe Harbor Agreement, effective July 2010. Under section 4(b)(2) of the Act, the Ramsey Canyon Preserve (16 ac (6.5 ha)) is being excluded from critical habitat designation (see *Application of Section 4(b)(2) of the Act,* below).

Recovery Unit 3 (Chiricahua Mountains-Malpai Borderlands-Sierra Madre, Arizona, New Mexico, and Mexico)

High Lonesome Well Unit

This previously proposed unit includes 0.4 ac (0.2 ha) of privately owned lands in the Playas Valley, Hidalgo County, New Mexico. This unit consists of an elevated concrete tank into which Chiricahua leopard frogs were introduced prior to listing (Painter 2000, p. 15). The tank is supplied with water from a windmill and provides water for livestock. The site supports a robust breeding population, but is much too far from other populations to be part of a metapopulation (the nearest population is in Unit 17, 25.4 mi (40.6 km) to the west). Furthermore, although frogs can exit the tank, they cannot get back into the tank.

We reevaluated the High Lonesome Well Unit and have determined that it does not meet the definition of critical habitat, because it does not have the physical or biological features that are essential for the conservation of the species. The unit does not contain the terrestrial habitat that provides opportunities for foraging and basking, and that is immediately adjacent to or surrounding breeding aquatic and riparian habitat, which is a component of PCE 1. Therefore, we have removed the High Lonesome Well Unit from this final critical habitat designation.

Peloncillo Mountains Unit

This unit includes 366 ac (148 ha) of Federal lands in the Coronado National Forest in Hidalgo County, New Mexico. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains PCEs 1 and 2 to support life-history functions essential for the conservation of the species.

Aquatic habitats in this unit include Geronimo, Javelina, State Line Tanks; Maverick Spring; and pools or ponds in the Cloverdale Cienega and along Cloverdale Creek below Canoncito Ranch Tank. Breeding has occurred in State Line Tank, and possibly other aquatic sites in this unit. Geronimo Tank was occupied at the time of listing. The occupancy status of the other sites at that time is unknown. These tanks and Maverick Spring have recent records of frogs (2007 to the present) and are considered currently occupied, with the exception of State Line Tank. State Line Tank was reported dry in 2011, with no available habitat or refuge for Chiricahua leopard frogs and no frogs observed. It is not known whether the tank incurred damage or drought caused it to dry. However, because Chiricahua leopard frogs disperse from Canoncito Ranch Tank into Cloverdale Cienega, Cloverdale Creek, and surrounding tanks when water is present, State Line Tank still contains PCE 2. This unit is managed as a metapopulation.

Also included in this unit are intervening drainages and uplands needed for connectivity among these aquatic sites, including: (1) Cloverdale Creek from Canoncito Ranch Tank downstream, including Cloverdale Cienega, and excluding portions of Cloverdale Creek and the cienega within private lands of Canoncito Ranch; (2) from Geronimo Tank downstream in an unnamed drainage to its confluence with Clanton Draw, then upstream to the confluence with an unnamed drainage, and upstream in that drainage to its headwaters, across a mesa to the headwaters of an unnamed drainage, then downslope through that drainage to State Line Tank; (3) from State Line Tank upstream in an unnamed drainage to a mesa, then directly overland to the headwaters of Cloverdale Creek, and then downstream in Cloverdale Creek to Javelina Tank; and (4) from Javelina Tank downstream in Cloverdale Creek to the Canoncito Ranch Tank, to include Maverick Spring.

Special management is required in this unit because periodic drought dries most of the aquatic sites completely or to small pools, which limits population growth potential. Nonnative sportfish are present at Geronimo Tank and may preclude successful recruitment. Occurrence of chytridiomycosis in this area has not been investigated, but may also be a limiting factor.

Sky Island Alliance is working with partners to restore the Cloverdale Cienega, which should improve aquatic habitats for Chiricahua leopard frogs. The owner of the Canoncito Ranch has signed onto a safe harbor agreement for the Chiricahua leopard frog. Under section 4(b)(2) of the Act, the private lands in this unit (289 ac (117 ha)) are excluded from the final rule for critical habitat (see *Application of Section 4(b)(2) of the Act,* below).

Cave Creek Unit

This unit includes 234 ac (95 ha) of Federal lands in the Coronado National Forest in the Chiricahua Mountains, Cochise County, Arizona. This unit was occupied at the time of listing, is currently occupied, and currently contains both PCEs 1 and 2 to support life-history functions essential for the conservation of the species. Chiricahua leopard frogs and tadpoles were released during the fall of 2011, into a pond on the Southwestern Research Station, where they were initially reared in an onsite ranarium. Released frogs are expected to distribute themselves throughout Cave Canyon during ensuing years.

Included in this unit is an approximate 4.76-mi (7.66-km) reach of Cave Creek and associated ponds in or near the channel, from Herb Martyr Pond downstream to the eastern U.S. Forest Service boundary. PCEs 1 and 2 are present. This site will be managed as a metapopulation.

Herb Martyr Pond is the type locality for the Chiricahua leopard frog; however, no frogs have been observed at the site since 1977. This pond requires special management because the pool behind the dam is entirely silted in, and pools at the base of the dam are probably not adequate for Chiricahua leopard frog survival or reproduction. With restoration, this site could support a breeding population of Chiricahua leopard frogs. The pond below the dam at John Hands appears suitable for occupancy, but Chiricahua leopard frogs have not been recorded there since 1966. Chiricahua leopard frogs were occasionally seen in Cave Creek through 2002.

Special management is required in this unit because scarcity of water can occur in drought years, and bullfrogs occur to the east but have never been recorded in the unit. The current status and past history of chytridiomycosis in this unit are unknown. Rainbow trout were present and occurred concurrently with Chiricahua leopard frogs at Herb Martyr Pond, but no trout are currently known in the unit.

The Southwestern Research Station, owned by the American Museum of Natural History, maintains habitat occupied by the Chiricahua leopard frog, has signed a safe harbor agreement for the Chiricahua leopard frog, and is an active participant in recovery. The Service and Arizona Game and Fish Department (AGFD) are working with additional private landowners downstream of the designated critical habitat to bring them into the safe harbor agreement. Under section 4(b)(2) of the Act, the American Museum of Natural History lands (92 ac (37 ha)) are being excluded from critical habitat designation (see *Application of Section 4(b)(2) of the Act,* below).

Leslie Creek Unit

The unit consists of 26 ac (11 ha) of National Wildlife Refuge (NWR) (Federal) lands on Leslie Canyon NWR, Cochise County, Arizona. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains PCE 1 to support life-history functions essential for the conservation of the species.

This unit is a stream system with intermittent pools and two small impoundments. The upstream boundary is the Leslie Canyon NWR, and its downstream limit is the crossing of Leslie Canyon Road, an approximate stream distance of 4,094 ft (1,248 m).

Chiricahua leopard frogs were present in this unit at the time of listing and are currently extant. This population is too far (24.8 mi (36.7 km)) from the next nearest breeding site, North Tank, to be part of a metapopulation. Hence it is managed as an isolated population.

Special management is required in this unit because drought and lack of pools are limiting factors in this unit. Also, Chiricahua leopard frogs are positive for chytridiomycosis at this site, and although they are persisting with the disease, the population is not robust, and the effects of the disease may be responsible in part. Bullfrogs occur in ponds to the east, but have never been recorded in Leslie Creek.

The endangered plant *Lilaeopsis schaffneriana* var. *recurva* (Huachuca water-umbel), endangered Yaqui chub (*Gila purpurea*), and endangered Yaqui topminnow (*Poeciliopsis occidentalis sonoriensis*) all occur in Leslie Creek, and the area is managed to conserve the aquatic and riparian habitats of the canyon. While current management prescriptions for the Yaqui fishes will benefit the Chiricahua leopard frog in this area, additional actions may be necessary to conserve and recover the Chiricahua leopard frog in this area. A landowner adjacent to the the refuge has signed a safe harbor agreement for the Chiricahua leopard frog and other species. With future habitat renovations and population reestablishments, there is some potential for developing additional populations of Chiricahua leopard frogs in this area, which could form a metapopulation with the Leslie Canyon population.

Rosewood and North Tanks Unit

This was a proposed unit that includes 19 ac (8 ha) of private land and 78 ac (31 ha) of land owned by the Arizona State Land Department in the San Bernardino Valley, Cochise County, Arizona. For this final rule, we are excluding all 97 ac (39 ha) of this unit under section 4(b)(2) of the Act (see *Application of Section 4(b)(2) of the Act,* below). Therefore, this unit is not being designated as critical habitat in this final rule.

Recovery Unit 4 (Piñaleno-Galiuro-Dragoon Mountains, Arizona)

Deer Creek Unit

This unit consists of 17 ac (7 ha) of Federal lands in the Coronado National Forest, 69 ac (28 ha) of Arizona State Land Department lands, and 34 ac (14 ha) of private lands in the Galiuro Mountains, Graham County, Arizona. This unit was occupied at the time of listing and contains the features essential to the conservation of the species (PCEs 1 and 2).

Included in designated critical habitat are Home Ranch, Clifford's, Vermont, and Middle Tanks, a series of 10 impoundments on the Penney Mine lease, and intervening drainages, primarily Deer Creek, and associated uplands and ephemeral tanks that provide corridors for movement among these tanks. Breeding has been confirmed on Deer Creek above Clifford's Tank, and in Home Ranch and Vermont Tanks, and is suspected in the other three sites named above when water is present long enough for tadpoles to metamorphose into adults (3 to 9 months). Home Ranch Tank supports a large population of Chiricahua leopard frogs. This unit functions as a metapopulation. Intervening drainages include: (1) Deer Creek from a point where it exits a canyon and turns abruptly to the east, upstream to its confluence with an unnamed drainage, upstream in that drainage to a confluence with four other drainages, upstream from that confluence in the western drainage to Clifford's Tank, upstream from that confluence in the west-central drainage to an unnamed tank, then directly overland southeast to another unnamed tank, then downstream from that tank in an unnamed drainage to the aforementioned confluence and upstream in that unnamed drainage to a saddle, and downstream from that saddle in an unnamed drainage to its confluence with an unnamed tributary to Gardner Canyon, and upstream in that unnamed tributary to Home Ranch Tank; (2) from the largest of the Penney Mine Tanks directly overland and southwest to an unnamed tank, and downstream from that tank in an unnamed drainage to the aforementioned confluence, to include another unnamed tank situated in that drainage; (3) from Vermont Tank directly overland and east to Deer Creek; and (4) from Middle Tank upstream in an unnamed drainage to a saddle, and then directly downslope to Deer Creek.

Special management is required in this unit to alleviate periodic drought, which results in breeding sites drying. During a severe drought in 2002, all but one of the waters in the unit dried. Frogs reportedly died for unknown reasons in the 1980s (Goforth 2005, p. 2), possibly indicative of chytridiomycosis; however, no Chiricahua leopard frogs have tested positive for the disease from this unit. The only nonnative aquatic predator recorded in this unit is the barred tiger salamander.

Recovery work has occurred in this unit, including head-starting of egg masses and reestablishment and augmentation of populations. The Service, AGFD, Arizona State Land Department, and an agate miner (Penney Mine Tanks) have drafted a conservation plan for managing habitats on the mine lease, but funds are lacking to implement that plan.

Oak Spring and Oak Creek Unit

This unit consists of 27 ac (11 ha) of Federal lands in the Coronado National Forestin the Galiuro Mountains, Graham County, Arizona.

Occupancy status at the time of listing was unknown. We consider this unit to have been unoccupied at the time of listing for the purpose of this critical habitat designation. We have determined this unit to be essential to the conservation of the species because this unit contains important breeding sites necessary for recovery. It is just north of Deer Creek, but is too far (about 1.6 mi (2.6 km)) overland (via straight-line distance) from the nearest aquatic sites (Home Ranch and Clifford's Tanks) in that unit. Connectivity is further complicated by a ridgeline between Oak Spring and Home Ranch Tank. Hence, this unit is managed as an isolated population. Additionally, both PCEs 1 and 2 are present in this unit.

This unit is currently occupied; however, the site does not support enough Chiricahua leopard frogs to be considered a robust population. This unit is an approximate 1.06-mi (1.71-km) intermittent reach of an incised canyon punctuated by pools of varying permanence, from Oak Spring downstream in Oak Creek to where a hiking trail intersects the creek. The largest pool, Cattail Pool, typically contains water and supports several breeding Chiricahua leopard frogs. The stream reach designated for critical habitat includes the area where Chiricahua leopard frogs occur.

The primary threat in this unit is extended periods of drought, which have caused all the pools to be subject to reduction or drying. Cattail Pool is spring-fed, and is likely the last pool to dry. Oak Spring is also used for water developments, which may limit the capability of the site to support frogs. Chiricahua leopard frogs have been headstarted and released at this site to augment the population.

Dragoon Mountains Unit

This unit includes 74 ac (30 ha) of Federal lands in the Coronado National Forest in Cochise County, Arizona. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains PCEs 1 and 2 to support life-history functions essential for the conservation of the species.

Shaw Tank and Tunnel Spring in Middlemarch Canyon are designated as critical habitat in this unit and are currently occupied breeding sites. The latter is a robust population that was occupied at the time of listing. Shaw Tank is a reestablishment site that was not known to be occupied in 2002.

Also included in the designated critical habitat is Halfmoon Tank, which supported a robust population of Chiricahua leopard frogs until 2002. It is unknown whether this tank supported Chiricahua leopard frogs at the time of listing. PCE 1 at Halfmoon Tank has been compromised by siltation and recent drought, which affects the amount and persistence of water. The tank is in need of renovation so that it may again dependably hold water and support breeding.

Special management is required in this unit because currently not enough breeding sites exist to comprise a metapopulation (four are necessary) in this unit. However, with additional habitat creation or renovation, a metapopulation may be possible, which is needed for this Recovery Unit (the only other metapopulation in this Recovery Unit is in Deer Creek).

Also included in this critical habitat designation are intervening drainages for connectivity, including Stronghold Canyon from Halfmoon Tank to Cochise Spring, then upstream in an unnamed canyon to Shaw Tank, and continuing upstream to the headwaters of that canyon, across a saddle and downstream in Middlemarch Canyon to Tunnel Spring.

Special management is also required in this unit because of scarcity of suitable breeding habitat and loss of that habitat during drought. Tunnel Spring is spring-fed and thus buffered against drought; however, Shaw and Halfmoon Tanks are filled with runoff. Neither nonnative predators nor chytridiomycosis has been noted in these populations and habitats, although if introduced either would constitute an additional threat.

Recovery work, including headstarting of eggs collected from Tunnel Spring and establishment of a new population at Shaw Tank with reared tadpoles and frogs, has been accomplished in this unit, and the U.S. Forest Service's livestock permittee has been a participant in those recovery activities.

Recovery Unit 5 (Mogollon Rim-Verde River, Arizona)

Buckskin Hills Unit

This unit includes 232 ac (94 ha) of Federal lands in the Coconino National Forest in Yavapai County, Arizona. This unit is designated as critical habitat because it was occupied at the time of listing and has the features essential to the conservation of the species (PCEs 1 and 2).

Included in this designated critical habitat unit are six tanks occupied at the time of listing (Sycamore Basin, Middle, Walt's, Partnership, Black, and Buckskin) that form a metapopulation. Frogs currently occur at Middle and Walt's Tanks. Also included in the critical habitat designation are two tanks occupied in 2001 that probably dried during a drought in 2002: Doren's Defeat and Needed Tanks. The former holds water well in years with average precipitation and is about 0.5 mi (0.8 km) from Partnership Tank and 0.67 mi (1.07 km) from Walt's Tank. Needed Tank may not hold water long enough for breeding, but it provides a habitat for dispersing frogs.

This designated critical habitat also includes drainages and uplands likely used as dispersal corridors among these tanks, including: (1) From Middle Tank downstream in Boulder Canyon to its confluence with an unnamed drainage that comes in from the northwest, to include Black Tank, then upstream in that unnamed drainage to a saddle, to include Needed Tank, downstream from the saddle in an unnamed drainage to its confluence with another unnamed drainage, downstream in that drainage to the confluence with an unnamed drainage, to include Walt's Tank, and upstream in that unnamed drainage to Partnership Tank; (2) from Doren's Defeat Tank upstream in an unnamed drainage to Partnership Tank; (3) from the confluence of an unnamed drainage with Boulder Canyon west to a point where the drainage turns southwest, then directly overland to the top of Sycamore Canyon, and then downstream in Sycamore Canyon to Sycamore Basin Tank; and (4) from Buckskin Tank upstream in an unnamed drainage to the top of that drainage, then directly overland to an unnamed drainage that contains Walt's Tank.

Special management is required in this unit because of nonnative species and drought. Divide Tank, which is adjacent to Highway 260, has supported nonnatives in the past and is a likely place for future illegal stockings of nonnative predatory fish or bullfrogs. If established, nonnatives could spread to sites designated in this rule as critical habitat. All of the tanks designated as critical habitat are filled by runoff; hence, they are vulnerable to drying during drought. When the species was proposed for listing, the populations in the Buckskin Hills were unknown; however, during 2000–2001, frogs were found at 11 sites. After a severe drought in 2002, frogs only remained at Sycamore Basin and Walt's Tanks. Because the tanks depend on runoff, and as most tanks went dry in 2002, protecting more than the minimum four breeding sites needed for a metapopulation is warranted. Chytridiomycosis has not been found in any frogs in the Buckskin Hills; however, the disease occurs in Arizona treefrogs (*Hyla wrightorum*) and western chorus frogs (*Pseudacris triseriata*) less than 10 mi (16 km) to the east, and frogs collected from Walt's Tank subsequently tested positive for the disease in captivity. It is unknown whether they contracted the disease in the wild or while captive.

Much recovery work has been accomplished in this unit, including captive rearing, population reestablishments, tank renovations, erosion control, fencing, and elimination of nonnative predators such as nonnative fish and crayfish.

Crouch, Gentry, and Cherry Creeks, and Parallel Canyon Unit

This unit includes 334 ac (135 ha) of Federal lands in the Tonto National Forest, 64 ac (26 ha) of AGFD lands, and 6 ac (3 ha) of private lands in Gila County, Arizona. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains PCEs 1 and 2 to support life-history functions essential for the conservation of the species.

Included as designated critical habitat are Trail Tank, HY Tank, Carroll Spring, West Prong of Gentry Creek, Pine Spring, and portions of Cherry and Crouch Creeks, all of which provide breeding or potential breeding habitat. Also included are intervening drainages

and uplands needed for connectivity among breeding sites, including: (1) Cherry Creek from Rock Spring upstream to its confluence with an unnamed drainage, upstream in that drainage and across a saddle, then downstream in an unnamed drainage to Trail Tank; (2) Crouch Creek from its headwaters just south of Highway 288 downstream to an unnamed drainage leading to Pine Spring, to include Cunningham Spring and Carroll Spring, then upstream in that unnamed drainage from Crouch Creek to Pine Spring; (3) from HY Tank downstream in an unnamed drainage to Cherry Creek, to include Bottle Spring; (4) from Cunningham Spring east across a low saddle to West Prong of Gentry Creek where the creek turns southwest; and (5) from Bottle Spring south over a low saddle to the headwaters of Crouch Creek.

At the time of listing, Chiricahua leopard frogs occurred in Crouch Creek, Carroll Spring, HY Tank, Bottle Spring, and West Prong of Gentry Creek. Trail Tank has nearly permanent water and is in the Parallel Canyon drainage, but close to the divide with Cherry Creek. In May 2010, it was renovated to remove a breeding population of bullfrogs and green sunfish. Additional follow-up removal of bullfrogs occurred in July 2010 and again in May 2011, after bullfrog tadpoles were rediscovered in Trail Tank in the fall of 2010. Bullfrogs at the nearby ephemeral unnamed 102 Roadside Tank were also eliminated in 2010. Special management is required in this unit because of bullfrogs. Once bullfrogs are confirmed absent, plans will move forward to translocate Chiricahua leopard frogs to Trail Tank.

Chiricahua leopard frogs were moved to Pine Spring in 2006, and habitat work was accomplished there to improve pool habitats. However, no frogs were observed during a site visit in May 2010. The connectivity of Pine Spring to Cunningham Spring and other sites upstream in Crouch Creek is complicated by a waterfall below Cunningham Spring; however, an overland route of less than a mile provides access around the waterfall.

Chiricahua leopard frogs were first noted in Cherry Creek in 2008, just before additional frogs were released into that site. Reproduction has been noted, and Chiricahua leopard frogs were observed in Cherry Creek in 2010.

Special management is required in this unit because of predation by nonnative species, including bullfrogs, crayfish, and sportfish; chytridiomycosis, which was found in a Cherry Creek frog in 2009; and scarcity of water. None of the populations are robust due to the small size of breeding habitats. We believe that Trail Tank may provide enough aquatic habitat for a robust population.

Ellison and Lewis Creeks Unit

This unit includes 83 ac (34) of Federal lands in the Tonto National Forest and 15 ac (6 ha) of private lands in Gila County, Arizona.

Occupancy status at the time of listing was unknown. We consider this unit to have been unoccupied at the time of listing for the purpose of this critical habitat designation. We have determined this unit to be essential to the conservation of the species because it contains important breeding habitat needed for recovery. Chiricahua leopard frogs have occasionally been found in Ellison Creek. In 1998, small numbers of frogs were observed, but were not seen again until 2006. Despite intensive surveys, no frogs were found in 2007 or 2008. In 2009, egg masses from Crouch Creek were headstarted, and tadpoles and subadult frogs were stocked at the four sites listed above as potential breeding sites. Frogs from those releases appeared to be persisting at all four sites in 2010. Additional releases of Crouch Creek frogs occurred in July 2010. Additionally, this unit contains both PCEs 1 and 2.

Included in this critical habitat proposal are potential breeding sites at Moore Saddle Tank #2, Ellison Creek just east of Pyle Ranch, Lewis Creek downstream of Pyle Ranch, and Low Tank. Intervening drainages that provide connectivity among the latter three sites are also designated as critical habitat as follows: (1) Unnamed tributary to Ellison Creek from its confluence with an unnamed drainage downstream to Ellison Creek; (2) then directly west across the Ellison Creek floodplain and over a low saddle to Lewis Creek below Pyle Ranch; (3) then downstream in Lewis Creek to its confluence with an unnamed drainage; and (4) then upstream in that unnamed drainage to Low Tank.

Moore Saddle Tank #2 is about 0.8 mi (1.3 km) overland from Low Tank. Hence, it is within the one-mile overland distance for reasonable dispersal likelihood. However, there are four drainages that bisect that route, and it is likely that any Chiricahua leopard frogs traversing those uplands would move down or upstream in one of those drainages rather than crossing them. As a result, Moore Saddle Tank #2 will be managed as an isolated and potentially robust population, leaving the other sites one short of the four needed to form a metapopulation. However, no other sites in the area are known that contain the PCEs or have the potential for developing the PCEs. Additional exploration of the area, and likely some habitat renovation, will be needed to secure a fourth site.

Recovery Unit 6 (White Mountains-Upper Gila, Arizona and New Mexico)

Concho Bill and Deer Creek Unit

This unit includes 17 ac (7 ha) of Federal lands in the Apache-Sitgreaves National Forest in Apache County, Arizona.

Occupancy status at the time of listing was unknown. We consider this unit to have been unoccupied at the time of listing for the purpose of this critical habitat designation. We have determined this unit to be essential to the conservation of the species because it contains important breeding habitat necessary for recovery. This is an isolated population that was established through captive breeding and translocation of stock from Three Forks, which is also in Recovery Unit 6 in Arizona. Frogs were first released at the spring pool in 2000; subsequent releases have augmented the population. Whether or not the frogs persisted after that initial release until the time of listing is unknown. The population is small, and generally only a few frogs if any are detected during surveys.

Included in this critical habitat designation is a spring at Concho Bill and a meadow-ephemeral stream reach extending for approximately 2,667 ft (813 m) below the spring. Additionally, PCE 1 is present in this unit.

The primary threat is the limited pool habitat for breeding and overwintering, which thus far has limited the size of the population. Small populations are subject to extirpation from random variations in demographics of age structure and sex ratio, and from disease and natural events (Service 2007, p. 38). In addition, crayfish are nearby in the Black River and could invade this site.

Campbell Blue and Coleman Creeks Unit

The unit includes 174 ac (70 ha) of Federal lands in the Apache-Sitgreaves National Forest in Greenlee County, Arizona. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains PCE 1 to support life-history functions essential for the conservation of the species.

Included as critical habitat is an approximate 2.04-mi (3.28-km) reach of Campbell Blue Creek from the western boundary of Luce Ranch upstream to the Coleman Creek confluence, and Coleman Creek from its confluence with

Campbell Blue Creek upstream to its confluence with Canyon Creek, an approximate stream distance of 1.04 mi (1.68 km).

This unit is too far from other known Chiricahua leopard frog populations to be considered part of a metapopulation. The nearest population is about 12.2 mi (19.6 km) to the northwest in the Concho Bill and Deer Creek Unit. Frogs were observed in Campbell Blue and Coleman Creeks in 2002, and then again in 2010. No more than a few frogs were seen during surveys (e.g., two were observed in 2010); however, the site is difficult to survey with its complex habitat characteristics, and frogs may easily elude observation.

Special management is required in this unit because crayfish and rainbow trout are present throughout this stream system, which likely limit recruitment of frogs. In 2010, the creeks had numerous beaver (*Castor canadensis*) ponds and vegetation cover that are probably important as protection from predators. Off-channel pools provide better habitat than swiftly moving, shallow creeks. The presence of chytridiomycosis has not been investigated in this unit.

Tularosa River Unit

This unit contains 335 ac (135 ha) of Federal lands in the Gila National Forest and 1,575 ac (637 ha) of private lands in Catron County, New Mexico. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains both PCEs 1 and 2 to support life-history functions essential for the conservation of the species.

This unit is an approximate 19.3-mi (31.1-km) reach of the Tularosa River from Tularosa Spring downstream to the entrance to the canyon below Hell Hole. Frogs were observed in this reach in 2002, at the time of listing, and continue to persist. This unit is isolated from other populations, but is a large system potentially capable of supporting a robust population.

Special management is required in this unit because in 2009, small numbers of frogs were found at two sites in the unit. The frogs may occur throughout this reach of the river, but breeding is likely limited to isolated localities where nonnative predators are rare or absent. Crayfish and rainbow trout are present, and bullfrogs have recently been found downstream of the Apache Creek confluence and just below Hell Hole. Both bullfrogs and crayfish are relatively recent arrivals to this system. Chytridiomycosis is also present. The first Chiricahua leopard frogs to test positive for the disease in New Mexico (1985) were found at Tularosa Spring. The frogs were found at that site through 2005, but none have been observed since. A robust population was also present nearby at a pond in a tributary to Kerr Canyon, in Kerr Canyon, and at Kerr Spring, but experienced a die-off from chytridiomycosis in 2009; it is unknown if frogs persist in those areas today. Chytridiomycosis is considered a serious threat in this unit.

The designated critical habitat extends just below Hell Hole, but not farther, because Chiricahua leopard frogs have not persisted below Hell Hole since the 1980s, likely because the area lacks the physical or biological features to support life-history functions.

Deep Creek Divide Area Unit

This unit consists of 408 ac (165 ha) of Federal lands in the Gila National Forest and 102 ac (41 ha) of private lands in Catron County, New Mexico. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains both PCEs 1 and 2 to support life-history functions essential for the conservation of the species.

Included as designated critical habitat are three livestock tanks (Long Mesa, Cullum, and Burro Tanks) in the Deep Creek Divide area and connecting reaches of North and South Fork of Negrito Creek above their confluence. Long Mesa Tank is currently occupied; surveys in 2010 did not find frogs at Cullum Tanks or the North Fork of Negrito Creek, although Chiricahua leopard frogs occupied these sites in 2009. Frogs were last found in South Fork of Negrito Creek in 2006, and at Burro Tank in 2002. Four impoundments on private lands along South Fork of Negrito Creek have not been surveyed for frogs; however, it is presumed they serve or once served as habitat for Chiricahua leopard frogs. Long Mesa, Cullum, and Burro Tanks, and the South Fork of Negrito Creek, were occupied at the time of listing.

Also included in this designated critical habitat are intervening drainages and uplands for movement among these breeding sites as follows: (1) From Burro Tank downstream in Burro Canyon to Negrito Creek, then upstream in Negrito Creek to the confluence of South Fork and North Fork of Negrito Creek; (2) from Long Mesa Tank overland and east to Shotgun Canyon, then downstream in that canyon to Cullum Tank; and (3) from Cullum Tank downstream in Shotgun and Bull Basin Canyons to an unnamed drainage, then upstream in that drainage to its confluence with a minor drainage coming off Rainy Mesa from the east-northeast, then upstream in that drainage and across Rainy Mesa to Burro Tank.

Special management is required in this unit because populations have suffered from chytridiomycosis. A complex of tanks, springs, and streams in the Deep Creek Divide area was once a stronghold for the Chiricahua leopard frog on the Gila National Forest. However, most of those populations contracted the disease, suffered die-offs, and disappeared. Chiricahua leopard frogs on the North Fork of Negrito Creek were few in number and appeared sick in 2008. Their possible absence in 2010 may be a result of a disease-related die-off.

Main Diamond Creek Unit

This unit consists of 53 ac (21 ha) of Federal lands in the Gila National Forest and along Main Diamond Creek downstream of Links Ranch, Catron County, New Mexico. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains PCE 1 to support life-history functions essential for the conservation of the species.

This site currently supports a robust population. Chiricahua leopard frogs may occur periodically or regularly at an impoundment at Links Ranch, but that impoundment also contains bullfrogs and may have sportfish. This designated critical habitat includes an approximate 3,980-ft (1,213-m), perennial or nearly perennial reach of Main Diamond Creek from the downstream (western) boundary of Links Ranch downstream through a meadow to the confluence of a drainage that comes in from the south, which is also where the creek enters a canyon. This population is about a 4.6-mi (7.4-km), straight-line distance over rugged terrain to the next nearest population at Beaver Creek. As a result, it is managed as an isolated, robust population.

Special management is required in this unit because bullfrogs at the impoundment likely prey upon Chiricahua leopard frogs. Also, chytridiomycosis has not been found in this population, but is a potential threat. The creek is primarily privately owned, and the landowner's future plans regarding land management in the area are unknown.

Beaver Creek Unit

This unit consists of 132 ac (54 ha) of Federal lands in the Gila National Forest and 25 ac (10 ha) of private lands near Wall Lake, Catron County, New Mexico. This unit is an approximate 5.59-mi (8.89-km) portion of Beaver Creek beginning at a warm spring and running

downstream to its confluence with Taylor Creek. Below that confluence, the stream is known as the East Fork of the Gila River.

Occupancy status at the time of listing was unknown. We consider this unit to have been unoccupied at the time of listing for the purpose of this critical habitat designation. We have determined this unit to be essential to the conservation of the species because Beaver Creek could support a robust population as it contains important breeding sites necessary for recovery. The nearest known population of Chiricahua leopard frogs is at Main Diamond Creek, approximately a 4.6-mi (7.4-km), straight-line distance away over rugged terrain. As a result, this site is managed as an isolated population. Additionally, PCE 1 is present in this unit.

Chiricahua leopard frogs are currently present; however, the population is not well studied. The main threat in this unit is nonnative predators. Rainbow trout, bass (*Micropterus* sp.), and bullfrogs reportedly occur along Beaver Creek with Chiricahua leopard frogs, although trout are limited to the cooler waters near the confluence with Taylor Creek (Johnson and Smorynski 1998, pp. 44–45). The mechanisms by which Chiricahua leopard frogs coexist with these nonnative predators are unknown. However, habitat complexity and adequate cover are likely important features that may need special management. Also, if chytridiomycosis is present in this unit, the spring at the upstream end of the unit is a warm spring, which may help frogs survive with the disease (Johnson and Smorynski 1998, p. 45; Service 2007, p. 26).

Kerr Canyon Unit

This unit contains 19 ac (8 ha) of Federal lands in the Gila National Forest land and 6 ac (2 ha) of private land in Catron County, New Mexico. The 1.0-mi (1.6-km) reach extends from Kerr Spring, located on the Gila National Forest, through an intermittent drainage to Kerr Canyon Pond (sometimes referred to as the Kerr Canyon Trick Tank) to include the adjacent private property in Kerr Canyon. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains PCE 1 to support life-history functions essential for the conservation of the species.

Our records indicate that this area contained a robust breeding population of Chiricahua leopard frogs from 2002 through 2007 (Service 2008, pp. 1–2). However, during surveys conducted in 2008 and 2009, few individuals were observed (Service 2009a, p. 2). We believe the population experienced a mass mortality event or die-off from chytridiomycosis (Service 2009a, p. 2; Service 2009b, p. 1; Service 2009c, p. 1). Tiger salamanders have also recently been found in Kerr Canyon Pond (Service 2009a, p. 2); however, the abundance of these Chiricahua leopard frog predators is currently unknown. Partial surveys of Kerr Canyon Creek and Pond were conducted in 2010 and 2011, with no Chiricahua leopard frogs observed; however, the area is still considered potentially occupied until more complete surveys can be conducted to determine whether Chiricahua leopard frogs persist in the area.

Kerr Canyon will be managed as an isolated population, as it is currently separated from other populations in Tularosa Creek that are at least 6.5 mi (10.4 km) away. As recently as 2007, Kerr Canyon supported a robust breeding population (Service 2007a, p. 2). However, the current population status is greatly reduced from 2007 numbers, or may possibly be extirpated. We suspect that observed declines in Chiricahua leopard frog abundance can be attributed to chytridiomycosis or predation. Because of the disease and competition with nonnative species, we find that the essential features in this area may require special management considerations or protection.

West Fork Gila River Unit

This unit contains 177 ac (72 ha) of Federal lands in the Gila National Forest in Catron County, New Mexico. This 7.0-mi (11.2-km) reach runs from Turkeyfeather Spring, through an intermittent drainage to the confluence with the West Fork Gila River, then downstream in the West Fork Gila River to confluence with White Creek. Within this unit, the Upper West Fork is divided into two perennial segments by a 1.2-mi (2.0-km) long, ephemeral reach between Turkeyfeather Creek and White Creek. The area within this unit was occupied at the time of listing and currently contains PCE 1 to support life-history functions essential for the conservation of the species.

The West Fork Gila River unit was occupied at the time of listing, and Chiricahua leopard frogs are currently present. The species has been observed in West Fork Gila River since 1995, with reproduction observed in 2001 (Blue Earth Ecological Consultants 2002, pp. 16–17; Service 2007, pp. B–64; Service 2009, p. 15). The population is not well studied; however, this section of the West Fork Gila River is long enough that it could support a robust population. This unit will be managed as an isolated population because it is likely occupied by low numbers of frogs and the nearest known, robust breeding population occurs in the Main Diamond Creek Unit, which is more than 5 mi (8 km) away along a perennial water course. Special management is required in this unit because there may be some potential for linking these populations if aquatic habitat between the units could be identified, renovated as needed, and populations of frogs established. However, potential sites and the presence or absence of PCE 2 in these connecting areas have not been investigated in any detail.

Also, special management is required because chytridiomycosis has been found on Chiricahua leopard frogs within this unit. The Gila National Forest considers this unit to be free of nonnative predators.

Recovery Unit 7 (Upper Gila-Blue River, Arizona and New Mexico)

Left Prong of Dix Creek Unit

This unit contains 13 ac (5 ha) of Federal lands in the Apache-Sitgreaves National Forest in Greenlee County, Arizona.

Occupancy status at the time of listing was unknown. We consider this unit to have been unoccupied at the time of listing for the purpose of this critical habitat designation. We have determined this unit to be essential to the conservation of the species because it contains breeding habitat necessary for recovery. Additionally, this unit contains PCE 1.

This reach runs from a warm spring above ''The Hole'' and continues to the confluence with the Right Prong of Dix Creek, an approximate stream distance of 4,248 ft (1,296 m). This population was discovered in 2003; Chiricahua leopard frogs were observed again in 2005. In 2010, the warm spring was not surveyed because a large boulder has lodged itself in the canyon, blocking access to the spring. In 2003, Chiricahua leopard frogs were also reported from below a warm spring in the Right Prong of Dix Creek. However, surveys in 2010 only found lowland leopard frogs. Currently, the population in the Left Prong is isolated.

The next nearest known Chiricahua leopard frog population is at Rattlesnake Pasture Tank, about a 6.0-mi (9.6-km), straight-line distance over rough terrain. A number of stock tanks have potential to connect these two sites and form a metapopulation; however, they have not been investigated in enough detail to understand whether PCEs are present or have the potential to be developed. No

Chiricahua leopard frogs have ever been found in these tanks.

This designated critical habitat overlaps that of critical habitat for Gila chub, which provides a level of protection for this unit. A healthy population of Gila chub, as well as other native fish, occurs in the Left Prong of Dix Creek. A natural rock barrier about a mile below the confluence of the Right and Left Prongs serves as a barrier to upstream movement of nonnative fish from the San Francisco River. The warm waters of the spring may allow persistence of Chiricahua leopard frogs if chytridiomycosis is present or if it colonizes this area in the future. A rough dirt road crosses the left prong of Dix Creek in the designated critical habitat unit. The major related threat is likely sediment flowing into the stream.

Rattlesnake Pasture Tank and Associated Tanks Unit

This unit contains 59 ac (24 ha) of Federal lands in the Apache-Sitgreaves National Forest in Greenlee County, Arizona.

Occupancy status at the time of listing was unknown. We consider this unit to have been unoccupied at the time of listing for the purpose of this critical habitat designation. We have determined this unit to be essential to the conservation of the species because it contains three tanks, along with dispersal corridors, that could help support a metapopulation. Additionally, both PCEs 1 and 2 are present in this unit.

Included in the designated critical habitat are three stock tanks: Rattlesnake Pasture, Rattlesnake Gap, and Buckhorn. Also included are intervening drainages and uplands for connectivity, including: (1) From Rattlesnake Pasture Tank downstream in an unnamed drainage to Red Tank Canyon (including Buckhorn Tank), then upstream in Red Tank Canyon to Rattlesnake Gap Tank; and (2) from Rattlesnake Gap Tank upstream in an unnamed drainage to its confluence with a minor drainage, then upslope to a saddle, and across that saddle and directly downslope to Rattlesnake Pasture Tank.

Chiricahua leopard frogs were discovered at Rattlesnake Pasture Tank in 2003, and are currently extant. The species has not been found at Rattlesnake Gap or Buckhorn Tanks; however, all three tanks are well connected via drainages to allow movement of frogs from Rattlesnake Pasture Tank to the other tanks. Rattlesnake Gap and Buckhorn Tanks have historically contained water. Other tanks in the area, including Cold Spring Mountain Tank and Rattlesnake Tanks #1 and 2, do not hold water for a long enough period to support a breeding population of frogs, and Chiricahua leopard frogs have not been found at these other tanks. The three tanks designated could help support a metapopulation; however, habitat work that secures water availability will be needed to achieve the fourth breeding site of the metapopulation.

The major threat in this unit is nonnative predators, such as tiger salamanders, that occur in all three tanks and likely prey upon Chiricahua leopard frogs. However, a healthy population of Chiricahua leopard frogs occurs with native Arizona tiger salamanders at Rattlesnake Pasture Tank. Three juvenile to small adult bullfrogs, which were likely immigrants from another site, were found at Rattlesnake Gap Tank in June 2010. There is potential for bullfrogs to become established at Rattlesnake Gap Tank. These tanks are filled by rainfall, but Rattlesnake Pasture Tank may be spring-fed as well. Nonetheless, there is some risk that these tanks, particularly Buckhorn Tank, could dry during an extended drought.

Coal Creek Unit

This unit consists of 7 ac (3 ha) of Federal lands in the Apache-Sitgreaves National Forest in Greenlee County, Arizona. This is an approximate 3,447-ft (1,051-m) reach of Coal Creek from Highway 78 downstream to the confluence with an unnamed drainage.

Occupancy status at the time of listing was unknown. We consider this unit to have been unoccupied at the time of listing for the purpose of this critical habitat designation. We have determined this unit to be essential to the conservation of the species because it contains important breeding habitat necessary for recovery. This creek dries to isolated pools, without the effect of snowmelt and summer precipitation, where Chiricahua leopard frogs take refuge. However, during the spring and summer, Coal Creek typically carries water, and the Chiricahua leopard frogs distribute themselves throughout this reach. Additionally, this unit contains PCE 1.

This population was discovered in 2003, and is still considered extant. This unit is isolated from other Chiricahua leopard frog populations; the nearest is Rattlesnake Pasture Tank, which is 5.1 mi (8.2 km) to the west over rugged terrain.

Neither chytridiomycosis nor nonnative predators is known to be a problem in this unit. However, one major threat in this unit is the potential for wildfires that could result in ash flow, sedimentation, and erosion in Coal Creek, which would degrade or eliminate habitat for Chiricahua leopard frogs. Another primary threat is extended drought, during which the aquatic habitats of the frog could be severely limited or could dry out completely, resulting in extirpation of this isolated population.

Blue Creek Unit

This unit includes 24 ac (10 ha) of Bureau of Land Management land and 12 ac (5 ha) of private lands in Grant County, New Mexico. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains PCE 1 to support life-history functions essential for the conservation of the species.

Included in this unit is an approximate 2.37-mi (3.81-km) reach of Blue Creek from adjacent to a corral on private lands downstream to the confluence of a drainage that comes in from the east. This is an area where Chiricahua leopard frogs currently breed. Additional habitat may occur upstream on private or State lands. However, the private reach immediately above the designated critical habitat lacks breeding pools, and no Chiricahua leopard frogs have been observed (Barnitz 2010, p. 1). The lands upstream of the private land have not been surveyed.

The nearest Chiricahua leopard frog population is at Coal Creek more than a 22 mi (35 km), straight-line distance, which is too great a distance to be considered part of a metapopulation.

Special management is required because the primary limiting factors in this unit are lack of perennial flow and periodic scouring flash flooding during the summer that likely wash tadpoles downstream. In some years, the entire reach goes dry in June; however, in other years with normal to above normal precipitation, frogs breed throughout this reach. Nonnative aquatic predators are absent. Although a Chiricahua leopard frog tested positive for chytridiomycosis in 2009, no die-offs have been noted. Also, special management is required because wildfire could result in ash flow, sedimentation, and erosion in Blue Creek, which would degrade or eliminate habitat for Chiricahua leopard frogs.

Recovery Unit 8 (Black-Mimbres-Rio Grande, New Mexico)

Seco Creek Unit

This unit includes 66 ac (27 ha) of Federal lands in the Gila National Forest in Sierra County, New Mexico. This area

was occupied at the time of listing and currently contains both PCEs 1 and 2 to support life-history functions essential for the conservation of the species.

The designated critical habitat includes the North Fork of Seco Creek from Sawmill Well downstream to its confluence with Middle Seco Creek, to include Sucker Ledge, but excludes the portion of North Seco Creek on private lands. This amounts to an approximate drainage distance of 3.32 miles (5.34 km).

Breeding of Chiricahua leopard frogs has not been observed at Sawmill or Sucker Ledge, but has been observed at Davis Well. At the time of listing, Chiricahua leopard frogs were extant at Sucker Ledge and Davis Well, and the status at Sawmill Well at that time was unknown. The North Fork of Seco Creek, including Sawmill Well, Sucker Ledge, and Davis Well, is currently occupied. PCEs 1 and 2 are present in the unit.

This unit contributes to a metapopulation, and Chiricahua leopard frogs move among these sites and sites on the Ladder Ranch using the intervening creeks. This unit with the areas on the Ladder Ranch comprises the most stable metapopulation in New Mexico.

Special management is required in this unit because chytridiomycosis has caused extirpations in this region, and in 2001, four tadpoles from Seco Creek appeared to show signs of the disease. In June 2007, a single sample (out of seven samples) from Artesia Well and a single sample (out of nine samples) from LM Bar Well tested positive for chytridiomycosis. Both of these were considered ''weak positive'' by the laboratory and may have been false positives. Extensive testing since then has failed to produce additional positive tests. Bullfrogs have been found occasionally on adjacent private lands, but the Ladder Ranch has made efforts to remove and control them to the best of their ability. Barred tiger salamanders occur in most waters in the area and likely prey upon Chiricahua leopard frog tadpoles and small adults, but do not appear to threaten the Chiricahua leopard frog population as a whole.

Turner Endangered Species Fund, Turner Enterprises, and the Ladder Ranch have over a 10-year record of implementing recovery and conservation measures for the Chiricahua leopard frog on the Ladder Ranch. The 156,439-acre Ladder Ranch is owned by Turner Enterprises and is managed for its biodiversity. The Ladder Ranch has been an active participant in the conservation of a number of rare and listed species, including the Mexican wolf (*Canis lupus baileyi*), Bolson tortoise (*Gopherus flavomarginatus*), Chiricahua leopard frog, black-tailed prairie dog (*Cynomys ludovicianus*), American bison (*Bison bison*), and Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*). Recovery actions for the Chiricahua leopard frog have included fencing some of the waters from the bison, monitoring and researching Chiricahua leopard frog populations and habitat, maintaining perennial water for frogs, improving habitat for Chiricahua leopard frogs, removing and controlling bullfrogs, using steel rim tanks for refugia populations, and most recently constructing a captive breeding facility to rear Chiricahua leopard frogs for population augmentation and reestablishment to contribute to the range-wide recovery of the Chiricahua leopard frog. The Service has provided funding for the captive-breeding program under the Partners for Fish and Wildlife Program and other granting authorities. The Ladder Ranch maintains captive-propagation facilities for the Chiricahua leopard frog under a section 10(a)(1)(A) enhancement of survival permit from the Service. Under section 4(b)(2) of the Act, private lands on the Ladder Ranch in this unit (310 ac (247 ha)) are excluded from critical habitat designation (see *Application of Section 4(b)(2) of the Act,* below).

Alamosa Warm Springs Unit

This unit consists of 54 ac (22 ha) of private, 25 ac (10 ha) of New Mexico State, and 0.2 ac (0.1 ha) of Bureau of Land Management lands at the headwaters of Alamosa Creek, Socorro County, New Mexico. This unit is designated as critical habitat because it was occupied at the time of listing and currently contains PCE 1 to support life-history functions essential for the conservation of the species.

Designated critical habitat includes an approximate 4,974-ft (1,516-m) spring run from the confluence of Wildhorse Canyon and Alamosa Creek downstream to the confluence with a drainage that comes in from the north, which is below the gauging station in Monticello Box. This reach includes areas where frogs have been found as recent as 2006 (Christman 2006b, p. 11).

At its source, waters at Alamosa Warm Springs range from 77 to 85 °F (25.0 to 29.3 °C) (Christman 2006b, p. 3). Chytridiomycosis is present in this population, but the Chiricahua leopard frogs persist, presumably aided by the warm waters.

This is a robust breeding population, but it is too far removed from other Chiricahua leopard frogs to be part of a metapopulation. The nearest population is Unit 38, 20.3 mi (32.5 km) to the south-southeast. As a result, this site is managed as an isolated, robust population.

Alamosa Warm Springs is at the northeastern edge of the distribution of the Chiricahua leopard frog. This site is drought-resistant because of perennial spring flow. Nonnative aquatic predators are unknown at this site, but if introduced, they could pose a serious threat to the population. Special management is required in this unit because heavy livestock grazing on the site and in the watershed, and a dirt road through the canyon, have degraded the habitat for Chiricahua leopard frogs, and flooding likely flushes tadpoles out of the unit periodically (Christman 2006b, pp. 5–6).

The endangered Alamosa springsnail (*Tryonia alamosae*) occurs at Alamosa Warm Springs; its presence may provide some additional level of protection to Chiricahua leopard frog. The future land management plans of the landowners are unknown.

Cuchillo Negro Warm Springs and Creek Unit

This unit consists of 3 ac (1 ha) of Bureau of Land Management and 3 ac (1 ha) of New Mexico State lands in Sierra County, New Mexico. This unit was occupied at the time of listing and currently contains both PCEs 1 and 2 to support life-history functions essential for the conservation of the species.

Two springs on Bureau of Land Management land are the source of stream that runs for about 6.0 mi (9.6 km) down Cuchillo Negro Creek; however, Chiricahua leopard frogs are rarely found more than 1.2 mi (2.0 km) downstream of the warm springs (Christman 2006a, p. 8). Critical habitat begins at the upper of the two springs and follows Cuchillo Negro Creek downstream to the confluence with an unnamed drainage that comes in from the snorth, excluding the portion of Cuchillo Negro Creek on privately owned lands, for an approximate stream distance of 2,518 feet (768 meters).

Special management is required in this unit because chytridiomycosis is present in this population, and it is likely that Chiricahua leopard frogs persist where the water is warm, but succumb to the disease in the cooler waters downstream. Chiricahua leopard frogs currently persist in very low numbers in this unit.

PCE 1 is present in this unit; however, this site is too far from other Chiricahua leopard frog populations to be considered part of a metapopulation. The nearest population is Seco Creek,

about 12.7 mi (20.3 km) to the south-southwest. Hence, this population is managed as an isolated population.

Chiricahua leopard frogs coexist with plains leopard frogs at this site, and it is likely the plains leopard frogs occasionally prey upon Chiricahua leopard frog tadpoles and small frogs. Plains leopard frogs, however, probably do not threaten the Chiricahua leopard frog. Bullfrogs have been recorded in Cuchillo Negro Creek, but only rarely, and do not appear to breed or persist in the reach with the leopard frogs (Christman 2006a, p. 9).

Special management is required in this unit because the primary threats in this unit are cleaning out of the channel by the Cuchillo Acequia Association, periodic flooding that flushes tadpoles downstream and results in silts in pools, and chytridiomycosis. The springs located on Bureau of Land Management land are the source of downstream irrigation water, and the Cuchillo Acequia Association has maintained two trenches through the springs reportedly to improve flow, although that flow resulted in extensive damage to the springs, stream, and riparian vegetation (67 FR 40802; June 13, 2002).

The private landowner downstream is the Ladder Ranch, and as described above, the ranch is an active participant in Chiricahua leopard frog recovery. Under section 4(b)(2) of the Act, the private lands in this unit (23 ac (9 ha)) are excluded from critical habitat designation (see *Application of Section 4(b)(2) of the Act,* below).

Ash and Bolton Springs Unit

This unit consists of 49 ac (20 ha) of private lands east of Hurley in Grant County, New Mexico. This unit was occupied at the time of listing and currently contains both PCEs 1 and 2 to support life-history functions essential for the conservation of the species.

Included in this unit are Ash and Bolton Springs, and ephemeral or intermittent drainages and uplands needed for movement of frogs among these two breeding sites as follows: (1) From the spring box at Ash Spring downstream in a drainage to a dirt road crossing; and (2) west and overland from the ruins of an old house below Ash Spring to a low saddle, then downslope into an unnamed drainage, and downstream in that drainage to its confluence with another unnamed drainage, downstream in that unnamed drainage its confluence with another unnamed drainage, then upstream in that unnamed drainage to the top of that drainage and directly downslope and west to another unnamed drainage, downstream in that unnamed drainage to its confluence with Bolton Canyon, and upstream in Bolton Canyon to the locally known Bolton Springs.

Populations of Chiricahua leopard frogs at Ash and Bolton Springs were present at the time of listing and currently persist. These sites were once part of a metapopulation, but all other sites have been extirpated. There may be potential in the future to rebuild a metapopulation through natural recolonization or population reestablishments, if threats can be managed.

The lands are owned by Freeport-McMoRan Copper and Gold Subsidiaries as part of the Chino Copper Mine, which is based in nearby Santa Rita and Hurley. In December 2008, Freeport-McMoRan announced plans to suspend mining and milling activities at Chino. The majority of the work force was laid off in 2009. To our knowledge, no current plans exist to expand the mine into the area designated for critical habitat, and Freeport-McMoRan and its predecessor, Phelps-Dodge, have been cooperative in conservation of the Chiricahua leopard frog.

Special management is required in this unit because chytridiomycosis is a threat. Large numbers of dead frogs were found at Ash Spring in 2007. However, the frogs at Bolton Springs have shown no signs of disease. Both populations exist in small aquatic sites that cannot sustain large populations; hence, they are also vulnerable to variations in environmental conditions and population demographics.

Mimbres River Unit

This unit consists of 1,097 ac (444 ha) of private lands in Grant County, New Mexico. The unit was occupied at the time of listing and currently contains PCE 1 to support life-history functions essential for the conservation of the species.

The unit is divided into two disjunct reaches of the Mimbres River that are separated by a 6.6-mi (10.6-km), intermittent reach. However, the two reaches may be too far apart to reasonably expect frogs to move between the two sites, and the next nearest Chiricahua leopard frog population is in the Ash and Bolton Springs Unit, more than 10 mi (16 km) away from the lower Mimbres River reach across rugged terrain.

Critical habitat in the upper Mimbres River includes an approximate 2.42-mi (3.89-km) reach that begins where the river flows into The Nature Conservancy's property and continues downstream to the confluence with Bear Canyon. The approximate 5.82-mi (9.36-km) lower critical habitat reach begins at the bridge over the Mimbres River just west of San Lorenzo and continues downstream to where it exits the The Nature Conservancy's Disert parcel near Faywood. The two critical habitat reaches are largely perennial, although portions of the river dry out during drought. Chiricahua leopard frogs are currently present in both reaches of the Mimbres River.

The best breeding site in the upper reach is Moreno Spring, which harbors a relatively stable population of Chiricahua leopard frogs. In the upper reach, Chiricahua leopard frogs have been observed to breed in the river and at off-channel pools on nearby private property. Breeding occurs in the lower river reach as well, where an additional robust population is present near San Juan.

Special management is required in this unit because chytridiomycosis is present in this unit. However, frogs are persisting with the disease. Moreno Spring is a warm spring that likely provides some buffer against the effects of the chytridiomycosis. Special management is also required in this unit because agricultural and rural development, water diversions, groundwater pumping, and leveeing and bankline work to protect properties from flooding are threats. Periodic flooding probably washes some tadpoles out of the system and results in silts in pools used for breeding. No bullfrogs or crayfish have been found in this unit; if introduced, they could pose a significant threat.

The threatened Chihuahua chub (*Gila nigrescens*) occurs in the upper reach, and rainbow trout, a nonnative species, occur throughout the areas where there is water. Both trout and chub likely prey upon Chiricahua leopard frog tadpoles. Bear Canyon Reservoir in Bear Canyon near the town of Mimbres reportedly supports populations of channel catfish (*Ictalurus punctatus*), black crappie (*Pomoxis nigromaculatus*), largemouth bass, and bluegill (*Lepomis macrochirus*), and rainbow trout (Johnson and Smorynski 1998, p. 132). These species may escape from the reservoir periodically into the Mimbres River.

Presence of the Chihuahua chub may provide some level of protection to the upper reach. In addition, The Nature Conservancy owns the majority of the river in the upper reach (510 ac (206 ha)) (not including Moreno Spring or Milagros Ranch (formerly known as Emory Oak Ranch)) and significant parcels in the lower reach. These lands, known as The Mimbres River Preseve, are managed for the benefit of the Chihuahua chub, Chiricahua leopard

frog, and other riparian and aquatic resources, although no formal conservation plan has been developed for this area or its resources. Therefore, under section 4(b)(2) of the Act, private lands owned by The Nature Conservancy in this unit (510 ac (206 ha)) are not excluded from critical habitat designation (see *Application of Section 4(b)(2) of the Act,* below).

South Fork Palomas Creek Unit

This unit consists of 23 ac (9 ha) of Federal lands in the Gila National Forest land in Sierra County, New Mexico. This 4.5-mi (7.3-km) reach of South Fork Palomas Creek runs downstream from Wagonbed Canyon to the boundary with the Ladder Ranch. This unit was occupied at the time of listing, is currently occupied, and contains both PCEs 1 and 2 to support life-history functions essential for the conservation of the species. Special management is required in this unit to control bullfrogs.

Under section 4(b)(2) of the Act, 106 ac (43 ha) of private lands in this unit, which are part of the Ladder Ranch, are excluded from critical habitat designation (see *Application of Section 4(b)(2) of the Act,* below). Management for the Chiricahua leopard frog on the Ladder Ranch included fencing the ranch's waters from bison that graze the area, reestablishing of populations using wild-to-wild translocations, maintaining of wells and tanks, and controlling bullfrogs. The Ladder Ranch also monitors the Chiricahua leopard frogs and habitats, and has recently initiated a captive-breeding facility and program to rear frogs for population augmentation and reestablishment.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, 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 Chiricahua leopard frogs. As discussed above, the role of critical habitat is to support 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, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation

for the Chiricahua leopard frog include, but are not limited to:

(1) Actions that would significantly increase sediment deposition or scouring within the stream channel or pond that acts as a breeding site or a movement corridor among breeding sites in a metapopulation. Such activities could include, but are not limited to: Excessive sedimentation from livestock grazing; road construction; commercial or urban development; channel alteration; timber harvest; prescribed fires; off-road vehicle or recreational use; and other alterations of watersheds and floodplains. These activities could adversely affect the potential for frogs to survive or breed at a breeding site, and reduce the likelihood that frogs could move among subpopulations in a metapopulation, which in turn would decrease the viability of the metapopulation and its component local populations.

(2) Actions that would alter water chemistry beyond the tolerance limits of the Chiricahua leopard frog (see discussion above, *Primary Constituent Elements for the Chiricahua Leopard Frog*). Such activities could include, but are not limited to: Release of chemicals, biological pollutants, or effluents into the surface water or into connected groundwater at a point source or by dispersed release (non-point source); livestock grazing that results in waters heavily polluted by feces; runoff from agricultural fields; roadside use of salts; aerial persticide overspray; runoff from mine tailings or other mining activities; and ash flow and fire retardants from fires and fire suppression. These actions could adversely affect the ability of the habitat to support survival and reproduction of Chiricahua leopard frogs at breeding sites. Variances in water chemistry or temperature could also affect the frog's ability to survive with chytridiomycosis.

(3) Actions that would alter the water quantity or permanence of a breeding site or dispersal corridor. If the permanence of an aquatic system declines so that it regularly dries up for more than 1 month each year, it will lose its ability to support breeding Chiricahua leopard frogs. If the quantity of water declines, it may reduce the likelihood that the site will support a population of Chiricahua leopard frogs that is robust enough to be viable over time. Similarly, ephemeral, intermittent, or perennial ponds can be important stop-over points for Chiricahua leopard frogs moving among breeding sites in a metapopulation. Reducing the permanence of these sites may reduce their ability to facilitate frog movements. However, in some cases, increasing permanence can be detrimental as well, in that it could create favorable habitat for predatory fish, bullfrogs, tiger salamanders, or crayfish that otherwise could not exist in the system. Such activities that could cause these effects include, but are not limited to, water diversions, groundwater pumping, watershed degredation, construction or destruction of dams or impoundments, developments or 'improvements' at a spring, channelization, dredging, road and bridge construction, and destruction of riparian or wetland vegetation.

(4) Actions that would directly or indirectly result in introduction of nonnative predators, increase the abundance of extant predators, or introduce disease (particularly chytridiomycosis). Possible actions could include, but are not limited to: Introduction or stocking of fish, bullfrogs, crayfish, tiger salamanders, or other predators on the Chiricahua leopard frog; creating or sustaining a sport fishery that encourages use of live fish, crayfish, tiger salamanders, or frogs as bait; water diversions, canals, or other water conveyance that move water from one place to another and through which inadvertent transport of predators into Chiricahua leopard frog habitat may occur; and movement of water, mud, wet equipment, or vehicles from one aquatic site to another, through which inadvertent transport of chytridiomycosis may occur.

(5) Actions and structures that would physically block movement among breeding sites in a metapopulation. Such actions and structures include, but are not limited to: Urban, industrial, or agricultural development; reservoirs that are 50 ac (20 ha) or more in size and stocked with predatory fish, bullfrogs, or crayfish; highways that do not include frog fencing and culverts; and walls, dams, fences, canals, or other structures that physically block movement. These actions and structures could reduce or eliminate immigration and emigration among breeding sites in a metapopulation, reducing the viability of the metapopulation and its subpopulations.

(6) Actions that would remove or block access to riparian vegetation and banklines within 20 ft (6.1 m) of the high water line of breeding ponds or to the upland edge of the wetland and riparian vegetation community lining breeding sites, whichever is greatest, or that would reduce vegetation in movement corridors among breeding sites in a metapopulation. Such activities could include, but are not limited to: Clearing of riparian or wetland vegetation; saltcedar (*Tamarix* sp.) control; road, bridge, or canal construction; urban development; conversion of river bottomlands to agriculture; stream or drainage channelization; and levee or dike construction. In some cases, thinning of very dense vegetation, such as cattails, which can completely take over an aquatic site, can be beneficial to the frog and its habitat. However, in most cases, vegetation clearing or removal, or blocking access to uplands adjacent to breeding sites, will reduce the quality of foraging and basking habitat, and may increase the likelihood of successful predation because cover has been removed.

We note that the above activities may adversely affect critical habitat. As stated previously, an activity adversely affecting critical habitat must be of a severity or intensity that the PCEs are compromised to the extent that the critical habitat can no longer meet its intended conservation function before a destruction or adverse modification determination is reached. Within the context of the goals and purposes of the recovery strategy in the species' recovery plan, an activity that compromises the PCEs to the point that one or more of the recovery criteria could not be achieved or would be very difficult to achieve in one or more Recovery Units would deteriorate the value of critical habitat to the point that its conservation function could not be met.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the critical habitat designation. Therefore, we are not exempting lands from this final designation of critical habitat for the Chiricahua leopard frog under section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide; or a combination of these.

In the case of the Chiricahua leopard frog, the benefits of critical habitat include public awareness of Chiricahua leopard frog presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for Chiricahua leopard frogs due to the protection from adverse modification or destruction of critical habitat. The majority of Chiricahua leopard frog habitat and localities are on Federal lands, mostly lands managed by the U.S. Forest Service; however, key aquatic sites are sometimes on non-Federal lands.

Building partnerships and promoting voluntary cooperation of landowners are essential to understanding the status of species on non-Federal lands, and necessary for implementing recovery actions, such as reestablishing listed species and restoring and protecting habitat. Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. We strive to promote these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (HCPs, safe harbor agreements, other conservation agreements, easements, and State and local regulations) enhance species conservation by extending species protections beyond those available through section 7(a)(2) consultations. In the past decade and a half, we have encouraged non-Federal landowners to enter into conservation agreements, based on our philosophy that voluntary conservation can benefit both landowners and wildlife, and that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996). For the Chiricahua leopard frog, we have often used the Service's Partners for Fish and Wildlife grant program to work with non-Federal partners on recovery projects for this species. This grant program requires a commitment from the participating landowner to maintain the improvements funded by the program for 10 years. We have also worked with private landowners on Chiricahua leopard frog conservation via safe harbor Agreements in Arizona and southwestern New Mexico, a conservation agreement for the Ramsey Canyon (= Chiricahua) leopard frog that protects frogs and their habitats on private and public lands in the Huachuca Mountains of Arizona, and an HCP in southeastern Arizona and southwestern New Mexico.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After evaluating the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If we determine that they do, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude that area from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we received, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation under section 4(b)(2) of the Act. We are excluding the following areas from critical habitat designation for the Chiricahua leopard frog. Table 3 below provides approximate areas (ac, ha) of lands that

meet the definition of critical habitat but are being excluded under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 3—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION BY CRITICAL HABITAT UNIT

Unit	Specific area to be excluded	Area meeting the definition of critical habitat in the unit (acres (hectares))	Exclusion in acres (hectares)
Pasture 9 Tank Unit	Entire Pasture 9 Tank Unit	0.5 (0.2)	0.5 (0.2)
Beatty's Guest Ranch Unit	Entire Beatty's Guest Ranch	10 (4)	10 (4)
Ramsey and Brown Canyons Unit	Ramsey Canyon Preserve	123 (50)	16 (6)
Peloncillo Mountains Unit	Canoncito Ranch	655 (265)	289 (117)
Cave Creek Unit	Southwestern Research Station	326 (132)	92 (37)
Rosewood and North Tanks Unit	Entire Rosewood and North Tanks	97 (39)	97 (39)
Seco Creek Unit	Ladder Ranch	676 (274)	610 (247)
Cuchillo Negro Warm Springs and Creek Unit	Ladder Ranch	29 (11)	23 (9)
South Fork Palomas Creek Unit	Ladder Ranch	129 (52)	106 (43)
Totals		1,916 (775)	1,243 (503)

We are excluding these areas because we believe that:

(1) Their value for conservation will be preserved for the foreseeable future by existing protective actions, or

(2) They are appropriate for exclusion under the ''other relevant factor'' provisions of section 4(b)(2) of the Act.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis of the proposed critical habitat designation and related factors (Industrial Economics 2011). The draft analysis, dated September 15, 2011, was made available for public review and comment from September 21, 2011, through October 21, 2011 (76 FR 58441). Following the close of the comment period, a final analysis (dated December 9, 2011) of the potential economic effects of the designation was developed taking into consideration the public comments and any new information (Industrial Economics 2011).

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for the Chiricahua leopard frog; some of these costs will likely be incurred regardless of whether or not we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether or not critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA considers economic impacts to activities from 2012 (expected year of final critical habitat designation) through 2031 (Industrial Economics 2011, p. 2–18). The FEA quantifies economic impacts of Chiricahua leopard frog conservation efforts associated with the following categories of activity:

(1) Livestock grazing: Includes draining stock tanks, damage to shoreline habitat, disease transmission, and changes to water quality due to intense livestock use.

(2) Mining: Includes mining operations and associated mining-related contaminants and runoff.

(3) Water diversion and management: Includes groundwater pumping (lowering of the water table), agricultural development, and operations of dams and diversions.

(4) Residential and commercial development and transportation: Includes sedimentation and runoff associated with construction, as well as stream channelization and loss of riparian or wetland vegetation.

(5) Fires and fire suppression activities: Includes ash flow and fire retardants from fires and fire suppression activities.

(6) Nonnative native species introductions and disease: Includes saltcedar control, stocking of nonnative fish, bullfrogs, or crayfish; and disease transmission.

The FEA estimates that no significant economic impacts are likely to result from the designation of critical habitat. Incremental costs are limited to administrative efforts of new and reinitiated consultations to consider adverse modification of critical habitat for the Chiricahua leopard frog. A significant level of baseline protection exists for the Chiricahua leopard frog, addressing a broad range of habitat threats. Nearly all units have some level of conservation, with 59 percent of proposed critical habitat on federally owned land and a number of conservation easements and safe harbor agreements on privately owned land.

However, the FEA does foresee additional administrative costs associated with the designation of critical habitat. In total, incremental administrative efforts are estimated at $1,300,000, or $115,000 on an annualized basis (discounted at 7 percent).

In conclusion, no significant economic impacts are likely to result from the designation of critical habitat, and incremental costs are limited to administrative efforts of new and reinitiated consultations to consider adverse modification of critical habitat. As a result, no areas are being excluded from the final designation based on a disproportionate economic impact to any entity or sector. A copy of the FEA with supporting documents may be obtained by contacting the Arizona Ecological Services Field Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.*

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this rule, we have determined that the lands within the designation of critical habitat for the Chiricahua leopard frog are not owned or managed by DOD, and we therefore anticipate no impact to national security. We are not excluding any lands based on impacts to 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 to national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

We consider a current plan or agreement to provide adequate management or protection if it meets the following criteria:

(1) The plan is finalized, complete, and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be effective and implemented for the foreseeable future, based on past practices, written guidance, or regulations;

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology that provide for the conservation of the essential physical or biological features of habitat; and

(4) The plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

We believe that the Malpai Borderlands HCP, Malpai Borderlands Safe Harbor Agreement, AGFD Safe Harbor Agreement, and our partnership with the Laddder Ranch fulfill the above criteria, and we are excluding non-Federal lands managed in accordance with these tenants that provide for the conservation of the Chiricahua leopard frog.

Two umbrella safe harbor agreements, the Malpai Borderlands Safe Harbor Agreement and the AGFD Safe Harbor Agreement, under which individual landowners can enroll their lands by signing a Certificate of Inclusion, have been completed for Arizona and southwestern New Mexico. Under the Certificates of Inclusion, landowners commit to certain conservation actions. These agreements have, in some cases, facilitated habitat improvements and translocations of Chiricahua leopard frogs to private lands to establish new populations. Under section 4(b)(2) of the Act, we assessed the appropriateness of exclusions from critical habitat for non-Federal lands in designated critical habitat units that are enrolled under either the AGFD Safe Harbor Agreement or the Malpai Borderlands Safe Harbor Agreement. We believe that these agreements fulfill the above criteria, and are excluding non-Federal lands managed in accordance with these tenants that provide for the conservation of the Chiricahua leopard frog. We also considered exclusions for non-Federal lands that are protected by conservation easements, conservation agreements, or other forms of protective management that benefit the Chiricahua leopard frog and its habitats. Specific units excluded from this critical habitat designation are discussed and described below.

Malpai Borderlands Safe Harbor Agreement

The Malpai Borderlands Safe Harbor Agreement specifies the primary biological objective of establishing and managing metapopulations of Chiricahua leopard frogs on enrolled properties that currently include 289 ac (117 ha) of lands on the Canoncito Ranch and 97 ac (39 ha) on the Magoffin Ranch in southeastern Arizona and southwestern New Mexico. The Malpai Borderlands Safe Harbor Agreement provides for management for existing populations of Chiricahua leopard frogs and establishment of new populations through reestablishment and translocations, which are expected to increase the distribution and numbers of Chiricahua leopard frogs on private lands. The metapopulations created and managed under the Malpai Borderlands Safe Harbor Agreement will be based on ''primary sites'' (sites that reliably hold surface water or retain moisture year-round in all years) and ''secondary sites'' that facilitate the metapopulation dynamic, but may dry one out of every 2 years on average. The Malpai Borderlands Safe Harbor Agreement also calls for special management of regional dispersal habitat between potentially occupied habitats on neighboring land, such as the San Bernardino National Wildlife Refuge.

There are several management actions that provide direct or indirect conservation benefit to Chiricahau leopard frogs under the Malpai Borderlands Safe Harbor Agreement. Examples include: (1) Specific considerations for stock tank construction and maintainance that benefit the Chiricahua leopard frog (construction of double-tanks, refugia sites at single tank systems, fencing, deepening, well drilling, installing pipelines, etc.); (2) managing livestock operations in a manner that specifically minimizes potential adverse effects to Chiricahua leopard frog populations to the maximum extent practicable; (3) avoiding intentional or accidental release of nonnative species to enrolled lands, as well as maintaining vigilance against third parties releasing nonnatives, reporting observations of nonnatives, and controlling nonnatives; and (4) implementing measures to ensure that prescribed fire, herbicide treatments, and other land treatments are conducted in a manner that promotes the long-term maintenance of habitat characteristics essential to Chiricahua leopard frog populations. For specific details of conservation activities implemented under the Malpai Borderlands Safe Harbor

Agreement, please see Malpai Borderlands Group (2004, pp. 10–24).

Benefits of Inclusion—Malpai Borderlands Safe Harbor Agreement

The principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure that actions that they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, which is the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying, or adversely modifying, critical habitat. Federal agencies must also consult with us on actions that may affect a listed species, and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including the Chiricahua leopard frog), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone. Critical habitat may provide a regulatory benefit for the Chiricahua leopard frog when there is a Federal nexus present for a project that might adversely modify critical habitat.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the Chiricahua leopard frog when there is a Federal nexus present for a project that might adversely modify critical habitat. With respect to the Malpai Borderlands Safe Harbor Agreement, we expect any projects that occur on private lands, and that have a Federal nexus and may affect critical habitat, would undergo consultation. Such a project might be a section 404 permit under the Clean Water Act from the U.S. Army Corps of Engineers, for example. In such instances, critical habitat designation on these private lands would provide an additional regulatory benefit to the conservation of the Chiricahua leopard frog by prohibiting adverse modification of habitat essential for the conservation of this species.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the Chiricahua leopard frog and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the Chiricahua leopard frog critical habitat designation that are managed under the tenets of the Malpai Borderlands Safe Harbor Agreement could be beneficial to the species because the critical habitat designation specifically identifies lands essential to the conservation of the species and special management considerations or protection. The process of proposing critical habitat provided an opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to landowners and managers in prioritizing conservation and management of identified areas. Information on the Chiricahua leopard frog and its habitat has also been provided to the public in the past through meetings; educational materials and outreach provided by the local, State, and Federal jurisdictions; and general partnerships, coordination, and collaboration with stakeholders in implementing Chiricahua leopard frog recovery programs. In general, we believe the designation of critical habitat for the Chiricahua leopard frog will provide additional information for the public concerning the importance of essential habitat that has not already been available.

In summary, we believe that educational benefits are likely realized when any information about the Chiricahua leopard frog and its habitat reaches a wide audience. The educational benefits of critical habitat designation on lands managed under the tenets of the Malpai Borderlands Safe Harbor Agreement may not be significant due to extensive past outreach, ongoing conservation efforts, the listing of Chiricahua leopard frog as threatened in 2002, the development and implementation of the final recovery plan in 2007, and other interactions concerning Chiricahua leopard frog conservation and recovery.

Benefits of Exclusion—Malpai Borderlands Safe Harbor Agreement

We believe the following benefits would be realized by forgoing designation of critical habitat for the Chiricahua leopard frog on lands managed under the tenets of the Malpai Borderlands Safe Harbor Agreement. These benefits chiefly include allowing for continued meaningful collaboration and effective working partnerships with private landowners to promote conservation of the Chiricahua leopard frog and its habitat.

We have detailed above a history of proactive collaboration and partnerships in the conservation and recovery of the Chiricahua leopard frog with numerous private partners since the species' listing in 2002, and in some examples, several years prior. These partners include the Nature Conservancy, the Ladder Ranch, the Magoffin Ranch, the Beatty Guest Ranch, the Southwestern Research Station, the San Rafael Ranch, and the Canoncito Ranch. These partners have demonstrated, as evidenced by a detailed list of specific activities above, a commitment to Chiricahua leopard frog conservation and recovery on their private lands. Indirectly and in addition, these private landowners serve as ambassadors for Chiricahua leopard frog conservation and recovery in their respective communities or areas, a valuable asset in today's often controversial challenge of listed species conservation and recovery.

Therefore, excluding these lands from critical habitat provides the significant benefit of maintaining and strengthening our existing conservation partnership and fostering new Federal-private partnerships. Through management under the Malpai Borderlands Safe Harbor Agreement, private landowners who are enrolled are committed to management and provide specific protection for the Chiricahua leopard frog and for the physical or biological features essential to the conservation of the species. In most respects, these management prescriptions are equal to or better than what the designation of critical habitat would provide. Exclusion of these private lands from critical habitat will help preserve these important partnerships and will also foster future partnerships and conservation of the Chiricahua leopard frog.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Malpai Borderlands Safe Harbor Agreement

The benefits of excluding these private lands from critical habitat outweigh the benefits of inclusion, based on the conservation-based management tenets under the Malpai Borderlands Safe Harbor Agreement, which have facilitated the specific projects summarized above. Activities on these lands will follow the mitigation strategy or promote site-specific conservation goals and objectives (whichever is applicable) and will be managed into the future for the benefit of the Chiricahua leopard frog.

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of lands identified for exclusion that are managed under the tenets of the Malpai Borderlands Safe Harbor Agreement as critical habitat for the Chiricahua leopard frog. Including these private lands in the critical habitat designation for the Chiricahua leopard frog will provide little additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and educational benefits of designation will be redundant with those achieved through listing and our cooperative efforts working with these private landowners to conserve the Chiricahua leopard frog and the physical or biological features essential to the conservation of the species. We recognize there may be some ancillary benefit from other laws such as NEPA (42 U.S.C. 4321 et seq.)resulting from designating these areas as critical habitat; however, we consider these possible benefits to be marginal considering the potential adverse impact that critical habitat designation could have on our partnership with these private landowners. We believe past and future coordination with these private landowners will continue to provide sufficient education regarding the Chiricahua leopard frog habitat conservation needs on their lands, and therefore educational benefits for these areas are small.

The benefits of excluding these private lands from critical habitat are significant. Exclusion of these lands from critical habitat will help preserve the partnership we have developed and reinforce those we are building with other private landowners, and foster future partnerships and development of management plans. We received numerous comments during the public comment period emphasizing that designation of critical habitat on these lands should not occur. We are committed to fostering working relationships with the conservation community, including these private landowners, to further the conservation of the Chiricahua leopard frog and other endangered and threatened species. Therefore, in consideration of the relevant impact to our relationship with these private landowners and other current and future conservation partnerships, we determined the benefits of exclusion outweigh the benefits of inclusion in critical habitat designation for these lands.

Exclusion Will Not Result in Extinction of the Species—Malpai Borderlands Safe Harbor Agreement

We determined that the exclusion of approximately 386 ac (156 ha) of habitat from this final designation of critical habitat for the Chiricahua leopard frog under the Malpai Borderlands Safe Harbor Agreement will not result in extinction of the species. Lands managed under the tenets of the Malpai Borderlands Safe Harbor Agreement provide protection and long-term management of lands that meet the definition of critical habitat for the Chiricahua leopard frog through site-specific habitat management and improvement projects. Additionally, the jeopardy standard of section 7 of the Act for the Chiricahua leopard frog provides assurances that the species will not go extinct as a result of exclusion from critical habitat designation. The consultation requirements of section 7(a)(2) and the attendant requirement to avoid jeopardy to the Chiricahua leopard frog for projects with a Federal nexus will provide significant protection to the species. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 289 ac (117 ha) of habitat in the Peloncillo Mountains Unit and the entire 97 ac (39 ha) in the Rosewood and North Tanks Unit from this final critical habitat designation.

AGFD Safe Harbor Agreement

The AGFD (Statewide) Safe Harbor Agreement was finalized in 2006. The purpose of the AGFD's Safe Harbor Agreement is to (1) to establish a program for the conservation of the Chiricahua leopard frog (*Rana chiricahuensis*) on private and other non-Federal lands in Arizona; (2) to provide regulatory assurances to voluntary participants that their conservation efforts will not result in required or imposed additional conservation measures or additional land, water or resource use restrictions beyond those agreed to at the time of enrollment and in the original Agreement; and (3) to provide similar assurances to landowners who do not participate directly in the conservation program established under this Agreement, but may desire regulatory assurances due to their proximity to program participants or other lands harboring Chiricahua leopard frogs (AGFD 2006, p. 1). The Pasture 9 Tank, Beatty's Guest Ranch, Ramsey and Brown Canyons, and Cave Creek Units discussed in the proposed rule (76 FR 14126) are all managed under AGFD Safe Harbor Agreement.

The AGFD Safe harbor Agreement requires several required conservation measures for enrollees, including special instructions and precautions for: (1) Constructing or maintaining stock tanks; (2) managing livestock operations in a manner that specifically minimizes potential adverse effects to Chiricahua leopard frog populations to the maximum extent practicable; (3) committing to avoid intentionally or accidentally releasing nonnative species to enrolled lands, as well as maintaining vigilance against third parties releasing nonnatives, reporting observations of nonnatives, and controlling nonnatives; and (4) implementing measures to ensure that prescribed fire, herbicide treatments, and other land treatments are conducted in a manner that promotes the long-term maintenance of habitat characteristics essential to Chiricahua leopard frog populations that are extant in enrolled properties. Numerous conservation activities are suggested, although not mandatory, in the AGFD Safe Harbor Agreement including Chiricahua leopard frog translocation, construction of a double tank system, construction of small refugia sites at single tank systems, fencing, deepening of pools, well drilling, pipelines, removal of nonnative aquatic predators from otherwise suitable sites, maintenance of existing habitat conditions, enhancement of dispersal corridors, enhancement of stream and cienega habitats, and vegetation enhancement. For specific details of conservation activities implemented under the AGFD Safe Harbor Agreement, please see AGFD (2006, pp. 16–18, 22–24).

Benefits of Inclusion—AGFD Safe Harbor Agreement

The principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure that actions that they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, which is the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal

agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying, or adversely modifying, critical habitat. Federal agencies must also consult with us on actions that may affect a listed species, and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including the Chiricahua leopard frog), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone. Critical habitat may provide a regulatory benefit for the Chiricahua leopard frog when there is a Federal nexus present for a project that might adversely modify critical habitat.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the Chiricahua leopard frog when there is a Federal nexus present for a project that might adversely modify critical habitat. With respect to the AGFD Safe Harbor Agreement, we expect any projects that occur on private lands, have a Federal nexus, and may affect critical habitat would undergo consultation. Such a project might be a section 404 permit under the Clean Water Act from the U.S. Army Corps of Engineers, for example. In such instances, critical habitat designation on these private lands would provide an additional regulatory benefit to the conservation of the Chiricahua leopard frog by prohibiting adverse modification of habitat essential for the conservation of this species.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the Chiricahua leopard frog and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the Chiricahua leopard frog critical habitat designation that are managed under the tenets of the AGFD Safe Harbor Agreement could be beneficial to the species because the critical habitat designation specifically identifies lands essential to the conservation of the species and special management considerations or protection. The process of proposing critical habitat provided an opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to landowners and managers in prioritizing conservation and management of identified areas. Information on the Chiricahua leopard frog and its habitat has also been provided to the public in the past through meetings; educational materials and outreach provided by the local, State, and Federal jurisdictions; and through general partnerships, coordination, and collaboration with stakeholders in implementing Chiricahua leopard frog recovery programs. In general, we believe the designation of critical habitat for the Chiricahua leopard frog will provide additional information for the public concerning the importance of essential habitat that has not already been available.

In summary, we believe that educational benefits are likely realized when any information about the Chiricahua leopard frog and its habitat reaches a wide audience. The educational benefits of critical habitat designation on lands managed under the tenets of the AGFD Safe Harbor Agreement may not be significant due to extensive past outreach, ongoing conservation efforts, the listing of Chiricahua leopard frog as threatened in 2002, the development and implementation of the final recovery plan in 2007, and other interactions concerning Chiricahua leopard frog conservation and recovery.

Benefits of Exclusion—AGFD Safe Harbor Agreement

We believe the following benefits would be realized by forgoing designation of critical habitat for the Chiricahua leopard frog on lands managed under the tenets of the AGFD Safe Harbor Agreement. These benefits chiefly include allowing for continued meaningful collaboration and effective working partnerships with private landowners to promote conservation of the Chiricahua leopard frog and its habitat.

We have detailed above a history of proactive collaboration and partnerships in the conservation and recovery of the Chiricahua leopard frog with numerous private partners since the species' listing in 2002, and in some examples, several years prior. These partners include the Nature Conservancy, the Ladder Ranch, the Magoffin Ranch, the Beatty Guest Ranch, the Southwestern Research Station, the San Rafael Ranch, and the Canoncito Ranch. These partners have demonstrated, as evidenced by a detailed list of specific activities above, a commitment to Chiricahua leopard frog conservation and recovery on their private lands. Indirectly and in addition, these private landowners serve as ambassadors for Chiricahua leopard frog conservation and recovery in their respective communities or areas, a valuable asset in today's often controversial challenge of listed species conservation and recovery.

Therefore, excluding these lands from critical habitat provides the significant benefit of maintaining and strengthening our existing conservation partnership and fostering new Federal-private partnerships. Through management under the AGFD Safe Harbor Agreement, these private landowners are committed to management that provides specific protection for the Chiricahua leopard frog and for the physical or biological features essential to the conservation of the species. In most respects, these management prescriptions are equal to or better than what the designation of critical habitat will provide. Exclusion of these private lands from critical habitat would help preserve these important partnerships and will also foster future partnerships and conservation of the Chiricahua leopard frog.

Benefits of Exclusion Outweigh the Benefits of Inclusion—AGFD Safe Harbor Agreement

The benefits of excluding these private lands from critical habitat outweigh the benefits of inclusion, based on the conservation-based management tenets under the AGFD Safe Harbor Agreement which have facilitated the specific projects summarized above. Activities on these lands will follow the mitigation strategy or promote site-specific conservation goals and objectives (whichever is applicable) and will be managed into

the future for the benefit of the Chiricahua leopard frog.

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of lands identified for exclusion that are managed under the tenets of the AGFD Safe Harbor Agreement as critical habitat for the Chiricahua leopard frog. Including these private lands in the critical habitat designation for the Chiricahua leopard frog will provide little additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and educational benefits of designation will be redundant with those achieved through listing and our cooperative efforts working with these private landowners to conserve the Chiricahua leopard frog and the physical or biological features essential to the conservation of the species. We recognize there may be some ancillary benefit from other laws such as NEPA resulting from designating these areas as critical habitat; however, we consider these possible benefits to be marginal considering the potential adverse impact that critical habitat designation could have on our partnership with these private landowners. We believe past and future coordination with these private landowners will continue to provide sufficient education regarding the Chiricahua leopard frog habitat conservation needs on their lands, and therefore educational benefits for these areas are small.

The benefits of excluding these private lands from critical habitat are significant. Exclusion of these lands from critical habitat will help preserve the partnership we have developed and reinforce those we are building with other private landowners, and foster future partnerships and development of management plans. We received numerous comments during the public comment period emphasizing that designation of critical habitat on these lands should not occur. We are committed to fostering working relationships with the conservation community, including these private landowners, to further the conservation of the Chiricahua leopard frog and other endangered and threatened species. Therefore, in consideration of the relevant impact to our relationship with these private landowners and other current and future conservation partnerships, we determined the benefits of exclusion outweigh the benefits of inclusion in critical habitat designation for these lands.

Exclusion Will Not Result in Extinction of the Species—AGFD Safe Harbor Agreement

We determined that the exclusion of approximately 118 ac (48 ha) of habitat from this final designation of critical habitat for the Chiricahua leopard frog under the AGFD Safe Harbor Agreement will not result in extinction of the species. Lands managed under the tenets of the AGFD Safe Harbor Agreement provide protection and long-term management of lands that meet the definition of critical habitat for the Chiricahua leopard frog through site-specific habitat management and improvement projects. Additionally, the jeopardy standard of section 7 of the Act for the Chiricahua leopard frog provides assurances that the species will not go extinct as a result of exclusion from critical habitat designation. The consultation requirements of section 7(a)(2) and the attendant requirement to avoid jeopardy to the Chiricahua leopard frog for projects with a Federal nexus will provide significant protection to the species. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 118 ac (48 ha) of habitat in the Pasture 9 Tank, Beatty's Guest Ranch, Ramsey and Brown Canyons, and Cave Creek Units from this final critical habitat designation.

Ladder Ranch Chiricahua Leopard Frog Conservation Partnership

The Ladder Ranch Chiricahua Leopard Frog Conservation Partnership includes staff from the Turner Endangered Species Fund, Turner Ranch Properties, and the Ladder Ranch Biodiversity Division in partnership with the Service and the New Mexico Department of Game and Fish. The Ladder Ranch is a 155,553-ac (62,950-ha) private ranch in Sierra County, New Mexico, whose management incorporates the Seco Creek, Cuchillo Negro Warm Springs and Creek, and the South Fork Palomas Creek critical habitat units. The Ladder Ranch provides conservation for the Chiricahua leopard frog based on the tenets of the recovery plan with four main objectives: (1) Maintain wild Chiricahua leopard frog populations on the Ladder Ranch; (2) develop applied research that will inform conservation management; (3) maintain a captive refugia system for Chiricahua leopard frog populations located elsewhere, off-ranch; and (4) use captive breeding to contribute towards rangewide recovery of the species.

The strategy underlying the Ladder Ranch's conservation for the Chiricahua leopard frog is built on the foundation of a robust wild population that inhabits the Seco Creek drainage on the Ladder Ranch, which is the largest Chiricahua leopard frog population in New Mexico. This metapopulation's persistence depends not only on natural intermittent and ephemeral stream habitat and steel and earthen stock tanks within the drainage, but also on dedicated water management by the ranch. The Ladder Ranch staff have implemented several conservation actions that have assisted in securing the Seco Creek metapopulation, including maintaining and improving pond habitat, erecting livestock and wildlife exclosure fences to prevent trampling and overgrazing at earthen ponds, and installing permanent fencing at Johnson, Fish, LM Bar, Pague, and North Seco Wells.

The Ladder Ranch has already conducted much conservation work for the Chiricahua leopard frog, such as habitat improvements, securing permanent water sources for occupied habitat, captive propagation-headstarting-release, radio telemetry research, disease testing, and annual monitoring of both captive and wild populations. A captive facility (ranarium) was also built to house frogs from both on- and off-ranch populations for the purposes of captive breeding for augmentation and restoring offspring to the wild. The Ladder Ranch staff has modified several steel water tanks that are part of the stock water infrastructure to serve as secure captive refugia sites for Chiricahua leopard frogs.

As part of the Ladder Ranch's conservation strategy for the Chiricahua leopard frog, they hope to restore robust populations in unoccupied drainages that contain suitable habitat. To accomplish this goal, the Ladder Ranch will: (1) Protect remaining populations of Chiricahua leopard frogs on the ranch; (2) identify, protect, restore, or create as needed, currently unoccupied recovery sites necessary to support viable populations and metapopulations of Chiricahua leopard frogs; (3) establish new or re-establish former populations at selected recovery sites; (4) augment populations on the ranch as needed to increase persistence; (5) monitor Chiricahua leopard frog populations and their habitats and the implementation activities on-site outlined the recovery plan; (6) implement research needed to support recovery actions and adaptive management; (7) develop cooperative conservation projects, such as a Safe Harbor Agreement; (8) develop and amend management planning on the ranch as needed to implement recovery actions; and (9) practice adaptive

management in which recovery tasks are revised by the Service in coordination with the Chiricahua Leopard Frog Recovery Team as pertinent new information becomes available.

Benefits of Inclusion—Ladder Ranch Chiricahua Leopard Frog Conservation Partnership

The principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure that actions that they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, which is the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying, or adversely modifying, critical habitat. Federal agencies must also consult with us on actions that may affect a listed species, and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including the Chiricahua leopard frog), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone. Critical habitat may provide a regulatory benefit for the Chiricahua leopard frog when there is a Federal nexus present for a project that might adversely modify critical habitat.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the Chiricahua leopard frog when there is a Federal nexus present for a project that might adversely modify critical habitat. With respect to the Service's partnership with the Ladder Ranch, we expect any projects that occur on the ranch that have a Federal nexus and may affect critical habitat would undergo consultation. Such a project might be a section 404 permit under the Clean Water Act from the U.S. Army Corps of Engineers, for example. In such instances, critical habitat designation on the ranch would provide an additional regulatory benefit to the conservation of the Chiricahua leopard frog by prohibiting adverse modification of habitat essential for the conservation of this species.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the Chiricahua leopard frog and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the Chiricahua leopard frog critical habitat designation that are managed under the Ladder Ranch could be beneficial to the species because the critical habitat designation specifically identifies lands essential to the conservation of the species and special management considerations or protection. The process of proposing critical habitat provided an opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to landowners and managers in prioritizing conservation and management of identified areas. Information on the Chiricahua leopard frog and its habitat has also been provided to the public in the past through meetings; educational materials and outreach provided by the local, State, and Federal jurisdictions; and general partnerships, coordination, and collaboration with stakeholders in implementing Chiricahua leopard frog recovery programs. In general, we believe the designation of critical habitat for the Chiricahua leopard frog will provide additional information for the public concerning the importance of essential habitat that has not already been available.

In summary, we believe that educational benefits are likely realized when any information about the Chiricahua leopard frog and its habitat reaches a wide audience. The educational benefits of critical habitat designation on the Ladder Ranch may not be significant due to extensive past outreach, ongoing conservation efforts by the ranch, the listing of Chiricahua leopard frog as threatened in 2002, the development and implementation of the final recovery plan in 2007, and other interactions concerning Chiricahua leopard frog conservation and recovery.

Benefits of Exclusion—Ladder Ranch Chiricahua Leopard Frog Conservation Partnership

We believe the following benefits would be realized by forgoing designation of critical habitat for the Chiricahua leopard frog on the Ladder Ranch. The primary benefit includes allowing for continued collaboration and effective working partnership between the Service and the Ladder Ranch to promote conservation of the Chiricahua leopard frog and its habitat.

Based on our partnership with the Ladder Ranch and the number of conservation activities the ranch has implemented for the conservation of the Chiricahua leopard frog, excluding land on the ranch from critical habitat provides the significant benefit of maintaining and strengthening our existing conservation partnership and fostering new Federal-private partnerships with other landowners. The Ladder Ranch is committed to providing protection for the Chiricahua leopard frog. In most respects, the management activities conducted by the Ladder Ranch are equal to or better than what the designation of critical habitat would provide. Exclusion of this private land from critical habitat would help preserve this important partnership and will also foster future partnerships and conservation of the Chiricahua leopard frog.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Ladder Ranch Chiricahua Leopard Frog Conservation Partnership

The benefits of excluding lands owned and managed by the Ladder Ranch from critical habitat outweigh the benefits of inclusion, based on our conservation-based partnership with the ranch. Our partnership with the Ladder Ranch promotes site-specific conservation goals and objectives for the benefit of the Chiricahua leopard frog.

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of lands identified for exclusion on the Ladder Ranch. Including this private land in the critical habitat designation for the Chiricahua leopard frog will provide little additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and educational benefits of designation will be redundant with those achieved through listing and our cooperative efforts

working with this private landowner to conserve the Chiricahua leopard frog and the physical or biological features essential to the conservation of the species. We consider the possible benefits of including the Ladder Ranch in critical habitat designation to be marginal considering the potential adverse impact that critical habitat designation could have on our partnership with the private landowner. We believe past and future coordination with this private landowner will continue to provide sufficient education regarding the Chiricahua leopard frog habitat conservation needs on their lands, and therefore educational benefits for these areas are small.

The benefits of excluding the Ladder Ranch from critical habitat based on our conservation partnership are significant. Exclusion of the ranch from critical habitat will help preserve the partnership we have developed and reinforce those we are building with other private landowners, and foster future partnerships and development of management plans. During the public comment period, we received a letter from the Ladder Ranch strongly emphasizing the ranch's desire not to have critical habitat designated on their land. We are committed to fostering working relationships with the conservation community, including the Ladder Ranch, to further the conservation of the Chiricahua leopard frog and other endangered and threatened species. Therefore, in consideration of the relevant impact to our relationship with the Ladder Ranch and other potential private landowners, we determined the benefits of exclusion outweigh the benefits of inclusion in critical habitat designation for these lands.

Exclusion Will Not Result in Extinction of the Species—Ladder Ranch Chiricahua Leopard Frog Conservation Partnership

We determined that the exclusion of approximately 739 ac (299 ha) of habitat from this final designation of critical habitat for the Chiricahua leopard frog based on our conservation partnership with the Ladder Ranch will not result in extinction of the species. Lands managed by the Ladder Ranch for the Chiricahua leopard frog provide protection for the frog through site-specific habitat management and improvement projects. Therefore, the Secretary is exercising his discretion to exclude approximately 739 ac (299 ha) of habitat in the Seco Creek, Cuchillo Negro Warm Springs and Creek, and South Fork Palomas Creek Units from this final critical habitat designation.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (Regulatory Planning and Review). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency 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 an 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. In this final rule, we are certifying that the critical habitat designation for Chiricahua leopard frog will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., livestock management, water management, transportation, and development). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Chiricahua leopard frog. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal

activities (see *Application of the ''Adverse Modification'' Standard* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Chiricahua leopard frog and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in Chapters 3 through 4 and Appendix A of the analysis and evaluates the potential for economic impacts related to livestock management, water management, transportation, and development.

Of the four sectors identified having small entities, the FEA estimates that up to 171 small entities may be affected by section 7 consultations stemming from this rule. Annualized incremental economic impacts to small businesses range from $254 per year for transportation and residential and commercial development to $8,390 per year for livestock management (Industrial Economics 2011, pp. A–2 —A–7). A detailed analysis of each sector is presented below.

The FEA estimates that within this designation of critical habitat, the development sector has a total of 3,718 entities, of which 3,542 are small entities. Of these small entities, up to 9 may be impacted by this designation of critical habitat. Stated another way, 0.25 percent of the small entities in the development sector may be impacted by this designation of critical habitat at the regional scale of this analysis. At the national scale, this percentage is much less. The FEA estimates total annualized impacts for the 9 entities to range from $28 to $254. Relative to the SBA's small entity size standard for this sector ($7 million or $33.5 million annual revenues), this forecasted impact would not have a significant economic impact.

The FEA estimates that within this designation of critical habitat, the transportation sector has a total of 165 entities, of which 154 are small entities. Of these small entities, up to 9 may be impacted by this designation of critical habitat. Stated another way, approximately 6 percent of the small entities may be impacted by this designation of critical habitat at the regional scale of this analysis. At the national scale, this percentage is much less. The total annualized incremental impact is estimated to be $254 and relative to the SBA's small entity size standard for this sector ($33.5 million), this would not represent a significant economic impact.

The FEA estimates that within this designation of critical habitat there are 120 entities that engage in water management, and of these entities 104 are small. Of these, up to 18 of these small entities may be impacted by this designation of critical habitat. Stated another way, 17 percent of the small entities engaged in water management may be impacted at the regional scale of this analysis. At the national scale, this percentage is much less. The total annualized impact is estimated to be up to $508 for all entities; relative to SBA's small entity size standard for this sector ($7 million), this would not represent a significant economic impact.

The FEA estimates that within this designation of critical habitat there are a total of 162 entities engaged in livestock management activities; of these 135 are small entities. The FEA estimates that all of the small entities may be affected by this designation of critical habitat at the regional scale of this analysis. However, at the national scale, the percentage of affected small entities is much less. The total annualized incremental impact due to the designation of critical habiat is estimated to be $8,390. Although the highest annualized impact of $8,390 per year for livestock management may represent a significant impact if those costs are borne by only a few small ranchers with annual revenues that are considerably lower than the small entity revenue size standard of $750,000 per year; this is an unlikely outcome. In the extreme case where a single ranch participates in all 135 consultations, annualized impacts to that single entity would be $8,390; however, in the other extreme, if 135 small ranches each participate in a single consultation, annualized impacts to each entity would be approximately $62. If 68 small ranches participate (i.e., the midpoint between 1 and 135), the annualized impacts would be $123 per entity. If only a few did participate, it is unlikely that these entities would be small businesses. Given that the consultations on livestock management activities are projected to occur on U.S. Forest Service allotments and other federally managed areas that are spread over large parts of Arizona and New Mexico, it is unlikely that only a few ranchers would participate in all 135 of the projected consultations. The analysis does not have access to average annual revenues for small entities in the critical habitat units, and thus, cannot estimate annualized impacts as a percent of annual revenues. However, even though there is potential for 135 entities in this sector to be affected by this designation, we anticipate the limited potential impacts to entities in this sector will not be significant. Our determination is based on the fact that any impact to small businesses are indirect and that under the RFA we are only required to evaluate direct impacts resulting from the designation of critical habitat; and as such direct costs are borne by the Federal action agency.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for Chiricahua leopard frog will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The Office of Management and Budget (OMB) has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. As none of the outcomes that may constitute ''a significant adverse effect'' are relevant to this analysis, energy-related impacts within the critical habitat designation are not anticipated. The economic analysis finds that extraction, energy production, and distribution are not expected to be affected (Industrial Economics 2011, p. A–8). Thus, based on information in the economic analysis, energy-related impacts associated with Chiricahua leopard frog conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (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 designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Chiricahua leopard frog in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The economic analysis found that no significant ecomonic impacts are likely to result from the designation of critical habitat for the Chiricahua leopard frog. A significant level of baseline protection already exists for the frog, which addresses a broad range of habitat threats. The majority of Chiricahua leopard frog habitat and localities are on Federal lands, and a number of conservation easements, habitat conservation plans, and safe harbor agreements provide protections on privately owned lands. Based on information contained in the final economic analysis assessment and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for the Chiricahua leopard frog does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Arizona and New Mexico. We received comments from the Arizona Game and Fish Department and the New Mexico Department of Game and Fish and have addressed them in the Summary of Comments and Recommendations section of this rule. The designation of critical habitat in areas currently occupied by the Chiricahua leopard frog may pose nominal additional restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that 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) will 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 applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating

critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the Chiricahua leopard frog 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.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of Chiricahua leopard frog, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we prepare an environmental assessment. We prepared a draft environmental assessment for critical habitat designation and notified the public of its availability in the **Federal Register** on September 21, 2011 (76 FR 58441).

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 occupied by the Chiricahua leopard frog at the time of listing that contain the features essential for conservation of the species, and no Tribal lands unoccupied by the Chiricahua leopard frog that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the Chiricahua leopard frog on Tribal lands.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this rulemaking are the staff members of the Arizona Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Frog, Chiricahua leopard'' under ''Amphibians'' in the List of Endangered and Threatened Wildlife 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						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Frog, Chiricahua leopard.	*Lithobates chiricahuensis.*	U.S.A (AZ, NM), Mexico.	Entire	T	726	17.95(d)	17.43(b)
*	*	*	*	*	*		*

§ 17.43–[Amended]

■ 3. Amend § 17.43(b) by removing the word ''*Rana*'' in the paragraph heading and adding in its place the word ''*Lithobates*''.

■ 4. In § 17.95, amend paragraph (d) by adding an entry for ''Chiricahua Leopard Frog (*Lithobates chiricahuensis*),'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) * * *

Chiricahua Leopard Frog (*Lithobates chiricahuensis*)

(1) Critical habitat units are depicted for Apache, Cochise, Gila, Graham, Greenlee, Pima, Santa Cruz, and Yavapai Counties, Arizona; and Catron, Grant, Hidalgo, Sierra, and Socorro Counties, New Mexico, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Chiricahua leopard frog are:

(i) Aquatic breeding habitat and immediately adjacent uplands exhibiting the following characteristics:

(A) Standing bodies of fresh water (with salinities less than 5 parts per thousand, pH greater than or equal to 5.6, and pollutants absent or minimally present), including natural and manmade (e.g., stock) ponds, slow-moving streams or pools within streams, off-channel pools, and other ephemeral or permanent water bodies that typically hold water or rarely dry for more than a month. During periods of drought, or less than average rainfall, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they would still be considered essential breeding habitat in non-drought years.

(B) Emergent and or submerged vegetation, root masses, undercut banks, fractured rock substrates, or some combination thereof, but emergent vegetation does not completely cover the surface of water bodies.

(C) Nonnative predators (e.g., crayfish (*Orconectes virilis*), bullfrogs (*Lithobates catesbeianus*), nonnative predatory fish) absent or occurring at levels that do not preclude presence of the Chiricahua leopard frog.

(D) Absence of chytridiomycosis, or if present, then environmental, physiological, and genetic conditions are such that allow persistence of Chiricahua leopard frogs.

(E) Upland habitats that provide opportunities for foraging and basking that are immediately adjacent to or surrounding breeding aquatic and riparian habitat.

(ii) Dispersal and nonbreeding habitat, consisting of areas with ephemeral (present for only a short time), intermittent, or perennial water that are generally not suitable for breeding, and associated upland or riparian habitat that provides corridors (overland movement or along wetted drainages) for frogs among breeding sites in a metapopulation with the following characteristics:

(A) Are not more than 1.0 mile (1.6 kilometers) overland, 3.0 miles (4.8 kilometers) along ephemeral or intermittent drainages, 5.0 miles (8.0 kilometers) along perennial drainages, or some combination thereof not to exceed 5.0 miles (8.0 kilometers).

(B) In overland and nonwetted corridors, provide some vegetation cover or structural features (e.g., boulders, rocks, organic debris such as downed trees or logs, small mammal burrows, or leaf litter) for shelter, forage, and protection from predators; in wetted corridors, provide some ephemeral, intermittent, or perennial aquatic habitat.

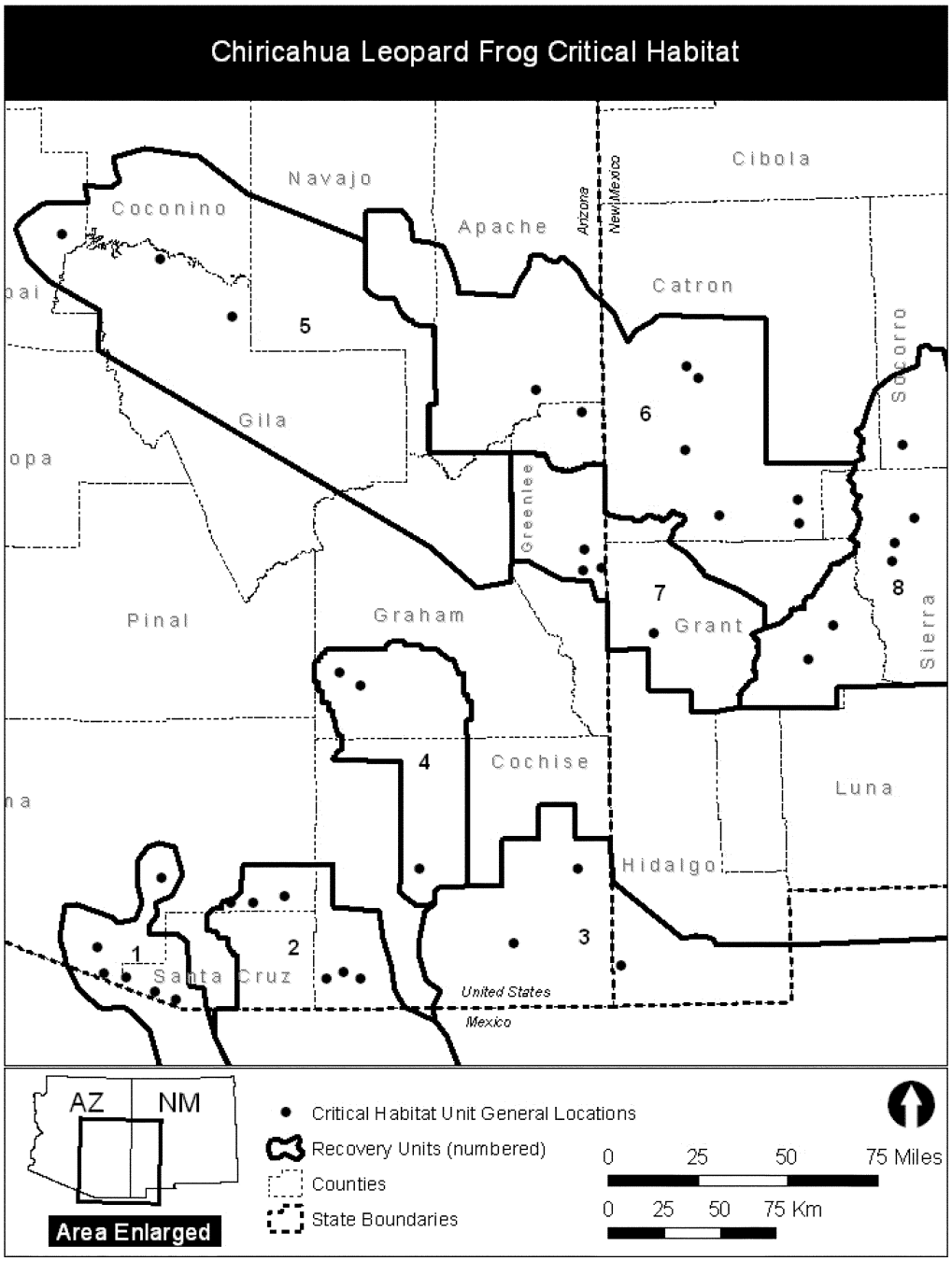
(C) Are free of barriers that block movement by Chiricahua leopard frogs, including, but not limited to, urban, industrial, or agricultural development; reservoirs that are 50 acres (20 hectares) or more in size and contain predatory nonnative fish, bullfrogs, or crayfish; highways that do not include frog fencing and culverts; and walls, major dams, or other structures that physically block movement.

(3) With the exception of impoundments, livestock tanks and other constructed waters, 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 a base of USGS 7.5' quadrangles, the Service's online Lands Mapper, the U.S. Geological Survey National Hydrography Dataset, and imagery from Google Earth. Lentic water bodies were digitized from Google Earth imagery. Point locations for lentic water bodies (still or non-flowing water bodies) were calculated as the geographic centroids of the digitized polygons defining the critical habitat boundaries. Line locations for lotic streams (flowing water) and drainages are depicted as the ''Flowline'' feature class from the National Hydrography Dataset geodatabase. Overland connections were digitized from Google Earth imagery. Administrative boundaries for Arizona and New Mexico were obtained from the Arizona Land Resource Information Service and New Mexico Resource Geographic Information System, respectively. This includes the most current (as of the effective date of this rule) geospatial data available for land ownership, counties, States, and streets. Locations depicting critical habitat are expressed as decimal degree latitude and longitude in the World Geographic Coordinate System projection using the 1984 datum (WGS84). Information on Chiricahua leopard frog localities was derived from survey forms, reports, publications, field notes, and other sources, all of which reside in our files at the Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021. Coordinates given for tanks are the approximate center points of those tanks.

BILLING CODE 4310–55–P

(5) **NOTE:** Index,map of critical habitat units for the Chiricahua leopard frog follows:

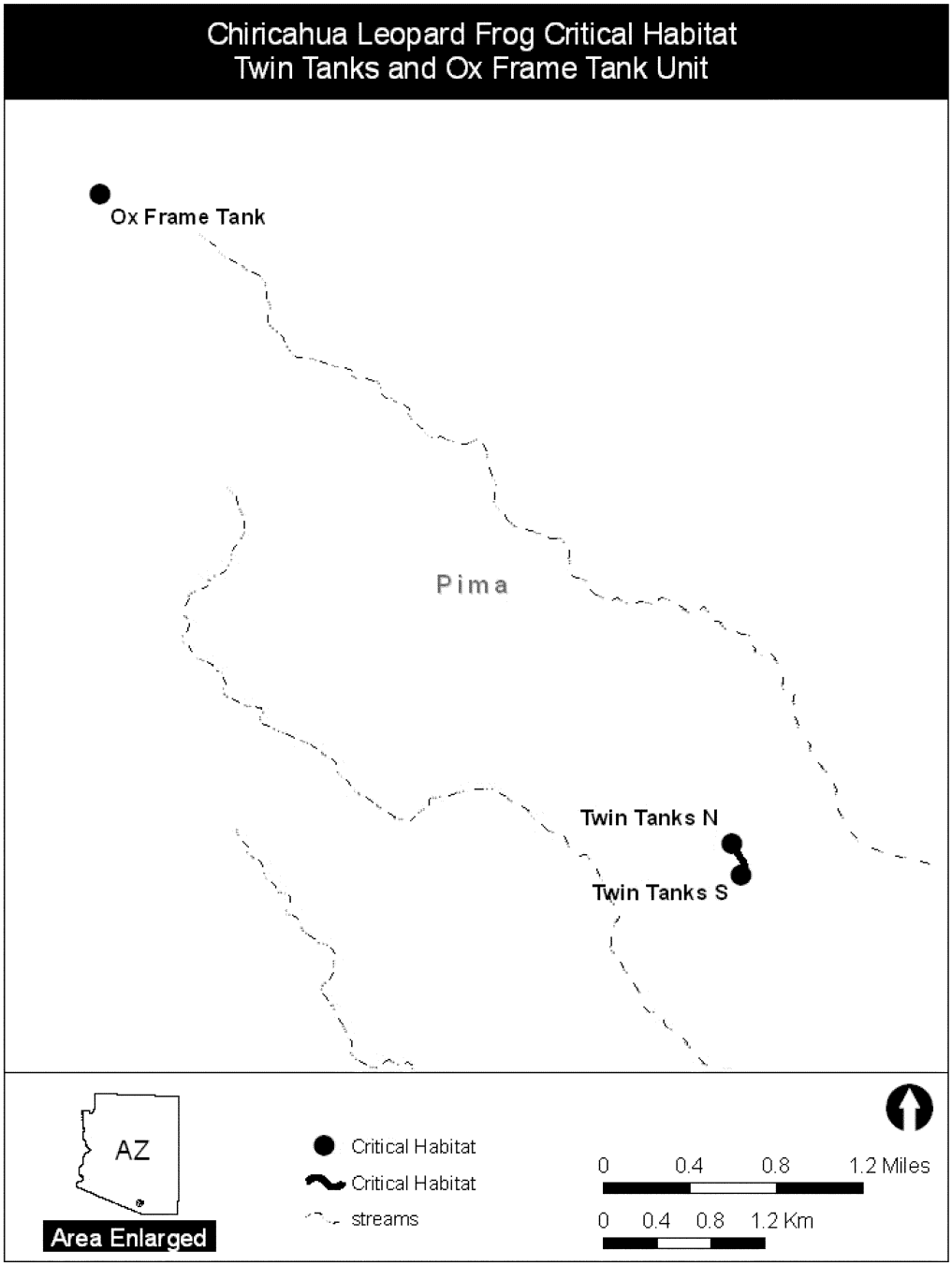


(6) Twin Tanks and Ox Frame Tank Unit, Pima County, Arizona.

(i) Twin Tanks, including the north tank (31.838230 N, 111.149875 W) and south tank (31.836031 N 111.149102 W), and the drainage running between them, a drainage distance of 979 feet (299 meters).

(ii) Ox Frame Tank (31.881882 N, 111.200318 W).

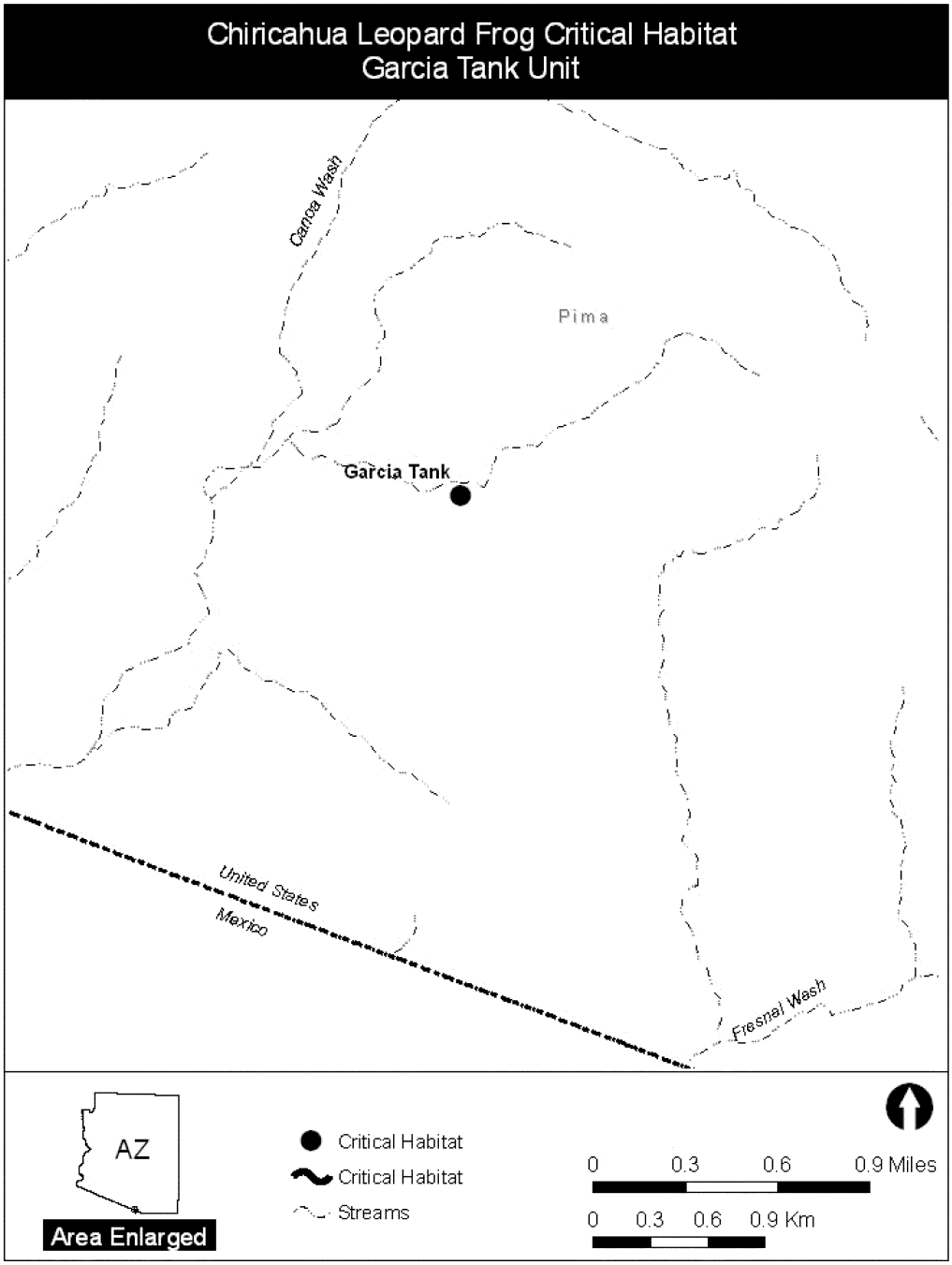
(iii) **NOTE:** Map of Twin Tanks and Ox Frame Tank Unit follows:



(7) Garcia Tank Unit, Pima County, Arizona.

(i) Garcia Tank (31.477060 N, 111.454114 W).

(ii) **NOTE:** Map of Garcia Tank Unit follows:



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(8) Buenos Aires National Wildlife Refuge Central Tanks Unit, Pima County, Arizona.

(i) Carpenter Tank (31.528748 N, 111.454642 W).

(ii) Rock Tank (31.583905 N, 111.462366 W).

(iii) State Tank (31.569254 N, 111.477114 W).

(iv) Triangle Tank (31.576105 N, 111.510909 W).

(v) New Round Hill Tank (31.613784 N, 111.489390 W).

(vi) Banado Tank (31.532759 N, 111.474729 W).

(vii) Choffo Tank (31.544627 N, 111.463126 W).

(viii) Barrel Cactus Tank (31.545284 N, 111.490310 W).

(ix) Sufrido Tank (31.566364 N, 111.445892 W).

(x) Hito Tank (31.579462 N, 111.446984 W).

(xi) Morley Tank (31.599057 N, 111.489088 W).

(xii) McKay Tank (31.605788 N, 111.474188 W).

(xiii) Chongo Tank (31.64002 N, 111.50435 W).

(xiv) Arroyo del Compartidero from Triangle Tank (31.576105 N, 111.510909 W) downstream through and including Aguire Lake to an unnamed drainage (31.594035 N, 111.504265 W); then downstream in that unnamed drainage to its confluence with Bailey Wash (31.596674 N, 111.501912 W); then downstream in Bailey Wash to its confluence with Puertocito Wash (31.604618 N, 111.494127 W); then downstream in Puertocito Wash to its confluence with Las Moras Wash (31.636031 N, 111.471749 W), including New Round Hill Tank (31.613784 N, 111.489390 W); and upstream in Las Moras Wash to Chongo Tank (31.64002 N, 111.50435 W), a distance of approximately 8.52 drainage miles (13.70 kilometers).

(xv) An unnamed drainage from its confluence with Puertocito Wash (31.619650 N, 111.483551 W) upstream to McKay Tank (31.605788 N, 111.474188 W, which is a cluster of three tanks), a distance of approximately 1.55 drainage miles (2.50 kilometers).

(xvi) Puertocito Wash from its confluence with Bailey Wash (31.604618 N, 111.494127 W) upstream to Sufrido Tank (31.566364 N, 111.445892 W), including Morley Tank (31.599057 N, 111.489088 W), a distance of approximately 4.60 drainage miles (7.40 kilometers).

(xvii) An innamed drainage from its confluence with Puertocito Wash upstream to Rock Tank (31.583905 N, 111.462366 W), then upstream in an unnamed drainage to the top of that drainage (31.582637 N, 111.456882 W) and directly overland to an unnamed drainage (31.583818 N, 111.455223 W), and then upstream to Hito Tank (31.579462 N, 111.446984 W) and downstream to McKay Tank (31.605788 N, 111.474188 W), a distance of approximately 3.80 drainage miles (6.11 kilometers) and 580 feet (177 meters) overland.

(xviii) Lopez Wash from Carpenter Tank (31.528748 N, 111.454642 W) downstream to its confluence with Aguire Lake (31.590582 N, 111.499589 W), a distance of approximately 6.75 drainage miles (10.87 kilometers).

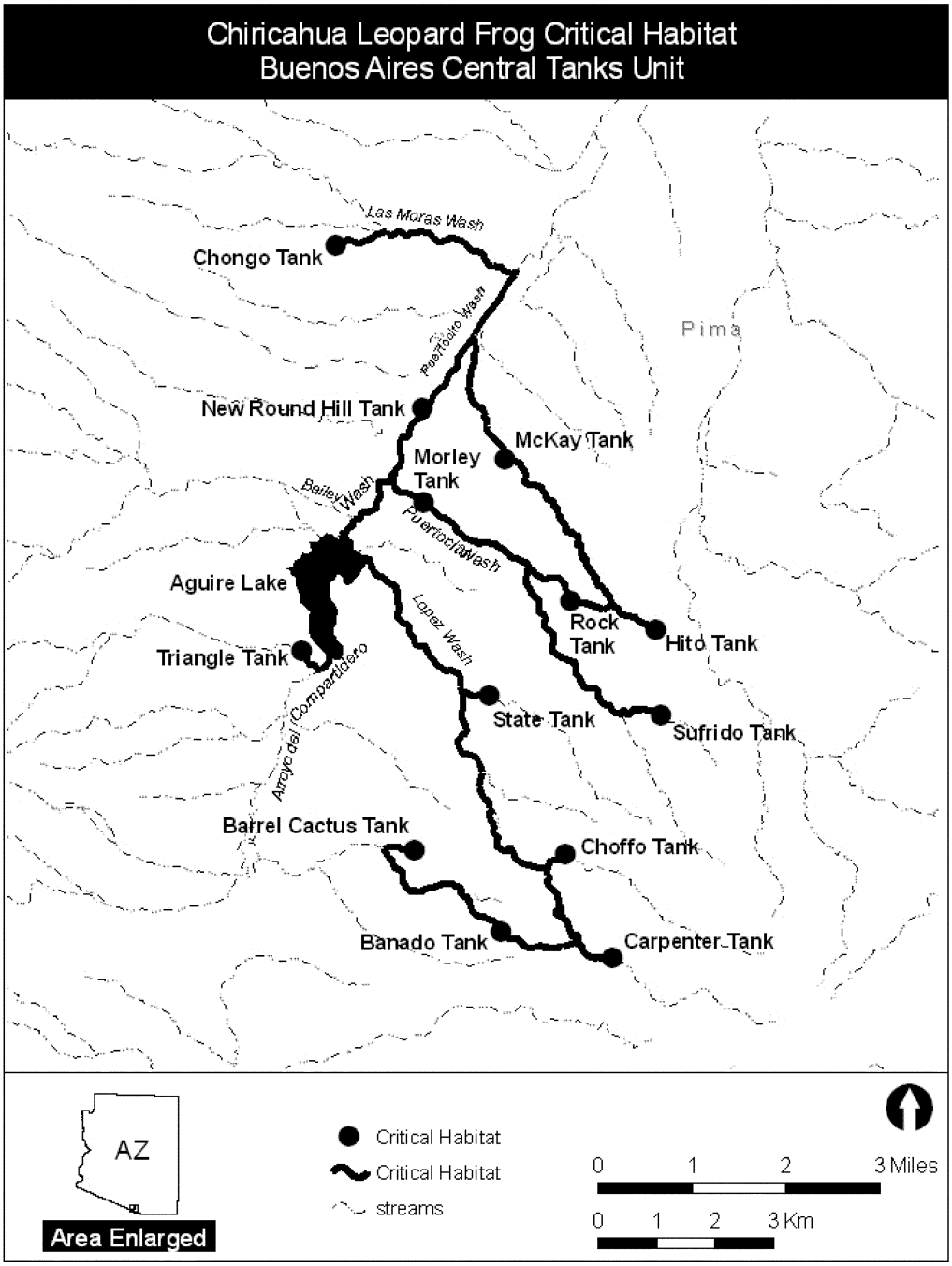
(xix) An unnamed drainage from its confluence with Lopez Wash (31.542605 N, 111.466699 W) upstream to Choffo Tank (31.544627 N, 111.463126 W), a distance of approximately 1,549 drainage feet (472 meters).

(xx) An unnamed drainage from its confluence with Lopez Wash (31.569735 N, 111.482058 W) upstream to State Tank (31.569254 N, 111.477114 W), a distance of approximately 1,613 drainage feet (492 meters).

(xxi) An unnamed drainage from Banado Tank (31.532759 N, 111.474729 W) downstream to the confluence with an unnamed drainage (31.545399 N, 111.496152 W), and then upstream in that drainage to Barrel Cactus Tank (31.545284 N, 111.490310 W), a distance of approximately 2.21 drainage miles (3.56 kilometers).

(xxii) An unnamed drainage from Banado Tank (31.532759 N, 111.474729 W) upstream to a saddle (31.530907 N, 111.463162 W), then directly downslope to Lopez Wash (31.532093 N, 111.462159 W), a distance of approximately 3,831 drainage feet (1,168 meters) and 808 feet (246 meters) overland.

(xxiii) **NOTE:** Map of Buenos Aires NWR Central Tanks Unit follows:


Chiricahua Leopard Frog Critical Habitat
Buenos Aires Central Tanks Unit
Las Moras Wash
Chongo Tank
Pima
New Round Hill Tank
McKay Tank
Morley Tank
Bailey Wash
Aguire Lake
Rock Tank
Hito Tank
Triangle Tank
Lopez Wash
State Tank
Sufrido Tank
Arroyo del Compartidero
Barrel Cactus Tank
Choffo Tank
Banado Tank
Carpenter Tank
AZ
Area Enlarged
Critical Habitat
Critical Habitat
streams
0 1 2 3 Miles
0 1 2 3 Km

(9) Bonita, Upper Turner, and Mojonera Tanks Unit, Santa Cruz County, Arizona.

(i) Bonita Tank (31.43525 N, 111.305505 W).

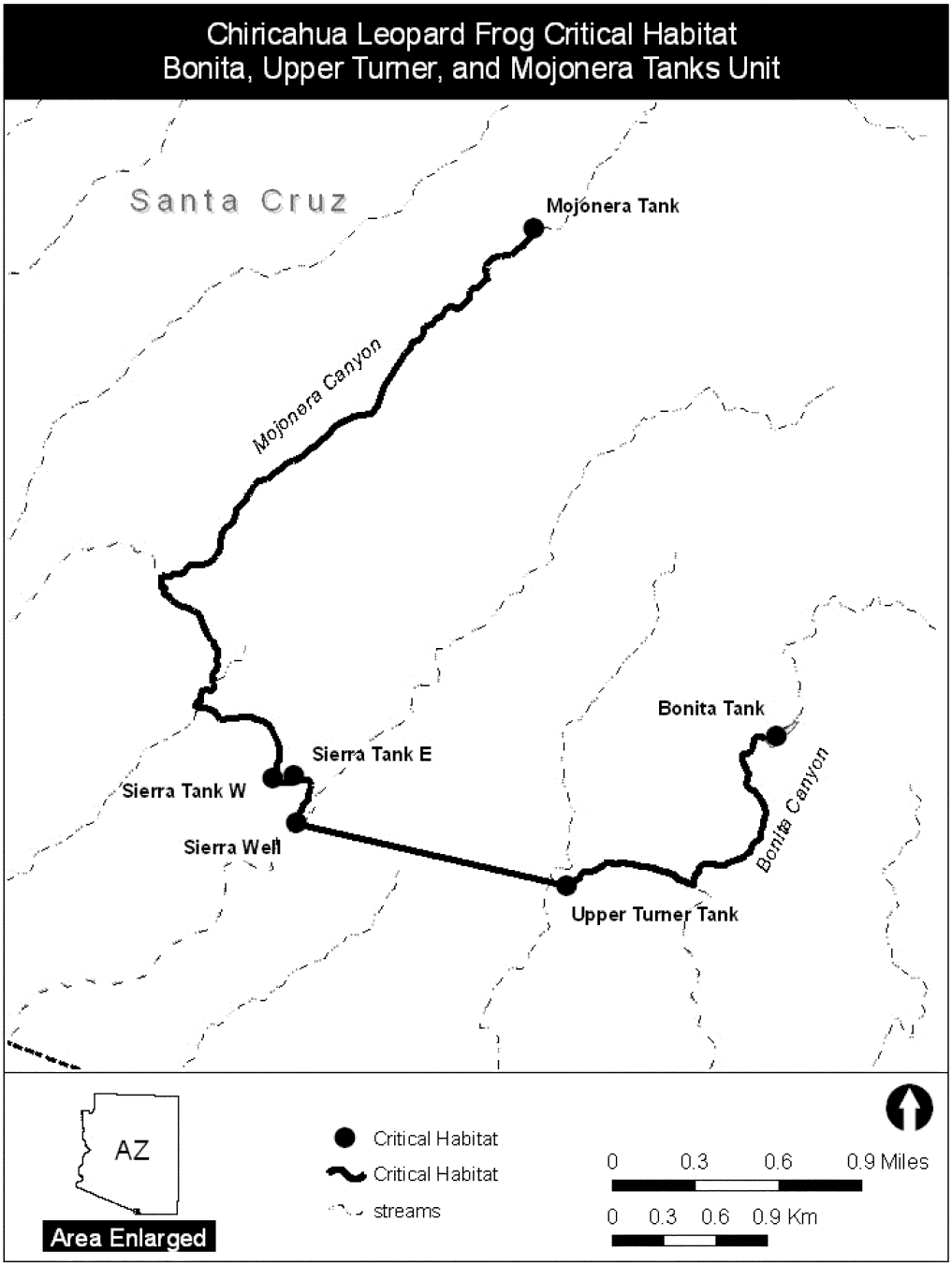
(ii) Upper Turner Tank (31.429690 N, 111.318332 W).

(iii) Mojonera Tank (31.464250 N, 111.320203 W).

(iv) From Upper Turner Tank (31.429690 N, 111.318332 W) upstream in an unnamed drainage to its confluence with a minor drainage coming in from the east (31.431029 N, 111.315846 W), then directly upslope in that drainage and east to a saddle (31.431015 N, 111.314770), and directly downslope through an unnamed drainage to Bonita Canyon (31.429806 N, 111.310325 W), and upstream in Bonita Canyon to Bonita Tank, a distance of approximately 1.29 drainage miles (2.08 kilometers) and 150 feet (46 meters) overland.

(v) From Mojonera Tank (31.464250 N, 111.320203 W) downstream in Mojonera Canyon to a sharp bend where the drainage turns west-northwest (31.445989 N, 111.343181 W); then southeast and upstream in an unnamed drainage to a saddle (31.443358 N, 111.340675 W) and downslope through an unnamed drainage to its confluence with another unnamed drainage (31.438637 N, 111.341044 W); then upstream in that unnamed drainage to a saddle (31.438497 N, 111.337639 W); then downstream in an unnamed drainage to Sierra Well (31.433012 N, 111.334709 W), to include Sierra Tank East (31.435488 N, 111.334736 W) and Sierra Tank West (31.435361 N, 111.336103 W); then directly overland to Upper Turner Tank (31.429690 N, 111.318332 W), a distance of approximately 3.45 drainage miles (5.56 kilometers) and 5,270 feet (1,606 meters) overland.

(vi) **NOTE:** Map of Bonita, Upper Turner, and Mojonera Tanks Unit follows:


Chiricahua Leopard Frog Critical Habitat
Bonita, Upper Turner, and Mojonera Tanks Unit
Santa Cruz
Mojonera Tank
Mojonera Canyon
Bonita Tank
Sierra Tank E
Sierra Tank W
Sierra Well
Bonita Canyon
Upper Turner Tank
AZ
Area Enlarged
Critical Habitat
Critical Habitat
streams
0 0.3 0.6 0.9 Miles
0 0.3 0.6 0.9 Km

(10) Sycamore Canyon Unit, Santa Cruz County, Arizona.

(i) Sycamore Canyon from the Ruby Road bridge (31.434030 N, 111.186537 W) south to the International Boundary (31.379952 N, 111.222937 W), a distance of 6.35 stream miles (10.23 kilometers).

(ii) Yank Tank (31.425426 N, 111.183289 W).

(iii) North Mesa Tank (31.415697 N, 111.167584 W).

(iv) Horse Pasture Spring (31.406812 N, 111.184717 W).

(v) Bear Valley Ranch Tank (31.413617 N, 111.176818 W).

(vi) South Mesa Tank (31.406832 N, 111.164505 W).

(vii) Rattlesnake Tank (31.400654 N, 111.163470 W).

(viii) Yanks Canyon from Yank Tank (31.425426N, 111.183289W) downstream to its confluence with Sycamore Canyon (31.428987 N, 111.190679 W), a distance of approximately 2,822 drainage feet (860 meters).

(ix) From North Mesa Tank (31.415697 N, 111.167584 W) downstream in Atascosa Canyon to its confluence with Peñasco Canyon (31.402594 N, 111.186647 W), then from that confluence downstream in Peñasco Canyon to its confluence with Sycamore Canyon (31.407395 N, 111.195820 W), a distance of approximately 2.91 drainage miles (4.69 kilometers).

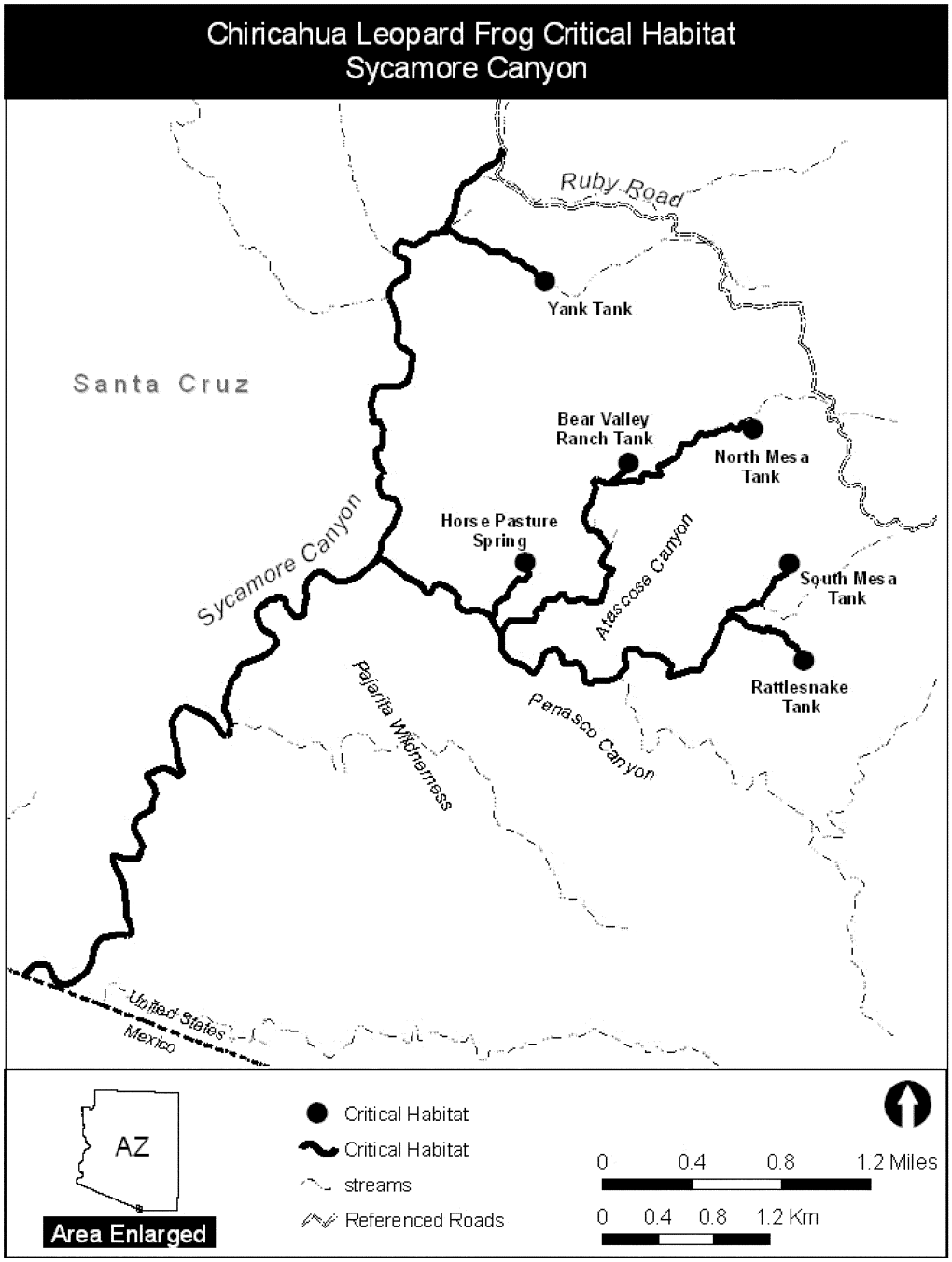
(x) From Horse Pasture Spring (31.406812 N, 111.184717 W) downstream to Peñasco Canyon, a drainage distance of approximately 1,759 feet (536 meters).

(xi) From Bear Valley Ranch Tank (31.413617 N, 111.176818 W) downstream in an unnamed drainage to its confluence with Atascosa Canyon (31.402583 N, 111.186593 W), a drainage distance of approximately 611 stream feet (186 meters).

(xii) From South Mesa Tank (31.406832 N, 111.164505 W) downstream in unnamed drainage to its confluence with another unnamed drainage (31.403615 N, 111.169213 W), then downstream in that unnamed drainage to its confluence with Peñasco Canyon (31.399519 N, 111.177701 W), then downstream in Peñasco Canyon to its confluence with Atascosa Canyon (31.402594 N, 111.186647 W), a drainage distance of approximately 2.05 miles (3.30 kilometers).

(xiii) From Rattlesnake Tank (31.400654 N, 111.163470 W) downstream in an unnamed drainage to its confluence with another unnamed drainage (31.403615 N, 111.169213 W), a drainage distance of approximately 2,274 feet (693 meters).

(xiv) **NOTE:** Map of Sycamore Canyon Unit follows:


Chiricahua Leopard Frog Critical Habitat
Sycamore Canyon
Ruby Road
Yank Tank
Santa Cruz
Bear Valley Ranch Tank
North Mesa Tank
Horse Pasture Spring
Sycamore Canyon
Atascosa Canyon
South Mesa Tank
Rattlesnake Tank
Pajarita Wilderness
Penasco Canyon
United States
Mexico
AZ
Area Enlarged
Critical Habitat
Critical Habitat
streams
Referenced Roads
0 0.4 0.8 1.2 Miles
0 0.4 0.8 1.2 Km

(11) Peña Blanca Lake and Spring and Associated Tanks Unit, Santa Cruz County, Arizona.

(i) Peña Blanca Lake (31.409091 N, 111.084971 W at the dam).

(ii) Peña Blanca Spring (31.388895 N, 111.092297 W).

(iii) Summit Reservoir (31.396565 N, 111.141347 W).

(iv) Tinker Tank (31.380107 N, 111.136359 W).

(v) Coyote Tank (31.369894 N, 111.150751 W).

(vi) Thumb Butte Tank (31.388426 N, 111.118105 W).

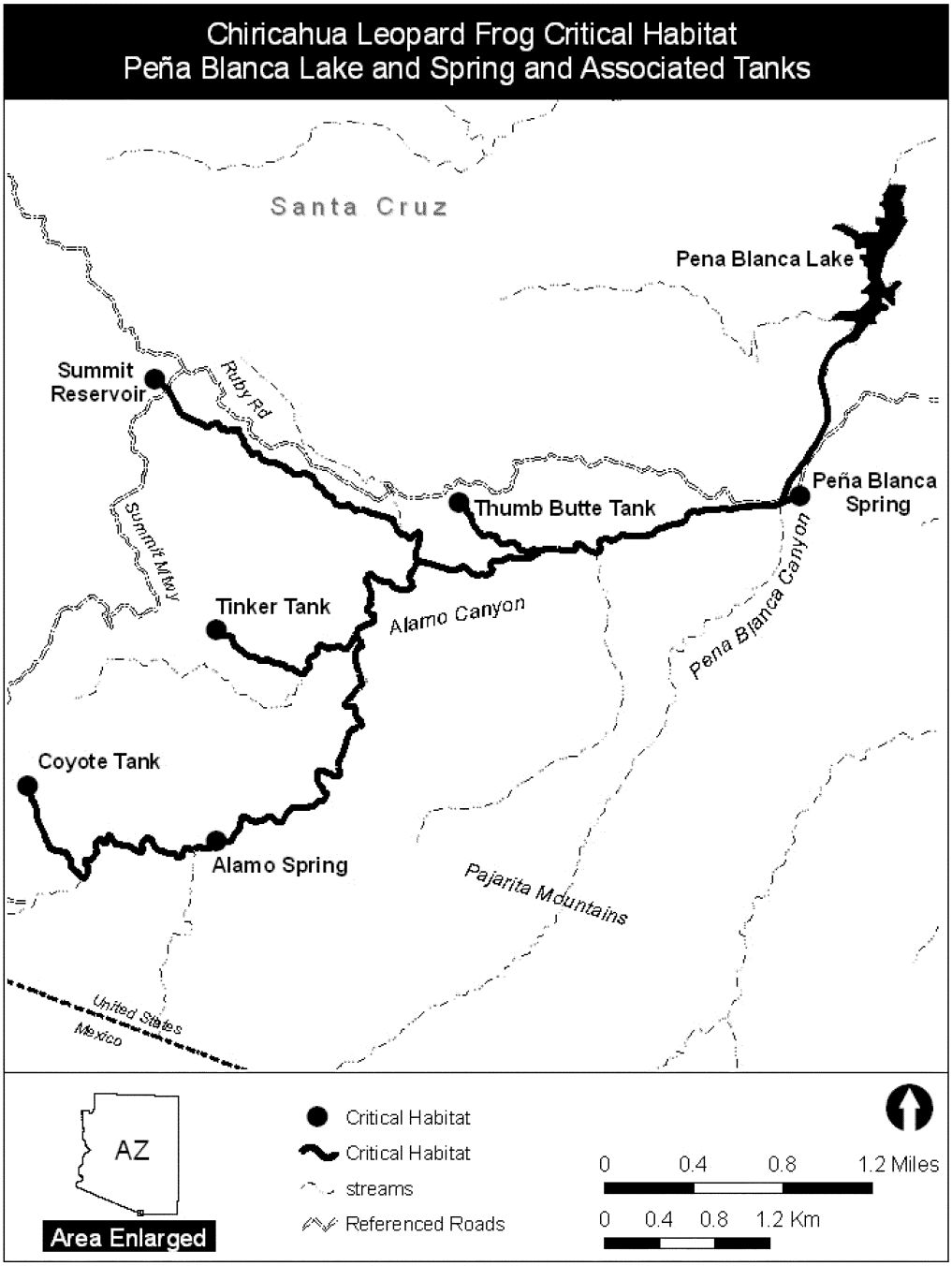
(vii) From Summit Reservoir directly southeast to a saddle on Summit Motorway (31.395580 N, 111.140552 W), then directly downslope to an unnamed drainage at (31.394133 N, 111.139450 W) and downstream in that drainage to its confluence with Alamo Canyon (31.384521 N, 111.121496 W), then downstream in Alamo Canyon to its confluence with Peña Blanca Canyon (31.388301 N, 111.093728 W), then downstream in Peña Blanca Canyon to Peña Blanca Lake (31.409091 N, 111.084971 W at the dam) to include Peña Blanca Spring (31.388895 N, 111.092297 W), a distance of approximately 4.44 drainage miles (7.10 kilometers) and 1,040 feet (317 meters) overland.

(viii) From Thumb Butte Tank (31.388426 N, 111.118105 W) downstream in an unnamed drainage to its confluence with Alamo Canyon (31.385228 N, 111.112132 W), a distance of approximately 2,494 drainage feet (760 meters).

(ix) From Tinker Tank (31.380107 N, 111.136359 W) downstream in an unnamed drainage to its confluence with Alamo Canyon (31.379693 N, 111.126053 W), then downstream in Alamo Canyon to the confluence with the drainage from Summit Reservoir (31.384521 N, 111.121496 W), a distance of approximately 1.55 drainage miles (2.50 kilometers).

(x) From Coyote Tank (31.369894 N, 111.150751 W) downstream in an unnamed drainage to its confluence with Alamo Canyon (31.365839 N, 111.138388 W); then downstream in Alamo Canyon to the confluence with the drainage from Tinker Tank (31.379693 N, 111.126053 W), to include Alamo Spring (31.365993 N, 111.137171 W), a distance of approximately 3.09 drainage miles (4.97 kilometers).

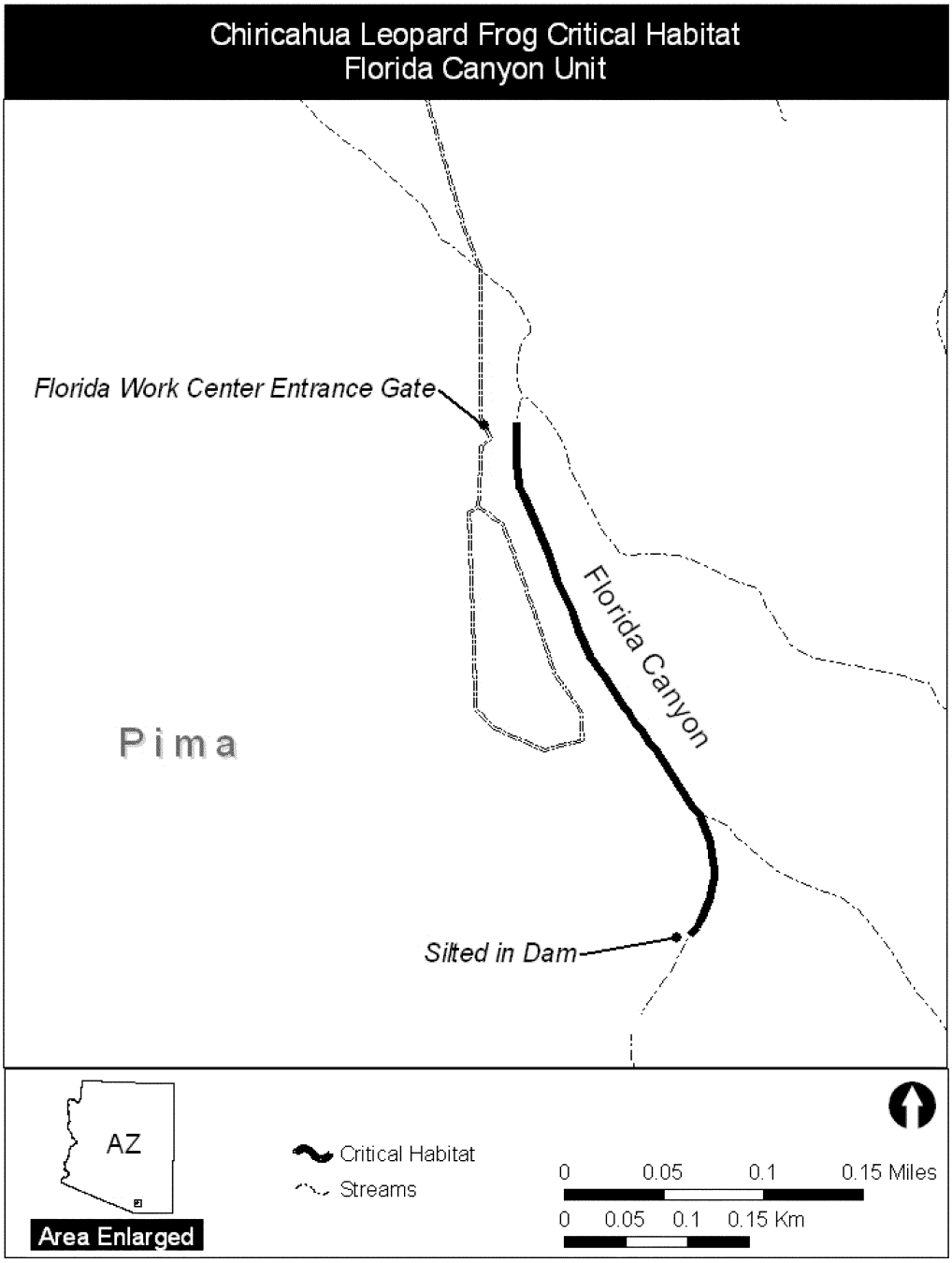
(xi) **NOTE:** Map of Peña Blanca Lake and Spring and Associated Tanks Unit follows:


Chiricahua Leopard Frog Critical Habitat
Peña Blanca Lake and Spring and Associated Tanks
Santa Cruz
Pena Blanca Lake
Summit Reservoir
Ruby Rd
Summit Mtny
Thumb Butte Tank
Peña Blanca Spring
Pena Blanca Canyon
Tinker Tank
Alamo Canyon
Coyote Tank
Alamo Spring
Pajarita Mountains
United States
Mexico
AZ
Area Enlarged
Critical Habitat
Critical Habitat
streams
Referenced Roads
0 0.4 0.8 1.2 Miles
0 0.4 0.8 1.2 Km

(12) Florida Canyon Unit, Pima County, Arizona.

(i) Florida Canyon from a silted-in dam (31.759444 N, 110.844095 W) downstream to just east of the Florida Workstation entrance gate (31.763186 N, 110.845511 W), a distance of approximately 1,521 stream feet (463 meters).

(ii) **NOTE:** Map of Florida Canyon Unit follows:



(13) Eastern Slope of the Santa Rita Mountains Unit, Pima County, Arizona.

(i) Two galvanized metal tanks in Louisiana Gulch (31.74865 N, 110.72839 W).

(ii) Greaterville Tank (31.767186 N, 110.759818 W).

(iii) Los Posos Gulch Tank (31.768587 N, 110.731583 W).

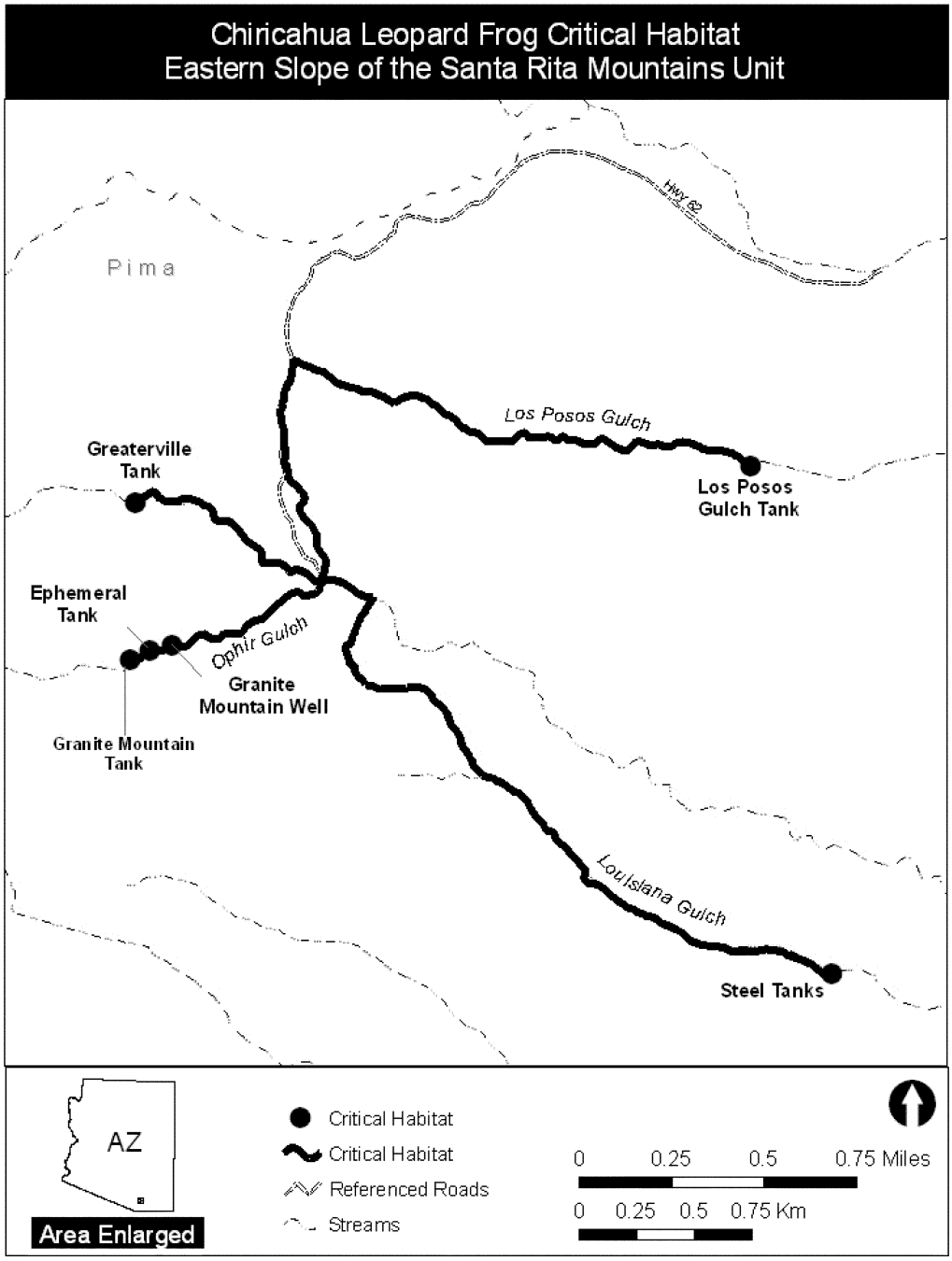
(iv) Upper Granite Mountain Tank (31.760914 N, 110.760186 W).

(v) From Los Posos Gulch Tank (31.768587 N, 110.731583 W) upstream to a saddle (31.771463 N, 110.748676 W); then downslope in an unnamed drainage to the confluence with another unnamed drainage (31.772830 N, 110.752727 W); then upstream and south in that drainage to a saddle (31.768245 N, 110.752891 W); then downslope in an unnamed drainage to its confluence with Ophir Gulch (31.763978 N, 110.751312 W); then upstream in Ophir Gulch to Upper Granite Mountain Tank (31.760914 N, 110.760186 W), to include an ephemeral tank (31.761388 N, 110.759184 W) and a well (31.761584 N, 110.758169 W), a distance of approximately 2.59 drainage miles (4.17 kilometers) and 984 feet (300 meters) overland.

(vi) From Greaterville Tank (31.767186 N, 110.759818 W) downstream in an unnamed drainage to its confluence with Ophir Gulch (31.763978 N, 110.751312 W), a distance of approximately 3,446 drainage feet (1,050 meters).

(vii) Louisiana Gulch from the metal tanks (31.74865 N, 110.72839 W) upstream to the confluence with an unnamed drainage (31.756493 N, 110.744175 W), then upstream in that drainage to its headwaters and across a saddle (31.759879 N, 110.748733 W) and downslope through an unnamed drainage to its confluence with Ophir Gulch (31.762953 N, 110.749329 W), then upstream in Ophir Gulch to the confluence with an unnamed drainage (31.763978 N, 110.751312 W), a distance of approximately 1.98 drainage miles (3.19 kilometers) and 327 feet (100 meters) overland.

(viii) **NOTE:** Map of Eastern Slope of the Santa Rita Mountains Unit follows:

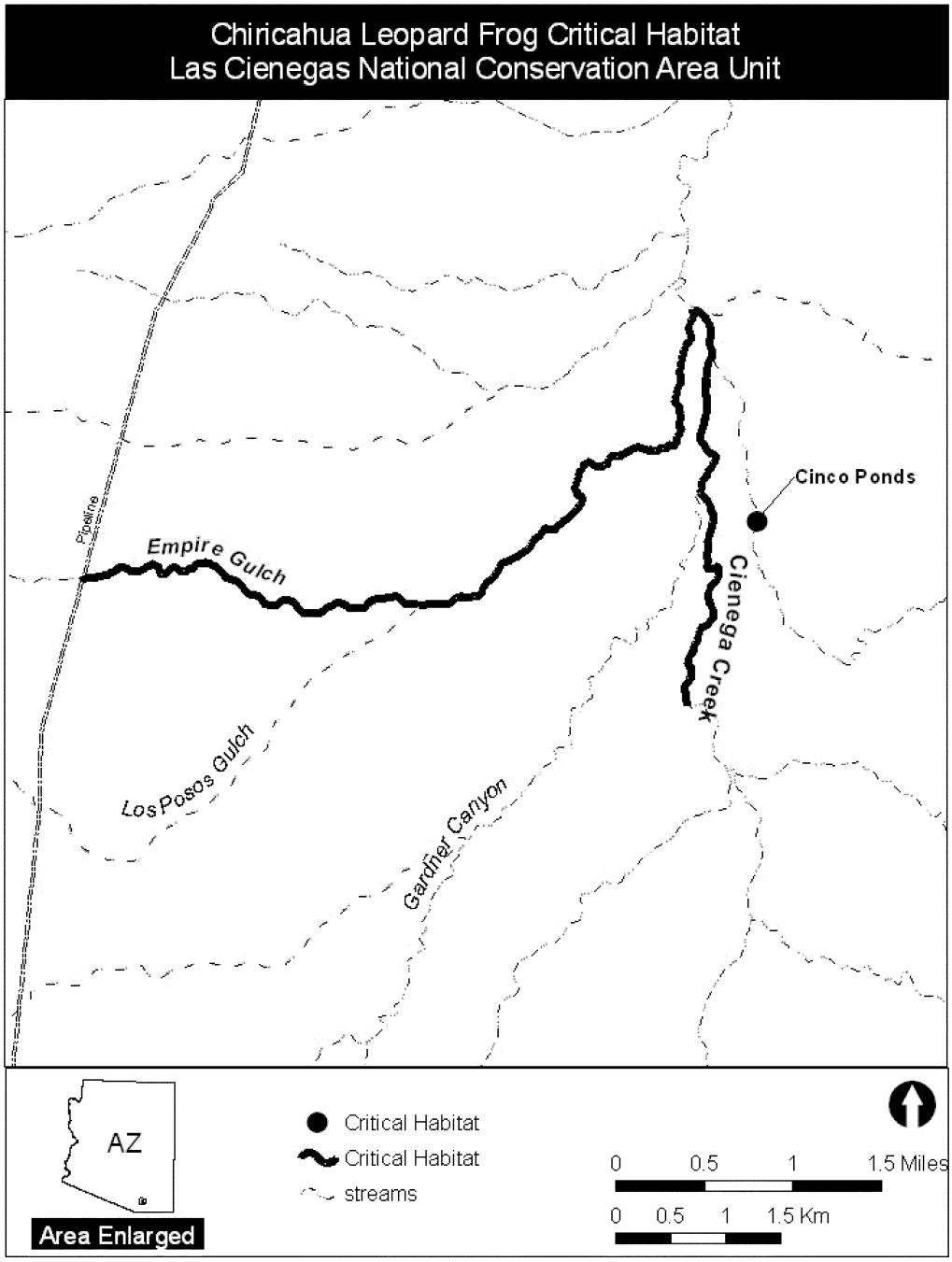

Chiricahua Leopard Frog Critical Habitat
Eastern Slope of the Santa Rita Mountains Unit
Pima
Hwy 82
Los Posos Gulch
Greaterville Tank
Los Posos Gulch Tank
Ephemeral Tank
Ophir Gulch
Granite Mountain Well
Granite Mountain Tank
Louisiana Gulch
Steel Tanks
AZ
Area Enlarged
Critical Habitat
Critical Habitat
Referenced Roads
Streams
0 0.25 0.5 0.75 Miles
0 0.25 0.5 0.75 Km

(14) Las Cienegas National Conservation Area Unit, Pima County, Arizona.

(i) Empire Gulch near Empire Ranch, beginning at a pipeline access road crossing (31.787054 N, 110.648665 W) and continuing downstream to its confluence with Cienega Creek (31.808988 N, 110.589795 W), a distance of approximately 5.08 stream miles (8.18 kilometers).

(ii) Cienega Creek from the Empire Gulch confluence (31.808988 N, 110.589795 W) upstream to the approximate end of the wetted reach and where the creek bends hard to the east (31.776478 N, 110.590382 W), to include Cinco Ponds (31.793066 N, 110.584422 W upstream to 31.788559 N, 110.584114 W), a distance of approximately 1.91 stream miles (3.08 kilometers).

(iii) **NOTE:** Map of Las Cienegas National Conservation Area Unit follows:



(15) Scotia Canyon Unit, Cochise County, Arizona.

(i) Peterson Ranch Pond (31.457016 N, 110.397724 W).

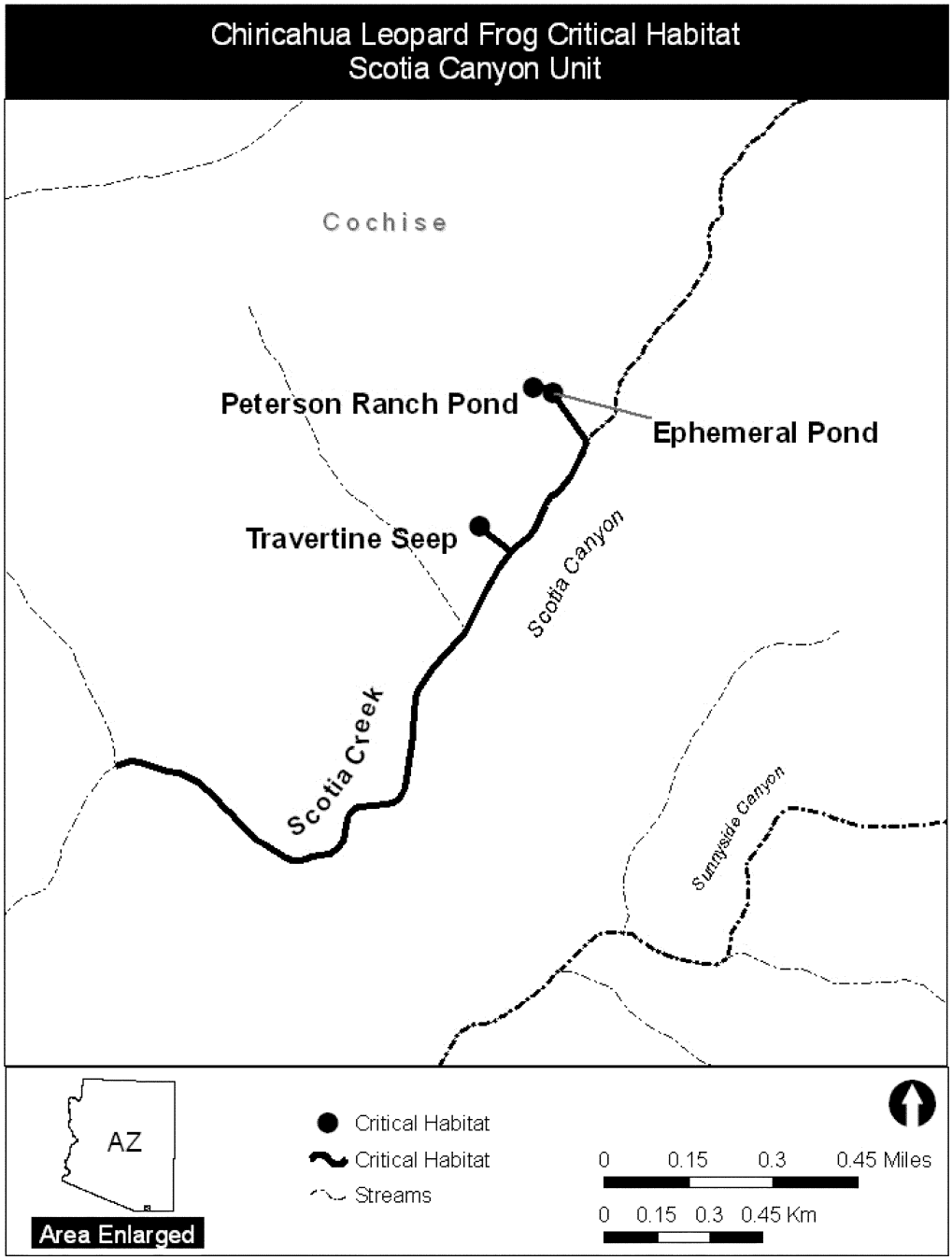
(ii) Travertine Seep (31.453466 N, 110.399386 W).

(iii) Creek in Scotia Canyon from just east of Peterson Ranch Pond (31.455723 N, 110.396124 W) downstream to the confluence of an unnamed drainage and a sharp bend in the canyon to the south (31.447598 N, 110.409884 W), a distance of approximately 1.36 stream miles (2.19 kilometers).

(iv) Overland from Peterson Ranch Pond (31.457016 N, 110.397724 W) to the upper end of the Scotia Creek segment (31.455723 N, 110.396124 W), to include an ephemeral pond (31.456929 N, 110.397120 W), an overland distance of approximately 671 feet (205 meters).

(v) Overland from the Travertine Seep (31.453466 N, 110.399386 W) directly southeast to Scotia Creek (31.452720 N, 110.398117 W), an overland distance of approximately 348 feet (106 meters).

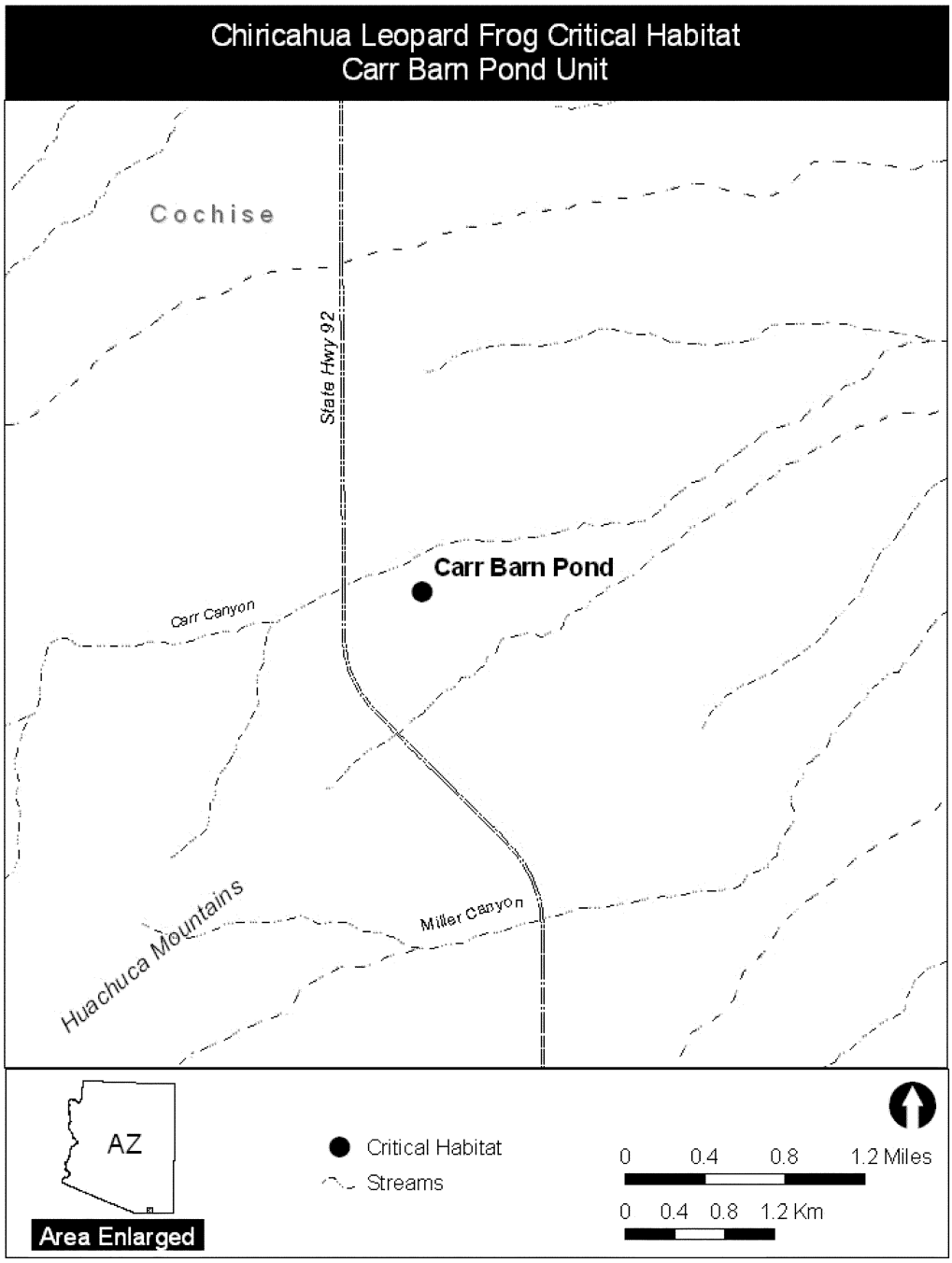
(vi) **NOTE:** Map of Scotia Canyon Unit follows:



(16) Carr Barn Pond Unit, Cochise County, Arizona.

(i) Carr Barn Pond (31.452461 N, 110.250355 W).

(ii) **NOTE:** Map of Carr Barn Pond Unit follows:



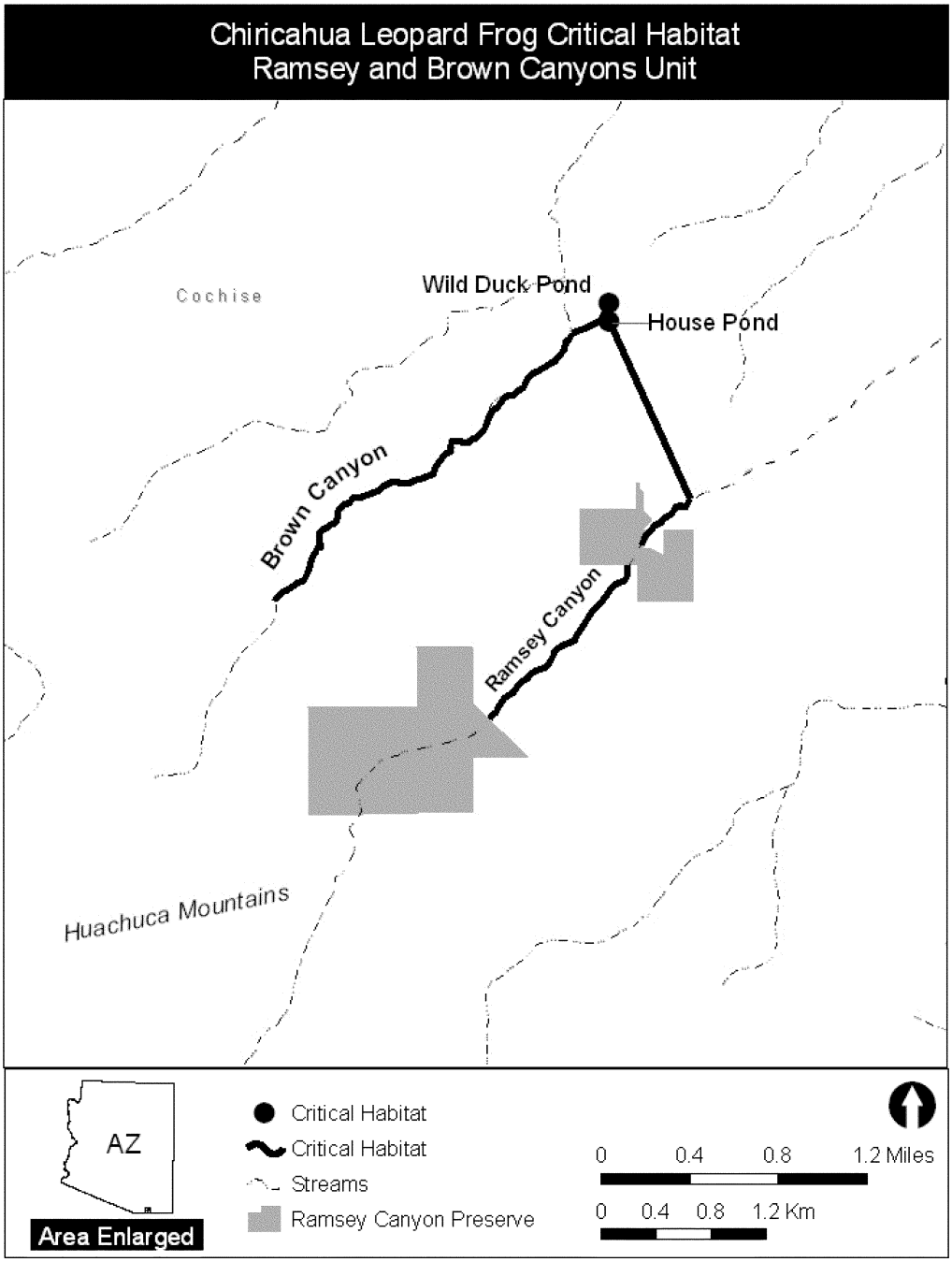
(17) Ramsey and Brown Canyons Unit, Cochise County, Arizona.

(i) Ramsey Canyon from the eastern boundary of The Nature Conservancy's Bledsoe Parcel in the Ramsey Canyon Preserve (31.448160 N, 110.306993 W) downstream to a dirt road crossing at the mouth of Ramsey Canyon (31.462315 N, 110.291248 W), excluding The Nature Conservancy's University of Toronto Parcel in the Ramsey Canyon Preserve, an approximate stream distance of 1.29 miles (2.08 kilometers).

(ii) Brown Canyon from The Box (31.456016 N, 110.323853 W) downstream to the Wild Duck Pond (31.475355 N, 110.297592 W) and House Pond (31.474068 N, 110.297565 W) on the former Barchas Ranch, an approximate drainage distance of 2.26 miles (3.64 kilometers).

(iii) From the dirt road crossing at the mouth of Ramsey Canyon (31.462315 N, 110.291248 W) directly overland to House Pond (31.474068 N, 110.297565 W) on the former Barchas Ranch, a distance of approximately 4,594 feet (1,400 meters).

(iv) **NOTE:** Map of Ramsey and Brown Canyons Unit follows:



(18) Peloncillo Mountains Tanks Unit, Hidalgo County, New Mexico.

(i) Geronimo Tank (31.520685 N, 109.016775 W).

(ii) State Line Tank (31.498451 N, 109.044940 W).

(iii) Javelina Tank (31.484995 N, 109.024970 W).

(iv) Canoncito Ranch Tank (31.449553 N, 109.986836 W).

(v) Maverick Spring (31.469376 N, 109.011142 W).

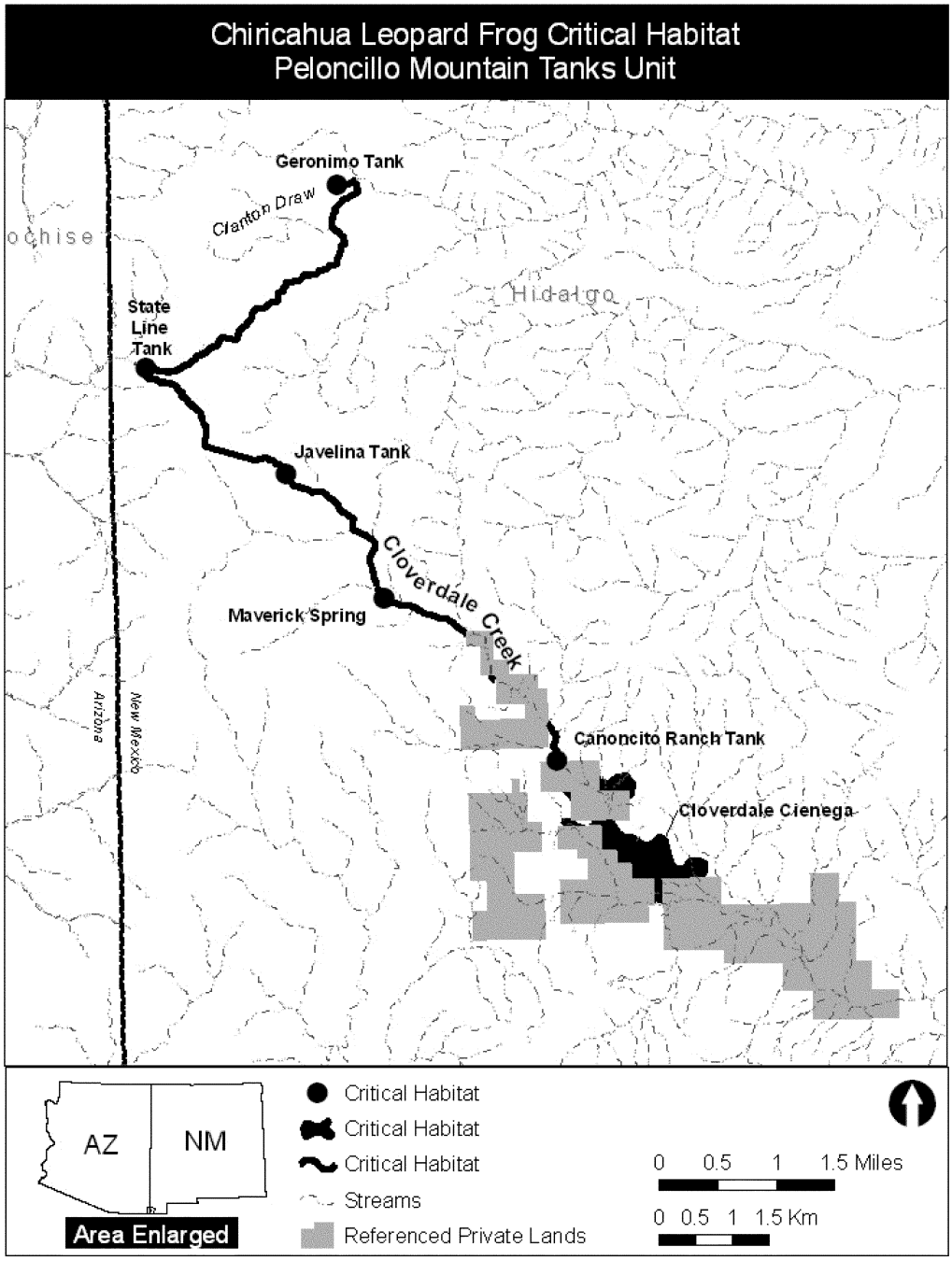
(vi) Cloverdale Creek from the Canoncito Ranch Tank (31.449553 N, 109.986836 W) downstream, including the cienega, to rock pools (31.432972 N, 108.966535 W) about 630 feet downstream of the Cloverdale road crossing of Cloverdale Creek, excluding portions of Cloverdale Creek and the cienega within private lands of Canoncito Ranch, an approximate stream distance of 3,711 feet (1,131 meters).

(vii) From Geronimo Tank (31.520685 N, 109.016775 W) downstream in an unnamed drainage to its confluence with Clanton Draw (31.520590 N, 109.012263 W), then upstream to the confluence with an unnamed drainage (31.515818 N, 109.018117 W), and upstream in that drainage to its headwaters (31.501854 N, 109.031898 W), across a mesa to the headwaters of an unnamed drainage (31.502220 N, 109.033839 W), then downslope through that drainage to State Line Tank (31.498451 N, 109.044940 W), an approximate drainage distance of 3.07 miles (4.94 kilometers) and 775 feet (236 meters) overland.

(viii) From State Line Tank upstream in an unnamed drainage to a mesa (31.488563 N, 109.036527 W), then directly overland to the headwaters of Cloverdale Creek (31.487477 N, 109.028002 W), and then downstream in Cloverdale Creek to Javelina Tank (31.484995 N, 109.024970 W), an approximate drainage distance of 1.40 miles (2.26 kilometers) and 2,245 feet (684 meters) overland.

(ix) From Javelina Tank (31.484995 N, 109.024970 W) downstream in Cloverdale Creek to the Canoncito Ranch Tank (31.449553 N, 109.986836 W), to include Maverick Spring (31.469376 N, 109.011142 W), and excluding portions of Cloverdale Creek within private lands of Canoncito Ranch, an approximate stream distance of 3.12 miles (5.02 kilometers).

(x) **NOTE:** Map of Peloncillo Mountains Unit follows:


Chiricahua Leopard Frog Critical Habitat
Peloncillo Mountain Tanks Unit
Geronimo Tank
Clanton Draw
ochise
Hidalgo
State Line Tank
Javelina Tank
Cloverdale Creek
Maverick Spring
Arizona
New Mexico
Canoncito Ranch Tank
Cloverdale Cienega
AZ
NM
Area Enlarged
Critical Habitat
Critical Habitat
Critical Habitat
Streams
Referenced Private Lands
0 0.5 1 1.5 Miles
0 0.5 1 1.5 Km

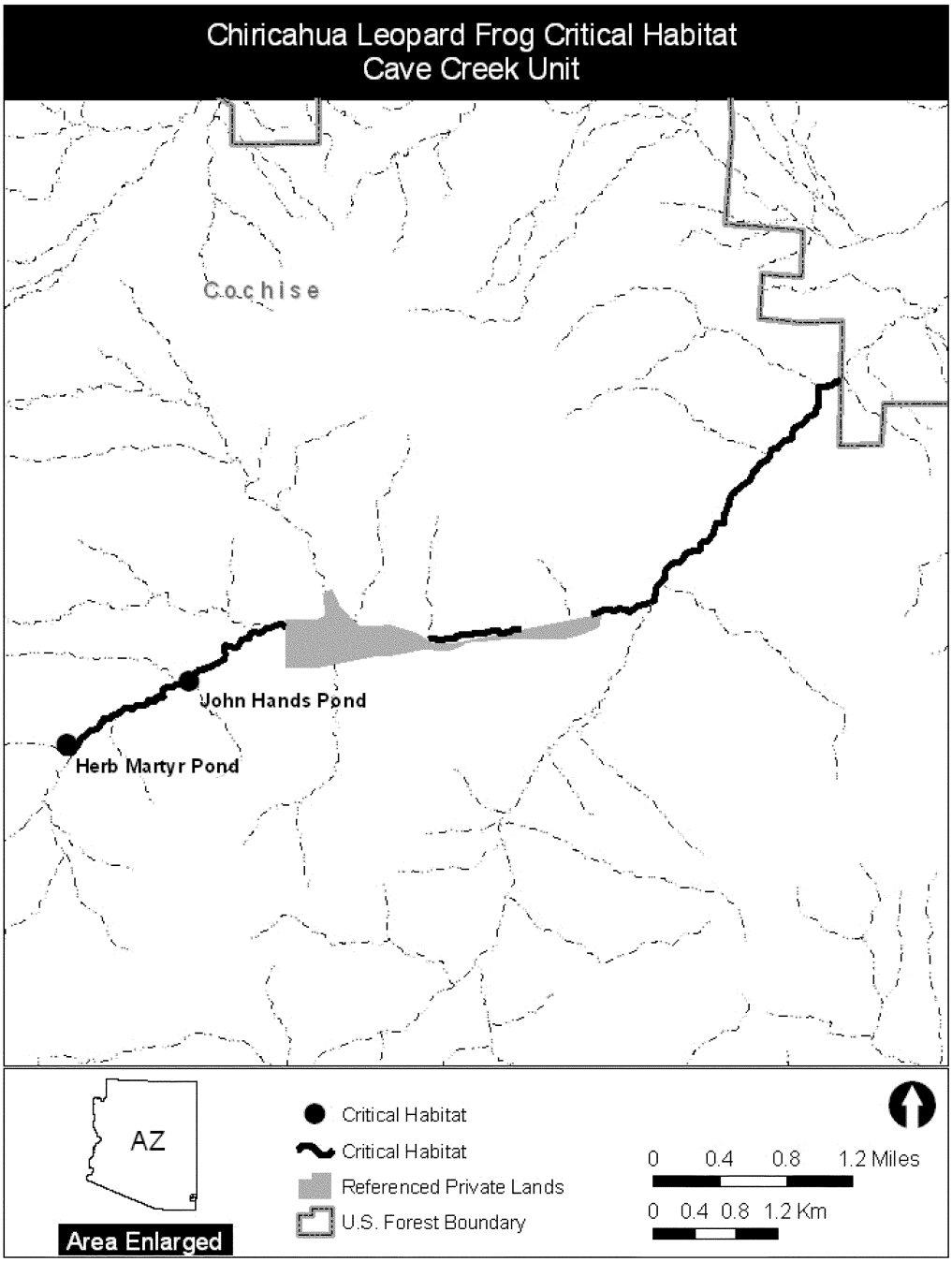
(19) Cave Creek Unit, Cochise County, Arizona.

(i) Herb Martyr Pond (31.87243 N, 109.23418 W).

(ii) John Hands Pond below the dam (31.87868 N, 109.20470 W).

(iii) Cave Creek from Herb Martyr Pond (31.87243 N, 109.23418 W) downstream to the U.S. Forest Service boundary (31.899659 N, 109.159987 W), to include John Hands Pond (31.87868 N, 109.20470 W), an approximate stream distance of 4.76 miles (7.67 kilometers).

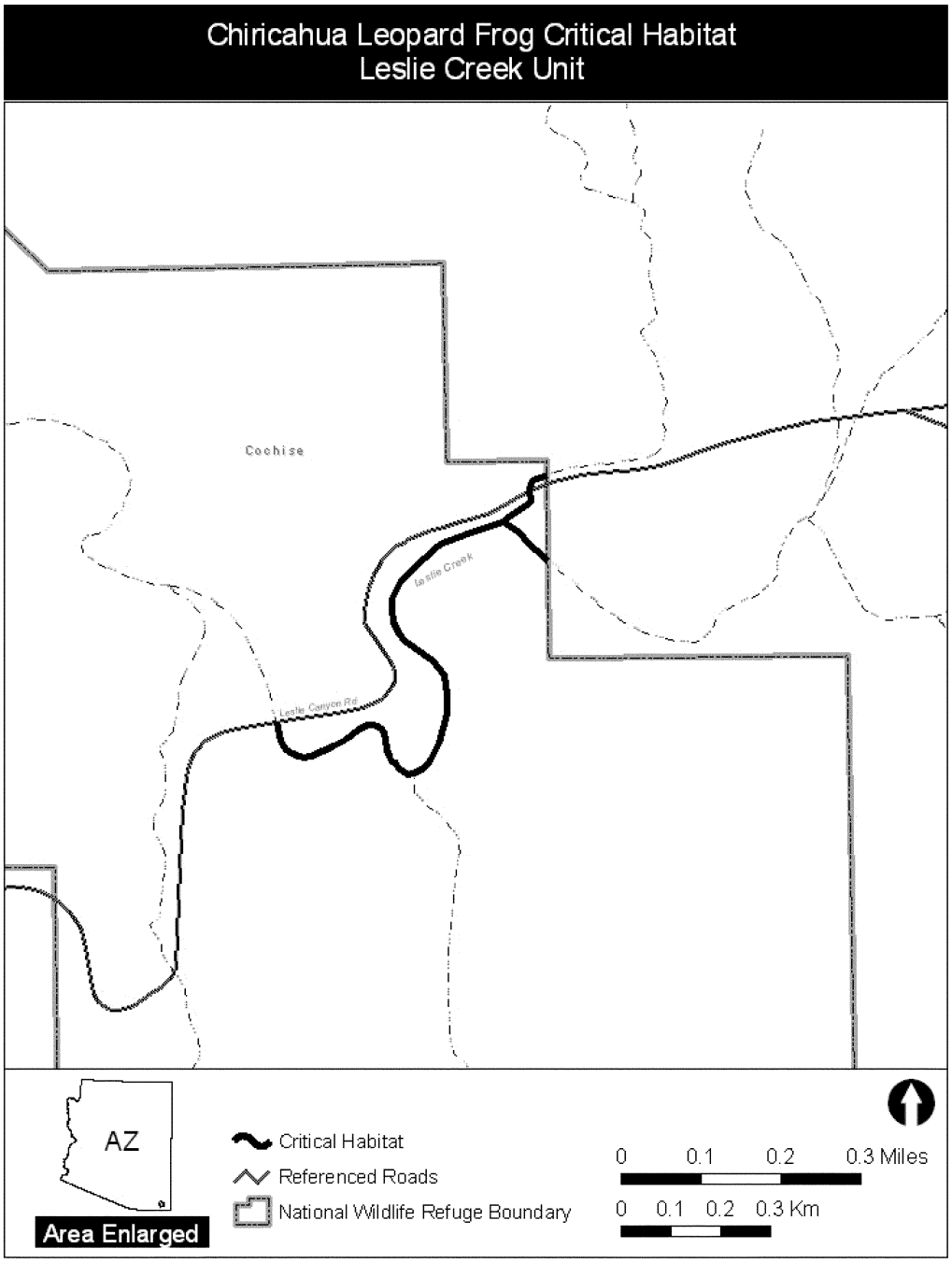
(iv) **NOTE:** Map of Cave Creek Unit follows:



(20) Leslie Creek Unit, Cochise County, Arizona.

(i) Leslie Creek from the upstream National Wildlife Refuge boundary (31.591072 N, 109.505311 W) downstream to the Leslie Canyon Road crossing (31.588510 N, 109.511598 W), an approximate stream distance of 4,094 feet (1,248 meters).

(ii) **NOTE:** Map of Leslie Creek Unit follows:



(21) Deer Creek Unit, Graham County, Arizona.

(i) Home Ranch Tank (32.656879 N, 110.274556 W).

(ii) Penney Mine Tanks, which includes a series of 10 small impoundments in a drainage from approximately 32.668795 N, 110.257763 W downstream to 32.670055 N, 110.257310 W.

(iii) Clifford Tank (32.67130 N, 110.264877 W).

(iv) Vermont Tank (32.676883 N, 110.262404 W).

(v) Middle Tank (32.679691 N, 110.252180 W).

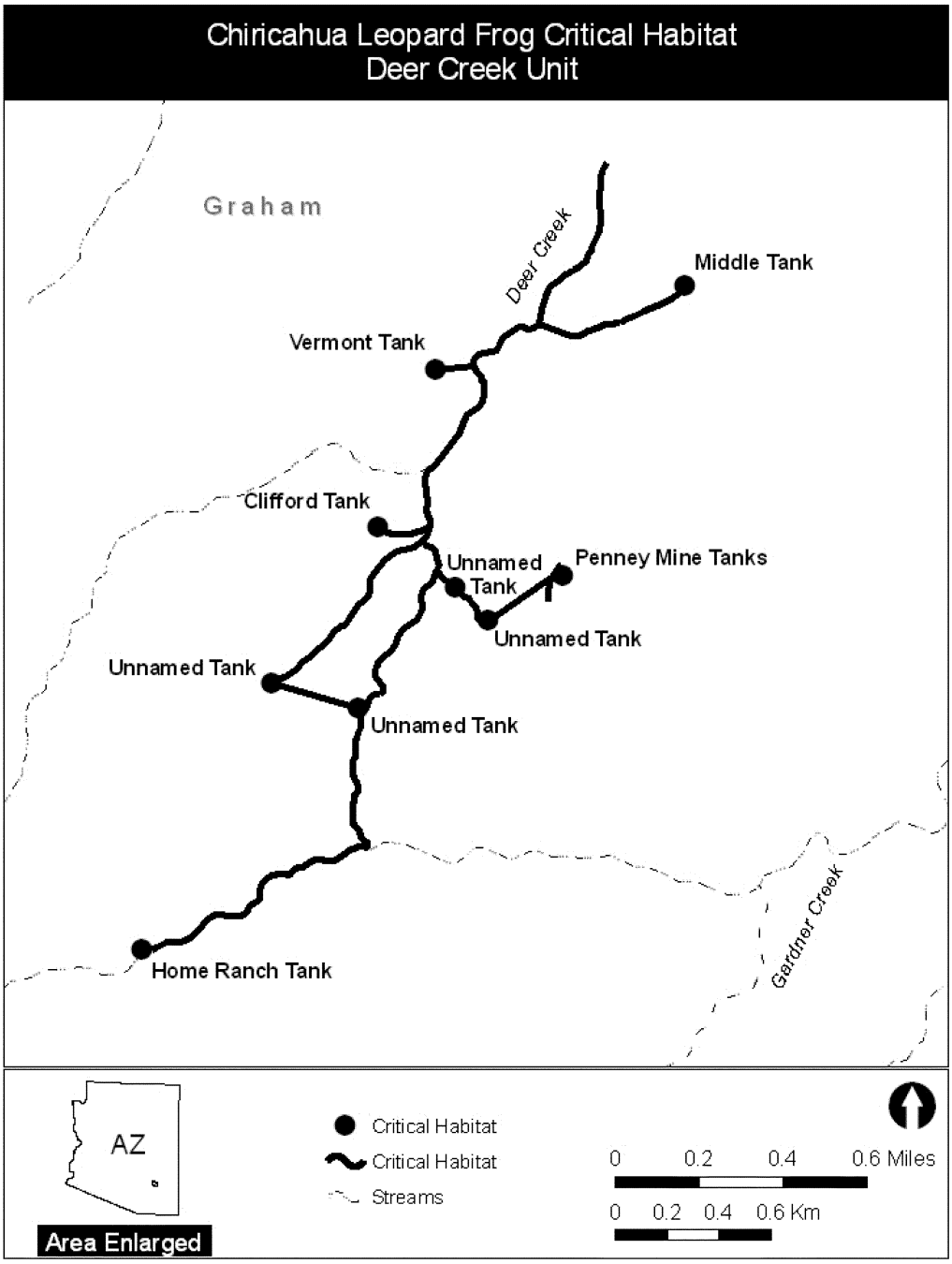
(vi) Deer Creek from a point where it exits a canyon and turns abruptly to the east (32.683937 N, 110.255290 W) upstream to its confluence with an unnamed drainage (32.673318 N, 110.262748 W); then upstream in that drainage to a confluence with four other drainages (32.671318 N, 110.262600 W); then upstream from that confluence in the western drainage to Clifford Tank (32.67130 N, 110.264877 W); then upstream from that confluence in the west-central drainage to an unnamed tank (32.666108 N, 110.269204 W); then directly overland southeast to another unnamed tank (32.665124 N, 110.265580 W); then downstream from that tank in an unnamed drainage to the aforementioned confluence (32.671318 N, 110.262600 W), and upstream in that unnamed drainage to a saddle (32.662529 N, 110.265717 W); then downstream from that saddle in an unnamed drainage to its confluence with an unnamed tributary to Gardner Creek (32.660409 N, 110.265303 W); and upstream in that unnamed tributary to Home Ranch Tank (32.656879 N, 110.274556 W), a distance of approximately 3.28 drainage miles (5.27 kilometers) and 1,216 feet (371 meters) overland.

(vii) From the largest of the Penney Mine Tanks (32.669696 N, 110.257652 W) directly overland to an unnamed tank (32.688150 N, 110.260309 W), and downstream in an unnamed drainage to the aforementioned confluence (32.671318 N, 110.262600 W), including another unnamed tank (32.669324 N, 110.261672 W) situated in that drainage, a distance of approximately 948 drainage feet (289 meters) and 1,051 feet (320 meters) overland.

(viii) From Vermont Tank (32.676883 N, 110.262404 W) directly overland for approximately 468 feet (143 meters) to Deer Creek (32.677037 N, 110.260815 W).

(ix) From Middle Tank (32.679691 N, 110.252180 W) upstream in an unnamed drainage to a saddle (32.677989 N, 110.256915 W), then directly downslope to Deer Creek (32.678307 N, 110.258257 W), an approximate drainage distance of 1,530 feet (466 meters) and 436 feet (133 meters) overland.

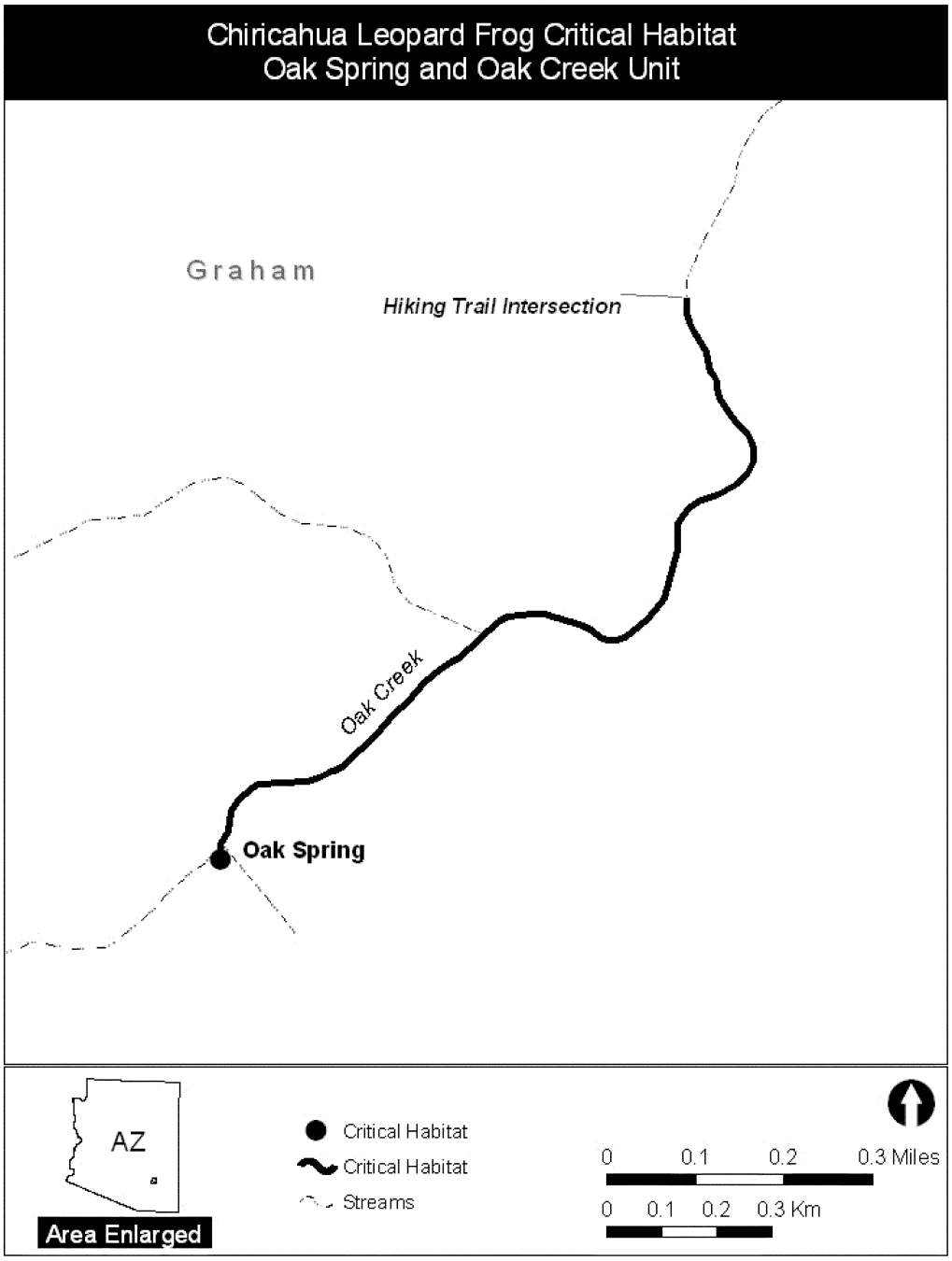
(x) **NOTE:** Map of Deer Creek Unit follows:


Chiricahua Leopard Frog Critical Habitat
Deer Creek Unit
Graham
Deer Creek
Middle Tank
Vermont Tank
Clifford Tank
Unnamed Tank
Penney Mine Tanks
Unnamed Tank
Unnamed Tank
Unnamed Tank
Gardner Creek
Home Ranch Tank
AZ
Area Enlarged
Critical Habitat
Critical Habitat
Streams
0 0.2 0.4 0.6 Miles
0 0.2 0.4 0.6 Km

(22) Oak Spring and Oak Creek Unit, Graham County, Arizona.

(i) Oak Creek from Oak Spring (32.673538 N, 110.293214 W) downstream to where a hiking trail intersects the creek (32.682618 N, 110.283915 W), an approximate stream distance of 1.06 miles (1.71 kilometers).

(ii) **NOTE:** Map of Oak Spring and Oak Creek Unit follows:



(23) Dragoon Mountains Unit, Cochise County, Arizona.

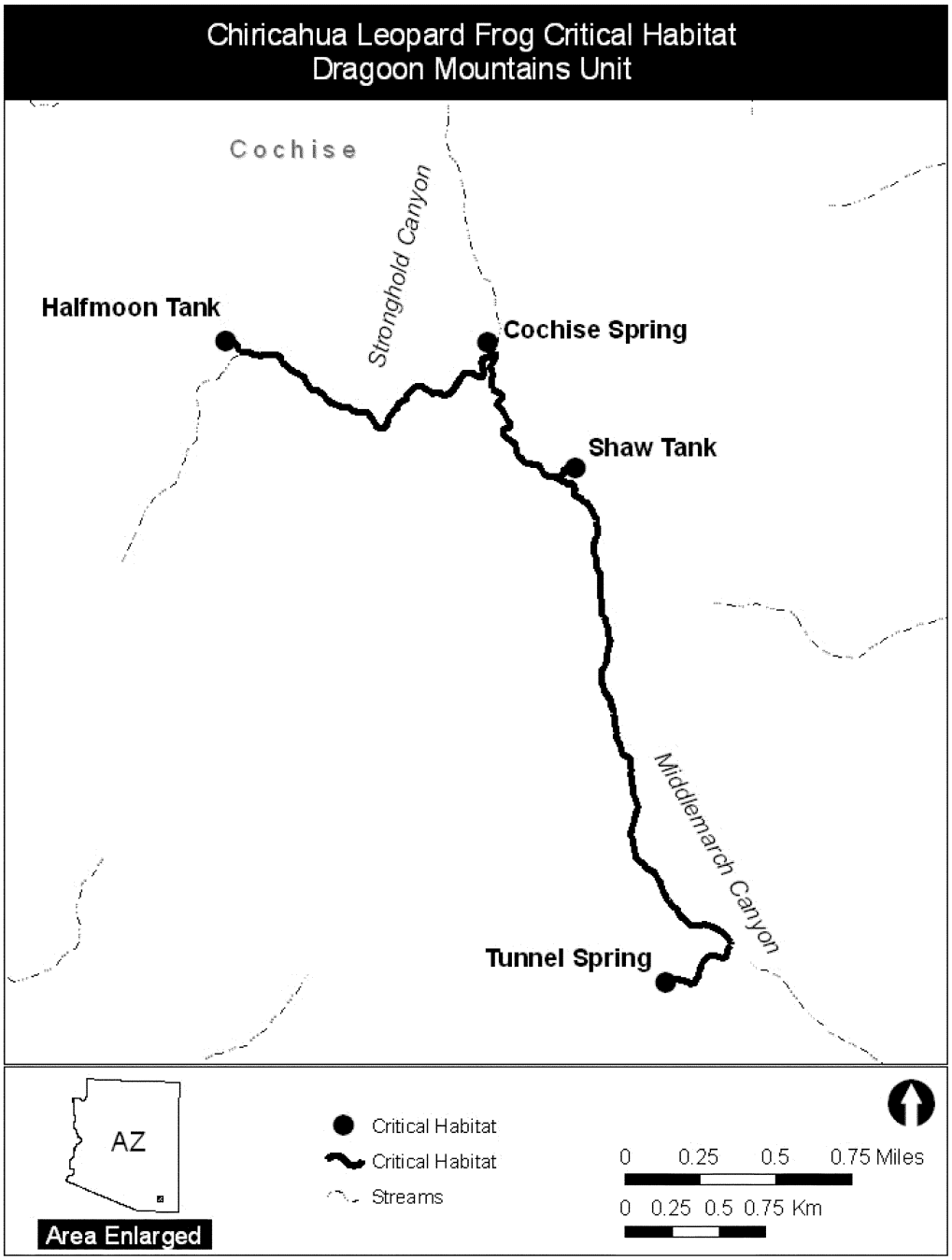
(i) Shaw Tank (31.906230 N, 109.958350 W).

(ii) Tunnel Spring (31.881018 N, 109.948182 W).

(iii) Halfmoon Tank (31.912453 N, 109.977963 W).

(iv) Stronghold Canyon from Halfmoon Tank (31.912453 N, 109.977963 W) downstream to Cochise Spring (31.912026 N, 109.963266 W), then upstream in an unnamed canyon to Shaw Tank (31.906230 N, 109.958350 W), and continuing upstream to the headwaters of that unnamed canyon (31.898491 N, 109.956589 W), then across a saddle and directly downslope to Middlemarch Canyon (31.894591 N, 109.956429 W), downstream in Middlemarch Canyon to its confluence with an unnamed drainage (31.883322 N, 109.949925 W), then upstream in that drainage to Tunnel Spring (31.881018 N, 109.948182 W), an approximate distance of 3.71 drainage miles (5.97 kilometers) and 1,300 feet (396 meters) overland.

(v) **NOTE:** Map of Dragoon Mountains Unit follows:



(24) Buckskin Hills Unit, Yavapai County, Arizona.

(i) Sycamore Basin Tank (34.481619 N, 111.641676 W).

(ii) Middle Tank (34.473076 N, 111.624488 W).

(iii) Walt's Tank (34.455959 N, 111.638497 W).

(iv) Partnership Tank (34.452241 N, 111.646271 W).

(v) Black Tank (34.462968 N, 111.623554 W).

(vi) Buckskin Tank (34.472660 N, 111.652468 W).

(vii) Doren's Defeat Tank (34.446271 N, 111.641269 W).

(viii) Needed Tank (34.461023 N, 111.631271 W).

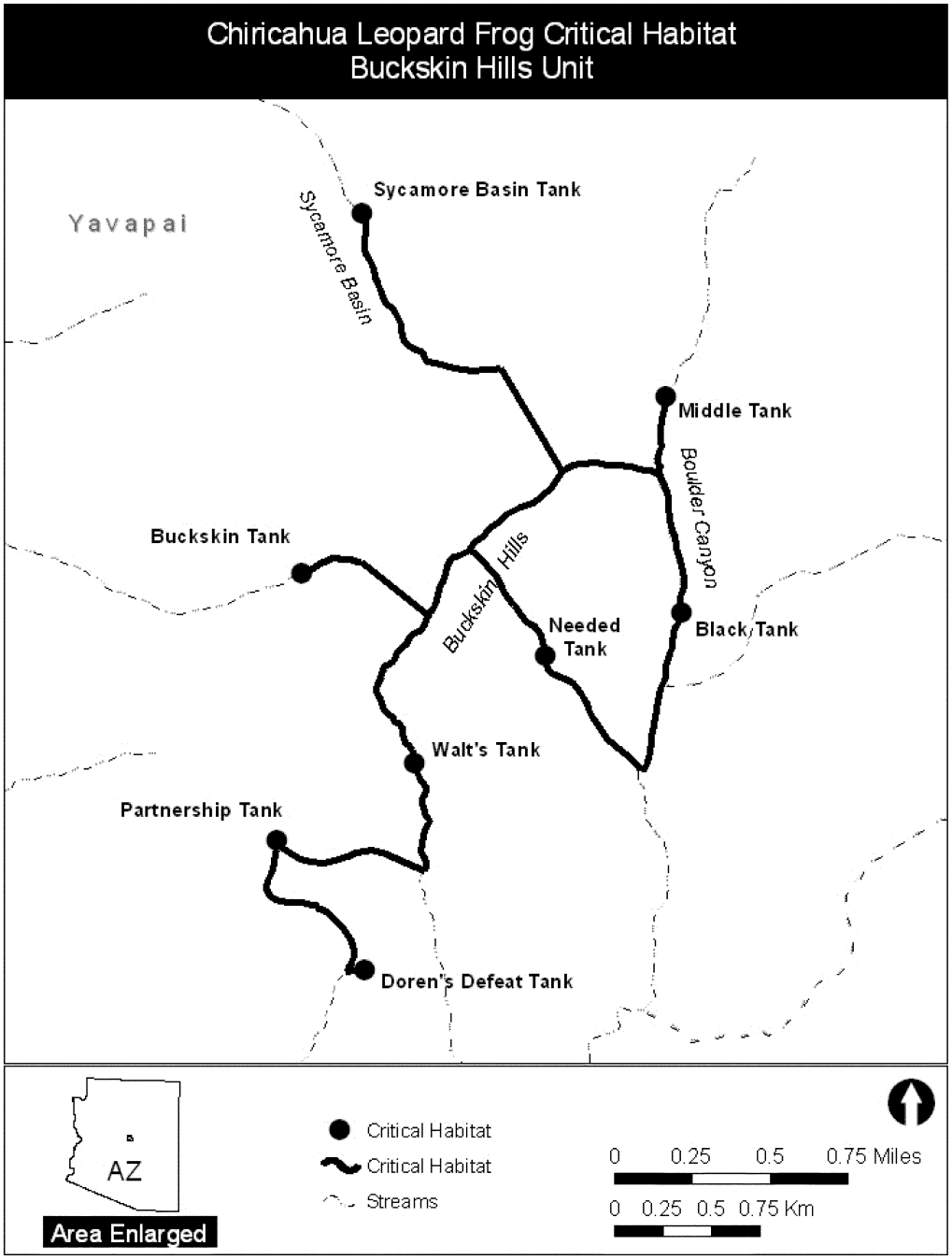
(ix) From Middle Tank (34.473076 N, 111.624488 W) downstream in Boulder Canyon to its confluence with an unnamed drainage that comes in from the northwest (34.455688 N, 111.625895 W), to include Black Tank (34.462968 N, 111.623554 W); then upstream in that unnamed drainage to a saddle (34.464120 N, 111.633633 W), to include Needed Tank (34.461023 N, 111.631271 W); then downstream from the saddle in an unnamed drainage to its confluence with another unnamed drainage (34.466209 N, 111.636096); then downstream in that drainage to the confluence with an unnamed drainage (34.450688 N, 111.638111 W), to include Walt's Tank (34.455959 N, 111.638497 W), and upstream in that unnamed drainage to Partnership Tank (34.452241 N, 111.646271 W); then upstream from the aforementioned confluence (34.466209 N, 111.636096) in the unnamed drainage that includes Walt's Tank to a point where the drainage turns east towards Boulder Canyon (34.469911 N, 111.630080 W), an approximate distance of 3.65 drainage miles (5.87 kilometers) and 425 feet (130 meters) overland.

(x) From Doren's Defeat Tank (34.446271 N, 111.641269 W) upstream in an unnamed drainage to Partnership Tank (34.452241 N, 111.646271 W), an approximate drainage distance of 3,310 feet (1,009 meters).

(xi) From the confluence of an unnamed drainage with Boulder Canyon (34.469515 N, 111.624979 W) west to a point where the drainage turns southwest (34.469911 N, 111.630080 W), then directly overland to the top of Sycamore Basin (34.473970 N, 111.633584 W), and then downstream in Sycamore Basin to Sycamore Basin Tank (34.481619 N, 111.641676 W), an approximate distance of 4,658 drainage feet (1,420 meters) and 1,827 feet (557 meters) overland.

(xii) From Buckskin Tank upstream in an unnamed drainage to the top of that drainage (34.465121 N, 111.641428 W), then directly overland to an unnamed drainage (34.462851 N, 111.637797 W) that contains Walt's Tank, an approximate distance of 1,109 drainage feet (338 meters) and 1,429 feet (435 meters) overland.

(xiii) **NOTE:** Map of Buckskin Hills Unit follows:



(25) Crouch, Gentry, and Cherry Creeks, and Parallel Canyon Unit, Gila County, Arizona.

(i) Trail Tank (34.176747 N, 110.812383 W).

(ii) HY Tank (34.148580 N, 110.831331 W).

(iii) Carroll Spring (34.133090 N, 110.838673 W).

(iv) West Prong of Gentry Creek from the confluence with an unnamed drainage (34.133243 N, 110.827755 W) downstream to a point (34.123475 N, 110.827872 W) where the creek turns southwest and is directly east of a saddle, then west overland across that saddle to Cunningham Spring (34.121883 N, 110.841424 W), an approximate distance of 3,837 drainage feet (1,169 meters) and 1,883 feet (574 meters) overland.

(v) Pine Spring (34.148580 N, 110.831331 W).

(vi) Bottle Spring (34.145180 N, 110.837515 W).

(vii) Cherry Creek from Rock Spring (34.155505 N, 110.852478 W) upstream to its confluence with an unnamed drainage (34.166956 N, 110.815587 W), then upstream in that drainage and across a saddle (34.176129 N, 110.808920 W), then downstream in an unnamed drainage to Trail Tank (34.176747 N, 110.812383 W), an approximate distance of 3.77 drainage miles (6.07 kilometers) and 975 feet (297 meters) overland.

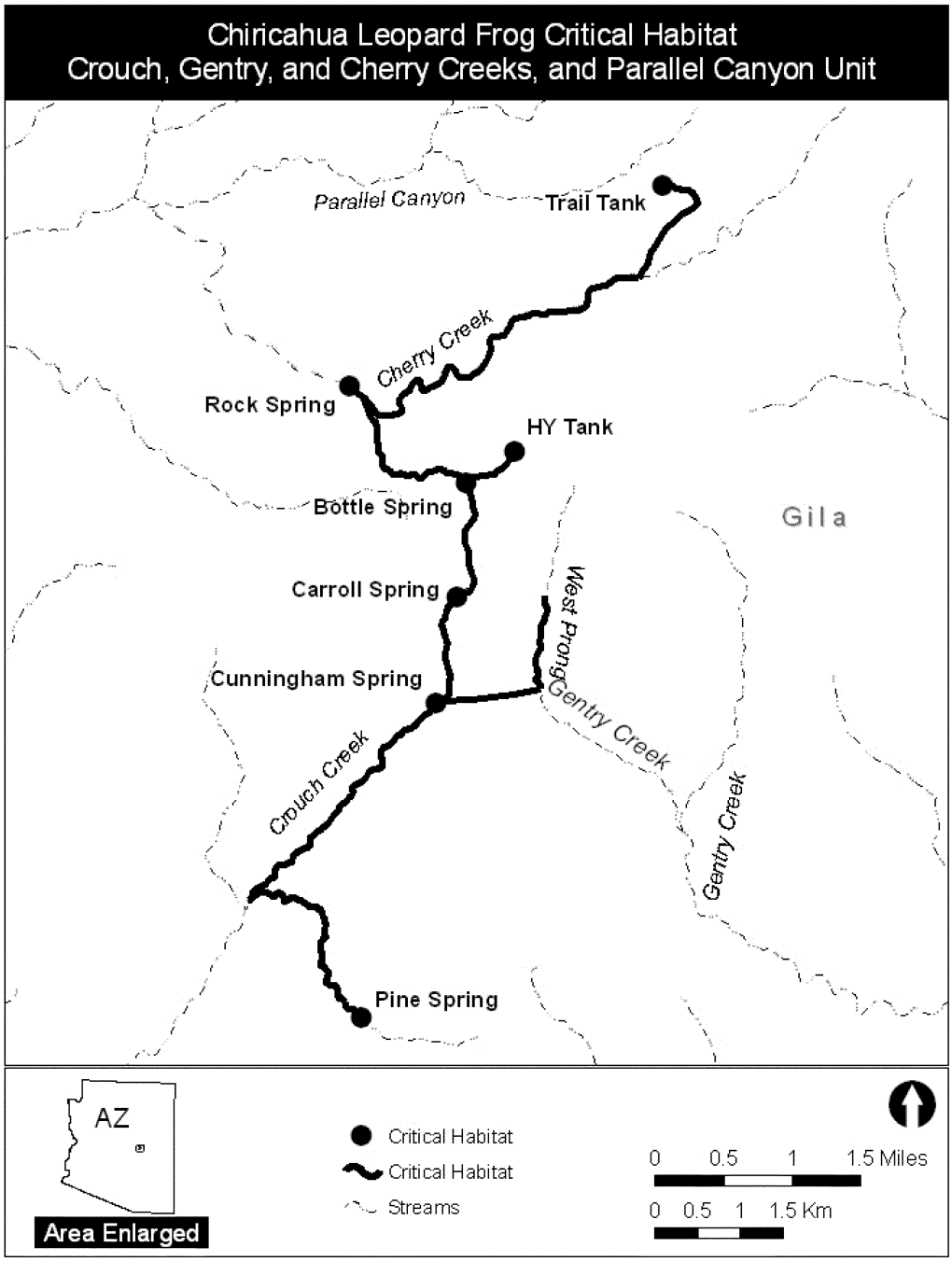
(viii) Crouch Creek from its headwaters just south of Highway 288 (34.143151 N, 110.836876 W) downstream to an unnamed drainage leading to Pine Spring (34.102235 N, 110.864341 W), to include Cunningham Spring and Carroll Spring; then upstream in that unnamed drainage from Crouch Creek to Pine Spring (34.148580 N, 110.831331 W), an

approximate drainage distance of 5.48 miles (8.82 kilometers).

(ix) From HY Tank (34.176747 N, 110.812383 W) downstream in an unnamed drainage to its confluence with Cherry Creek (34.154309 N, 110.85077 W), to include Bottle Spring (34.145180 N, 110.837515 W), an approximate stream distance of 1.66 miles (2.67 kilometers).

(x) From Bottle Spring (34.145180 N, 110.837515 W) south over a low saddle to the headwaters of Crouch Creek (34.143151 N, 110.836876 W), an approximate distance of 762 feet (232 meters) overland.

(xi) **NOTE:** Map of Crouch, Gentry, and Cherry Creeks, and Parallel Canyon Unit follows:



(26) Ellison and Lewis Creeks Unit, Gila County, Arizona.

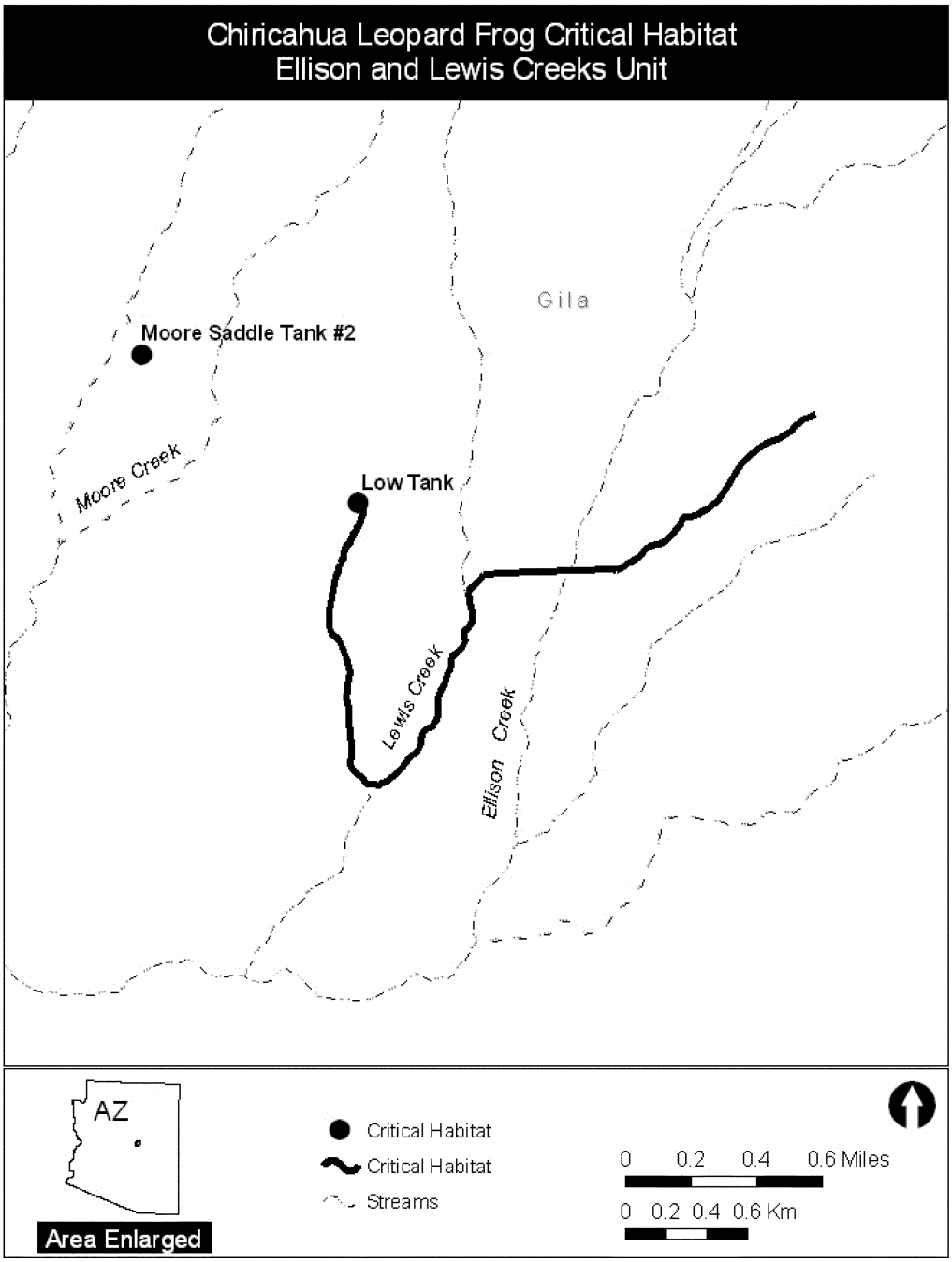
(i) Moore Saddle Tank #2 (34.374063 N, 111.205040 W).

(ii) Low Tank (34.36768 N, 111.19347 W).

(iii) Unnamed tributary to Ellison Creek from its confluence with an unnamed drainage (34.371458 N, 111.169111 W) downstream to Ellison Creek below Pyle Ranch (34.364667 N, 111.179966 W), then directly west across the Ellison Creek floodplain and over a low saddle to Lewis Creek below Pyle Ranch (34.364391 N, 111.186742 W), then downstream in Lewis Creek to its confluence with an unnamed drainage (34.354912 N, 111.192547 W), and then upstream in that unnamed drainage to Low Tank (34.36768 N,

111.19347 W), an approximate distance of 2.52 drainage miles (4.05 kilometers) and 1,070 feet (326 meters) overland.

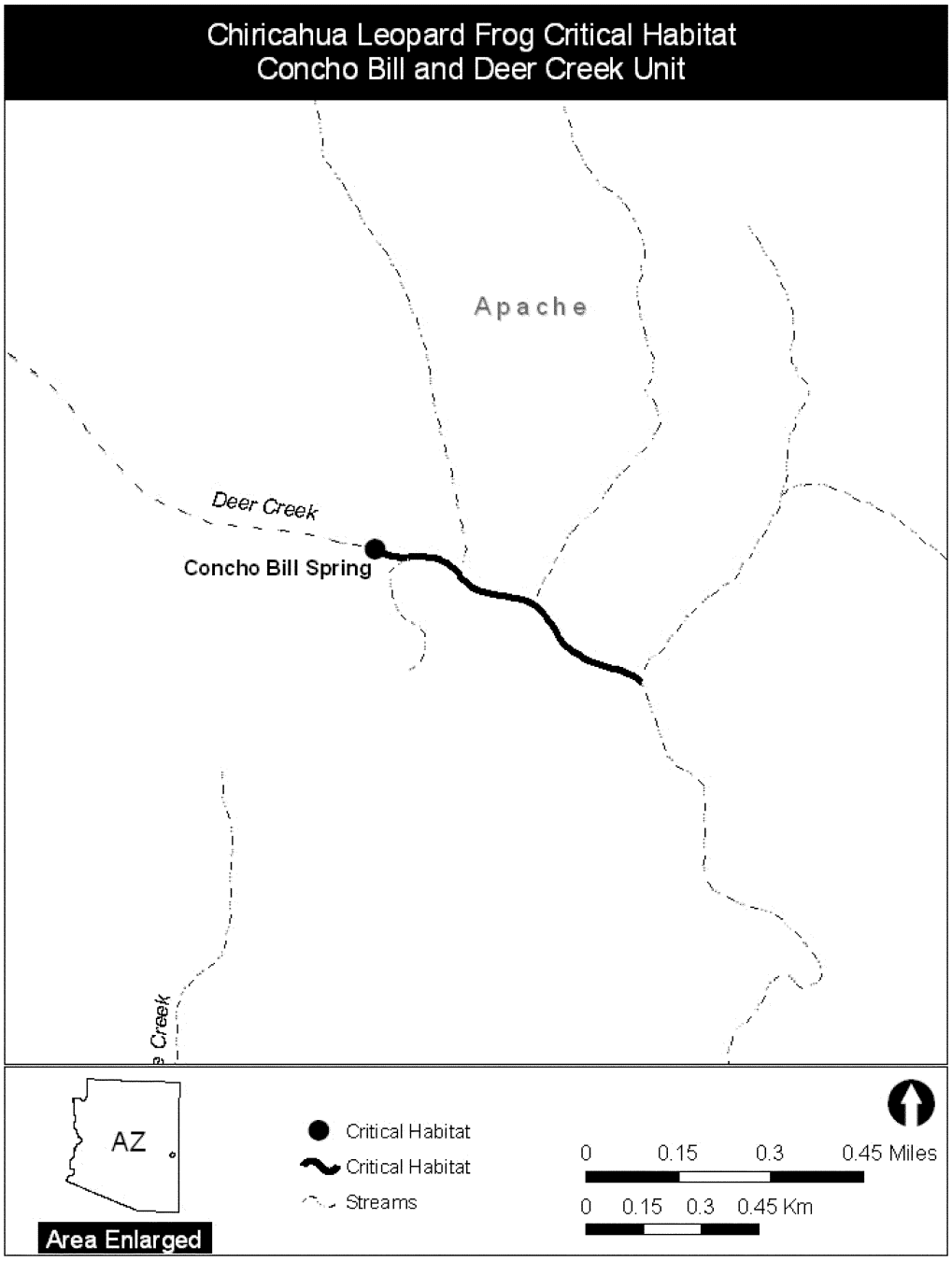
(iv) **NOTE:** Map of Ellison and Lewis Creeks Unit follows:



(27) Concho Bill and Deer Creek Unit, Apache County, Arizona.

(i) From Concho Bill Spring (33.830088 N, 109.366540 W) downstream in Deer Creek to its confluence with an unnamed drainage (33.827115 N, 109.359495 W), an approximate drainage distance of 2,667 feet (813 meters).

(ii) **NOTE:** Map of Concho Bill and Deer Creek Unit follows:

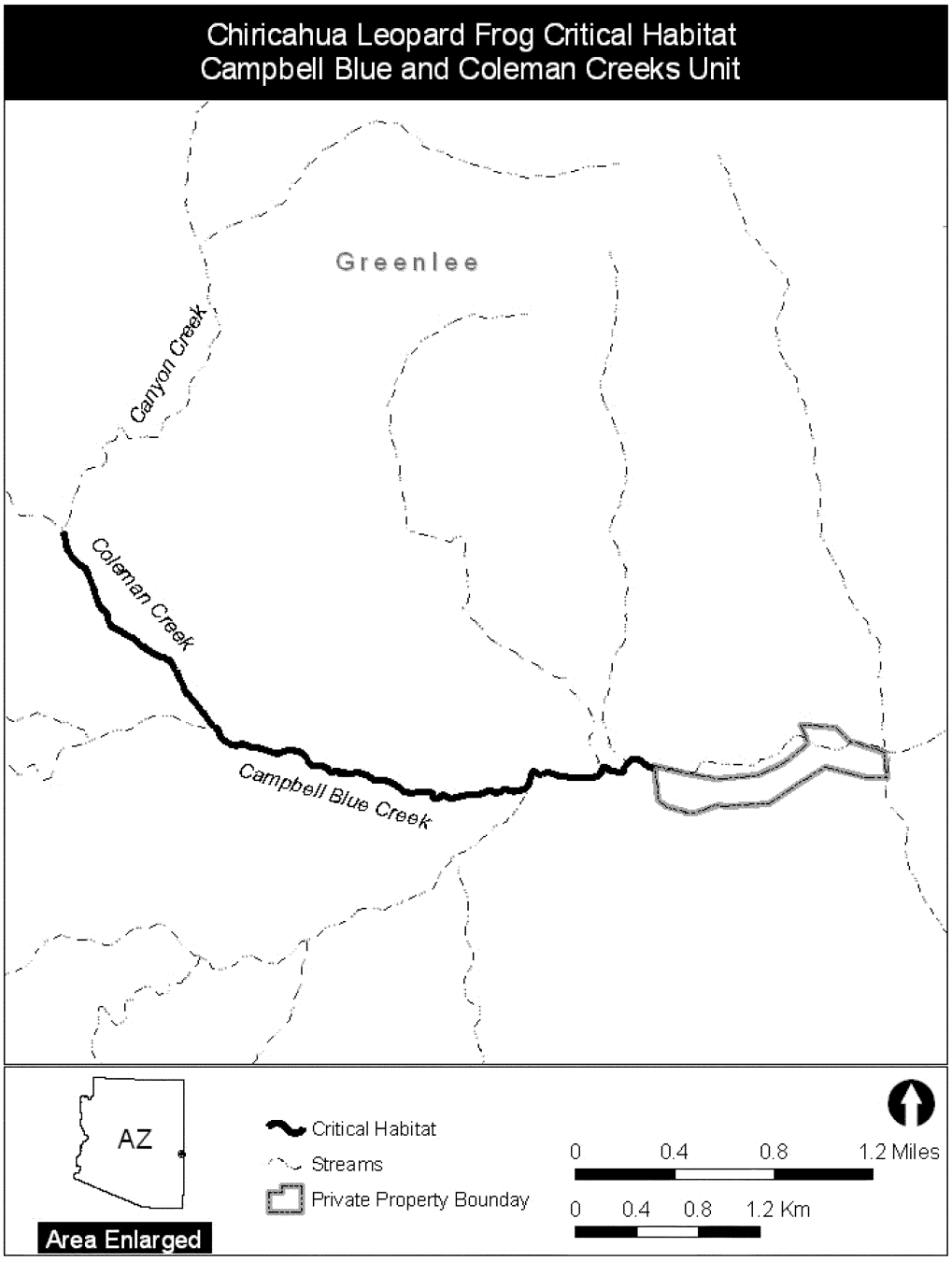


(28) Campbell Blue and Coleman Creeks Unit, Greenlee County, Arizona.

(i) Campbell Blue Creek from the upstream boundary of Luce Ranch (33.735956 N, 109.127746 W) upstream to its confluence with Coalman Creek (33.738560 N, 109158679 W), an approximate stream distance of 2.04 miles (3.28 kilometers).

(ii) Coleman Creek from its confluence with Campbell Blue Creek (33.738560 N, 109158679 W) upstream to its confluence with Canyon Creek (33.750139 N, 109.168850 W), an approximate stream distance of 1.04 miles (1.68 kilometers).

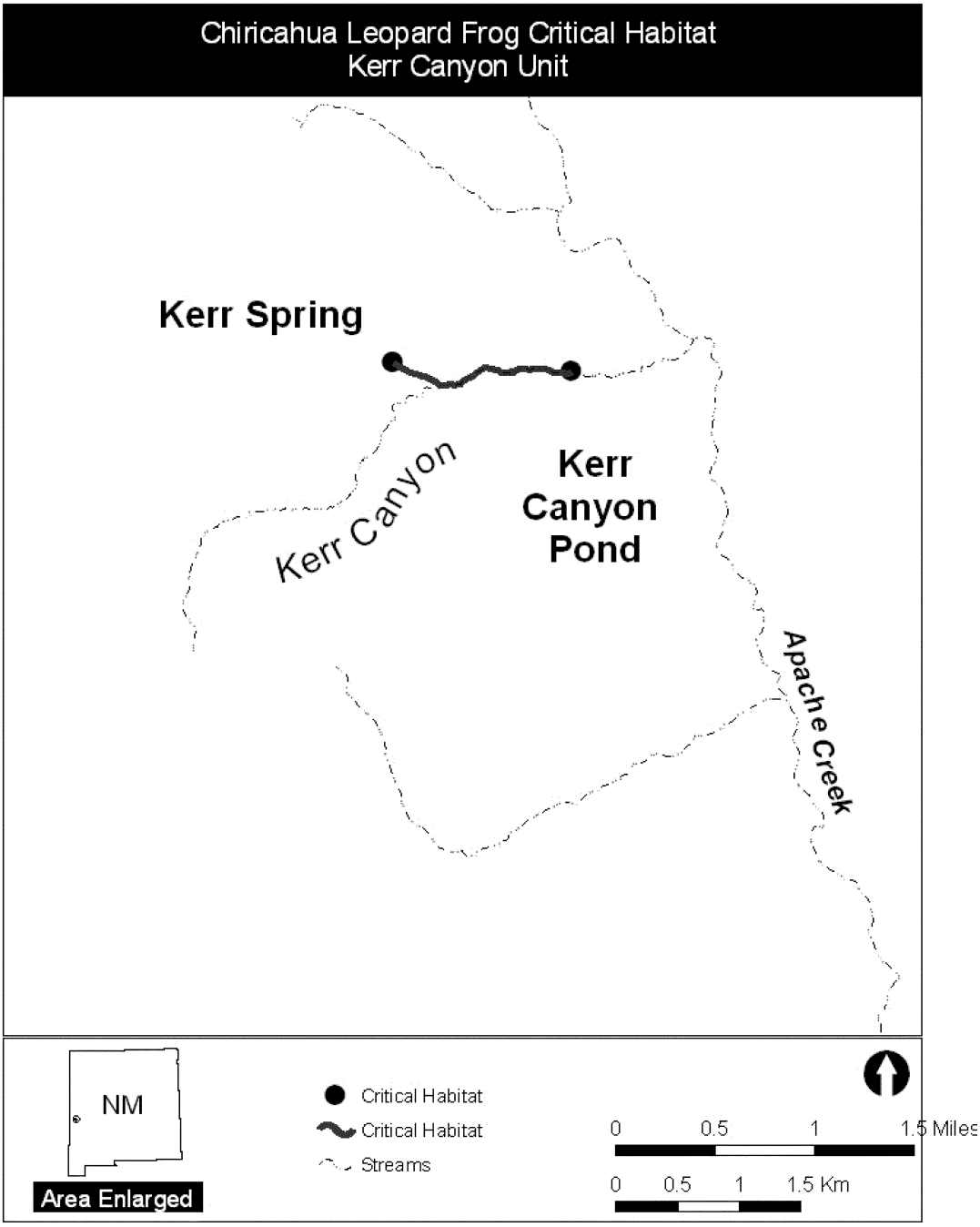
(iii) **NOTE:** Map of Campbell Blue and Coleman Creeks Unit follows:



(29) Kerr Canyon Unit, Catron County, New Mexico.

(i) From Kerr Spring (33.900561 N, 108.664732 W) downstream in unnamed drainage in Kerr Canyon to Kerr Canyon Pond (33.649088 N, 108.517011 W), a distance of approximately 0.98 drainage miles (1.58 km).

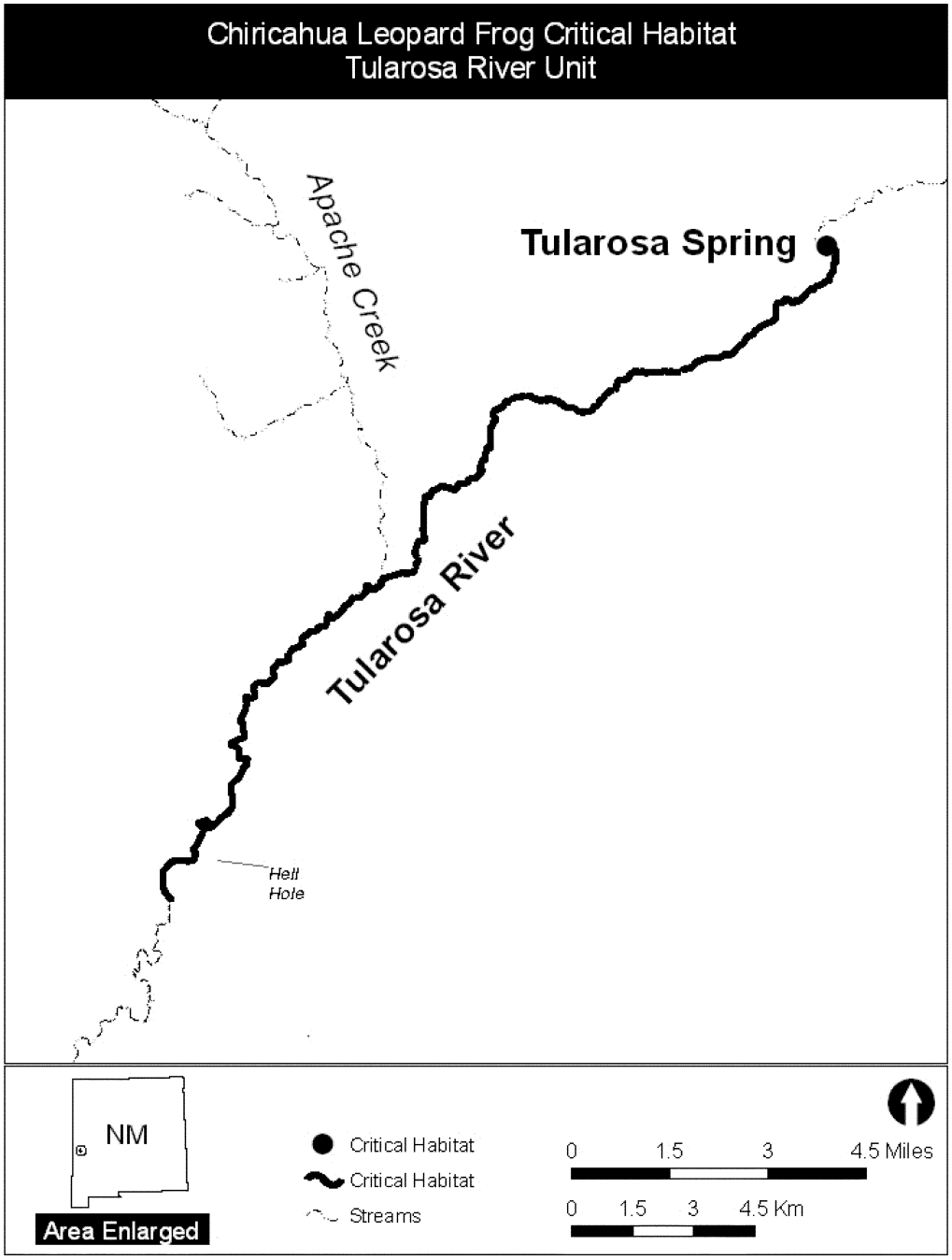
(ii) **NOTE:** Map of Kerr Canyon Unit follows:



(30) Tularosa River Unit, Catron County, New Mexico.

(i) Tularosa River from the upper end of Tularosa Spring (33.903798 N, 108.501926 W) downstream to the entrance to the canyon downstream of Hell Hole (33.762737 N, 108.681551 W), an approximate river distance of 19.31 miles (31.08 kilometers).

(ii) **NOTE:** Map of Tularosa River Unit follows:



(31) Deep Creek Divide Area Unit, Catron County, New Mexico.

(i) Long Mesa Tank (33.551664 N, 108.686841 W).

(ii) Cullum Tank (33.554864 N, 108.676961 W).

(iii) Burro Tank (33.571146 N, 108.638682 W).

(iv) North Fork of Negrito Creek from its confluence with South Fork of Negrito Creek (33.607082 N, 108.631340 W) upstream to its confluence with an unnamed drainage (33.612529 N, 108.614731 W), an approximate stream distance of 1.37 miles (2.20 kilometers).

(v) South Fork of Negrito Creek from its confluence with North Fork of Negrito Creek (33.607082 N, 108.631340 E) upstream to an impoundment (33.599047 N, 108.621300 W), including three other impoundments along the channel (33.601890 N, 108.622227 W; 33.602845 N, 108.622764 W; and 33.603810 N, 108.623971 W), an approximate stream distance of 4,821 feet (1,469 meters).

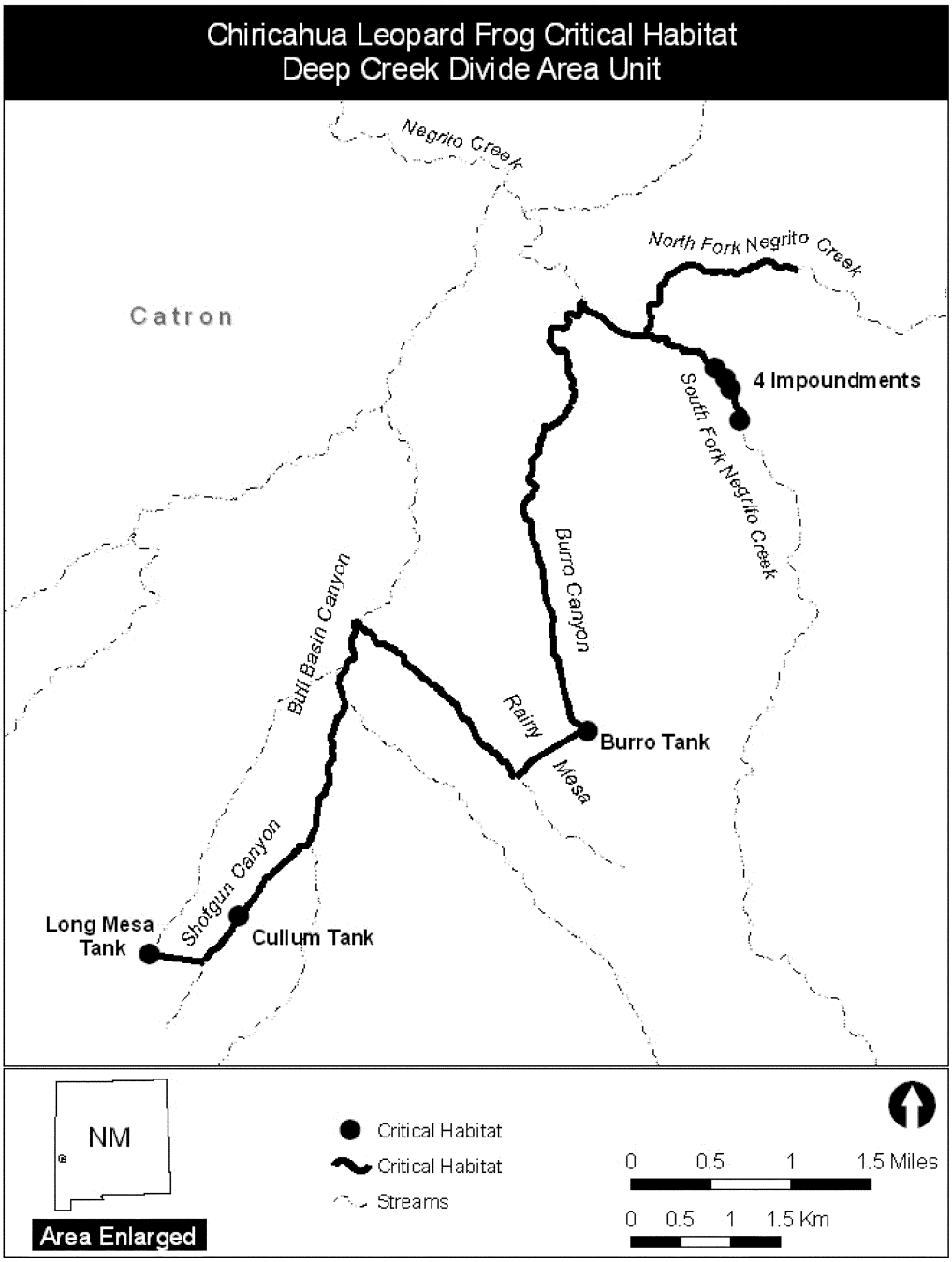
(vi) From Burro Tank (33.571146 N, 108.638682 W) downstream in Burro Canyon to Negrito Creek (22.609589 N, 108.638448 W), then upstream in

Negrito Creek to the confluence of North and South Forks of Negrito Creeks (33.607082 N, 108.631340 W), an approximate stream distance of 3.80 miles (6.12 kilometers).

(vii) From Long Mesa Tank (33.551664 N, 108.686841 W) directly overland and east to Shotgun Canyon (33.550816 N, 108.681110 W), then downstream in that canyon to Cullum Tank (33.554864 N, 108.676961 W), an approximate distance of 2,003 drainage feet (610 meters) and 1,801 feet (549 meters) overland.

(viii) From Cullum Tank (33.554864 N, 108.676961 W) downstream in Shotgun and Bull Basin Canyons to a confluence with an unnamed drainage (33.581626 N, 108.663624 W), then upstream in that drainage to the confluence with a minor drainage leading off Rainy Mesa from the east-northeast (33.567121 N, 108.646776 W), then upstream in that drainage and directly east-northeast across Rainy Mesa to Burro Tank (33.571146 N, 108.638682 W), an approximate distance of 3.88 drainage miles (6.24 kilometers) and 1,863 feet (568 meters) overland.

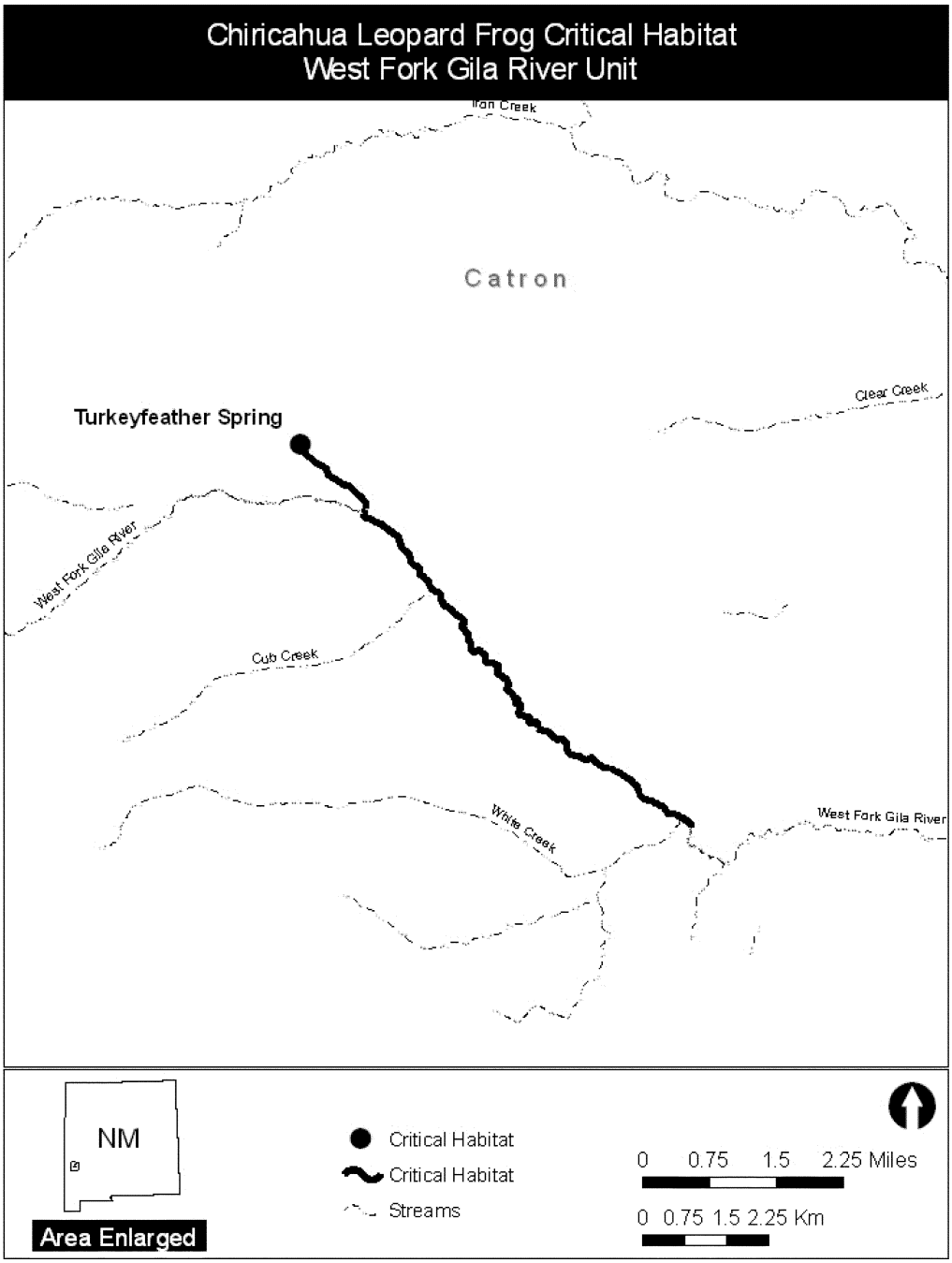
(ix) **NOTE:** Map of Deep Creek Divide Area Unit follows:



(32) West Fork Gila River Unit, Catron County, New Mexico.

(i) From Turkeyfeather Spring (33.337486 N, 108.528607 W) downstream in Turkeyfeather Creek to its confluence with West Fork Gila River (33.32593 N, 108.517011 W), then downstream and southeast in West Fork Gila River to its confluence with White Creek (33.3274675 N, 108.4925 W), a distance of approximately 6.97 drainage miles (11.22 km).

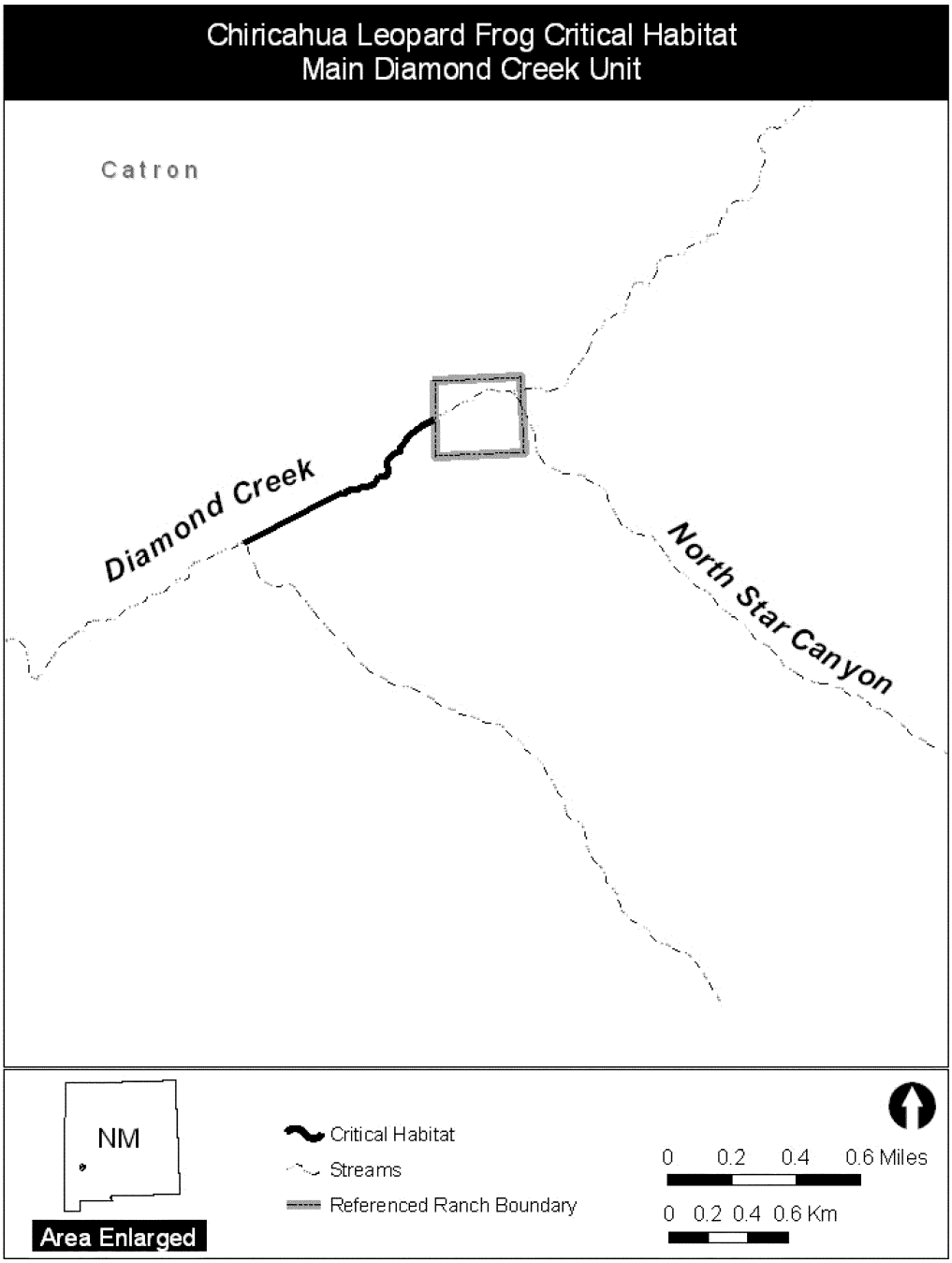
(ii) **NOTE:** Map of West Fork Gila River Unit follows:



(33) Main Diamond Creek Unit, Catron County, New Mexico.

(i) Main Diamond Creek, from the downstream boundary of Links Ranch (33.269512 N, 108.105542 W) downstream to the confluence with an unnamed drainage that comes in from the south, which is also where Main Diamond Creek enters a canyon (33.264514 N, 108.116019 W), an approximate stream distance of 3,980 feet (1,213 meters).

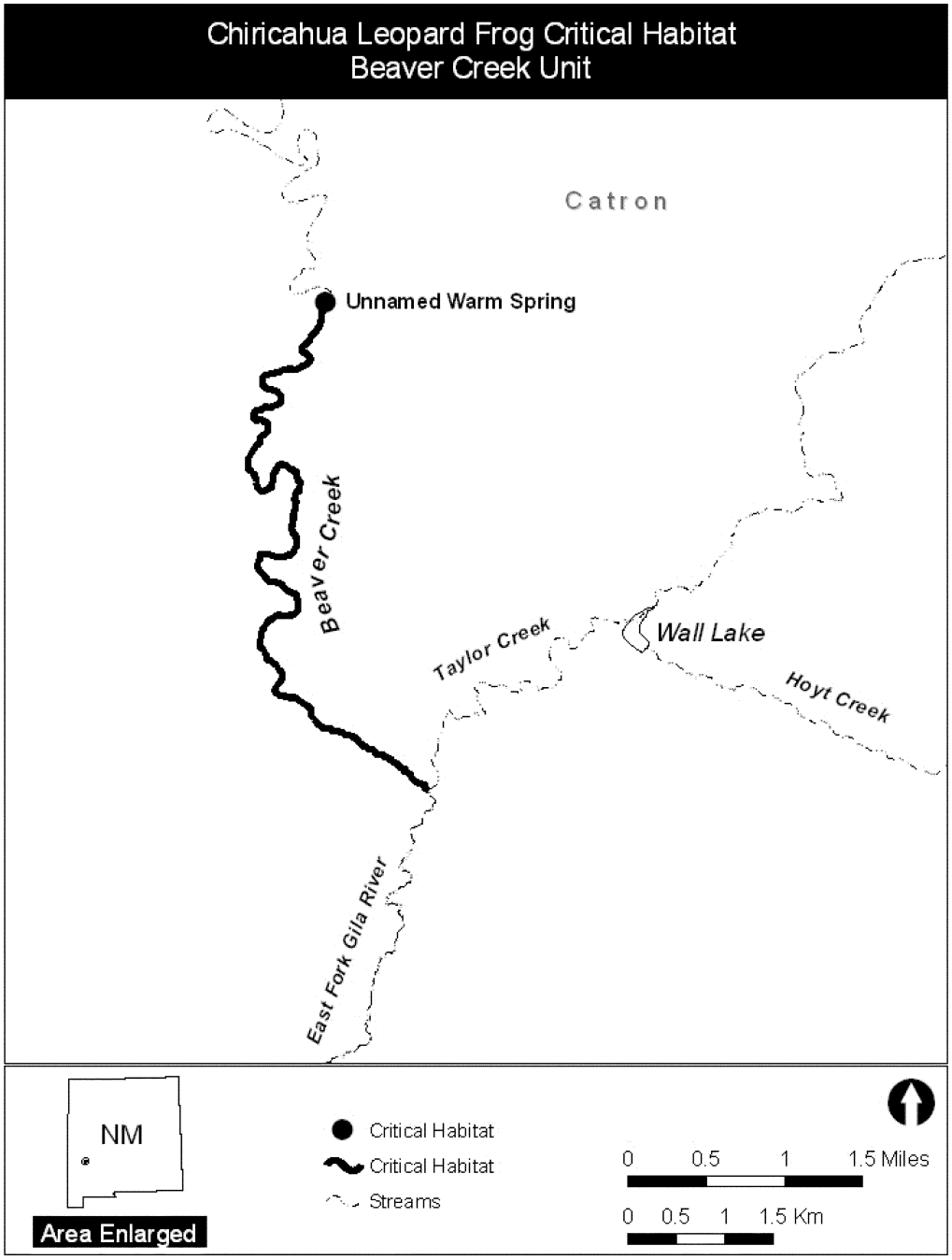
(ii) **NOTE:** Map of Main Diamond Creek Unit follows:



(34) Beaver Creek Unit, Catron County, New Mexico.

(i) Beaver Creek from an unnamed warm spring (33.380952 N, 108.111761 W) downstream to its confluence with Taylor Creek (33.334694 N, 108.101543 W), an approximate stream distance of 5.59 miles (8.89 kilometers).

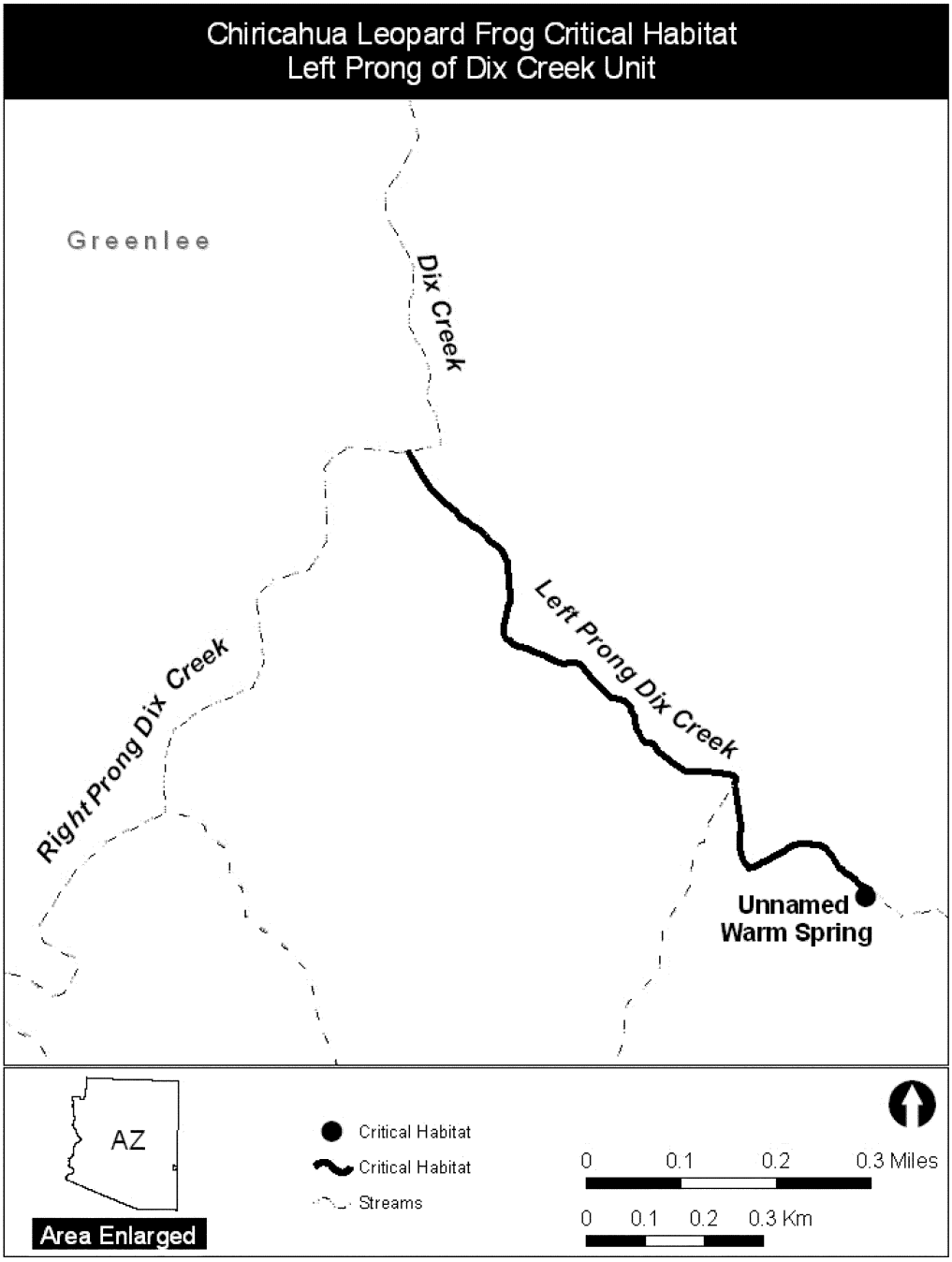
(ii) **NOTE:** Map of Beaver Creek Unit follows:



(35) Left Prong of Dix Creek Unit, Greenlee County, Arizona.

(i) Left prong of Dix Creek from an unnamed warm spring (33.179413 N, 109.149176 W) above ''The Hole'' downstream to its confluence with the right prong of Dix Creek (33.186657 N, 109.157754 W), an approximate stream distance of 4,248 feet (1,295 meters).

(ii) **NOTE:** Map of Left Prong of Dix Creek Unit follows:



(36) Rattlesnake Pasture Tank and Associated Tanks Unit, Greenlee County, Arizona.

(i) Rattlesnake Pasture Tank (33.093987 N, 109.151714 W).

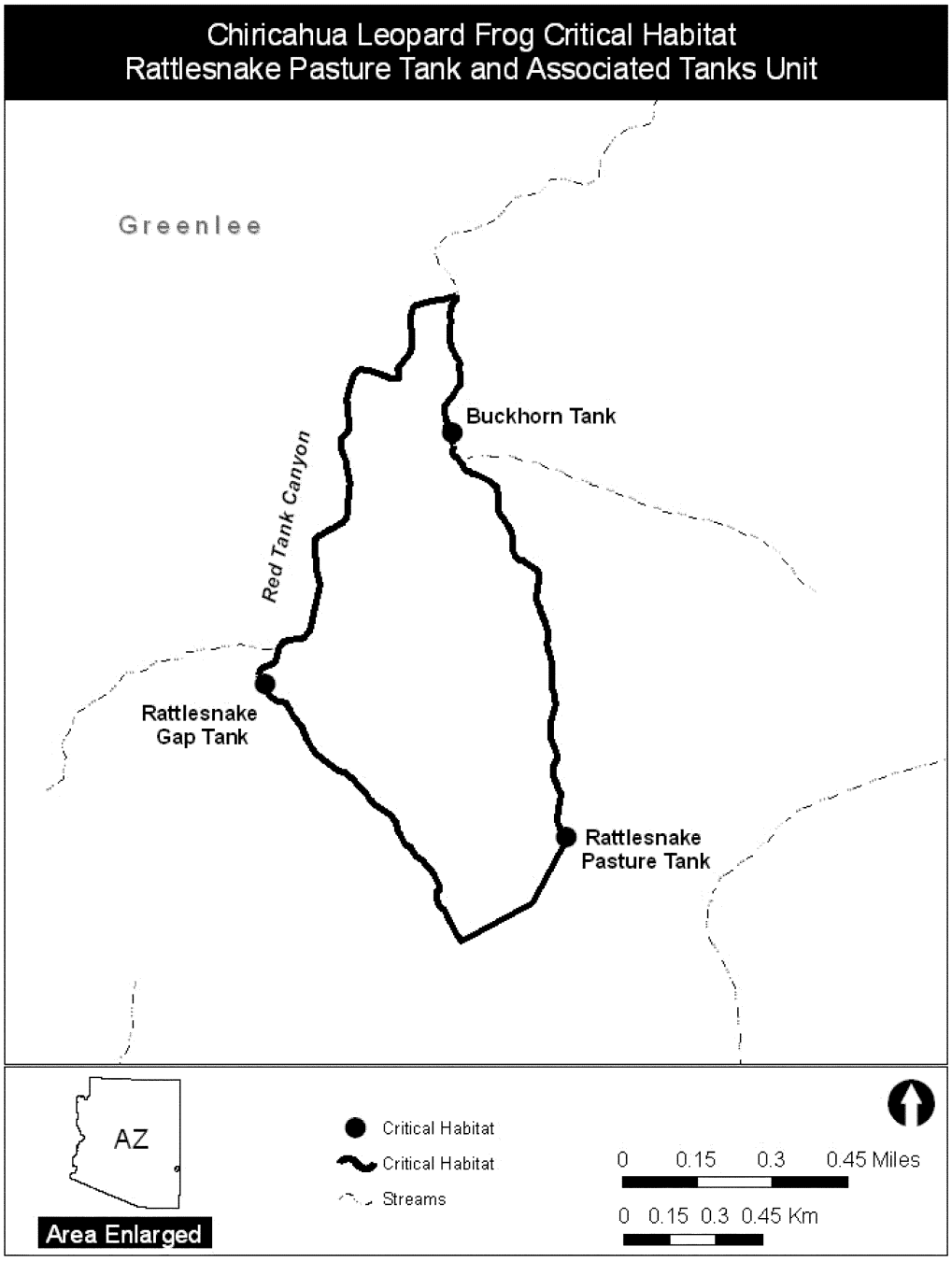
(ii) Rattlesnake Gap Tank (33.098497 N, 109.162152 W).

(iii) Buckhorn Tank (33.105613 N, 109.155506 W).

(iv) From Rattlesnake Pasture Tank (33.093987 N, 109.151714 W) downstream in an unnamed drainage to its confluence with Red Tank Canyon (33.109603 N, 109.155549 W), to include Buckhorn Tank (33.105613 N, 109.155506 W); then upstream in Red Tank Canyon to Rattlesnake Gap Tank (33.098497 N, 109.162152 W), an approximate drainage distance of 2.27 miles (3.65 kilometers).

(v) From Rattlesnake Gap Tank (33.098497 N, 109.162152 W) upstream in an unnamed drainage to its confluence with a minor drainage (33.090898 N, 109.155386 W), then directly upslope to a saddle (33.091771 N, 109.152380), and across that saddle and directly downslope to Rattlesnake Pasture Tank (33.093987 N, 109.151714 W), an approximate distance of 3,722 drainage feet (1,134 meters) and 1,645 feet (501 meters) overland.

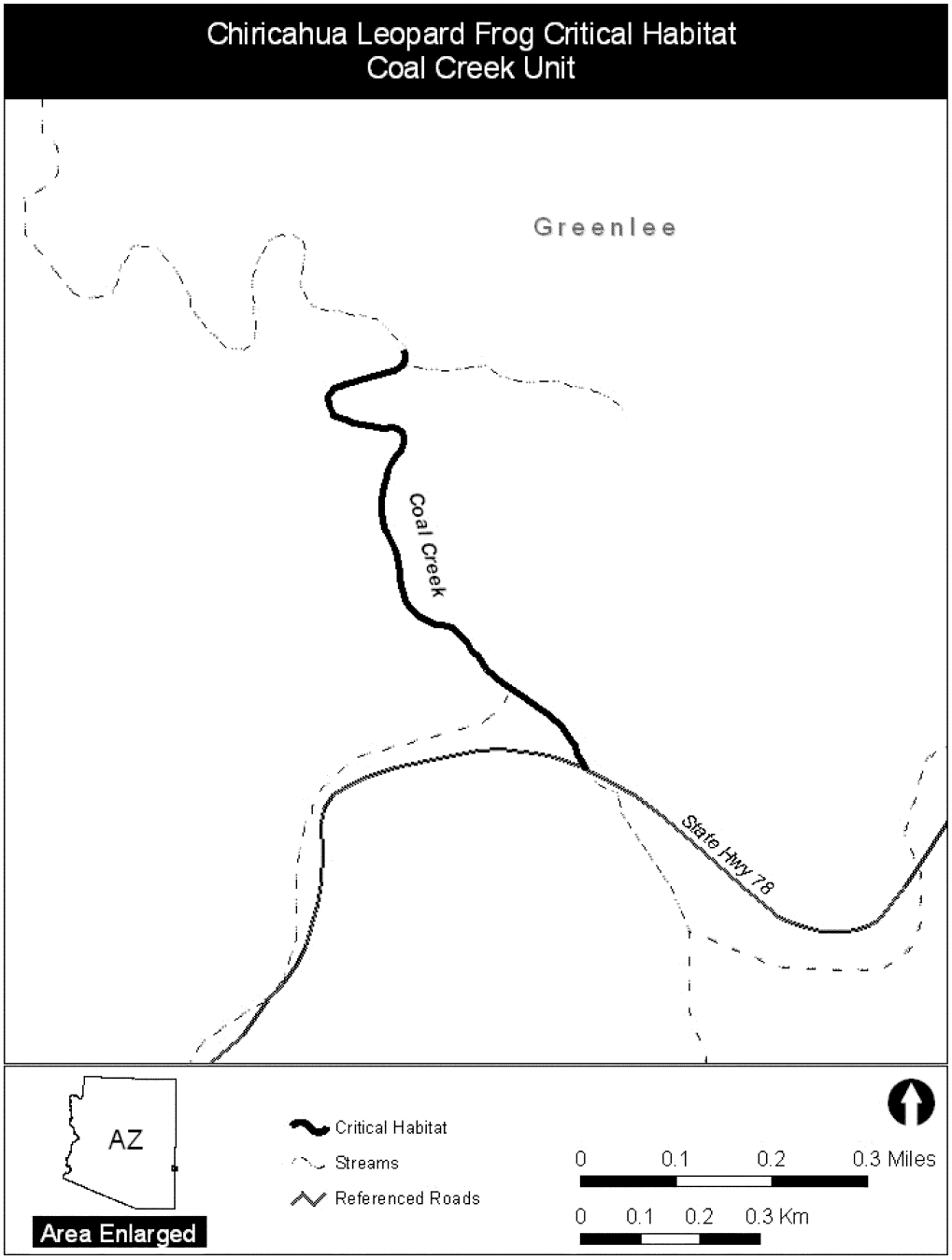
(vi) **NOTE:** Map of Rattlesnake Pasture Tank and Associated Tanks Unit follows:



(37) Coal Creek Unit, Greenlee County, Arizona.

(i) Coal Creek from the Highway 78 crossing (33.103667 N, 109.062458 W) downstream to the confluence with an unnamed drainage (33.110025 N, 109.065847 W), an approximate stream distance of 3,447 feet (1,051 meters).

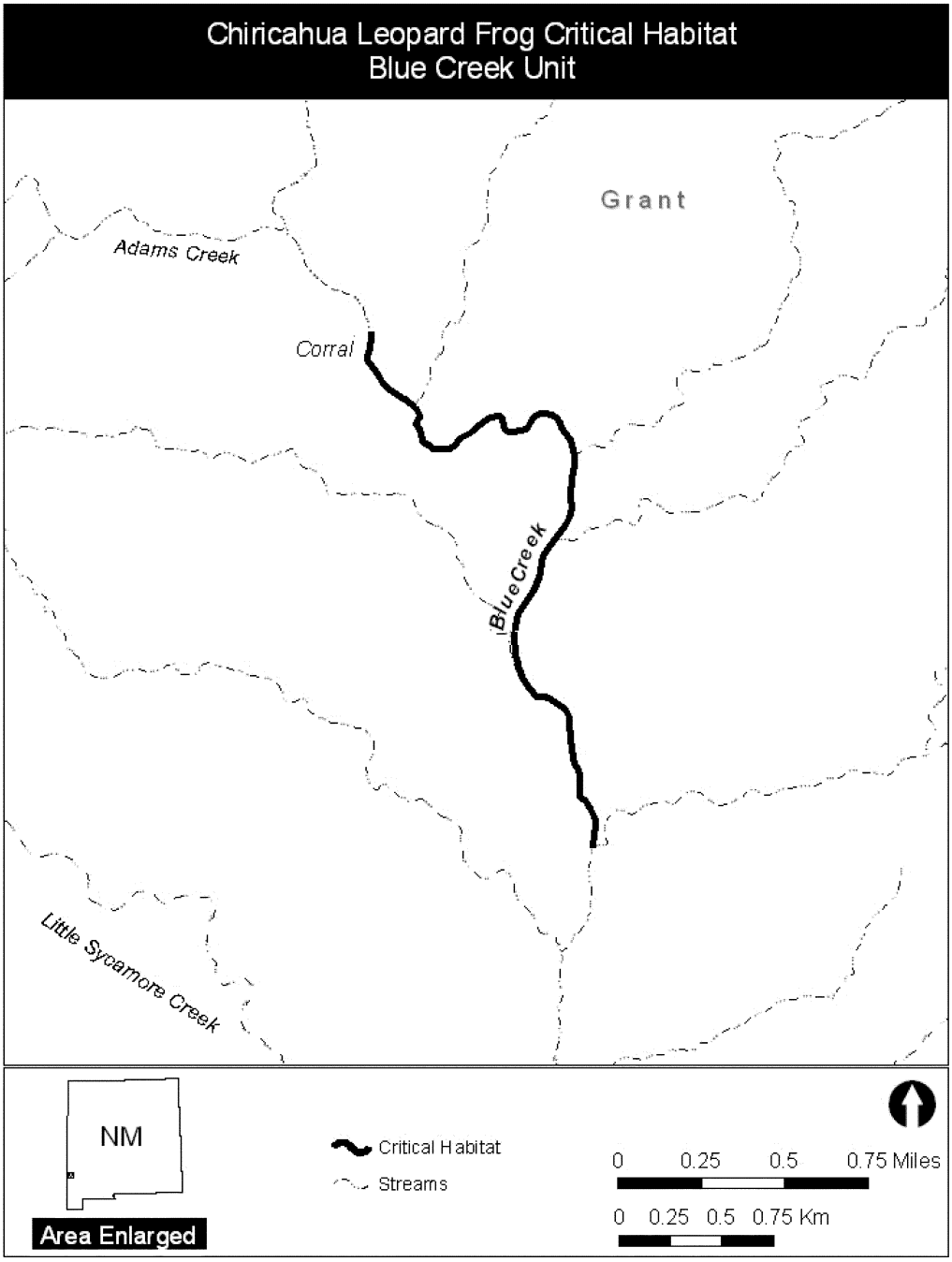
(ii) **NOTE:** Map of Coal Creek Unit follows:



(38) Blue Creek Unit, Grant County, New Mexico.

(i) Blue Creek from just east of a corral on private lands (32.848702 N, 108.835761 W) downstream to its confluence with an unnamed drainage that comes in from the east (32.825785 N, 108.824742 W), an approximate stream distance of 2.37 miles (3.81 kilometers).

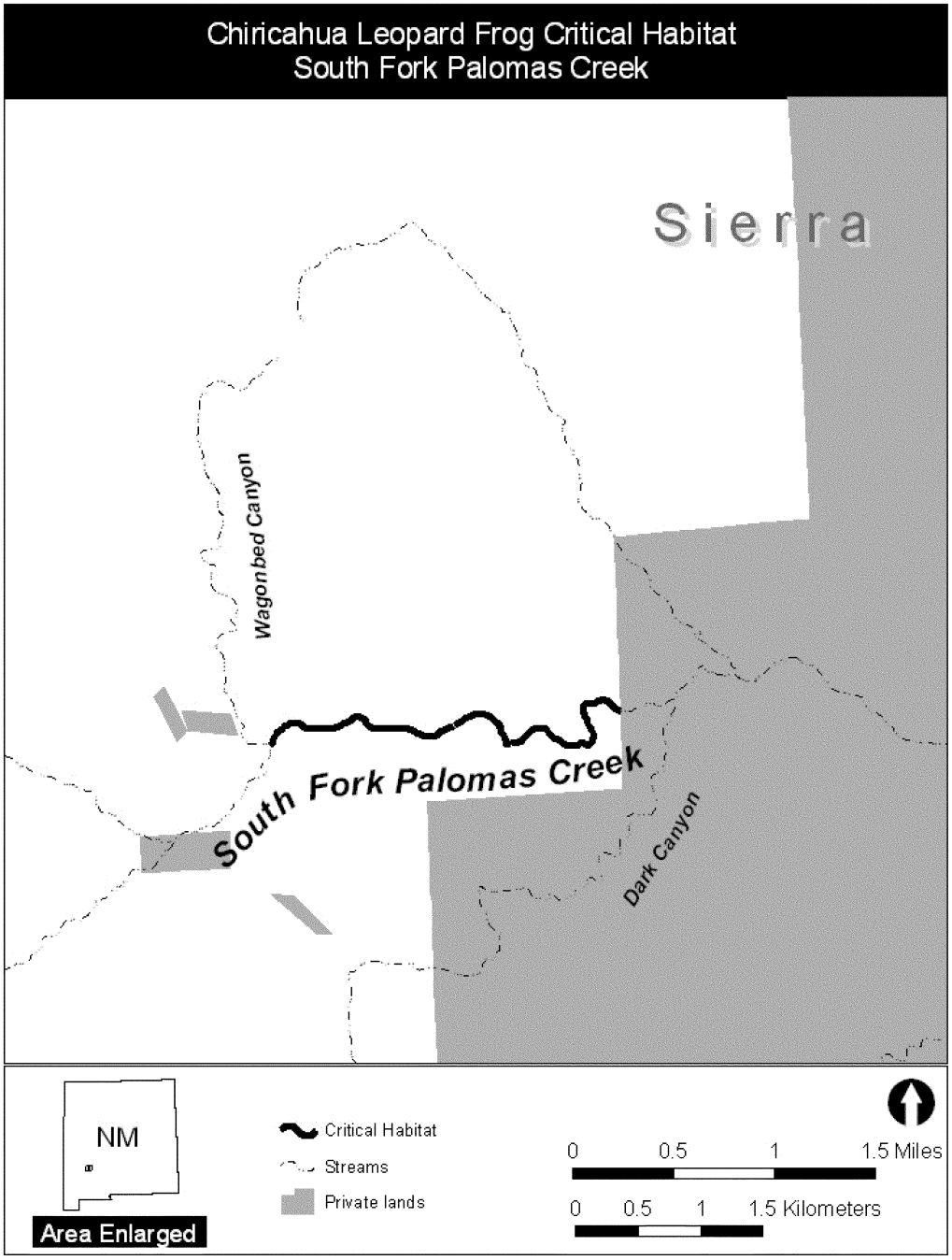
(ii) **NOTE:** Map of Blue Creek Unit follows:



(39) South Fork Palomas Creek Unit, Sierra County, New Mexico.

(i) From the confluence of an unnamed tributary in Wagonbed Canyon and South Fork Palomas Creek (33.164592 N, 107.723155 W), downstream in South Fork Palomas Creek to its confluence with an unnamed tributary in Dark Canyon (33.167074 N, 107.68853 W), excluding the portions of South Fork Palomas Creek on privately owned lands of the Ladder Ranch, a distance of approximately 2.32 drainage miles (3.73 km).

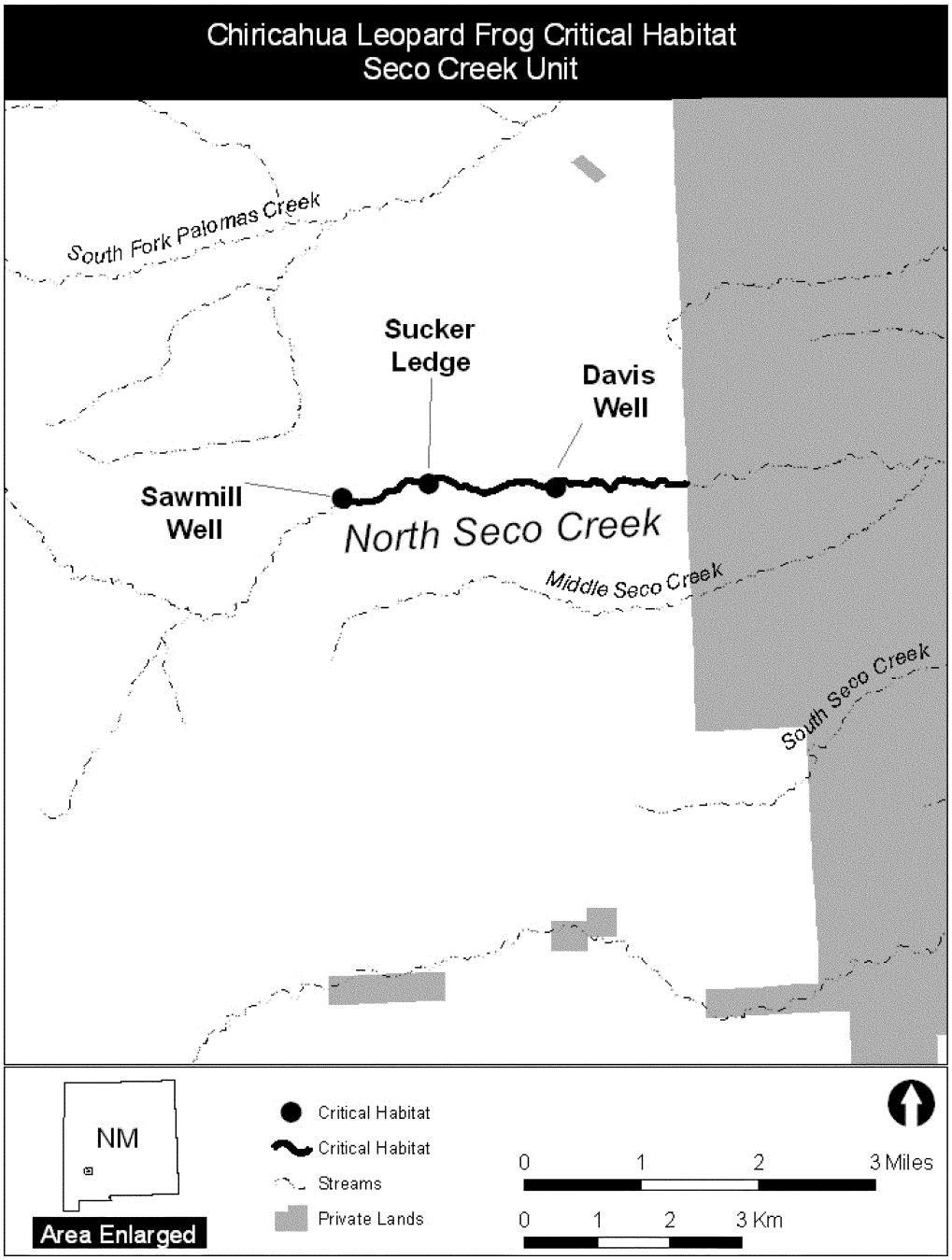
(ii) **NOTE:** Map of South Fork Palomas Creek Unit follows:



(40) Seco Creek Unit, Sierra County, New Mexico.

(i) North Seco Creek from Sawmill Well (33.112052 N, 107.760165 W) downstream to the private land boundary of the Ladder Ranch (33.112689 N, 107.709554 W), to include Sawmill Well (33.112052 N, 107.760165 W), Sucker Ledge (33.113545 N, 107.747370 W), and Davis Well (33.112421 N 107.728650 W), an approximate drainage distance of 3.32 miles (5.35 kilometers).

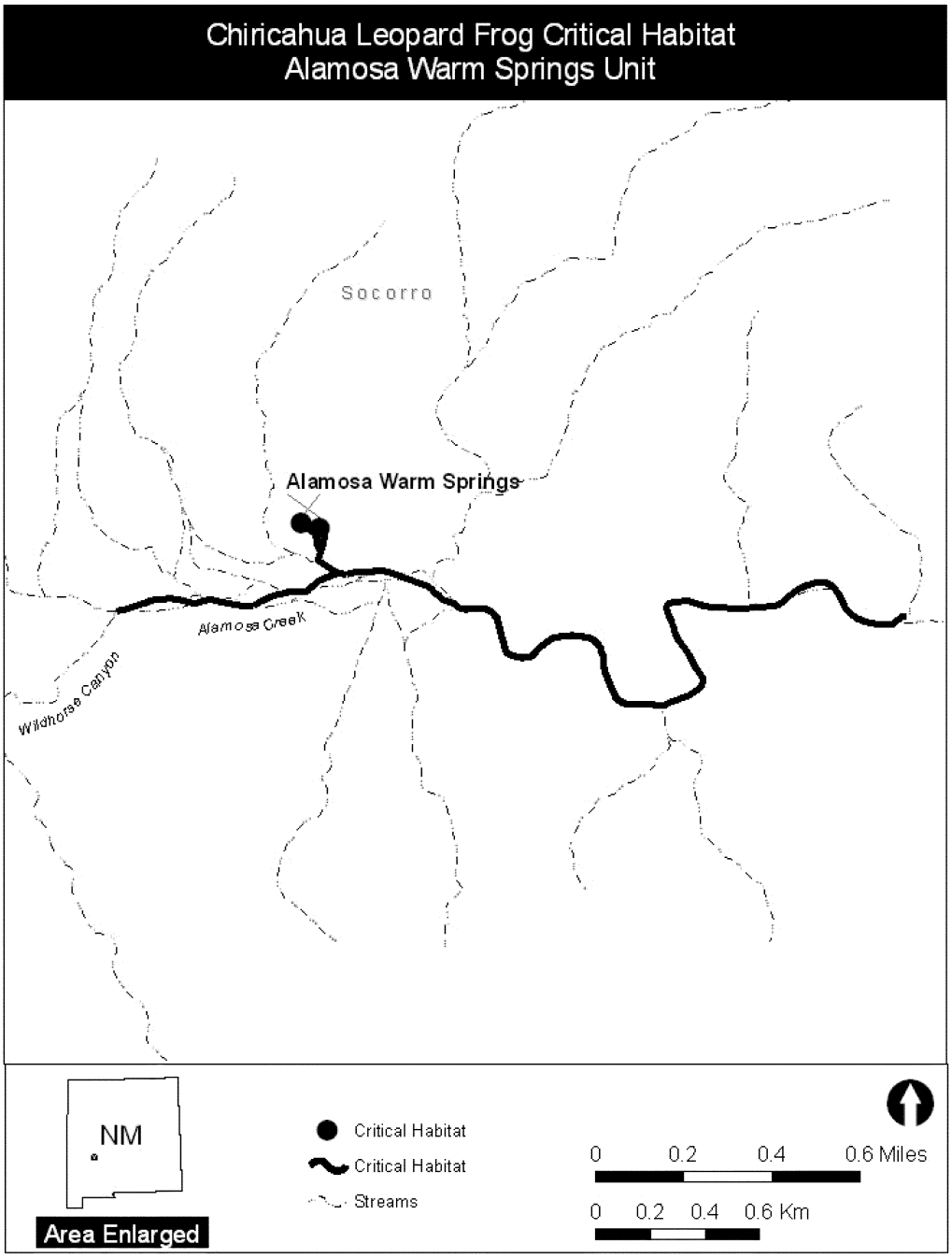
(ii) **NOTE:** Map of Seco Creek Unit follows:



(41) Alamosa Warm Springs Unit, Socorro County, New Mexico.

(i) From the confluence of Wildhorse Canyon and Alamosa Creek (33.570315 N, 107.608474 W) downstream in Alamosa Creek to the confluence with an unnamed drainage that comes in from the north (33.569199 N, 107.577137 W), to include Alamosa Warm Springs (33.572365 N, 107.600153 W), an approximate stream distance of 4,974 feet (1,516 meters).

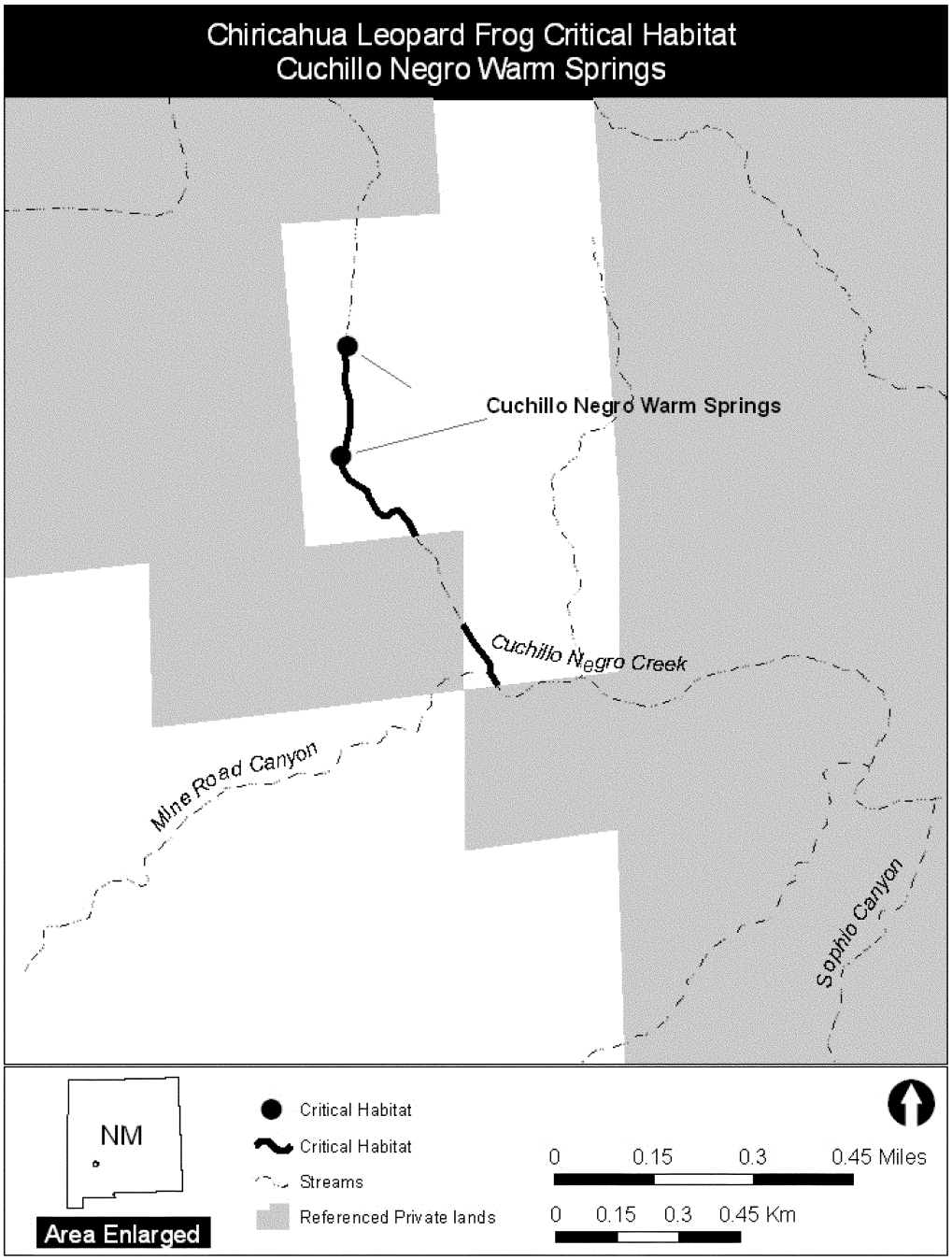
(ii) **NOTE:** Map of Alamosa Warm Springs Unit follows:



(42) Cuchillo Negro Warm Springs and Creek Unit, Sierra County, New Mexico.

(i) From the upper of the two Cuchillo Negro Warm Springs (33.268403 N, 107.563619 W) downstream in Cuchillo Negro Creek to its confluence with an unnamed drainage that comes in from the north (33.271386 N, 107.557843 W), excluding the portions of Cuchillo Negro Creek on privately owned lands, an approximate stream distance of 2,518 feet (768 meters).

(ii) **NOTE:** Map of Cuchillo Negro Warm Springs and Creek Unit follows:



(43) Ash and Bolton Springs Unit, Grant County, New Mexico.

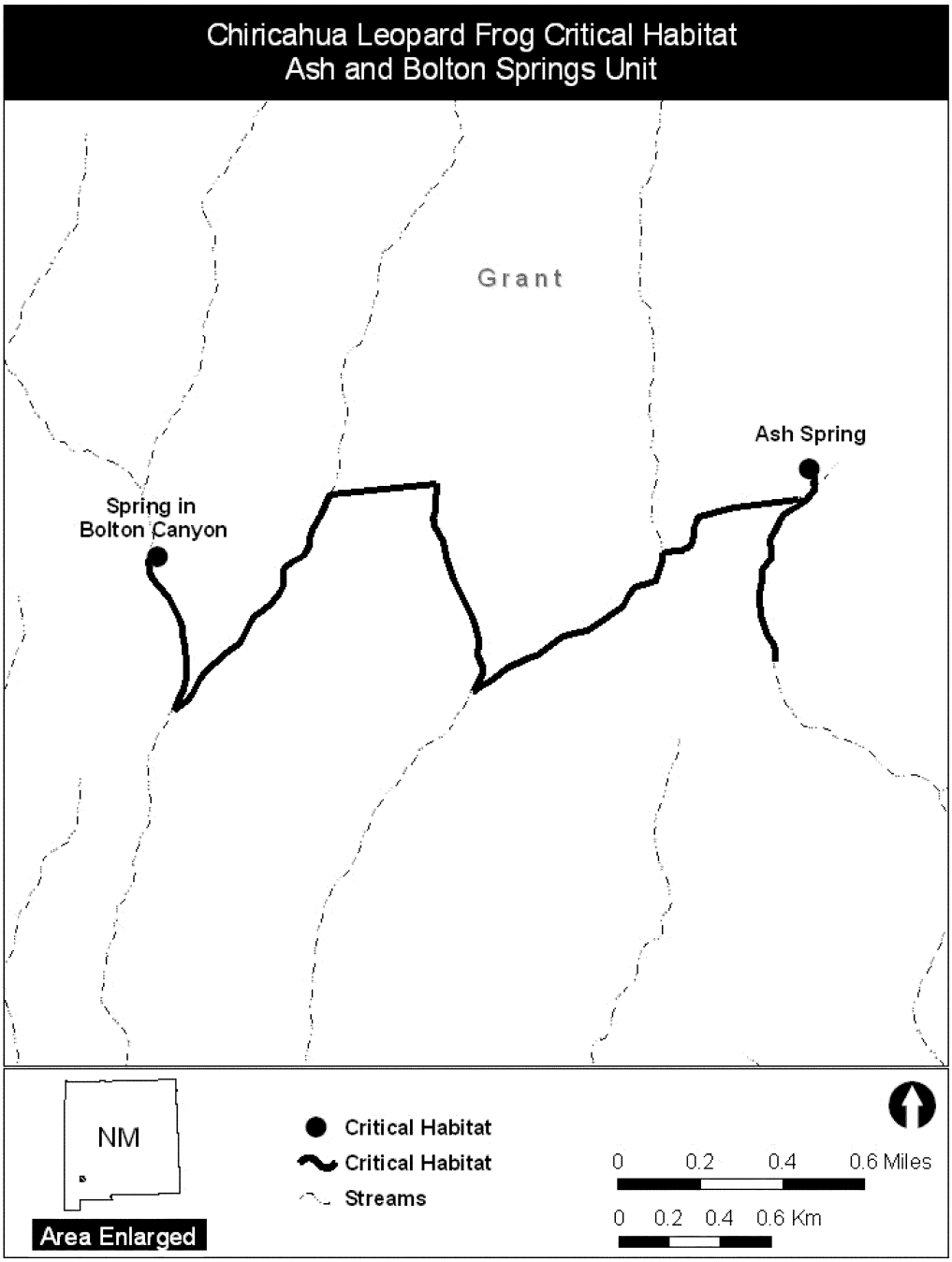
(i) Ash Spring (32.715625 N, 108.071980 W).

(ii) Unnamed spring in Bolton Canyon locally known as Bolton Springs (32.713419 N, 108.099679 W).

(iii) From the spring box at Ash Spring (32.715625 N, 108.071980 W) downstream to a dirt road crossing of the drainage (32.708769 N, 108.073579 W), an approximate stream distance of 2,830 feet (863 meters).

(iv) From the the ruins of a house in the Ash Spring drainage (32.714562 N, 108.072542 W) west to a low saddle (32.714373 N, 108.075263 W) and directly downslope into an unnamed drainage (32.713983 N, 108.076665 W), then downstream in that drainage to its confluence with another unnamed drainage (32.712829 N, 108.078131 W), then downstream in that unnamed drainage to its confluence with another unnamed drainage (32.708210 N, 108.086360 W), then upstream in that unnamed drainage to the top of that drainage (32.715476 N, 108.087719 W) and directly downslope and west to another unnamed drainage (32.715207 N, 108.092094 W), then downstream in that unnamed drainage to its confluence with Bolton Canyon (32.707844 N, 108.099267 W), and then upstream in Bolton Canyon to the locally known Bolton Springs (32.713419 N, 108.099679 W), an approximate distance of 2.41 drainage miles (3.87 kilometers) and 2,650 feet (808 meters) overland.

(v) **NOTE:** Map of Ash and Bolton Springs Unit follows:

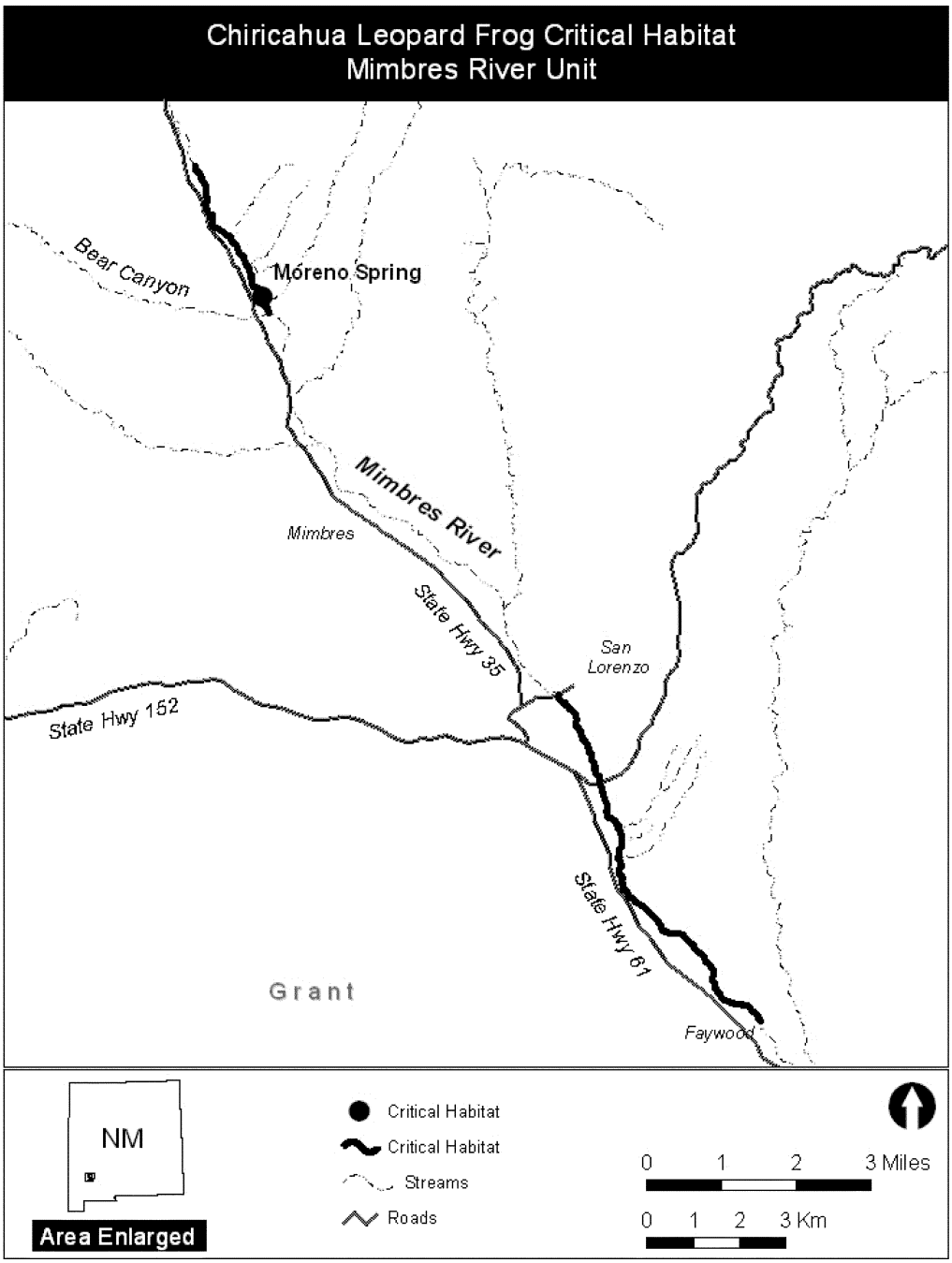


(44) Mimbres River Unit, Grant County, New Mexico.

(i) The Mimbres River from the northern boundary of The Nature Conservancy's Mimbres River Preserve property (32.912474 N, 108.004529 W) downstream to its confluence with Bear Canyon (32.883926 N, 107.988252 W), to include Moreno Spring (32.887107 N, 107.989492 W) and ponds at Milagros Ranch, an approximate river distance of 2.42 miles (3.89 kilometers).

(ii) The Mimbres River from the bridge just west of the town of San Lorenzo (32.808190 N, 107.924589 W) downstream to its intersection with the southern boundary of The Nature Conservancy's Disert property near Faywood (32.743884 N, 107.880297 W), an approximate river distance of 5.82 miles (9.36 kilometers).

(iii) **NOTE:** Map of Mimbres River Unit follows:



* * * * *

Dated: March 5, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–5953 Filed 3–19–12; 8:45 am]

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Federal Register

Vol. 77, No. 54

Tuesday, March 20, 2012

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FEDERAL REGISTER PAGES AND DATE, MARCH

12437–12720 1
12721–12980 2
12981–13180 5
13181–13482 6
13483–13958 7
13959–14264 8
14265–14470 9
14471–14678 12
14679–14950 13
14951–15230 14
15231–15554 15
15555–15932 16
15933–16130 19
16131–16424 20

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8778 13181
8779 13183
8780 13185
8781 13481
8782 13959
8783 14265

Executive Orders:
13601 12981
13602 16131

Administrative Orders:
Memorandums:
Memorandum of February 27, 2012 12721
Memorandum of February 28, 2012 12985
Memorandum of March 6, 2012 15231
Notices:
Notice of March 2, 2012 13179
Notice of March 13, 2012 15229

4 CFR

28 15233

5 CFR

Ch. LXXXIII 15555
9301 15555
9302 15561

Proposed Rules:
7501 14997

7 CFR

2 .....14951, 14952
319 .....12437, 15933
457 13961
761 15933
762 15933
764 15933
765 15933
766 15933
1735 15564

Proposed Rules:
15 13980
20 13990
211 13015
235 13015
930 .....12748, 13015
985 13019
1260 12752
1777 14307

9 CFR

Proposed Rules:
92 15848
93 15848
94 15848
95 15848
96 15848
98 15848
307 15976
381 .....13512, 15976
500 13512

10 CFR

429 13888
430 13888

Proposed Rules:
50 16175
170 15530
171 15530
430 16183
431 13026
438 14482
719 12754
1046 13206

12 CFR

1228 15566

Proposed Rules:
252 13513
Ch. X 14700
1070 15286

14 CFR

39 .....12444, 12448, 12450, 12989, 12991, 13187, 13191, 13193, 13483, 13485, 13488, 14679, 14681, 15939, 16135, 16137, 16139, 16143, 16145, 16147, 16151, 16155
67 13967
71 .....12992, 13195, 14269, 15575
95 14269
97 .....12452, 12454, 15576, 15577
1245 14686

Proposed Rules:
16 13027
39 .....12506, 12755, 12757, 13043, 13228, 13230, 13993, 14310, 14312, 14314, 14316, 15291, 15293, 15636, 15638, 15640, 15644, 15980, 16186, 16188, 16191, 16193
71 .....12759, 12760, 15295, 15297
91 14319

16 CFR

Proposed Rules:
305 15298

17 CFR

200 13490

Proposed Rules:
43 15460
162 13450
248 13450

18 CFR

806 14272

Proposed Rules:

366 12760

19 CFR

10 15943
24 15943
162 15943
163 15943
178 15943

20 CFR

404 13968
416 13968
655 ..... 12723, 16157

21 CFR

Ch. I 15961
211 16158
520 ..... 15960, 15961
558 14272
866 14272
1301 15234
1309 15234

Proposed Rules:

Ch. 1 13513
172 13232
866 16126
1308 12508

23 CFR

627 15250

Proposed Rules:

771 15310

26 CFR

1 13968

Proposed Rules:

1 ..... 12514, 13996, 14321, 15003, 15319, 15646
301 15004

28 CFR

35 16163
36 16163

Proposed Rules:

35 16196
36 16196

29 CFR

552 14688
1910 13969
4022 15256
4044 ..... 14274, 14275, 15256

Proposed Rules:

1910 13997

31 CFR

321 16165
330 16165
560 16170

Proposed Rules:

Ch. X 13046

32 CFR

240 14955
311 ..... 15585, 15587, 15588
319 ..... 15590, 15591, 15592, 15593, 15594
322 ..... 15595, 15596
706 ..... 12993, 13970

33 CFR

100 ..... 12456, 14959, 14963, 14965, 15258, 15597, 15600, 15602, 15604
117 ..... 12475, 12476, 14689, 14690, 14968
165 ..... 12456, 12994, 13971, 14276, 14471, 14970, 15260, 15261, 15263, 16170

Proposed Rules:

100 ..... 15006, 15320, 15323, 15647, 15981
117 12514
165 ..... 13232, 13516, 13519, 13522, 13525, 14321, 14700, 14703, 15009, 15323, 16198

34 CFR

104 14972

36 CFR

242 12477

Proposed Rules:

7 12761
1195 14706

37 CFR

Proposed Rules:

201 15327

38 CFR

1 12997
17 13195

Proposed Rules:

17 ..... 12517, 12522, 13236, 14707
60 15650
61 12698

39 CFR

20 12724
111 15605
3020 13198

Proposed Rules:

111 12764

40 CFR

52 ..... 12482, 12484, 12487, 12491, 12493, 12495, 12652, 12674, 12724, 13491, 13493, 13495, 13974, 14604, 14691, 14697, 14862, 14976, 15263, 15607, 15608
59 14279
60 13977
70 15267
80 13009
93 14979
131 13496
180 ..... 12727, 12731, 12740, 13499, 13502, 14287, 14291
261 12497
271 ..... 13200, 15273, 15966
300 15276
721 13506
799 15609
1500 14473
1501 14473
1502 14473
1503 14473
1505 14473
1506 14473
1507 14473
1508 14473

Proposed Rules:

51 ..... 14226, 15656
52 ..... 12524, 12525, 12526, 12527, 12770, 13055, 13238, 14226, 14712, 14715, 15329, 15656, 15985
59 14324
60 ..... 13997, 14716
70 14226
71 14226
98 15590
141 15335
142 15335
180 ..... 15012, 15015
260 15336
261 15336
271 ..... 13248, 15343
300 ..... 14717, 15344
372 13061

42 CFR

84 14161
424 14989

Proposed Rules:

412 13698
413 13698
495 13698

44 CFR

64 13010
65 ..... 12501, 12746

Proposed Rules:

67 15664

45 CFR

Proposed Rules:

170 13832

46 CFR

67 16172
530 13508
531 13508

Proposed Rules:

98 14327
502 12528

47 CFR

51 14297
54 ..... 12784, 14297

Proposed Rules:

1 15665
22 15665
54 12952

48 CFR

Ch. 1 ..... 12912, 12947, 13952, 13956
1 ..... 12913, 12925, 14303
2 ..... 12913, 12925, 12937, 14303
4 ..... 12913, 13952, 14303
5 12927
6 ..... 12913, 14303
7 12925
8 12927
13 ..... 12913, 12930, 14303
14 ..... 12913, 14303
15 ..... 12913, 14303
16 ..... 12925, 12927
18 ..... 12913, 12927, 14303
19 ..... 12913, 12930, 12948, 14303
22 ..... 12933, 12935, 14303
25 ..... 12933, 12935, 13952, 14303
26 ..... 12913, 14303
31 12937
32 ..... 12925, 12937
33 ..... 12913, 14303
36 ..... 12913, 14303
38 12927
42 ..... 12913, 12925, 12948, 14303
45 12937
49 12937
50 12925
51 12937
52 ..... 12913, 12933, 12935, 12937, 12948, 13952, 14303
53 ..... 12913, 12937, 14303
212 14480
225 13013
252 13013

Proposed Rules:

252 14490
931 12754
952 12754
970 12754
Ch. 10 13069
2401 15681
2402 15681
2403 15681
2404 15681
2406 15681
2407 15681
2409 15681
2415 15681
2416 15681
2417 15681
2419 15681
2426 15681
2427 15681
2428 15681
2432 15681
2437 15681
2439 15681
2442 15681
2452 15681

49 CFR

214 13978
1244 15969

Proposed Rules:

571 15351

50 CFR

17 ..... 13394, 14914, 15617, 16324
100 12477
622 ..... 15284, 15916
648 ..... 14481, 14697
660 ..... 12503, 15973
679 ..... 12505, 13013, 13510, 14304, 14305, 14698, 14994, 15194

Proposed Rules:

13 ..... 14200, 15019, 15352
17 ..... 12543, 13248, 13251, 14062, 14200, 15019, 15352
23 ..... 14200, 15019
402 15352
600 15701
635 ..... 15701, 15712
648 15991
679 ..... 13253, 15019

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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S. 1134/P.L. 112–100
St. Croix River Crossing Project Authorization Act (Mar. 14, 2012; 126 Stat. 268)

S. 1710/P.L. 112–101
To designate the United States courthouse located at 222 West 7th Avenue, Anchorage, Alaska, as the James M. Fitzgerald United States Courthouse. (Mar. 14, 2012; 126 Stat. 270)

Last List March 15, 2012

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