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Contents

Federal Register

Vol. 76, No. 157

Monday, August 15, 2011

Agriculture Department
See Forest Service
See Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50451–50452

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Annual Firearms Manufacturing and Exportation Report, 50497–50498
eForm6 Access Request, 50496
Supplemental Information on Water Quality Considerations, 50496–50497

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50481–50483

Civil Rights Commission
NOTICES
Meetings:
New Hampshire State Advisory Committee, 50453

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50453–50455

Defense Acquisition Regulations System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Types of Contracts, 50461–50462

Defense Department
See Defense Acquisition Regulations System
NOTICES
Privacy Act; Computer Matching Program, 50460–50461

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Drug Enforcement Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Registration; Application for Registration Renewal, etc., 50498–50499

Education Department
NOTICES
Applications for New Awards:
Special Demonstration Programs; National Technical Assistance Projects To Improve Employment Outcomes for Individuals With Disabilities, 50470–50474
Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities, etc., 50462–50470
Special Demonstration Programs:
National Technical Assistance Projects To Improve Employment Outcomes for Individuals With Disabilities, 50474–50476

Employee Benefits Security Administration
NOTICES
Investment Advisory, Investment Management and Broker-Dealer Affiliates and Their Successors:
Grant of Individual Exemption Involving BlackRock, Inc., 50632–50659

Energy Department
NOTICES
Applications to Export Electric Energy:
Glacial Energy of Texas, Inc., 50476–50477
Environmental Impact Statements; Availability, etc.:
Topaz Solar Farm, San Luis Obispo County, CA, 50477–50479

Environmental Protection Agency
RULES
National Oil and Hazardous Substances Pollution Contingency Plans; National Priorities List:
Deletion of Sayreville Landfill Superfund Site, 50414–50420
PROPOSED RULES
National Oil and Hazardous Substances Pollution Contingency Plans; National Priorities List:
Deletion of Sayreville Landfill Superfund Site, 50441–50442
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Lead-Based Paint Pre-Renovation Information Dissemination, 50479–50480

Federal Aviation Administration
RULES
Airworthiness Directives:
Bombardier, Inc. Model DHC–8–400 Series Airplanes, 50403–50405
SOCATA Airplanes, 50405–50407

Federal Communications Commission
RULES
Service Rules and Policies for the Broadcasting Satellite Service, 50425–50433

Federal Emergency Management Agency
RULES
Changes in Flood Elevation Determinations, 50420–50425

PROPOSED RULES
Flood Elevation Determinations, 50443
Flood Elevation Determinations:
Correction, 50443–50447

Federal Highway Administration
NOTICES
Buy America Waiver, 50537

Federal Motor Carrier Safety Administration
RULES
Regulatory Guidance:
Operators of Certain Farm Vehicles and Off-Road Agricultural Equipment, 50433–50435
NOTICES
Regulatory Guidance:
Household Goods Carriers Requiring Shippers To Sign Blank or Incomplete Documents, 50537–50538

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 50480
Proposals to Engage in Permissible Nonbanking Activities, etc.; Correction, 50480

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Designation of Revised Critical Habitat for Southwestern Willow Flycatcher, 50542–50629
NOTICES
Environmental Impact Statements; Availability, etc.:
Arctic National Wildlife Refuge, Fairbanks, AK, 50490–50492

Food and Drug Administration
NOTICES
Draft Guidance for Industry and Staff; Availability:
Factors To Consider When Making Benefit-Risk Determinations in Medical Device Premarket Review, 50483–50484
Draft Guidance for Industry, Clinical Investigators and Staff; Availability:
Design Considerations for Pivotal Clinical Investigations for Medical Devices, 50484–50485
Meetings:
Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee, 50485–50486

Foreign-Trade Zones Board
NOTICES
Applications For Expansion:
Foreign-Trade Zone 163, Ponce, PR, 50455

Forest Service
NOTICES
Meetings:
South Central Idaho Resource Advisory Committee, 50452

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
PROPOSED RULES
Meetings:
Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas, 50442–50443
NOTICES
Requirements and Registration for Lifeline Facebook App Challenge; Correction, 50481

Homeland Security Department
See Federal Emergency Management Agency
See U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Protected Critical Infrastructure Information Stakeholder Survey, 50487–50488

Industry and Security Bureau
RULES
Addition of Persons Acting Contrary to the National Security or Foreign Policy Interests of the United States to the Entity List, 50407–50413

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Indian Gaming Commission
See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping Duty Changed Circumstances Reviews; Extensions of Time Limits for Final Results:
Diamond Sawblades and Parts Thereof From People's Republic of China, 50455–50456
Antidumping Duty Changed Circumstances Reviews; Final Results:
Polyethylene Terephthalate Film, Sheet, and Strip From Republic of Korea, 50456–50457

International Trade Commission
NOTICES
Determinations:
Stainless Steel Plate From Belgium, Korea, Italy, South Africa, and Taiwan, 50495–50496

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Drug Enforcement Administration
See Justice Programs Office

Justice Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Office for Victims of Crime Trafficking Information Management System, 50499

Labor Department
See Employee Benefits Security Administration

Land Management Bureau
NOTICES
Filing of Plats of Survey:
Idaho, 50492
Realty Action:
Direct Sale of Public Land in San Benito County, CA, 50492–50493
Records of Decision; Availability:
Desert Sunlight Holdings, LLC, Desert Sunlight Solar Farm and California Desert Conservation Area Plan Amendment, 50493–50494

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts Advisory Panel, 50499–50500

National Indian Gaming Commission
PROPOSED RULES
Class II Gaming Regulation Proposals:
Poarch Band of Creek Indians on Behalf of Tribal Gaming Working Group, 50436

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 50486–50487
National Cancer Institute, 50487
National Human Genome Research Institute, 50486

National Oceanic and Atmospheric Administration
PROPOSED RULES
Endangered and Threatened Species; 5-Year Reviews:
17 Evolutionarily Significant Units and Distinct Population Segments of Pacific Salmon and Steelhead, 50448–50449
5 Evolutionarily Significant Units of Pacific Salmon and 1 Distinct Population Segment of Steelhead in California, 50447–50448
Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan:
Trawl Rationalization Program; Program Improvement and Enhancement; Amendment 21–1, 50449–50450
NOTICES
Taking and Importing Marine Mammals:
Military Training Activities and Research Conducted Within the Mariana Islands Range Complex, 50457–50460

National Park Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Mojave National Preserve, San Bernardino County, CA, 50494
National Register of Historic Places:
Pending Nominations and Related Actions, 50494–50495

National Science Foundation
NOTICES
Meetings:
Proposal Review, 50500

Nuclear Regulatory Commission
NOTICES
Request for Comments on Draft Policy Statement :
Volume Reduction and Low-Level Radioactive Waste Management, 50500–50502

Pension Benefit Guaranty Corporation
RULES
Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits, 50413–50414

Pipeline and Hazardous Materials Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Pipeline Safety; Public Awareness Program, 50539

Postal Service
RULES
International Mail Manual:
Incorporation by Reference, 50414
PROPOSED RULES
Folded Self-Mailers and Unenveloped Mailpieces, 50438–50441

Research and Innovative Technology Administration
NOTICES
Meetings:
Advisory Council on Transportation Statistics, 50539–50540

Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50452–50453

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 50525–50528
Chicago Board Options Exchange, Inc., 50516–50519, 50532–50533
Chicago Stock Exchange, Inc., 50524–50525
EDGA Exchange, Inc., 50511–50512
EDGX Exchange, Inc., 50512–50513
Financial Industry Regulatory Authority, Inc., 50515–50516, 50528–50529
International Securities Exchange, LLC, 50503–50504, 50513–50515
NASDAQ OMX BX, Inc., 50522–50523
NASDAQ OMX PHLX LLC, 50509–50511, 50519–50521
NASDAQ Stock Market LLC, 50508–50509, 50521–50522
National Stock Exchange, Inc., 50533–50535
New York Stock Exchange LLC, 50505–50506, 50529–50532
NYSE Amex LLC, 50506–50508
NYSE Arca, Inc., 50502–50503

Small Business Administration
NOTICES
Disaster Declarations:
North Dakota; Amendment 4, 50535
North Dakota; Amendment 5, 50535
Oklahoma; Amendment 1, 50535

State Department
NOTICES
Waiver of Restriction on Assistance to Lebanon, 50535–50536

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Kentucky Regulatory Program, 50436–50438

Susquehanna River Basin Commission
NOTICES
Projects Approved or Rescinded for Consumptive Uses of Water, 50536–50537

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Pipeline and Hazardous Materials Safety Administration

See Research and Innovative Technology Administration

U.S. Customs and Border Protection

NOTICES

Accreditation and Approval as a Commercial Gauger and Laboratory:
Saybolt, LP, 50488–50489
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Harbor Maintenance Fee, 50489–50490

Veterans Affairs Department

NOTICES

Pilot Program of Enhanced Contract Care Authority for Veterans in Highly Rural Areas, 50540

Separate Parts In This Issue

Part II

Interior Department, Fish and Wildlife Service, 50542–50629

Part III

Labor Department, Employee Benefits Security Administration, 50632–50659

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.

14 CFR
39 (2 documents) 50403, 50405

15 CFR
744.....50407

25 CFR
Proposed Rules:
Ch. III.....50436

29 CFR
4022.....50413

30 CFR
Proposed Rules:
917.....50436

39 CFR
20.....50414
Proposed Rules:
111.....50438

40 CFR
300.....50414
Proposed Rules:
300.....50441

42 CFR
Proposed Rules:
5.....50442

44 CFR
65 (2 documents) 50420, 50423
Proposed Rules:
67 (3 documents) 50443, 50446

47 CFR
25.....50425

49 CFR
383.....50433
390.....50433

50 CFR
Proposed Rules:
17.....50542
223 (2 documents) 50447, 50448
224 (2 documents) 50447, 50448
660.....50449

Rules and Regulations

Federal Register
Vol. 76, No. 157
Monday, August 15, 2011

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0470; Directorate Identifier 2010–NM–190–AD]; Amendment 39–16768; AD 2011–17–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> One in-service incident has been reported on [a] DHC–8 Series 400 aeroplane in which the right hand main landing gear (MLG) failed to extend using the alternate gear extension system. * * * Failure of [the] MLG to extend and lock could adversely affect the safe landing of the aeroplane.
>
> * * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective September 19, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 19, 2011.

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: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; 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 May 12, 2011 (76 FR 27615). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> One in-service incident has been reported on [a] DHC–8 Series 400 aeroplane in which the right hand main landing gear (MLG) failed to extend using the alternate gear extension system. Investigation determined that the tread on the outboard tire was catching on the bumper plate located on the outboard MLG door that prevented the MLG door to open following an extension attempt via the alternate extension system. Failure of [the] MLG to extend and lock could adversely affect the safe landing of the aeroplane.
>
> To prevent the potential jam condition between the bumper plate and the MLG tires, Bombardier Aerospace has developed a modification to trim the edge of the bumper plate to eliminate the possibility of interference [Bombardier Modsum 4–113645].

The Modsum includes performing a detailed visual inspection for damage or cracks of the bumper plate and base fitting and replacing any damaged or cracked part with a new part, if necessary. 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 received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 65 products of U.S. registry. We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $479 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 costs. 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 AD on U.S. operators to be $75,335, or $1,159 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 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 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); and

3. 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:

2011–17–04 Bombardier, Inc.: Amendment 39–16768. Docket No. FAA–2011–0470; Directorate Identifier 2010–NM–190–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 19, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, having serial numbers 4001 through 4247 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

One in-service incident has been reported on [a] DHC–8 Series 400 aeroplane in which the right hand main landing gear (MLG) failed to extend using the alternate gear extension system. * * * Failure of [the] MLG to extend and lock could adversely affect the safe landing of the aeroplane.

* * * * *

Compliance

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

Actions

(g) Within 2,000 flight hours after the effective date of this AD: Incorporate Bombardier Modsum 4–113645, including performing a detailed visual inspection for damage or cracks of the bumper plate and base fitting and replacing any damaged or cracked part, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010. Do all applicable replacements before further flight.

(h) For airplanes on which a bumper plate having part number 85424082–101 or 85424082–103 is installed that has been reworked in accordance with Bombardier Repair Drawing 8/4–54–553: Within 1,000 flight hours after the effective date of this AD, reidentify the bumper plate, in accordance with paragraph 3.B., step (8) of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010.

Note 1: Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010, includes an operational check of the alternate extension system of the MLG. If the check fails, guidance on doing corrective actions can be found in the Bombardier Q400 Dash 8 Aircraft Maintenance Manual.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Incorporation of Bombardier Modsum 4–113645 before the effective date of this AD in accordance with Bombardier Service Bulletin 84–32–74, dated December 23, 2009, is considered acceptable for compliance with the modification in paragraph (h) of this AD, provided the action in paragraph (h) of this AD is done within the compliance time specified in paragraph (h) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(j) 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 New York 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 on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards 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.

Related Information

(k) Refer to MCAI Canadian Airworthiness Directive CF–2010–23, dated July 21, 2010; and Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010; for related information.

Material Incorporated by Reference

(l) You must use Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(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; e-mail *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 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 July 29, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–20141 Filed 8–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0530 Directorate Identifier 2011–CE–012–AD; Amendment 39–16770; AD 2011–17–06]

RIN 2120–AA64

Airworthiness Directives; SOCATA Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for SOCATA Model TBM 700 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A TBM 700 operator reported a case of elevator trim tab actuator jamming once the trim tab arrived to stop.

The investigations conducted by the trim tab actuator manufacturer have shown that there was a discrepancy with PRECILEC manufacturing process of elevator trim tab actuator which caused this event. It has been determined as well that this discrepancy is limited to a batch of Serial Numbers (S/N).

If not detected and corrected, a jammed trim tab could lead to unusual control forces, resulting in lower controllability, particularly if combined with adverse flight conditions at landing.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective September 19, 2011.

On September 19, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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 service information identified in this AD, contact SOCATA—Direction des Services—65921 Tarbes Cedex 9—France; telephone +33 (0) 62 41 7300, fax +33 (0) 62 41 76 54, or for North America: SOCATA NORTH AMERICA, 7501 South Airport Road, North Perry Airport (HWO), Pembroke Pines, Florida 33023; *telephone:* (954) 893–1400; *fax:* (954) 964–4141; *e-mail: mysocata@socata.daher.com; Internet: http://mysocata.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.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090; *e-mail: albert.mercado@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 was published in the **Federal Register** on May 25, 2011 (76 FR 30295). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A TBM 700 operator reported a case of elevator trim tab actuator jamming once the trim tab arrived to stop.

The investigations conducted by the trim tab actuator manufacturer have shown that there was a discrepancy with PRECILEC manufacturing process of elevator trim tab actuator which caused this event. It has been determined as well that this discrepancy is limited to a batch of Serial Numbers (S/N).

If not detected and corrected, a jammed trim tab could lead to unusual control forces, resulting in lower controllability, particularly if combined with adverse flight conditions at landing.

For the reasons described above, this AD requires the inspection of the elevators trim tab actuator P/N 6071017251 for identification of S/N and, in case of findings, the replacement of the affected ones with serviceable units.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 377 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $32,045, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 7 work-hours and require parts costing $0, for a cost of $595 per product. We have no way of determining the number of products that may need these actions.

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

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 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); and

(3) 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 Management Facility 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 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:

2011–17–06 SOCATA: Amendment 39–16770; Docket No. FAA–2011–0530; Directorate Identifier 2011–CE–012–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 19, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to SOCATA Model TBM 700 airplanes, serial numbers 1 through 530, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A TBM 700 operator reported a case of elevator trim tab actuator jamming once the trim tab arrived to stop.

The investigations conducted by the trim tab actuator manufacturer have shown that there was a discrepancy with PRECILEC manufacturing process of elevator trim tab actuator which caused this event. It has been determined as well that this discrepancy is limited to a batch of Serial Numbers (S/N).

If not detected and corrected, a jammed trim tab could lead to unusual control forces, resulting in lower controllability, particularly if combined with adverse flight conditions at landing.

For the reasons described above, this AD requires the inspection of the elevators trim tab actuator P/N 6071017251 for identification of S/N and, in case of findings, the replacement of the affected ones with serviceable units.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within 12 months after September 19, 2011 (the effective date of this AD), identify the serial number (S/N) of Left Hand and Right Hand PRECILEC elevator trim tab actuators following DAHER–SOCATA Mandatory Service Bulletin SB 70–190–27, dated January 2011.

(2) If, as a result of the inspection required by paragraph (f)(1) of this AD you find any affected elevator trim tab actuator as listed in DAHER–SOCATA Mandatory Service Bulletin SB 70–190–27, dated January 2011, installed on an airplane, before further flight, replace it with a serviceable part following DAHER–SOCATA Mandatory Service Bulletin SB 70–190–27, dated January 2011.

(3) After September 19, 2011 (the effective date of this AD), do not install on an airplane any PRECILEC elevator trim tab actuator part number 6071017251 with an S/N listed in DAHER–SOCATA Mandatory Service Bulletin SB 70–190–27, dated January 2011, unless it has been repaired in accordance with DAHER–SOCATA Mandatory Service Bulletin SB 70–190–27, dated January 2011.

Note 1: Trim tab actuators repaired by a service center are identified with screw green colored locking varnish as shown in figure 2 of DAHER–SOCATA Mandatory Service Bulletin SB 70–190–27, dated January 2011.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090; *e-mail: albert.mercado@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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.

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2011–0060, dated March 29, 2011 (Correction: March 30, 2011); and DAHER–SOCATA Mandatory Service Bulletin SB 70–190–27, dated January 2011, for related information.

Material Incorporated by Reference

(i) You must use DAHER–SOCATA Mandatory Service Bulletin SB 70–190–27,

dated January 2011, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact SOCATA—Direction des Services—65921 Tarbes Cedex 9—France; telephone +33 (0) 62 41 7300, fax +33 (0) 62 41 76 54, or for North America: SOCATA NORTH AMERICA, 7501 South Airport Road, North Perry Airport (HWO), Pembroke Pines, Florida 33023; *telephone:* (954) 893–1400; *fax:* (954) 964–4141; *e-mail: mysocata@socata.daher.com; Internet: http://mysocata.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 incorporated by reference for this AD 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 Kansas City, Missouri, on July 28, 2011.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–20165 Filed 8–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 110502272–1391–01]

RIN 0694–AF22

Addition of Persons Acting Contrary to the National Security or Foreign Policy Interests of the United States to the Entity List; and Implementation of Additional Changes From the Annual Review of the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding fifteen persons under twenty entries to the Entity List (Supplement No. 4 to Part 744) on the basis of section 744.11 of the EAR. The persons being added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed under the following six destinations on the Entity List: Cyprus, Greece, Iran, Syria, Ukraine, and the United Kingdom (U.K.).

In addition, this rule amends the EAR to implement modifications to the Entity List on the basis of the annual review of the Entity List conducted by the End-User Review Committee (ERC), which the ERC conducts to determine if any entities on the Entity List should be removed or modified. This rule implements the results of the annual review for entities located in Syria.

Lastly, this rule makes a clarification to an existing entry located in China to clarify the relationship of a listed alias to the existing entry and to provide additional information on the alias.

DATES: *Effective Date:* This rule is effective August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, e-mail: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List notifies the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from BIS and that the availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, when appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other changes to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

This rule implements decisions of the ERC to add persons to the Entity List and modify existing entries based on the annual review of the Entity List. First, this rule implements the decision of the ERC to add fifteen persons under twenty entries to the Entity List on the basis of section 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. Second, this rule implements the results of the annual review for entities located in Syria by making modifications to seven existing entries under Syria on the Entity List.

Additions to the Entity List

This rule implements the decision of the ERC to add fifteen persons under twenty entries (including five additional entries) to the Entity List on the basis of section 744.11 of the EAR. The twenty entries added to the Entity List consist of one person in Cyprus, three persons in Greece, four persons in Iran, two persons in Syria, five persons in Ukraine, and five persons in the U.K. The additional five entries cover five additional addresses of persons added to the Entity List—these persons are being listed under multiple countries to account for alternate addresses of these persons in those countries. Specifically, these five additional entries cover one person in Ukraine who also has addresses in Iran and Syria (resulting in two additional entries for the Iran and Syria addresses), one person in Ukraine who also has addresses in Greece and in the U.K. (resulting in two additional entries for the Greece and U.K. addresses), and one person in the U.K. who also has an address in Cyprus (resulting in one additional entry for the Cyprus address).

The ERC reviewed section 744.11(b) (Criteria for revising the Entity List) in making the determination to add these persons to the Entity List. Under that paragraph, persons for whom, based on specific and articulable facts, there is reasonable cause to believe have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List pursuant to section 744.11. Paragraphs (b)(1)-(b)(5) include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

The persons being added to the Entity List under this rule have been determined by the ERC to be involved in activities that could be contrary to the national security or foreign policy interests of the United States. Examples of the specific activities these persons have been involved with that are contrary to the national security or foreign policy interests of the United States pursuant to section 744.11 include the violation of the license requirements imposed for exports and reexports to Syria as specified in General Order No. 2 of Supplement No.

1 to part 736 of the EAR, and violation of the embargo against Iran as specified in the Iran Transactions Regulations (31 CFR Part 560). Both Syria and Iran have been designated by the Secretary of State as countries that have repeatedly provided support for acts of international terrorism. Specifically, these persons were involved in the lease, transfer, and operation of commercial aircraft subject to the EAR, without the requisite licenses, for use in Syria and Iran.

Additions to the Entity List

This rule adds fifteen persons under twenty entries to the Entity List on the basis of section 744.11 of the EAR. For all of the fifteen persons added to the Entity List, the ERC specifies a license requirement for all items subject to the EAR and establishes a license application review policy of a presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported or transferred (in-country) to such persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for shipments to those persons being added to the Entity List.

Specifically, this rule adds the following fifteen persons under twenty entries to the Entity List:

Cyprus

(1) *Niki Panteli Kyriakou,* 91, Evgeniou Voulgareous, Limassol 4153, Cyprus (See alternate address under United Kingdom).

Greece

(1) *Sergei (Sergi) Ivanovich Tomchani, a.k.a., Sergey Ivanovich Tomchani,* 58, Vouliagmenis Ave Voula, 16673, Athens, Greece (See alternate addresses under Ukraine and United Kingdom);

(2) *Sky Wings Airlines SA,* 58, Vouliagmenis Ave Voula, 16673, Athens, Greece; and

(3) *Socrates Vasilakis,* 58, Vouliagmenis Ave Voula, 16673, Athens, Greece.

Iran

(1) *Kish Airlines,* Headquarters, No. 21 Ekbatan Main Blvd., P.O. Box 19395/4639, Tehran, 13938, Iran;

(2) *Sahand Airlines,* Sahand Airport, Bonab/Sahand, Iran;

(3) *Ukraine Mediterranean Airlines, a.k.a., UM Airlines, UM Air,* Building Negin Sai app. 105, Valiasr Str., Tehran, Iran (See alternate addresses under Ukraine and Syria); and

(4) *Zagros Airlines,* Abadan Airport, Abadan, Iran.

Syria

(1) *Cham Wings Airlines,* Al-Fardous Street, Damascus, Syria; and

(2) *Ukraine Mediterranean Airlines, a.k.a., UM Airlines, UM Air,* 29 Ayar Str., Julia Dumna building, Damascus, Syria (See alternate addresses under Iran and Ukraine).

Ukraine

(1) *Khors Air Company,* 34, Lesi Ukrainki Boulevard, Kiev, 01133, Ukraine; and 10, Mekhanizatoriv Street, Kiev, 03035, Ukraine;

(2) *Natalya Totskaya,* 34, Lesi Ukrainki Boulevard, Kiev, 01133, Ukraine; and 10, Mekhanizatoriv Street, Kiev, 03035, Ukraine;

(3) *Roman Unytskyi,* 34, Lesi Ukrainki Boulevard, Kiev, 01133, Ukraine; and 10, Mekhanizatoriv Street, Kiev, 03035, Ukraine;

(4) *Sergei (Sergi) Ivanovich Tomchani, a.k.a., Sergey Ivanovich Tomchani,* 34, Lesi Ukrainki Boulevard, Kiev, 01133, Ukraine; and 10, Mekhanizatoriv Street, Kiev, 03035, Ukraine (See alternate addresses under Greece and United Kingdom); and

(5) *Ukraine Mediterranean Airlines, a.k.a., UM Airlines, UM Air,* 7, Shulyavskaya Str., Kiev, Ukraine (See alternate addresses under Iran and Syria).

United Kingdom

(1) *A.P. Finance Limited,* 38, Princes Court—88 Brompton Road, Knightsbridge, London, SW3 1ES, United Kingdom; and Enterprise House, 113/115 George Lane, London, E18 1AB, United Kingdom;

(2) *Anatolii Pysarenko,* 38, Princes Court—88 Brompton Road, Knightsbridge, London, SW3 1ES, United Kingdom; and Enterprise House,113/115 George Lane, London, E18 1AB, United Kingdom;

(3) *Myra Gkizi,* 38, Princes Court—88 Brompton Road, Knightsbridge, London, SW3 1ES, United Kingdom;

(4) *Niki Panteli Kyriakou,* 38, Princes Court—88 Brompton Road, Knightsbridge, London, SW3 1ES, United Kingdom (See alternate address under Cyprus); and

(5) *Sergei (Sergi) Ivanovich Tomchani, a.k.a., Sergey Ivanovich Tomchani,* 38, Princes Court—88 Brompton Road, Knightsbridge, London, SW3 1ES, United Kingdom; and Enterprise House 113/115 George Lane, London, E18 1AB, United Kingdom (See alternate addresses under Greece and Ukraine).

Annual Review of the Entity List

This rule amends the EAR to implement changes to the Entity List (Supplement No. 4 to part 744) on the basis of the annual review of the Entity List conducted by the ERC, in accordance with the procedures outlined in Supplement No. 5 to part 744 (Procedures for End-User Review Committee Entity List Decisions). The changes from the annual review of the Entity List that are approved by the ERC are implemented in stages as the ERC completes its review of entities listed under different destinations on the Entity List. This rule implements the results of the annual review for entities located in Syria.

Modifications to the Entity List

On the basis of decisions made by the ERC during the annual review, this rule amends seven entries currently on the Entity List under Syria by modifying or adding addresses or aliases, as follows:

Syria

(1) *EKT Electronics, a.k.a., Katrangi Electronics, Katrangi Trading, Katranji Labs, Electronics Systems,* #1 floor, 11/A, Abbasieh Building, Hijaz Street, P.O. Box 10112, Damascus, Syria; and #1 floor, 02/A, Fares Building, Rami Street, Margeh, Damascus, Syria (See alternate address under Lebanon).

(2) *Encyclopedia Electronics Center, a.k.a., Hassan Matni Import Export Co., Nazir Matni Electronics,* Mosalam Baroudi Street, P.O. Box 12071, Halbouni, Damascus, Syria.

(3) *Higher Institute of Applied Science and Technology (HIAST), a.k.a., Institut Superieur des Sciences Appliquées et de Technologie (ISSAT), Institut des Sciences Appliquées et de Technologie (ISAT),* P.O. Box 31983, Barzeh, Damascus, Syria.

(4) *Industrial Establishment of Defense (IED), a.k.a., Industrial Establishment of Defence (IED), Établissements Industriels de la Défense (EID), Etablissement Industrial de la Defence (ETINDE),* Al Thawraa Street, P.O. Box 2330, Damascus, Syria.

(5) *Mohammed Katranji,* #1 floor, 11/A, Abbasieh Building, Hijaz Street, P.O. Box 10112, Damascus, Syria; and #1 floor, 02/A, Fares Building, Rami Street, Margeh, Damascus, Syria (See alternate address under Lebanon).

(6) *National Standards and Calibration Laboratory (NSCL), a.k.a., Scientific Studies and Research Center (SSRC)-NSCL, Institut National Calibration Centre,* P.O. Box 4470, Damascus, Syria.

(7) *Scientific Studies and Research Center (SSRC), a.k.a., Center for Scientific Studies and Research (SSRC), Scientific Studies Research Centre (SSRC), Centre d'Etudes et de Recherches Scientifiques (CERS), Center for Study and Research (CERS),*

Scientific Studies and Research Council, Syrian Scientific Research Council, Scientific Research Council (SRC), P.O. Box 4470, Damascus, Syria.

Clarification to the Entity List and Correction to Published Rule

BIS published a final rule on April 18, 2011 (76 FR 21628) (April 18 Final Rule) that made revisions to the Entity List. These revisions included a clarification in the preamble of the rule that the ''901 Institute'' should be listed as one of nineteen individual aliases for the listed person the ''Chinese Academy of Engineering Physics'' (CAEP) and not as part of the eighteenth alias, *i.e.* the ''University of Electronic Science and Technology of China'' (UESTC). The final rule published today makes two additional changes to the existing entry for CAEP. First, as a clarification, this rule adds an address for the ''901 Institute,'' to assist exporters, reexporters, and transferors in more easily identifying this listed alias for CAEP. The addition of this address was approved by the ERC.

Second, this rule corrects an inadvertent error in the April 18 Final Rule by removing ''901 Institute'' as an alias of CAEP's eighteenth alias in Supplement No. 4 to part 744 of the EAR because, as explained in the April 18 Final Rule and noted above, the ''901 Institute'' is not part of the eighteenth alias (*i.e.* UESTC) but is a distinct nineteenth alias for CAEP. Although this conforming change was correctly described in the preamble of the April 18 Final Rule, it was not included in the regulatory text. This final rule corrects that error by amending the regulatory text to remove the reference to the ''901 Institute'' in CAEP's eighteenth alias (*i.e.* UESTC) and listing it as CAEP's nineteenth alias. The ERC cleared the removal of the ''901 Institute'' as an alias of UESTC and its addition as CAEP's nineteenth alias prior to the publication of the April 18 Final Rule.

Specifically, this rule revises this existing entry to the Entity List, as described above, to read as follows:

China

(1) *Chinese Academy of Engineering Physics,* a.k.a., the following nineteen aliases:

—Ninth Academy;
—Southwest Computing Center;
—Southwest Institute of Applied Electronics;
—Southwest Institute of Chemical Materials;
—Southwest Institute of Electronic Engineering;
—Southwest Institute of Environmental Testing;
—Southwest Institute of Explosives and Chemical Engineering;
—Southwest Institute of Fluid Physics;
—Southwest Institute of General Designing and Assembly;
—Southwest Institute of Machining Technology;
—Southwest Institute of Materials;
—Southwest Institute of Nuclear Physics and Chemistry (a.k.a., China Academy of Engineering Physics (CAEP)'s 902 Institute);
—Southwest Institute of Research and Applications of Special Materials Factory;
—Southwest Institute of Structural Mechanics; (all of the preceding located in or near Mianyang, Sichuan Province);
—Chengdu Electronic Science and Technology University (CUST);
—The High Power Laser Laboratory, Shanghai;
—The Institute of Applied Physics and Computational Mathematics, Beijing;
—*University of Electronic Science and Technology of China (No. 4, 2nd Section, North Jianshe Road, Chengdu, 610054); and
—*901 Institute, P.O. Box 523, Chengdu, 6100003.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on August 15, 2011, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before August 30, 2011. Any such items not actually exported or reexported before midnight, on August 30, 2011, require a license in accordance with the EAR.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2010, 75 FR 50681 (August 16, 2010), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in-country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the

United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010); Notice of January 13, 2011, 76 FR 3009 (January 18, 2011).

■ 2. Supplement No. 4 to part 744 is amended:

■ (a) By revising under China, in alphabetical order, one Chinese entity;

■ (b) By adding, in alphabetical order, the destination of Cyprus under the Country column and one Cypriot entity;

■ (c) By adding, in alphabetical order, the destination of Greece under the Country column and three Greek entities;

■ (d) By adding under Iran, in alphabetical order, four Iranian entities;

■ (e) By adding under Syria, in alphabetical order, two Syrian entities, ''Cham Wings Airlines'' and ''Ukraine Mediterranean Airlines, a.k.a., UM Airlines, UM Air'';

■ (f) By revising under Syria, in alphabetical order, seven Syrian entities;

■ (g) By adding, in alphabetical order, the destination of Ukraine under the Country column and five Ukrainian entities; and

■ (h) By adding under the United Kingdom, in alphabetical order, five British entities.

The additions and revisions read as follows:

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
CHINA, PEOPLE'S REPUBLIC OF	*	*	*	*
	Chinese Academy of Engineering Physics, a.k.a., the following nineteen aliases: —Ninth Academy; —Southwest Computing Center; —Southwest Institute of Applied Electronics; —Southwest Institute of Chemical Materials; —Southwest Institute of Electronic Engineering; —Southwest Institute of Environmental Testing; —Southwest Institute of Explosives and Chemical Engineering; —Southwest Institute of Fluid Physics; —Southwest Institute of General Designing and Assembly; —Southwest Institute of Machining Technology; —Southwest Institute of Materials; —Southwest Institute of Nuclear Physics and Chemistry (a.k.a., China Academy of Engineering Physics (CAEP)'s 902 Institute); —Southwest Institute of Research and Applications of Special Materials Factory; —Southwest Institute of Structural Mechanics; (all of the preceding located in or near Mianyang, Sichuan Province); —Chengdu Electronic Science and Technology University (CUST); —The High Power Laser Laboratory, Shanghai; —The Institute of Applied Physics and Computational Mathematics, Beijing; —University of Electronic Science and Technology of China (No. 4, 2nd Section, North Jianshe Road, Chengdu, 610054); and —901 Institute (P.O. Box 523, Chengdu, 6100003).	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97 66 FR 24266, 5/14/01 75 FR 78883, 12/17/10. 76 FR 21628, 4/18/11. 76 FR [INSERT FR PAGE NUMBER], 8/15/11.

Country	Entity	License requirement	License review policy	Federal Register citation
*	* *	* *	*	*
CYPRUS	Niki Panteli Kyriakou, 91, Evgeniou Voulgareous, Limassol 4153, Cyprus (See alternate address under United Kingdom).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
*	* *	* *	*	*
GREECE	Sergei (Sergi) Ivanovich Tomchani, a.k.a., Sergey Ivanovich Tomchani, 58, Vouliagmenis Ave Voula, 16673, Athens, Greece (See alternate addresses under Ukraine and United Kingdom).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Sky Wings Airlines SA, 58, Vouliagmenis Ave Voula, 16673, Athens, Greece.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Socrates Vasilakis, 58, Vouliagmenis Ave Voula, 16673, Athens, Greece.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
*	* *	* *	*	*
IRAN	* * *	*	* *	*
	Kish Airlines, Headquarters, No. 21 Ekbatan Main Blvd., P.O. Box 19395/4639, Tehran, 13938, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	* * *	*	* *	*
	Sahand Airlines, Sahand Airport, Bonab/Sahand, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	* * *	*	* *	*
	Ukraine Mediterranean Airlines, a.k.a., UM Airlines, UM Air, Building Negin Sai app. 105, Valiasr Str., Tehran, Iran (See alternate addresses under Ukraine and Syria).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	* * *	*	* *	*
	Zagros Airlines, Abadan Airport, Abadan, Iran	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
*	* *	* *	*	*
SYRIA	Cham Wings Airlines, Al-Fardous Street, Damascus, Syria.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	EKT Electronics, a.k.a., Katrangi Electronics, Katrangi Trading, Katranji Labs, Electronics Systems, #1 floor, 11/A, Abbasieh Building, Hijaz Street, P.O. Box 10112, Damascus, Syria; and #1 floor, 02/A, Fares Building, Rami Street, Margeh, Damascus, Syria (See alternate address under Lebanon).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54503, 9/22/08 76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Encyclopedia Electronics Center, a.k.a., Hassan Matni Import Export Co., Nazir Matni Electronics, Mosalam Baroudi Street, P.O. Box 12071, Halbouni, Damascus, Syria.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54503, 9/22/08 76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Higher Institute of Applied Science and Technology (HIAST), a.k.a., Institut Superieur des Sciences Appliquées et de Technologie (ISSAT), Institut des Sciences Appliquées et de Technologie (ISAT), P.O. Box 31983, Barzeh, Damascus, Syria.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	70 FR 11861, 3/10/05 76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Industrial Establishment of Defense (IED), a.k.a., Industrial Establishment of Defence (IED), Établissements Industriels de la Défense (EID), Etablissement Industrial de la Defence (ETINDE), Al Thawraa Street, P.O. Box 2330, Damascus, Syria.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	70 FR 11861, 3/10/05 76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Mohammed Katranji, #1 floor, 11/A, Abbasieh Building, Hijaz Street, P.O. Box 10112, Damascus, Syria; and #1 floor, 02/A, Fares Building, Rami Street, Margeh, Damascus, Syria (See alternate address under Lebanon).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54503, 9/22/08 76 FR [INSERT FR PAGE NUMBER], 8/15/11.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	National Standards and Calibration Laboratory (NSCL), a.k.a., Scientific Studies and Research Center (SSRC)-NSCL, Institut National Calibration Centre, P.O. Box 4470, Damascus, Syria.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	70 FR 11861, 3/10/05 76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Scientific Studies and Research Center (SSRC), a.k.a., Center for Scientific Studies and Research (SSRC), Scientific Studies Research Centre (SSRC), Centre d'Etudes et de Recherches Scientifiques (CERS), Center for Study and Research (CERS), Scientific Studies and Research Council, Syrian Scientific Research Council, Scientific Research Council (SRC), P.O. Box 4470, Damascus, Syria.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	70 FR 11861, 3/10/05 76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Ukraine Mediterranean Airlines, a.k.a., UM Airlines, UM Air, 29 Ayar Str., Julia Dumna building, Damascus, Syria (See alternate addresses under Iran and Ukraine).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
*	* *	* *	*	*
UKRAINE	Khors Air Company, 34, Lesi Ukrainki Boulevard, Kiev, 01133, Ukraine; and 10, Mekhanizatoriv Street, Kiev, 03035, Ukraine.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Natalya Totskaya, 34, Lesi Ukrainki Boulevard, Kiev, 01133, Ukraine; and 10, Mekhanizatoriv Street, Kiev, 03035, Ukraine.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Roman Unytskyi, 34, Lesi Ukrainki Boulevard, Kiev, 01133, Ukraine; and 10, Mekhanizatoriv Street, Kiev, 03035, Ukraine.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Sergei (Sergi) Ivanovich Tomchani, a.k.a., Sergey Ivanovich Tomchani, 34, Lesi Ukrainki Boulevard, Kiev, 01133, Ukraine; and 10, Mekhanizatoriv Street, Kiev, 03035, Ukraine (See alternate addresses under Greece and United Kingdom).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Ukraine Mediterranean Airlines, a.k.a., UM Airlines, UM Air, 7, Shulyavskaya Str., Kiev, Ukraine (See alternate addresses under Iran and Syria).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	* * *	* *	*	*
UNITED KINGDOM.	A.P. Finance Limited, 38, Princes Court—88 Brompton Road, Knightsbridge, London, SW3 1ES, United Kingdom; and Enterprise House, 113/115 George Lane, London, E18 1AB, United Kingdom.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Anatolii Pysarenko, 38, Princes Court—88 Brompton Road Knightsbridge, London, SW3 1ES, United Kingdom; and Enterprise House,113/115 George Lane, London, E18 1AB, United Kingdom.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	* * *	*	* *	*
	Myra Gkizi, 38, Princes Court—88 Brompton Road, Knightsbridge, London, SW3 1ES, United Kingdom.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Niki Panteli Kyriakou, 38, Princes Court—88 Brompton Road, Knightsbridge, London, SW3 1ES, United Kingdom (See alternate address under Cyprus).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.
	Sergei (Sergi) Ivanovich Tomchani, a.k.a., Sergey Ivanovich Tomchani, 38, Princes Court—88 Brompton Road, Knightsbridge, London, SW3 1ES, United Kingdom; and Enterprise House 113/115 George Lane, London, E18 1AB, United Kingdom (See alternate addresses under Greece and Ukraine).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 8/15/11.

Dated: August 4, 2011.

Kevin J. Wolf

Assistant Secretary for Export Administration.

[FR Doc. 2011–20602 Filed 8–12–11; 8:45 am]

BILLING CODE 3510–33–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in September 2011. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for September 2011.[1]

The September 2011 interest assumptions under the benefit payments regulation will be 2.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for August 2011, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during September 2011, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 215, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* *	*	*	*		*		*	
215	9–1–11	10–1–11	2.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 215, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* *	*	*	*		*		*	
215	9–1–11	10–1–11	2.25	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 10th day of August 2011.

Laricke Blanchard,

Deputy Director for Policy, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–20649 Filed 8–12–11; 8:45 am]

BILLING CODE 7709–01–P

POSTAL SERVICE

39 CFR Part 20

International Mail Manual; Incorporation by Reference

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of the *Mailing Standards of the United States Postal Service, International Mail Manual* (IMM®) dated April 17, 2011, updated with *Postal Bulletin* revisions through June 2, 2011, effective June 6, 2011, and its incorporation by reference in the Code of Federal Regulations.

DATES: *Effective Date:* This final rule is effective on August 15, 2011. The incorporation by reference of the IMM is approved by the Director of the Federal Register as of August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Lizbeth Dobbins, (202) 268–3789.

SUPPLEMENTARY INFORMATION: The *International Mail Manual* was issued on April 17, 2011, and was updated with postal bulletin revisions through June 2, 2011. It replaced all previous editions. This issue of the IMM removes the issue number, replacing it with the issue date to mirror the format used for the *Domestic Mail Manual* (DMM®). It also continues to enable the Postal Service to fulfill its long-standing mission of providing affordable, universal mail service. It continues to: (1) increase the user's ability to find information; (2) increase the users' confidence that they have found the information they need; and (3) reduce the need to consult multiple sources to locate necessary information. The provisions throughout this issue support the standards and mail preparation changes implemented since the version of May 11, 2009. The *International Mail Manual* is available to the public on the Postal Explorer® Internet site at *http://pe.usps.com.*

List of Subjects in 39 CFR Part 20

Foreign relations; Incorporation by reference.

In view of the considerations discussed above, the Postal Service hereby amends 39 CFR part 20 as follows:

PART 20—INTERNATIONAL POSTAL SERVICE

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Amend § 20.1 by revising paragraph (a), and adding a new entry at the end of the table in paragraph (b), to read as follows:

§ 20.1 International Mail Manual; incorporation by reference.

(a) Section 552(a) of title 5, U.S.C., relating to the public information requirements of the Administrative Procedure Act, provides in pertinent part that matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register. In conformity with that provision and 39 U.S.C. 410(b)(1), and as provided in this part, the Postal Service hereby incorporates by reference its *International Mail Manual* (IMM), dated April 17, 2011, updated with P*ostal Bulletin* revisions through June 2, 2011, effective June 6, 2011. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

(b) * * *

International Mail Manual	Date of issuance
* * * * *	
IMM	April 17, 2011.

■ 3. Revise § 20.2 to read as follows:

§ 20.2 Effective date of the International Mail Manual.

The provisions of the *International Mail Manual* dated April 17, 2011, updated with P*ostal Bulletin* revisions through June 2, 2011, effective June 6, 2011, are applicable with respect to the international mail services of the Postal Service.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–20618 Filed 8–12–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9451–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Sayreville Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA, Region 2, is publishing a direct final Notice of Deletion of the Sayreville Landfill Superfund Site (Site), located in the Borough of Sayreville, Middlesex County, New Jersey, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final Notice of Deletion is being published by EPA with the concurrence of the State of New Jersey, through the Department of Environmental Protection (NJDEP). EPA and NJDEP have determined that all appropriate remedial actions under CERCLA, other than operation, maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion will be effective September 29, 2011 unless EPA receives significant adverse comments by September 14, 2011. If significant adverse comments are received, EPA will publish a timely withdrawal of this direct final deletion in the **Federal Register**, informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: salkie.diane@epa.gov.*
- *Fax:* 212–637–4393.
- *Mail:* To the attention of Diane Salkie, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (*telephone:* 212–637–4308). Such deliveries are only accepted during the Docket's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.).

Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002; EPA's policy is that all comments received will be included in the Docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://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 comments. If you send e-mail comments directly to EPA without going through *http://www.regulations.gov,* your e-mail 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 electronic comments, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM that 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 comments. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials can be available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, *Phone:* 212–637–4308, *Hours:* Monday to Friday from 9 a.m. to 5 p.m. and New Jersey Department of Environmental Protection, 401 East State Street, Trenton, New Jersey 08625–0410, *Phone:* 609–777–3373.

FOR FURTHER INFORMATION CONTACT: Diane Salkie, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19th Floor, New York, New York 10007–1866, telephone at (212) 637–4370; fax at (212) 637–4393; or e-mail at: *salkie.diane@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 2 is publishing this direct final Notice of Deletion of the Sayreville Landfill Superfund Site (Site) from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e) (3) of the NCP, a site deleted from the NPL remains eligible for remedial actions if conditions at the site warrant such action.

Because EPA considers this action to be noncontroversial and routine, this action will be effective September 29, 2011 unless EPA receives significant adverse comments by September 14, 2011. Along with this direct final Notice of Deletion, EPA is co-publishing the Notice of Intent to Delete in the ''Proposed Rules'' section of today's Federal Register. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Sayreville Landfill Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless significant adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other parties have implemented all appropriate response actions required;

ii. all appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, implementing remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at the site above

levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of this Site.

(1) EPA consulted with the state of New Jersey prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register.**

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the New Jersey Department of Environmental Protection, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, the Home News Tribune. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e) (3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following summary provides the Agency's rationale for deleting this Site from the NPL.

Site Background and History

The Sayreville Landfill Superfund site (CERCLIS ID: NJD980505754) covers approximately 30 acres and is located in a moderately industrial section of the Borough of Sayreville in Middlesex County, New Jersey, approximately one mile south of Route 535 and one and a half miles north of the Bordentown-Amboy Turnpike. Several small industries surround the Site to the north, east and south. The South River, which flows north, is a major tributary to the Raritan River and forms the western border of the Site. The river waters adjacent to the Site are designated for both primary and secondary contact recreation. Pond Creek forms a portion of the Site boundary to the north and northwest and Duck Creek on the south and southwest. These waters are classified by the NJDEP as fresh water Non-Trout. The Site is partially located within the tidal wetlands of the river with drainage swales along the western part of the property.

Land and Resource—The landfill property encompasses approximately 30 acres of land, of which, approximately 20 acres were used for waste fill and contains buried wastes. The waste fill area rises above the natural grade by approximately eight to ten feet, is covered with low-lying vegetation and marsh grasses, and is bordered by small surface streams. The eastern section of the Site, near Jernee Mill Road, contains clusters of hardwood trees. The nearest residential developments are located ½ mile to the north and ¼ mile to the west (across the South River, which is the western border of the landfill).

History of Contamination—From 1971 to August 1977, the Sayreville Landfill was operated by the Borough of Sayreville as a licensed municipal landfill which accepted primarily municipal solid wastes and some light industrial wastes. Reports from previous investigations indicate that hazardous wastes were disposed of at the Site between 1974 and 1977 when landfill operations ceased. In addition, it is believed that additional quantities of hazardous wastes were dumped at the Site after 1977.

Initial Response—In 1980, a landfill closure plan, approved by the NJDEP, was implemented by the Borough. Subsequent Site inspections, however, revealed that the closure had not been properly completed. The existing vegetative growth over the landfill had eroded in many areas and failed to significantly impede the release of fugitive dust or landfill gas emissions. In 1981, the NJDEP issued an order to the Borough of Sayreville to cease violations regarding maintenance of the landfill.

Basis for Taking Action—In April 1981, the New Jersey Division of Criminal Justice performed a magnetometer survey on a portion of the landfill alleged to contain buried hazardous waste materials. Based on the survey results, an estimated 30 drums were excavated from the western peninsula of the waste-fill area. Analytical results detected various hazardous compounds including pentachlorophenol, para-ethyl toluene, chloroform, methyl bromide as well as pesticides and acids. In August 1982, EPA visited the Site to gather information for ranking it on the Federal Superfund National Priorities List (NPL). Based on the data collected from this and previous investigations, the Site was proposed for the NPL on December 30, 1982 (47 FR 58476) and placed final on the NPL on September 8, 1983 (47 FR 40674).

Redevelopment—During development of the 1998 OU2 ROD, the owner of the property indicated its desire, after proper landfill closure to reuse the property for recreational/commercial purposes. In 1998, NJDEP agreed that recreational use of the property would be appropriate provided that development of the landfill did not breach the landfill cap, and that an additional monitoring program would be required to ensure the integrity of the landfill cap. Reuse/redevelopment is further addressed in the August 2010 deed restriction and the June 14, 2007 Classification Exception Area (CEA).

Remedial Investigation and Feasibility Study (RI/FS)

In February 1986, NJDEP engaged B&V Waste Science and Technology, Inc. (BVWST) to begin a remedial investigation and feasibility study (RI/FS) at the Site. The Phase I field work was conducted between November 1986 and March 1987 and included the following activities: installation of 21 groundwater monitoring wells and three piezometer wells; collection of groundwater samples from on-site monitoring wells; collection of surface water and stream sediment samples from 11 locations surrounding the Site; excavation of five test pits and collection of soil samples; and air

monitoring at 52 locations. Phase II of the RI began in October 1989 and was intended to supplement and verify the findings and analytical results from Phase I of the investigation. Phase II included the following activities: collection of groundwater samples from 21 on-site monitoring wells; collection of three surface water and six sediment samples; excavation of 11 test pits; and collection of 12 drum contents samples. Based on the results of the RI, BVWST completed the FS report which identified and evaluated a number of remedial alternatives.

Selected Remedy

On September 28, 1990, EPA issued a Record of Decision selecting a remedial action plan for the landfill (OU1). The remedial action objectives for the OU1 ROD include the following: prevent direct contact with landfill soils and buried drums and minimize surface water runoff which contributes to landfill erosion; minimize the migration of soil and drum content contaminants into groundwater, surrounding surface waters and stream sediments; and identify potential releases of contaminants to groundwater, surface water and sediments. The major components of the selected remedy include:

- Fencing of the Site to restrict access and the establishment of deed restrictions;
- Capping of the wastefill with a NJDEP solid waste cap to prevent infiltration and any potential releases of hazardous waste to groundwater and surface waters;
- Construction of an access road and storm water and passive gas management systems;
- Removal and off-site thermal treatment of buried drums containing hazardous wastes;
- Intensive groundwater, surface waters, stream sediments and air sampling and monitoring; and
- The installation of additional groundwater monitor wells within the deep Farrington aquifer.

In a supplemental investigation, a third round of water sampling was conducted on the 21 wells in addition to installing two more deep wells in the deep Farrington Sand aquifer.

These successive sampling events indicated that the contaminant concentrations had declined over time. The deep Farrington Sand aquifer was determined to have no contaminants above the NJ Ground-Water Quality Standards. On June 30, 1997, EPA issued an Explanation of Significant Differences (OU1 ESD) which modified the original cleanup selected in the 1990 OU1 ROD. The OU1 ESD documented that EPA and NJDEP, after further review of the circumstances surrounding the Site, including additional monitoring data, determined that installation of an additional deep well into the Farrington Sand aquifer was not necessary.

Based on the findings of the various investigations, the fact that there are no known users of the perched and shallow aquifers and that ground-water contaminant concentrations appeared to be decreasing, on September 23, 1998, the NJDEP, in consultation with EPA, issued a ROD for off-site sediments, surface water, and groundwater (OU2). The OU2 ROD selected as the remedy, ''No Further Action'' for surface water and sediments, and ''No Further Action with Monitoring'' for groundwater. The OU2 ROD also called for:

- Monitoring of the wells surrounding the landfill to verify the effectiveness of the landfill cap and to ensure that the landfill is not contaminating the groundwater.
- Implementation of a Deed Notice to prevent any intrusive activities into the landfill cap.
- Implementation of a Classification Exception Area (CEA) for the shallow aquifer in the vicinity of the Site.

Response Actions

Source Control—The final remedial design (RD) was approved in February 1996.

Actual on-site construction began on June 30, 1997, and was substantially completed by July 1998. A Preliminary Closeout Report was issued by EPA on September 28, 1998. O'Brien and Gere Engineers certified final construction completion in June 1999. EPA approved the Remedial Action Report on September 30, 1999. The Remedial Action Report contains detailed information on the construction and demonstrates that the remedy is operational and functional.

The PRPs selected IEM Sealand/ ThermoRetec as the prime construction contractor on May 5, 1997 and O'Brien and Gere was selected as the oversight contractor. Major work activities included: site clearing and grubbing, waste relocation from the northern peninsula to the main landfill; waste removal from the demolition area and perimeter areas and relocation to the main landfill; regrading of the main landfill cap area; construction of the landfill cap system; placement of topsoil and seeding; gas vent installation; monitoring well abandonment; retrofitting of monitoring wells to accommodate the final grade; drum removal; and wetlands mitigation.

The perimeter of the Site was cleared and installation of the perimeter soil and erosion control measures was completed. Excavation of waste from the northern landfill proceeded with excavation, hauling, placement and compaction of materials to the main landfill area. Upon completion of excavation, confirmation soil samples were collected to ensure cleanup levels were attained. Construction of the cap system included a riprap channel around the perimeter of the cap to allow drainage. The cap consists of a six-inch sand bedding layer with geo-membrane liner placed on the sand. On top of the liner, a geo-net drainage system was installed. The next layer consists of 18-inch embankment material covered with six inches of topsoil. Eighteen drums of solid waste and 17 drums of liquid waste were transported off site by Waste Minimization Sciences, Inc. on April 30, 1998 for disposal by incineration. Two freshwater wetland mitigation areas were developed at the northeast and southeast corners of the main landfill. Three inspections were made following the creation of the wetlands mitigation areas to document types and amounts of vegetation and to determine survival rates of the plant species.

Fencing was installed extending several hundred feet along Jernee Mill Road in both directions from the entrance gate. At both ends, the fence then turns westward towards the South River and proceeds approximately halfway to the River, preventing access to the landfill Site from areas other than wetlands. ''No Trespassing'' signs have also been posted around the perimeter of the landfill Site. The deed notice was recorded in Middlesex County on August 10, 2010. In March 2003, in accordance with the OU2 ROD requirement for the establishment of a State Classification Exception Area (CEA), municipal engineers for the Borough of Sayreville, O'Brien and Gere Engineers, provided NJDEP with information that was placed in the State's CEA database which identifies what areas of the Site have ground-water contamination in excess of New Jersey Ground-Water Quality Standards. The CEA was established by NJDEP on June 14, 2007.

Cleanup Goals

After the composite cap system was installed, groundwater monitoring was conducted semi-annually from August 1991 until August 2004 and continued annually until November 2007. From 2008–2010 a review of groundwater data and on-site gas monitoring was performed and a revision to the O&M plan was submitted to NJDEP. Over the

two year period of 2008–2010, DEP approved an exemption from conducting groundwater sampling, however, annual reports for inspections and gas monitoring continued during this period. The next round of groundwater samples were collected in 2010.

According to the Post-Closure O&M Plan groundwater is sampled from ten monitoring wells in three water bearing zones: perched, shallow and deep. The applicable or relevant and appropriate requirements (ARARs) for the groundwater at the Site are the EPA Safe Drinking Water Act Maximum Contaminant Levels (MCLs) and New Jersey Department of Environmental Protection Ground Water Quality Standards (GWQSs). Volatile organic compounds (VOCs) benzene, chlorobenzene and chloroethene, have historically been the only VOCs above the ARARs in the perched or shallow zone wells. The levels have demonstrated significant decreases in concentration in the last few years. Historically, one semi-volatile organic compound (SVOC) was detected in the shallow and deep zones but is not considered Site related and is below the ARARs. Inorganic compounds found throughout the Site are arsenic, aluminum, cadmium, chromium, iron, lead, nickel, manganese, sodium and thallium. Aluminum, iron, manganese and sodium reflect regional background conditions and are not thought to be Site related. Inorganic concentrations have fluctuated over the fourteen rounds of sampling, but have shown a decrease and stability since 2006.

Perched Zone—Three wells located in the perched water bearing zone, MW–8, MW–11 and P–5 are within the boundaries of the landfill where wastefill was placed. In 1989, during Phase II of the Remedial Investigation the levels of chloroethane, methylene chloride, benzene, antimony and beryllium were above the ARARs in groundwater from wells MW–8 and MW–11. Piezometer well P–5 was installed at a later time and showed elevated results of the same compounds in addition to chlorobenzene, cadmium, chromium, nickel and sodium. Lead in well P–5 peaked at a level of 100 μg/L in 2001 but has since declined to 6.7 μg/L, below the MCL of 15 μg/L in 2010. The 2010 sampling results demonstrate that methylene chloride, antimony, beryllium, chromium and nickel are either non-detect or below the ARARs in the three wells. Elevated iron, manganese and sodium reflect regional background conditions. Benzene, chlorobenzene and chloroethane have decreased significantly, but remain slightly elevated in the three monitoring wells located within the former wastefill disposal area. However, the groundwater meets ARARs in the monitoring well located at the downgradient boundary of the waste management area.

Shallow Zone—Under the Post-Closure O&M Plan there are currently four wells in the shallow water bearing zone being monitored. Wells MW–5S and MW–6S are located within the landfill area on the west side of the landfill and two wells are hydraulically upgradient wells: P–1 to the north of the landfill and MW–3 to the east of the landfill. In the western wells antimony, beryllium, methylene chloride and acetone concentrations began above the ARARs and showed non-detect or below ARARs in 2010. Arsenic also remains above the GWQS in both on site wells, however below the MCLs in MW–6S. The hydraulically upgradient wells showed arsenic, chromium, nickel, methylene chloride and acetone at levels above the ARARs historically and non-detect in 2010. Piezometer well P–1 initially showed benzene at a level of 15 μg/L and has fluctuated from non-detect to the current level of 1.3 μg/L slightly above the NJDEP GWQS of 1 μg/L and below the MCL of 5 μg/L. Since P–1 is upgradient, the contamination most likely originates from another source.

Deep Zone—Three monitoring wells are in the deep water bearing zone or the Farrington Aquifer. MW–1D and MW–14 are both upgradient and north of the landfill while MW15 is located south of the landfill. Historically, acetone, methylene chloride, benzene and 1,2-dichloroethane were above the ARARs in the upgradient wells, but have declined to the current result of non-detect. No organic compounds were above ARARs in MW–15. Lead in well MW–1D peaked at 130 μg/L in 2004 but has since declined to 10 μg/L, below the MCL of 15 μg/L. Elevated levels of aluminum, iron, manganese and sodium were found in all three deep wells, however, reflect regional background conditions.

Summary—Although the on-site wells located in the waste management area and upgradient of the Site remain contaminated with slightly elevated levels of organic contaminants of concern, the downgradient well shows levels below the MCLs. The only inorganic contaminants of concern still present in the 2010 results are lead and arsenic. The lead was found in P–5 (perched well) located on site and MW–1D (deep well), upgradient of the site. Both results are above the GWQS but below the MCLs. Although arsenic remains above the GWQS in MW–6S (shallow well), it is below the MCL and has decreased since the earlier sampling events. Arsenic concentrations have fluctuated throughout the sampling of MW–5S, and with the exception of the 2010 sampling, had been below the MCLs.

Operation and Maintenance

In 1986 and 1987, investigations indicated that gaseous emissions of volatile compounds at the Site were almost exclusively methane. To control the emissions, 22 passive vents were installed within the landfill. In 1999, 13 soil gas monitoring probes were installed around the perimeter of the landfill. However, these probes failed and were replaced by the current monitoring system in 2003. The gas has been monitored for methane, oxygen, carbon dioxide and nitrogen quarterly from the new probes since 2004. Methane has been consistently elevated in soil gas probe P–6A located at the edge of the Site in the wetlands area. All other probes have shown methane at a non-detect level or have decreased to non-detect. In 2008, a forensic analysis of methane from P–6A and landfill vent LV–15 was conducted and determined that the gas is consistent with a biogenically-derived gas from landfill activities and not from the natural wetlands. Probe P–6A is located near monitoring well MW–6S which has not shown any volatile organic compound contamination for several years. There are no health and safety concerns due to the absence of confined space and distance to off-site receptors.

Detailed ''Sampling and Monitoring Reports'' were submitted by O'Brien and Gere Engineers to the PRP Committee members, NJDEP, and EPA on a semi-annual basis. These reports included both maintenance and monitoring activities and identified any problems and corrective measures. Routine O&M activities are performed by O'Brien and Gere Engineers by contract with the PRP Committee at the Site in accordance with the Operation and Maintenance Manual which was approved by NJDEP in November 1995.

Ten ground-water monitoring wells (three wells in the perched aquifer, four wells in the shallow aquifer, one well in the water bearing Woodbridge/South Amboy Clay, and two wells in the deep aquifer) were sampled semi-annually over a period of five years. The final semi-annual report was submitted in January 2005. Since then, monitoring has been conducted on an annual basis until 2007. The latest data provided to EPA was obtained from samples taken in November 2007 and December 2010.

Landfill gas is monitored using thirteen soil gas monitoring probes.

In 2011, NJDEP approved the revised O&M Plan with the following modifications to the sampling and analysis plan:

(1) A reduction in the groundwater monitoring frequency to one round per five years.

(2) Monitoring of the deep water bearing zone (wells MW–1D, MW–14, and MW–15) is discontinued since it is not part of the CEA, and investigations and monitoring have demonstrated that no contamination related to the landfill has impacted the deep water zone.

(3) Semi-volatile organic contaminants are not detected in the groundwater and were removed from the list of target analytes.

(4) Based on the CEA constituents and recent analytical results, the list of target organic analytes includes the following volatile organic contaminants: benzene, chlorobenzene, chloroethane

(5) Based on the CEA constituents and recent analytical results, the list of target inorganic analytes was reduced to the following: arsenic, chromium, lead, nickel and thallium; all other detected inorganic constituents (iron, manganese, and sodium) that exceed the GWQS reflect regional background conditions

(6) A low flow purging and sampling methodology in general conformance with the NJDEP Field Sampling Procedures Manual (2005) should continue to be used to obtain a more accurate representation of actual groundwater quality in the monitored water bearing zones.

Following completion of the remedial construction, Site inspections were performed monthly for two years and then quarterly thereafter. The findings are recorded in the inspection and maintenance logs provided in Appendix A of the ''Sampling and Monitoring Reports''. The contractor cuts the grass on a monthly basis as needed, and performs any necessary repairs to the liners and/or the soil gas monitoring probes. Damage to the surface soil above the cap is also inspected and repaired as necessary. The contractor is also responsible for maintaining the integrity of the fence.

Site inspections are conducted quarterly and reported to EPA and DEP annually in the form of the Post-Closure Inspection and Maintenance Form along with any necessary support information. The site inspection investigates the conditions of the fence, security signs, access road and gates as well as the state of the landfill cap, vegetation and drainage. The 2010 Deed Notice places restrictions on the Site so that no alteration, improvement or disturbance of the cap, or the landfill materials can take place without prior approval from NJDEP.

Five-Year Review

Two Five-Year Reviews have been conducted at the Site, the first in 2002, and the second in 2007. The implemented actions (OU–1 and OU–2) taken at the Sayreville Landfill Superfund Site were found to be protective of human health and the environment in the short-term and that in order for the remedy to be protective in the long-term, the final institutional controls needed to be implemented. The deed notice was recorded in Middlesex County on August 10, 2010. Currently, there are no exposure pathways that could result in unacceptable risks and none are expected as long as the Site use does not change and the engineered and access controls currently in place continue to be properly operated, monitored, and maintained. In addition, the deed notice has been recorded restricting land use and the CEA is in place to restrict groundwater use providing for long-term protectiveness of human health and the environment. The next five-year review will be completed by June 2012.

Community Involvement

Public participation activities for this Site have been satisfied as required in CERCLA sections 113(k) and 117, 42 U.S.C. 9613 (k) and 9617. Throughout the removal and remedial process, EPA and the NJDEP have kept the public informed of the activities being conducted at the Site by way of public meetings, progress fact sheets, and the announcement through local newspaper advertisement on the availability of documents such as the RI/FS, Risk Assessment, ROD, Proposed Plan and Five-Year Reviews. Notices associated with these community relations activities were also mailed out to the area residents and other concerned parties on the mailing list for the Site.

Determination That the Site Meets the Criteria for Deletion From the NCP

The NCP specifies that EPA may delete a site from the NPL if ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate'' as stated in 40 CFR 300.425(e) (1) (ii). EPA, with the concurrence from the State of New Jersey, through NJDEP, dated July 27, 2011, believes that this criterion for deletion has been met. Consequently, EPA is deleting this Site from the NPL. Documents supporting this action are available in the Site files.

The groundwater meets applicable or relevant and appropriate requirements (ARARs) at all monitoring wells located at the downgradient boundary of the waste management area. The downgradient wells outside the boundary of the landfill were removed from the sampling plan based on had multiple years of sampling results with non-detect for the site contaminants of concern.

The deed notice was recorded in Middlesex County on August 10, 2010. Currently, there are no exposure pathways that could result in unacceptable risks and none are expected as long as the Site engineered and access controls currently in place continue to be properly operated, monitored, and maintained. In addition, the deed notice has been recorded restricting use and providing for long-term protectiveness of human health and the environment.

In March 2003, in accordance with the September 23, 1998 Record of Decision requirement for the establishment of a State Classification Exception Area (CEA), municipal engineers for the Borough of Sayreville, O'Brien and Gere Engineers, provided NJDEP with information that was placed in the State's CEA database which identifies what areas of the Site have ground-water contamination in excess of New Jersey Ground-Water Quality Standards. The CEA was established by NJDEP on June 14, 2007.

V. Deletion Action

EPA, with the concurrence of the State of New Jersey, has determined that all appropriate Fund-financed responses under CERCLA have been implemented, other than operation, maintenance and five-year reviews, and no further action by responsible parties is appropriate. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is deleting the Site without prior publication. This action will be effective September 29, 2011 unless EPA receives adverse comments by September 14, 2011. If adverse comments are received within the 30-day public comment period of this action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments received. In such a case, there will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 4, 2011.

Judith Enck,

Regional Administrator, U.S. EPA Region 2.

For the reasons set out in the preamble Part 300 Title 40 of Chapter I of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O.12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry for ''NJ Sayreville Landfill, Sayreville''.

[FR Doc. 2011–20742 Filed 8–12–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

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

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Idaho:					
Ada (FEMA Docket No. B–1181).	City of Meridian, (10–10–0128P).	October 25, 2010, November 1, 2010, *The Idaho Statesman*.	The Honorable Tammy de Weerd, Mayor, City of Meridian, 33 East Broadway Avenue, Suite 300, Meridian, ID 83642.	March 1, 2011	160180
Ada (FEMA Docket No. B–1181).	Unincorporated areas of Ada County, (10–10–0128P).	October 25, 2010, November 1, 2010, *The Idaho Statesman*.	The Honorable Fred Tilman, Chairman, Ada County Board of Commissioners, Ada County Courthouse, 200 West Front Street, 3rd Floor, Boise, ID 83702.	March 1, 2011	160001
Illinois:					
DuPage (FEMA Docket No. B–1181).	City of Darien, (10–05–1256P).	December 13, 2010, December 20, 2010, *The Daily Herald*.	The Honorable Kathleen A. Weaver, Mayor, City of Darien, 1702 Plainfield Road, Darien, IL 60561.	April 19, 2011	170750
DuPage (FEMA Docket No. B–1181).	Unincorporated areas of DuPage County, (10–05–1256P).	December 13, 2010, December 20, 2010, *The Daily Herald*.	The Honorable Robert J. Schillerstrom, Chairman, DuPage County Board, Jack T. Knuepfer Administration Building, 421 North County Farm Road, Wheaton, IL 60187.	April 19, 2011	170197
DuPage (FEMA Docket No. B–1181).	Village of Woodridge, (10–05–5743P).	November 25, 2010, December 2, 2010, *The Bugle Newspaper*.	The Honorable William F. Murphy, Mayor, Village of Woodridge, 5 Plaza Drive, Woodridge, IL 60517.	November 12, 2010	170737
McHenry (FEMA Docket No. B–1183).	Unincorporated areas of McHenry County, (10–05–4602P).	February 7, 2011, February 14, 2011, *The Northwest Herald*.	The Honorable Ken A. Koehler, Chairman, McHenry County Board, 2200 North Seminary Avenue, Woodstock, IL 60098.	June 14, 2011	170732
Will (FEMA Docket No. B–1181).	Village of Bolingbrook, (10–05–5743P).	November 25, 2010, December 2, 2010, *The Bugle Newspaper*.	The Honorable Roger C. Claar, Mayor, Village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, IL 60440.	November 12, 2010	170812
Kansas:					
Johnson (FEMA Docket No. B–1181).	City of Lenexa, (10–07–0912P).	November 30, 2010, December 7, 2010, *The Legal Record*.	The Honorable Michael Boehm, Mayor, City of Lenexa, 12350 West 87th Street Parkway, Lenexa, KS 66215.	April 6, 2011	200168
Johnson (FEMA Docket No. B–1183).	City of Overland Park, (10–07–2077P).	January 5, 2011, January 12, 2011, *The Sun Publications*.	The Honorable Carl Gerlach, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	May 12, 2011	200174
Johnson (FEMA Docket No. B–1180).	City of Leawood, (10–07–0270P).	August 25, 2010, September 1, 2010, *The Sun Publications*.	The Honorable Peggy J. Dunn, Mayor, City of Leawood, 4800 Town Center Drive, Leawood, KS 66211.	August 11, 2010	200167
Johnson (FEMA Docket No. B–1180).	City of Overland Park, (10–07–0270P).	August 25, 2010, September 1, 2010, *The Sun Publications*.	The Honorable Carl Gerlach, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	August 11, 2010	200174
Massachusetts:					
Bristol (FEMA Docket No. B–1181).	Town of Easton, (11–01–0022P).	November 1, 2010, November 8, 2010, *The Enterprise News*.	Mr. David Colton, Town of Easton Administrator, 136 Elm Street, Easton, MA 02356.	October 26, 2010	250053
Bristol (FEMA Docket No. B–1181).	Town of Easton, (11–01–0021P).	November 15, 2010, November 22, 2010, *The Enterprise News*.	Mr. David Colton, Town of Easton Administrator, 136 Elm Street, Easton, MA 02356.	November 2, 2010	250053
Bristol (FEMA Docket No. B–1181).	Town of Swansea, (10–01–1791P).	October 20, 2010, October 27, 2010, *The Spectator*.	The Honorable M. Scott Ventura, Chairman, Board of Selectmen, Swansea Town Hall Annex, 68 Stevens Road, Swansea, MA 02777.	October 4, 2010	255221
Michigan:					
Bay (FEMA Docket No. B–1181).	Township of Frankenlust, (09–05–6111P).	October 7, 2010, October 14, 2010, *The Bay City Democrat and The Bay County Legal News*.	Mr. Ronald Campbell, Township of Frankenlust Supervisor, 2401 Delta Road, Bay City, MI 48706.	February 11, 2011	260022
Minnesota:					
Anoka (FEMA Docket No. B–1181).	City of Centerville, (10–05–2774P).	October 27, 2010, November 10, 2010, *The Citizen*.	The Honorable Mary Capra, Mayor, City of Centerville, 1880 Main Street, Centerville, MN 55038.	March 10, 2011	270008
Olmsted (FEMA Docket No. B–1181).	City of Rochester, (10–05–2736P).	October 7, 2010, October 14, 2010, *The Rochester Post-Bulletin*.	The Honorable Ardell F. Brede, Mayor, City of Rochester, 201 4th Street Southeast, Room 281, Rochester, MN 55904.	February 11, 2011	275246
Olmsted (FEMA Docket No. B–1181).	Unincorporated areas of Olmsted County, (10–05–2736P).	October 7, 2010, October 14, 2010, *The Rochester Post-Bulletin*.	Mr. Richard G. Delvin, Olmsted County Administrator, 151 Southeast 4th Street, Rochester, MN 55904.	February 11, 2011	270626
Missouri:					
Phelps (FEMA Docket No. B–1181).	City of Rolla, (10–07–0319P).	December 13, 2010, December 20, 2010, *The Rolla Daily News*.	The Honorable William S. Jenks, III, Mayor, City of Rolla, 901 North Elm Street, Rolla, MO 65401.	April 19, 2011	290285
Phelps (FEMA Docket No. B–1180).	City of Rolla, (10–07–0800P).	September 27, 2010, October 4, 2010, *The Rolla Daily News*.	The Honorable William S. Jenks, III, Mayor, City of Rolla, 901 North Elm Street, Rolla, MO 65401.	February 2, 2011	290285
Phelps (FEMA Docket No. B–1180).	Unincorporated areas of Phelps County, (10–07–0800P).	September 27, 2010, October 4, 2010, *The Rolla Daily News*.	The Honorable Randy Verkamp, Presiding Phelps County Commissioner, 200 North Main Street, Rolla, MO 65401.	February 2, 2011	290824

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
St. Charles (FEMA Docket No. B–1181).	City of St. Peters, (10–07–1774P).	December 15, 2010, December 22, 2010, *The Suburban Journals of St. Charles County*.	The Honorable Len Pagano, Mayor, City of St. Peters, 1 Saint Peters Centre Boulevard, St. Peters, MO 63376.	December 1, 2010	290319
St. Charles (FEMA Docket No. B–1181).	Unincorporated areas of St. Charles County, (10–07–1774P).	December 15, 2010, December 22, 2010, *The Suburban Journals of St. Charles County*.	Mr. Steve Ehlmann, St. Charles County Executive, 100 North 3rd Street, St. Charles, MO 63301.	December 1, 2010	290315
Nebraska:					
Douglas (FEMA Docket No. B–1183).	City of Omaha, (10–07–2288P).	January 13, 2011, January 20, 2011, *The Daily Record*.	The Honorable Jim Suttle, Mayor, City of Omaha, Omaha-Douglas Civic Center, 1819 Farnam Street, Suite 300, Omaha, NE 68183.	December 30, 2010	315274
New Hampshire:					
Hillsborough (FEMA Docket No. B–1180).	City of Manchester, (10–01–1093P).	July 29, 2010, August 5, 2010, *The Union Leader Newspaper*.	The Honorable Ted Gatsas, Mayor, City of Manchester, 1 City Hall Plaza, Manchester, NH 03101.	December 3, 2010	330169
Ohio:					
Butler (FEMA Docket No. B–1183).	City of Monroe, (10–05–4421P).	February 3, 2011, February 10, 2011, *The Middletown Journal*.	The Honorable Robert E. Routson, Mayor, City of Monroe, 233 South Main Street, P.O. Box 330, Monroe, OH 45050.	January 24, 2011	390042
Franklin (FEMA Docket No. B–1183).	Unincorporated areas of Franklin County, (10–05–2538P).	January 24, 2011, January 31, 2011, *The Daily Reporter*.	Mr. John O'Grady, President, Franklin County, 373 South High Street, 26th Floor, Columbus, OH 43215.	May 31, 2011	390167
Delaware (FEMA Docket No. B–1180).	Unincorporated areas of Delaware County, (10–05–4584P).	September 15, 2010, September 22, 2010, *The Westerville News and Public Opinions*.	The Honorable Tommy Thompson, Delaware County Commissioner, 101 North Sandusky Street, Delaware, OH 43015.	January 20, 2011	390146
Franklin (FEMA Docket No. B–1180).	City of Westerville, (10–05–4584P).	September 15, 2010, September 22, 2010, *The Columbus Dispatch*.	The Honorable Kathy Cocuzzi, Mayor, City of Westerville, 21 South State Street, Westerville, OH 43081.	January 20, 2011	390179
Greene (FEMA Docket No. B–1180).	City of Bellbrook, (10–05–2633P).	August 24, 2010, August 31, 2010, *The Greene County Daily*.	The Honorable Mary Graves, Mayor, City of Bellbrook, 15 East Franklin Street, 2nd Floor, Bellbrook, OH 45305.	December 29, 2010	390194
Greene (FEMA Docket No. B–1180).	Unincorporated areas of Greene County, (10–05–2633P).	August 24, 2010, August 31, 2010, *The Greene County Daily*.	The Honorable Rick Perales, Greene County Commissioner, 35 Greene Street, Xenia, OH 45385.	December 29, 2010	390193
Lorain (FEMA Docket No. B–1180).	City of Elyria, (09–05–6438P).	August 26, 2010, September 2, 2010, *The Chronicle-Telegram*.	The Honorable William M. Grace, Mayor, City of Elyria, 131 Court Street, Elyria, OH 44035.	January 3, 2011	390350
Summit (FEMA Docket No. B–1181).	City of Akron, (10–05–5693P).	November 29, 2010, December 6, 2010, *The Akron Legal News*.	The Honorable Donald L. Plusquellic, Mayor, City of Akron, 166 South High Street, Room 200, Akron, OH 44308.	December 17, 2010	390523
Rhode Island:					
Providence (FEMA Docket No. B–1183).	City of Cranston, (11–01–0960P).	February 3, 2011, February 10, 2011, *The Cranston Herald*.	The Honorable Allan Fung, Mayor, City of Cranston, Cranston City Hall, 869 Park Avenue, Cranston, RI 02910.	January 21, 2011	445396
Wisconsin:					
Dane (FEMA Docket No. B–1180).	City of Sun Prairie, (10–05–3124P).	September 23, 2010, September 30, 2010, *The Star*.	The Honorable Joe Chase, Mayor, City of Sun Prairie, 300 East Main Street, Sun Prairie, WI 53590.	August 30, 2010	550573
Green (FEMA Docket No. B–1181).	Unincorporated areas of Green County, (10–05–1296P).	October 21, 2010, October 28, 2010, *The Post Messenger Recorder*.	The Honorable Arthur Carter, Chairman, Green County Board, 1016 16th Avenue, Monroe, WI 53566.	February 18, 2011	550157
Green (FEMA Docket No. B–1181).	Village of New Glarus, (10–05–1296P).	October 21, 2010, October 28, 2010, *The Post Messenger Recorder*.	Mr. Jim Salter, President, Village of New Glarus Board, 319 2nd Street, P.O. Box 399, New Glarus, WI 53574.	February 18, 2011	550164
Manitowoc (FEMA Docket No. B–1180).	Unincorporated areas of Manitowoc County, (10–05–2864P).	September 13, 2010, September 20, 2010, *The Herald-Times-Reporter*.	Mr. Bob Ziegelbauer, Manitowoc County Executive, Courthouse, 1010 South 8th Street, Manitowoc, WI 54220.	January 18, 2011	550236
Washington (FEMA Docket No. B–1181).	Unincorporated areas of Washington County, (10–05–2489P).	November 9, 2010, November 16, 2010, *The West Bend Daily News*.	The Honorable Herbert J. Tennies, Chairman, Washington County, P.O. Box 1986, 432 East Washington Street, West Bend, WI 53095.	March 16, 2010	550471
Waukesha (FEMA Docket No. B–1181).	City of New Berlin, (10–05–2901P).	October 21, 2010, October 28, 2010, *My Community Now—Southwest*.	The Honorable Jack F. Chiovatero, Mayor, City of Berlin, 3805 South Casper Drive, New Berlin, WI 53151.	October 4, 2010	550487

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

Dated: July 29, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–20710 Filed 8–12–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1206]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Baldwin	City of Orange Beach, (11–04–0533P).	May 6, 2011; May 13, 2011; *The Islander.*	The Honorable Tony Kennon, Mayor, City of Orange Beach, P.O. Box 458, Orange Beach, AL 36561.	April 29, 2011	015011
Shelby	City of Montevallo, (10–04–6506P).	May 25, 2011; June 1, 2011; *The Shelby County Reporter.*	The Honorable Ben McCrory, Mayor, City of Montevallo, 545 South Main Street, Montevallo, AL 35115.	September 29, 2011	010349
Arizona:					
Maricopa	City of El Mirage, (11–09–0216P).	May 12, 2011; May 19, 2011; *The Arizona Business Gazette.*	The Honorable Lana Mook, Mayor, City of El Mirage, 12145 Northwest Grande Avenue, El Mirage, AZ 85335.	September 16, 2011	040041
Maricopa	City of Peoria, (11–09–0647P).	June 2, 2011; June 9, 2011; *The Arizona Business Gazette.*	The Honorable Bob Barrett, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	October 7, 2011	040050

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maricopa	Unincorporated areas of Maricopa County, (11–09–0216P).	May 12, 2011; May 19, 2011; *The Arizona Business Gazette*.	The Honorable Andrew Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	September 16, 2011	040037
Maricopa	Unincorporated areas of Maricopa County, (11–09–0647P).	June 2, 2011; June 9, 2011; *The Arizona Business Gazette*.	The Honorable Andrew Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	October 7, 2011	040037
Navajo	Town of Snowflake, (10–09–1783P).	May 27, 2011; June 3, 2011; *The White Mountain Independent*.	The Honorable Kelly Willis, Mayor, Town of Snowflake, 81 West 1st Street South, Snowflake, AZ 85937.	October 3, 2011	040070
Pima	Unincorporated areas of Pima County, (11–09–0685P).	May 31, 2011; June 7, 2011; *The Daily Territorial*.	The Honorable Ramón Valadez, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	October 5, 2011	040073
California:					
San Diego	City of San Diego, (11–09–0120P).	May 6, 2011; May 13, 2011; *The San Diego Daily Transcript*.	The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	September 12, 2011	060295
Shasta	Unincorporated areas of Shasta County, (10–09–3227P).	June 1, 2011; June 8, 2011; *The Red Bluff Daily News*.	The Honorable Les Baugh, Chairman, Shasta County Board of Supervisors, 1450 Court Street, Suite 308B, Redding, CA 96001.	October 6, 2011	060358
Tehama	Unincorporated areas of Tehama County, (10–09–3227P).	June 1, 2011; June 8, 2011; *The Anderson Valley Post*.	The Honorable Greg Avilla, Chairman, Tehama County Board of Supervisors, P.O. Box 250, Red Bluff, CA 96080.	October 6, 2011	065064
Ventura	City of Simi Valley, (11–09–2030P).	May 6, 2011; May 13, 2011; *The Ventura County Star*.	The Honorable Bob Huber, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	September 12, 2011	060421
Colorado:					
Boulder	City of Boulder, (10–08–0754P).	May 3, 2011; May 10, 2011; *The Camera*.	The Honorable Susan Osborne, Mayor, City of Boulder, City Council Office, 1777 Broadway Street, Boulder, CO 80302.	September 7, 2011	080024
Boulder	Unincorporated areas of Boulder County, (10–08–0754P).	May 3, 2011; May 10, 2011; *The Camera*.	The Honorable Ben Pearlman, Chairman, Boulder County Board of Commissioners, 1325 Pearl Street, 3rd Floor, Boulder, CO 80302.	September 7, 2011	080023
Rio Blanco	Town of Meeker, (11–08–0007P).	April 28, 2011; May 5, 2011; *The Rio Blanco Herald Times*.	The Honorable Mandi Etheridge, Mayor, Town of Meeker, 345 Market Street, Meeker, CO 81641.	September 2, 2011	080151
Rio Blanco	Unincorporated areas of Rio Blanco County, (11–08–0007P).	April 28, 2011; May 5, 2011; *The Rio Blanco Herald Times*.	The Honorable Kai Turner, Chairman, Rio Blanco County Board of Commissioners, P.O. Box I, Meeker, CO 81641.	September 2, 2011	080288
Rio Blanco	Unincorporated areas of Rio Blanco County, (11–08–0049P).	May 5, 2011; May 12, 2011; *The Rio Blanco Herald Times*.	The Honorable Kai Turner, Chairman, Rio Blanco County Board of Commissioners, P.O. Box I, Meeker, CO 81641.	September 9, 2011	080288
Florida:					
Charlotte	Unincorporated areas of Charlotte County, (11–04–4544P).	May 31, 2011; June 7, 2011; *The Charlotte Sun*.	The Honorable Bob Starr, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	May 25, 2011	120061
Miami-Dade	City of Sweetwater, (11–04–3782P).	June 1, 2011; June 8, 2011; *The Miami Daily Business Review*.	The Honorable Manuel M. Maroño, Mayor, City of Sweetwater, 500 Southwest 109th Avenue, Sweetwater, FL 33174.	May 25, 2011	120660
Monroe	Unincorporated areas of Monroe County, (11–04–3523P).	May 31, 2011; June 7, 2011; *The Key West Citizen*.	The Honorable Heather Carruthers, Mayor, Monroe County, 530 Whitehead Street, Key West, FL 33040.	May 25, 2011	125129
Pasco	Unincorporated areas of Pasco County, (10–04–8088P).	May 6, 2011; May 13, 2011; *The Tampa Tribune*.	The Honorable Ann Hildebrand, Chair, Pasco County Board of Commissioners, 7530 Little Road, New Port Richey, FL 34654.	April 29, 2011	120230
St. Lucie	Unincorporated areas of St. Lucie County, (11–04–1456P).	May 6, 2011; May 13, 2011; *The St. Lucie News-Tribune*.	The Honorable Chris Craft, Chairman, St. Lucie County Board of Commissioners, 2300 Virginia Avenue, Ft. Pierce, FL 34982.	April 27, 2011	120285
New York: Oneida	City of Sherrill, (10–02–0242P).	June 11, 2010; June 17, 2010; *The Oneida Daily Dispatch*.	Mr. Robert A. Comis, Sherill City Manager, 377 Sherrill Road, Sherrill, NY 13461.	December 3, 2010	360544
North Carolina:					
Alamance	City of Burlington, (10–04–4375P).	May 6, 2011; May 13, 2011; *The Times-News*.	The Honorable Ronnie K. Wall, Mayor, City of Burlington, P.O. Box 1358, Burlington, NC 27216.	September 12, 2011	370002
Alamance	Town of Elon, (10–04–4375P).	May 6, 2011; May 13, 2011; *The Times-News*.	The Honorable Jerry R. Tolley, Mayor, Town of Elon, 104 South Williamson Avenue, Elon, NC 27244.	September 12, 2011	370411

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Buncombe	Unincorporated areas of Buncombe County, (10–04–2274P).	May 13, 2011; May 20, 2011; *The Asheville Citizen-Times*.	Ms. Wanda Greene, Buncombe County Manager, 205 College Street, Suite 300, Asheville, NC 28801.	September 19, 2011	370031
Davidson	Unincorporated areas of Davidson County, (10–04–3473P).	May 6, 2011; May 13, 2011; *The High Point Enterprise*.	Mr. Robert Hyatt, Davidson County Manager, 913 Greensboro Street, Lexington, NC 27292.	September 12, 2011	370307
Guilford	City of High Point, (10–04–3473P).	May 6, 2011; May 13, 2011; *The High Point Enterprise*.	The Honorable Rebecca R. Smothers, Mayor, City of High Point, P.O. Box 230, 211 South Hamilton Street, High Point, NC 27261.	September 12, 2011	370113
Madison	Unincorporated areas of Madison County, (10–04–8485P).	March 30, 2011; April 6, 2011; *The News-Record & Sentinel*.	Mr. Steve Garrison, Madison County Manager, P.O. Box 579, Marshall, NC 28753.	August 4, 2011	370152
Texas: Denton	City of Lewisville, (10–06–3039P).	May 26, 2011; June 2, 2011; *The Denton Record-Chronicle*.	The Honorable Dean Ueckert, Mayor, City of Lewisville, 151 West Church Street, Lewisville, TX 75029.	June 20, 2011	480195
Utah: Salt Lake	City of West Jordan, (11–08–0575P).	April 29, 2011; May 6, 2011; *The Salt Lake Tribune*.	The Honorable Melissa K. Johnson, Mayor, City of West Jordan, 8000 South Redwood Road, West Jordan, UT 84088.	April 25, 2011	490108

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

Dated: July 29, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–20716 Filed 8–12–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 06–123; FCC 11–93]

Service Rules and Policies for the Broadcasting Satellite Service (BSS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission adopts rules to mitigate space path interference between the 17/24 GHz Broadcasting-Satellite Service (BSS) space-to-Earth transmissions and the feeder link receiving antennas of Direct Broadcast Satellite Service (DBS) space stations that operate in the same frequency band. We adopt an off-axis power flux density (pfd) coordination trigger for 17/24 GHz BSS space stations. We also require a minimum orbital separation of 0.2 degrees between 17/24 GHz BSS space stations and DBS space stations. We place bounds on orbital eccentricity and inclination of 17/24 GHz BSS space stations and condition the protection of DBS networks to certain assumed limits on eccentricity and inclination. By these actions, we facilitate the introduction of the 17/24 GHz BSS and anticipate that it will provide new and innovative services, including video, audio, data, and video-on-demand, to consumers in the United States and promote increased competition among satellite and terrestrial services.

We revised our informational requirements to require 17/24 GHz BSS space station applicants to file pfd calculations (and if the pfd coordination trigger is exceeded, to file coordination information), and to file predicted and measured transmitting antenna off-axis gain information. We also require both 17/24 GHz BSS applicants and DBS applicants to file maximum orbital eccentricity information with their application. Finally, we adopt procedures to enable pending applicants and existing authorization holders to file relevant information related to these rules.

DATES: Effective September 14, 2011, except §§ 25.114(d)(15)(iv), 25.114(d)(18), 25.264(a), (b), (c), (d) and (f), of the Commission's rules. These requirements contained herein are subject to the Paperwork Reduction Act (PRA) and have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these requirements.

FOR FURTHER INFORMATION CONTACT: Lynne Montgomery, Satellite Division, International Bureau, at 202–418–2229 or via e-mail at *Lynne.Montgomery@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Second Order on Reconsideration in IB Docket No. 06–123, FCC 11–93, adopted June 8, 2011 and released June 14, 2011. The full text of the Second Order on Reconsideration is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via e-mail *FCC@BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number (for example, FCC 07–174, Order on Reconsideration). The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to person with disabilities by sending an e-mail to *fcc504@fcc.gov* or call the Consider & Governmental Affairs Bureau at 202–418–0530 (voice), or 202–418–0432 (tty).

Synopsis

1. We adopt an off-axis power flux density (pfd) coordination trigger for 17/24 GHz BSS space stations, require a minimum orbital separation of 0.2° between 17/24 GHz BSS space stations and DBS space stations, and place bounds on orbital inclination and eccentricity of 17/24 GHz BSS space stations. We also revise our informational requirements to require 17/24 GHz BSS space station applicants to file predicted and measured transmitting antenna off-axis gain information. Finally, we adopt procedures to enable pending applicants and existing authorization holders to

file relevant information related to these rules. By these actions, we facilitate the introduction of the 17/24 GHz BSS and anticipate that it will provide new and innovative services, including video, audio, data, and video-on-demand, to consumers in the United States and promote increased competition among satellite and terrestrial services.

2. *Off-Axis Power Flux Density Coordination Trigger.* We adopt an off-axis pfd trigger level of -117 dBW/m^2/100 kHz at the receiving antenna of any licensed U.S. DBS space station, any foreign DBS space station authorized to provide service in the United States, and any DBS space station proposed in a previously filed application for a U.S. license or U.S. market access. We also recognize that, at some orbital locations, a particular DBS or 17/24 GHz BSS network may not be authorized to operate throughout the entire 17.3–17.8 GHz band. Thus, we make clear that this coordination requirement applies only in the case of co-frequency operations between the DBS network and the 17/24 GHz BSS network. We will require each 17/24 GHz BSS applicant to identify all relevant DBS networks for which the off-axis pfd coordination trigger is exceeded. The off-axis pfd level should be determined for all transmitting beams in the 17.3–17.8 GHz band, over both polarizations, and at a minimum must take into account three key factors: (1) The power level delivered into the 17 GHz transmitting antenna; (2) the off-axis gain of the 17 GHz transmitting antenna in the direction of the DBS space station; and (3) the particular geometric configuration between the 17/24 GHz BSS and DBS space stations.

3. *No Separate Trigger for DBS Telecommand Transmissions.* The pfd coordination trigger value that we are adopting here, in combination with the narrower measurement bandwidth of 100 kHz, provide sufficient protection to DBS telecommand links. The associated information showings and the requirement to coordinate in cases where the pfd of the 17/24 GHz BSS downlink signal at the adjacent DBS space station is in excess of the coordination trigger level will afford the DBS operator sufficient opportunity for detailed examination of the effect of the 17/24 GHz BSS downlink transmissions on its telecommand links, and a mechanism to remedy the situation if it is deemed necessary. Accordingly, we do not adopt a technical showing specific to DBS telecommand links but instead rely upon the off-axis pfd coordination trigger adopted above.

4. *Required Angular Ranges for Antenna Off-Axis Gain Data.* Small variations in satellite orbital eccentricity and inclination can produce significant variation in the geometry occurring between two adjacent spacecraft, particularly as the separation between those spacecraft decreases. Inter-spacecraft geometry is generally more sensitive to variations in orbital inclination than to variations in eccentricity, when typical values for these parameters are taken into account.

5. A review of the orbital parameters of operating DBS space stations reveals that the largest orbital apogee-perigee variation is 26.3 km. Thus, the measurement range of ± 30° from the X axis in the X–Z plane proposed by DIRECTV should be sufficient to address cases where the 17/24 GHz BSS space station is operating with a non-biased configuration (*i.e.,* lying in the X–Z plane and pointed toward the Earth along the Z axis) and is separated in longitude from an adjacent DBS spacecraft by as little as 0.1°.

6. Similarly, a review of DBS orbital parameters indicates that most currently operating DBS satellites are stationkept in the north/south direction to within 0.075° of the equatorial plane. A similar north-south stationkeeping tolerance for a nearby 17/24 GHz BSS space station will yield a worst-case total inclination separation of 0.15° between the two space stations. If we were to adopt a ±20° range for measurements in planes rotated about the Z axis, as proposed by DIRECTV, the submitted transmitting antenna off-axis gain data would cover cases in which DBS and 17/24 GHz BSS spacecraft could be located as close as 0.45° in longitude along the GSO arc. Allowing for a worst-case inclination separation of 0.15° between the two space stations, a ±60° angular range of measurements made in planes rotated about the Z axis, as proposed by EchoStar, would cover space station longitudinal separations as closely spaced as 0.1°.

7. In specifying the angular ranges over which transmitting antenna off-axis gain data must be provided, we attempt to strike a balance among competing, but inter-related factors. Specifically, we seek to provide operators with the flexibility to locate at small orbital separations while adopting data submission requirements that are within ranges considered to be reasonable by commenters. Simultaneously, we seek to provide sufficient flexibility to accommodate typical operating variations in orbital inclination and eccentricity. Thus, we believe that transmitting antenna off-axis gain measurements made over a range of ± 30° from the X axis in the X–Z plane, and over a range of ±60° in planes rotated about the Z axis, should permit accurate off-axis pfd information to be calculated for 17/24 GHz BSS space stations separated in longitude by as little as 0.1° from DBS space stations. EchoStar has advocated extending the measurement range to include a full ±120° in the X–Z plane. We do not believe, however, that the rationale offered by EchoStar justifies adopting a requirement for such a large quantity of measured data. We do, however, concur with EchoStar's assertion that the antenna gain data in the X–Z plane should be measured in 5° rather than 10° increments in light of the potential gain variation within a 10° span. Accordingly, we will require 17/24 GHz BSS applicants to submit transmitting antenna off-axis gain information in both polarizations in the X–Z plane over an angular range of ± 30° from the positive and the negative X axes, at 5° intervals, and through a range of ±60° in planes rotated from the X–Z plane about the Z axis at 10° intervals.

8. We note that antenna off-axis gain is a frequency dependent parameter, and performance characteristics will not be identical when measured at different frequencies within the 17.3–17.8 GHz band. Although commenters were in general agreement regarding the need to provide transmitting antenna off-axis gain data within the 17.3–17.8 GHz band, no commenter provided input regarding the granularity of the frequency steps at which gain measurements should be made. In order to adequately characterize the off-axis gain performance of the 17 GHz transmitting antennas, but without unduly burdening the applicant, we will require that off-axis antenna gain measurements be made at a minimum of three frequencies. These frequencies should be determined with respect to the entire portion of the 17.3–17.8 GHz frequency band over which the space station is designed to transmit. Accordingly, at a minimum, transmitting antenna off-axis gain measurements should be made at the following three frequencies: 5 MHz above the lower edge of the band; at the band center frequency; and 5 MHz below the upper edge of the band.

9. The transmitting antenna off-axis gain data submission requirements discussed above are suitable for a space station that is operating with a non-biased orientation. As DIRECTV correctly points out, however, a space station eventually may be operated at a location different from the one where it was originally designed to operate. As a consequence, it may be rotated relative to the reference coordinate system in order to achieve the desired service area

coverage. DIRECTV suggests that the interference analysis for such scenarios could be best accomplished if the information requirements we adopt take such an eventuality into account, and recommends that sufficient data be provided by the applicant to permit evaluation of potential interference in such instances. Specifically, DIRECTV suggests that applicants should provide sufficient data to allow for interference analysis when the satellite is biased up to ± 30° in the X–Z plane, and up to ± 20° in planes rotated about the Z axis.

10. We agree with DIRECTV that satellite bias must be taken into account in antenna off-axis performance information. We find, however, that the range of bias proposed by DIRECTV is overly large. Rather than presume a likely maximum bias and encumber all 17/24 GHz BSS applicants with information submission requirements intended to address this possible situation, we believe that a more reasonable approach is to require the applicant to take into account any anticipated satellite bias. Thus, we will require that 17/24 GHz BSS applicants submit transmitting antenna off-axis performance information to cover the specified angular measurement ranges that will account for planned bias relative to the reference coordinate system. Therefore, depending upon the direction and magnitude of the planned bias, the applicant must determine whether measurements must be taken over a greater angular range—when compared with the angular range over which measurement is required for a space station operating with zero bias—to accommodate any change of operating orientation. The applicant must submit its antenna performance measurements over this expanded angular range, and must explain its rationale for doing so, and indicate the planned spacecraft orientation bias in its application.

11. In addition, a 17/24 GHz BSS operator seeking to relocate a space station must include in its relocation application a discussion of any planned spacecraft orientation bias and, if necessary, submit additional transmitting antenna off-axis gain information to take into account such biased orientation. We note that if an operator is unable to provide this additional data, the Commission may be prevented from taking a favorable action on the operator's proposed modification. Thus, we caution 17/24 GHz BSS applicants that it is their responsibility to anticipate the possibility of future changes in operating orientation. Thus, while initial antenna performance information may be required over a particular angular range, applicants might consider measuring the antenna performance over a larger range, so that the antenna off-axis performance information will be available in the event the operator seeks a change in operating orientation at some point in the future.

12. *Minimum Orbital Separation Requirement of 0.2° Adopted.* Small variations in satellite orbital eccentricity and inclination can produce significant variation in the geometry occurring between two adjacent spacecraft, particularly as the separation between those spacecraft decreases. The off-axis pfd coordination trigger and consequent transmitting antenna off-axis performance submission requirements are based on analyses that sought to accommodate typical operating variations in orbital inclination and eccentricity, while simultaneously permitting close orbital separation, and while maintaining information measurement requirements within ranges asserted to be reasonable by the commenters. Our analysis determined that these conditions could best be met with a minimum longitudinal separation of 0.1° between the DBS and 17/24 GHz BSS spacecraft. In the event of smaller longitudinal separations, critical assumptions regarding the value chosen for the coordination trigger and the ranges of transmitting antenna off-axis gain information would no longer be valid. Accordingly, to maintain a longitudinal separation of 0.1° between DBS and 17/24 GHz BSS space stations at all times, and taking into account the east/west stationkeeping tolerance of 0.05°, we will require a minimum orbital separation of 0.2° between the assigned locations of 17/24 GHz BSS and DBS space stations, absent an explicit agreement between the two licensees to permit closer operations.

13. *Bounds on Orbital Inclination and Eccentricity.* The range of transmitting antenna off-axis gain measurement defined above assumes that the orbits of the DBS and 17/24 GHz BSS space stations do not exceed certain worst-case values of orbital eccentricity or orbital inclination. To ensure that the geometric assumptions underlying our antenna off-axis angular measurement requirements are valid, some bound must be placed on the orbital eccentricity and orbital inclination of both 17/24 GHz BSS and DBS space stations. Of these two parameters, the geometry between the two spacecraft is most affected by variations in orbital inclination. The Commission's rules do not explicitly specify a stationkeeping limit in the north/south direction. Rather, our rules permit satellite operators to cease north/south stationkeeping maneuvers for the satellite as long as such operations do not increase interference. Specifically, our rules require that while a satellite is in inclined orbit, operators must maintain the interference levels experienced by adjacent satellites at levels that do not exceed those that would be caused by the satellite operating without an orbital inclination. At present, our rules also preclude licensees operating in inclined orbit from claiming protection from interference in excess of that which they would receive in the absence of inclined operations.

14. We anticipate that most DBS and 17/24 GHz BSS satellites will typically operate with orbits that are not highly inclined, in large part to avoid the need for satellite-tracking earth stations. In the reverse-band sharing environment, however, where space path interference occurring between two networks can be significantly influenced by relatively small variations in orbital inclination, we believe that more specificity regarding angular inclination is required. To ensure that the 17/24 GHz BSS space station remains within the range of locations relative to the DBS space station that is assumed by our angular measurement requirements, a maximum permissible orbital inclination must be established. Accordingly, we will require that operating 17/24 GHz BSS space stations be maintained in orbits that do not exceed 0.075° of inclination. Similarly, we will protect DBS networks from space path interference from nearby 17/24 GHz BSS networks only to the extent that the DBS space station is maintained in an orbit with an inclination less than 0.075°.

15. The 30° angular off-axis gain information in the X–Z plane assumes that at a longitudinal separation of 0.1° there will be no more than 40 km difference in the apogee and perigee values of the two adjacent spacecraft. Presuming that this difference can be equally distributed between the DBS and 17/24 GHz BSS space stations, we will require that 17/24 GHz BSS space stations be maintained in orbits whose orbital altitude does not exceed 35,806 km or fall below 35,766 km above the Earth's surface when transmitting 17/24 GHz BSS service-link signals. Similarly, we will protect DBS networks operating in the geostationary orbit from space path interference from nearby 17/24 GHz BSS networks only to the extent that the DBS space station orbit is maintained within these same maximum and minimum altitude

values. While our rules permit DBS operators to operate in orbits with higher inclination or eccentricity values, it is the responsibility of the DBS operator exceeding these inclination or eccentricity values to assess the potential for interference from nearby 17/24 GHz BSS systems, and to accept any such additional interference arising as a result of its inclined or eccentric operations. To best facilitate the calculation of potential off-axis interference between 17/24 GHz BSS and DBS space stations, in addition to the east/west and north/south stationkeeping information already required, we will require applicants in both services to provide predicted maximum orbital eccentricity values with their applications. We adopt these limits on orbital eccentricity and orbital inclination as a logical outgrowth to the off-axis pfd coordination trigger and the transmitting antenna off-axis gain information requirements adopted in this order.

16. *Two-Part Submission Process for Antenna Off-Axis Gain Data.* All 17/24 GHz BSS applicants are required to provide transmitting antenna off-axis gain information. In cases where the 17/24 GHz BSS operator seeks to operate near an established DBS satellite, the transmitting antenna off-axis gain information for the 17 GHz transmitting antenna needs to be available to determine whether the 17/24 GHz BSS network will cause harmful interference into the existing DBS system. It also must be available for the benefit of DBS operators who may eventually seek to launch replacement satellites at that same location. Absent additional information, we cannot determine how far apart two space stations must be in order to conclude that interference will not occur.

17. In addition, it is possible that future new entrants may seek to operate at locations that are not designated in the Region 2 BSS and Feeder Link Plans, but that are in the vicinity of established 17/24 GHz BSS space stations. Thus, we believe that the off-axis gain information of the transmitting 17 GHz band antennas should be publicly available at all locations so that such future DBS operators can make the appropriate system design decisions necessary to avoid receiving harmful interference from an established 17/24 GHz BSS space station. The time between filing an application and launch of the space station can span several years, during which time applicants seeking to operate at locations other than established U.S. DBS cluster locations would have no access to any type of 17/24 GHz BSS antenna performance information upon which to base their choice of orbital location and other system design decisions. Moreover, although at present we have little empirical experience with predicting the off-axis gain performance characteristics of 17/24 GHz BSS space station transmitting antennas in the 17.3–17.8 GHz band, it is our expectation that as familiarity with such systems and the associated analysis increases, we may place more confidence in the predicted characteristics. Accordingly, it is conceivable that in the future, operators may come to rely with increased certainty upon the results of predicted information, thereby lessening the need to wait for measured data as confirmation.

18. We believe that the general two-part approach best addresses the need to make some degree of information publicly available at the time of application, while simultaneously recognizing that the most accurate antenna characterization will not be available until space station construction is nearly complete. We also agree that measured antenna data should be submitted no later than 9 months prior to launch. We believe that requiring measured data no later than 9 months prior to launch best balances the interests of all parties, by providing the Commission and potentially affected DBS operators sufficient time to review the information and to carry out any necessary coordination, while maximizing the time in which space station operator's have to design, construct and test the antennas. We recognize, however, that requiring licensees to submit measured data no later than 9 months prior to launch can create a situation in which the interference environment in the vicinity of the 17/24 GHz BSS space station will not be well characterized until the antenna is built and operational—which could be several years after the predicted data is submitted. This level of uncertainty is not acceptable for subsequent DBS applicants seeking to locate nearby, and is particularly problematic when the 17/24 GHz BSS station locates near or within an existing DBS cluster. Accordingly, we seek an approach that will best balance the needs of both services by providing a reasonable degree of certainty to the DBS operator with regard to interference levels, while simultaneously permitting the 17/24 GHz BSS operator the flexibility to design and build its antenna.

19. To achieve these goals, we adopt the following approach. We will require all 17/24 GHz BSS applicants to submit with their applications predicted transmitting antenna off-axis gain information over the angular ranges described above. Applicants must provide pfd calculations that, on the basis of this predicted antenna gain data, (1) identify all prior-filed DBS networks at whose location that the applicant's pfd level exceeds the coordination trigger of -117 dBW/m^2/100 kHz; and (2) demonstrate to what extent the coordination trigger value is exceeded. If the applicant exceeds the coordination trigger at any prior-filed DBS location, the applicant must also provide certification that all affected DBS operators acknowledge and do not object to the applicant's higher off-axis pfd levels. Although we will not require 17/24 GHz BSS applicants to submit the details of the analytical model used to generate the predicted antenna performance data, applicants should be prepared to provide this information upon our request.

20. Further, at least 9 months prior to launch, we will require the 17/24 GHz BSS licensee to confirm the predicted data by submitting measured off-axis antenna gain information over the same angular ranges described above. Because the presence of the spacecraft body can significantly affect the off-axis antenna gain pattern, to the extent practical these measurements should be made under conditions as close to flight configuration as possible. This could be done with the antenna mounted on the spacecraft or may include the use of simulated spacecraft components. In addition, we require the licensee to: (1) Demonstrate that the pfd level at any prior-filed DBS space station does not exceed the coordination trigger of -117 dBW/m^2/100 kHz; or (2) demonstrate to what extent the coordination trigger is exceeded at any DBS space station location. Where the pfd coordination trigger is exceeded, the licensee must provide a certification that all affected DBS operators acknowledge and do not object to the applicant's higher off-axis pfd levels.

21. We recognize that there is likely to be a number of years between the filing of the initial application containing the predicted off-axis antenna gain information and the filing of the measured data based upon testing of the actual antenna. This could lead to the situation in which a DBS applicant files an application after the 17/24 GHz BSS operator submits predicted data for its antenna, but before the 17/24 GHz BSS licensee submits the measured data. In such a case, the DBS applicant could choose an orbital location and system parameters for its DBS system that are optimized for an environment

defined by the 17/24 GHz BSS antenna's predicted parameters, but not for its actual measured parameters. To provide some protection for DBS systems in these circumstances, we will also require that the 17/24 GHz BSS licensee provide its measured data and accompanying pfd calculations not only with respect to DBS satellites that were filed prior to the time it submitted its original application, but also with respect to any subsequently-filed DBS networks.

22. In the event that the pfd level at any prior-filed or subsequently-filed DBS space station determined from the measured off-axis antenna gain information exceeds that determined from the earlier predicted data, the 17/24 GHz BSS licensee must modify its license (or amend its application, as appropriate) based upon this new information. Further, if the pfd level exceeds the coordination trigger value of −117 dBW/m²/100 kHz at the antenna of any prior-filed DBS space station, the 17/24 GHz BSS licensee must either modify its operations or coordinate its operations with each affected prior-filed DBS licensee or applicant. In the event that coordination is not achieved with the prior-filed DBS space station operators, the 17/24 GHz BSS pfd levels must be reduced to conform to the coordination trigger value of −117 dBW/m²/100 kHz at the DBS location. In the case of subsequently-filed DBS space stations, the 17/24 GHz BSS applicant/licensee must coordinate or modify its operations only if the pfd levels at the location of the subsequently-filed DBS space station calculated from the measured data, exceed both the trigger level of −117 dBW/m²/100 kHz, and the pfd levels that can be calculated on the basis of the predicted off-axis antenna gain data. In such instances, the 17/24 GHz BSS operator must either modify its operations to conform to: (1) The −117 dBW/m²/100 kHz coordination trigger level, or (2) the off-axis pfd level at the victim DBS space station that can be calculated on the basis of the predicted off-axis antenna gain data that were on file with the Commission at the time the DBS application was filed, whichever is greater.

23. Where measured pfd levels exceed those predicted, and the 17/24 GHz BSS licensee is required to coordinate its operations under the above mentioned circumstances, the 17/24 GHz BSS licensee must provide certification that all affected DBS licensees acknowledge and do not object to the higher off-axis pfd levels. If the 17/24 GHz BSS licensee cannot coordinate (or does not wish to coordinate) its operations with affected DBS systems, it must instead adjust its operating parameters (*e.g.,* power levels, orbital location) so that the required pfd level is not exceeded. We wish to make clear to 17/24 GHz BSS applicants and operators that they assume the risk that any required adjustments may affect the 17/24 GHz BSS system's technical and economic viability.

24. *Procedures in the Event of Harmful Interference.* Our experience with reverse band operations—and particularly with reverse-band operations involving close-proximity space stations—is extremely limited. Further, as commenters have indicated, the off-axis receiving antenna performance characteristics of currently operating DBS satellites may not be documented. As both EchoStar and DIRECTV remind the Commission, there are millions of American consumers who depend upon DBS transmissions. The Commission's Part 25 rules currently include several requirements that address harmful interference events. Thus, while we do not adopt a service-specific rule regarding cessation of emissions, we remind operators that our existing rules apply to 17/24 GHz BSS.

25. Further, while we do not adopt service-specific rules regarding the cessation of emissions, our licensing process provides an opportunity to address this issue. While it is our intention that bounding the antenna off-axis pfd levels will ultimately provide the best mechanism for mitigating space path interference, its efficacy depends upon sufficient knowledge of the coordination situation between both space stations. Until such information can be better established for DBS receiving antennas, we believe that affording DBS operators the opportunity to raise concerns during the licensing process provides the best temporary remedy. Specifically, we believe that DBS operators are uniquely positioned to provide useful data regarding what level of interference would be sufficiently detrimental to their operations taking into account the distinct circumstances present at the orbital location and to provide this information to the Commission. Thus, we remain open to the possibility of placing additional operating constraints on a 17/24 GHz BSS space station seeking to operate in close proximity (*i.e.*, within 0.4°) to a U.S.-authorized DBS space station that was placed into service at its current location prior to the release date of this Order. The 0.4° distance is a useful threshold within which we would remain open to additional licensing conditions and is based upon the comments and analysis in the ITU document provided by DIRECTV who, in discussing an orbital separation approach to space path interference mitigation, encourages the Commission to adopt a conservative orbital separation of 0.4°. Any such additional licensing conditions would be determined on a case-by-case basis, and would address the conditions under which the 17/24 GHz BSS operator would be required to modify or terminate its transmissions. DBS operators bear the burden of timely requesting and fully justifying any such additional conditions or requirements through the public notice and comment process.

26. Where the Bureau has determined that a DBS operator has timely requested and fully justified inclusion of additional conditions on the grant of a 17/24 GHz BSS application, the Bureau should narrowly tailor the relief granted. Specifically, the conditions placed on the 17/24 GHz BSS operations should be limited to protecting U.S.-authorized DBS space stations (or non-U.S. authorized DBS space station granted market access to the United States) that were placed into service at their assigned location prior to the release date of this Order, and that are separated by 0.4° or less from the 17/24 GHz BSS space station. In these cases, the condition placed on the 17/24 GHz BSS operator would terminate if the DBS space station is relocated to a new orbital location regardless of whether that new location is within 0.4° of a current or planned 17/24 GHz BSS space station. The condition would also terminate at the end of the license term for the DBS space station at issue. We believe that in the short-term, when used as a temporary measure in combination with our other rules, this approach will provide the most effective means of balancing the competing needs of both services.

27. At present, U.S.-licensed DBS space stations and non-U.S. licensed DBS space stations granted market access to the United States are operating at only a small number of orbital locations. We have authorized 17/24 GHz BSS space stations to operate within 0.4° of a DBS space station at only one of these locations (*i.e.*, 110° W.L.), and one pending application seeks authority to operate within 0.4° of a DBS space station. For this reason, we believe that instances of unforeseen harmful interference will be exceedingly rare. Moreover, complete cessation of emissions is an extreme remedy. For the rare interference event, it will likely be sufficient for the 17/24 GHz BSS operator to correct the problem with

more moderate measures such as reducing its transmitted power levels or redistributing its transponder loading. As required by our existing rules, 17/24 GHz BSS operators are required to coordinate their operations carefully with adjacent DBS systems prior to launch. Further, we strongly encourage, but do not mandate, 17/24 GHz BSS operators to undertake cooperative on-station testing prior to commencing full operations, so that any potential interference problems between the 17/24 GHz BSS and DBS systems can be identified and mitigated at an early stage.

28. *Procedures for Pending Applications and Current Authorizations.* In this Second Report and Order, we amend our rules to require that all 17/24 GHz BSS applicants submit with their applications predicted transmitting off-axis antenna gain information over the angular range described above. In this section, we address how existing licensees and applicants can file new data to conform their licenses and pending applications to these new rules. To implement our decision here, we direct the Bureau to release a Public Notice after publication of the rules in the **Federal Register**, inviting applicants to amend their pending applications consistent with the rules we adopt today. Any application that is not amended by the date specified by the Bureau will be dismissed as defective. The Bureau will review the amended applications to determine whether they are substantially complete and acceptable for filing. The Bureau will return to the applicant as defective any amended applications that are not substantially complete.

29. We recognize that the authorizations issued under these technical rules may not be exactly what the applicants expected. This, by itself, is not a barrier to the adoption of these rules or the requirement that applicants amend their applications to come into compliance with the new rules. The Commission has the authority to apply new procedures to pending applications if doing so does not impair the rights an applicant possessed when it filed its application, increase an applicant's liability for past conduct, or impose new duties on applicants with respect to ''transactions already completed.'' Applicants do not gain any vested right merely by filing an application. Filing an application cannot be considered a ''transaction already completed'' for purposes of this analysis.

30. Similarly, the Public Notice will also require current authorization holders to file a modification application that demonstrates compliance with the rules we adopt here today, and to supplement the file with all required information. The Bureau will review the modification applications to determine whether they are substantially complete and acceptable for filing. The Bureau will return to the applicant as defective any modification applications that are not substantially complete.

31. The Commission may adopt rules that modify any station license of general applicability that affect a class of licensees, ''if in its judgment such action will promote the public interest, convenience and necessity'' and the modification may be accomplished through notice and comment rulemaking. The purpose of the Commission's actions here is to establish revised technical rules that will foster the provision of new services without causing harmful interference to a co-primary service—DBS. Neither DBS nor 17/24 GHz BSS operators possess the right to interfere with co-primary operations. We are not altering the past legal consequences of past actions of 17/24 GHz BSS authorization holders. Rather, the scheme we are adopting in this order is a means of bringing current authorization holders and pending applicants into compliance with general operational requirements. Moreover, the 17/24 GHz BSS authorization holders could not have had any reasonable expectation that the Commission would refrain from exercising its regulatory power to change the operational requirements of a service in cases where the public interest is best served by such change. Commission action that upsets expectations held by current authorization holders based on existing rules is not impermissibly retroactive. This is particularly true given the fact that all 17/24 GHz BSS licensees were aware at the time of grant that they would be subject to any additional requirements adopted as a result of this proceeding. In fact, all such licenses were granted with a condition on the face of the license stating that ''[t]his authorization and all conditions contained herein are subject to the outcome of the Commission's rulemaking in IB Docket No. 06–123 and any requirements subsequently adopted therein.''

32. We invite both 17/24 GHz BSS applicants and authorization holders to file their predicted transmitting antenna off-axis gain data at any time prior to the date that the rules adopted today become effective. We acknowledge that some parties may be close to possessing actual measured data, particularly those who actively participated and commented in this proceeding. If any of these entities have measured data, they are permitted to immediately file a modification (or amendment as appropriate) containing measured data rather than filing predicted data. No fee will be required for amendments or modifications filed for the sole purpose of amending a pending application or modifying a current authorization to comply with the rules adopted here today. Amendments that include changes in requested frequencies, orbital locations, or any other change not required by the rules adopted today, must include the appropriate fee.

Procedural Matters

A. Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (''RFA''), the *FNPRM* incorporated an Initial Regulatory Flexibility Analysis (''IRFA''). The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the *FNPRM,* including comments on the IRFA. No one commented specifically on the IRFA. Pursuant to the RFA, Appendix C provides a Final Regulatory Flexibility Analysis. It assesses the effects of adopting space path interference rules on small business concerns.

B. Final Paperwork Reduction Act of 1995 Analysis

In the *FNPRM*, the Commission analyzed the actions we now adopt in this Report and Order with respect to the Paperwork Reduction Act of 1995. The Report and Order modifies the data collection by requiring 17/24 GHz BSS applicants to provide pfd calculations at the time of application and 9 months prior to launch of the space station that either: (1) Demonstrate that the pfd level at the location of any prior-filed DBS network does not exceed the coordination trigger of -117 dBW/m2/100 kHz; or (2) demonstrate to what extent the coordination trigger is exceeded at the receiver input of any prior-filed DBS network. If the coordination trigger is exceeded, the 17/24 GHz BSS applicant must also provide certification that all affected DBS operators acknowledge and do not object to the applicant's higher off-axis pfd levels. 17/24 GHz BSS applicants are also required to submit transmitting antenna off-axis gain measurements made over a range of $\pm 30°$ from the X axis in the X–Z plane and over a range of $\pm 60°$ in planes rotated about the Z axis that should permit accurate off-axis pfd information to be calculated for DBS and 17/24 GHz BSS space stations

separated in longitude by as little as 0.2 degrees. 17/24 GHz BSS and DBS Applicants seeking to bias their space station orientation are required to file additional information with the Commission in which they provide an explanation of the planned orientation bias and the necessary increased range of antenna off-axis gain measurements. Both 17/24 GHz BSS and DBS applicants are required to file the predicted maximum orbital eccentricity with their application. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Report to Congress

The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Accordingly, *It is ordered* that, pursuant to the authority contained in sections 4(i), 4(j), 7(a), 302(a), 303(c), 303(e), 303(f), 303(g), 303(j), 303(r), and 303(y) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302(a), 303(c), 303(e), 303(f), 303(g), 303(j), 303(r), 303(y), this Report and Order in IB Docket No. 06–123 is adopted.

It is further ordered that part 25 of the Commission's rules is amended as set forth in Appendix B, and such rule amendments shall be effective 30 days after the date of publication in the **Federal Register**, except for §§ 25.114(d)(15)(iv), 25.114(d)(18), 25.264(a), 25.264(b), 25.264(c), 25.264(d), 25.264(f), which contain new information collection requirements that require approval by the Office of Management and Budget (OMB) under the PRA. The Federal Communications Commission will publish a document in the **Federal Register** announcing such approval and the relevant effective date.

It is further ordered that the International Bureau is delegated authority to issue Public Notices consistent with this Report and Order.

It is further ordered that the final regulatory flexibility analysis, as required by section 604 of the Regulatory Flexibility Act, is adopted.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this Report and Order, including the final regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

It is further ordered that the Commission shall send a copy of this Report and Order in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 25

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed, in the preamble, the Federal Communications Commission amends Title 47 of the Code of Federal Regulations, Part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 154, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

■ 2. Section 25.114 is amended by adding paragraphs (d)(15)(iv) and (d)(18) to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(d) * * *

(15) * * *

(iv) The information required in § 25.264(a) and (b).

* * * * *

(18) For space stations in the Direct Broadcast Satellite service or the 17/24 GHz broadcasting-satellite service, maximum orbital eccentricity.

* * * * *

■ 3. Section 25.264 is added to subpart C to read as follows:

§ 25.264 Requirements to facilitate reverse-band operation in the 17.3–17.8 GHz band of 17/24 GHz Broadcasting-satellite Service and Direct Broadcast Satellite Service space stations.

(a) Each applicant for a space station license in the 17/24 GHz broadcasting-satellite service (BSS) must provide a series of tables or graphs with its application, that contain the predicted transmitting antenna off-axis gain information for each transmitting antenna in the 17.3–17.8 GHz frequency band. Using a Cartesian coordinate system wherein the X axis is tangent to the geostationary orbital arc with the positive direction pointing east, *i.e.*, in the direction of travel of the satellite; the Y axis is parallel to a line passing through the geographic north and south poles of the Earth, with the positive direction pointing south; and the Z axis passes through the satellite and the center of the Earth, with the positive direction pointing toward the Earth, the applicant must provide the predicted transmitting antenna off-axis antenna gain information:

(1) In the X–Z plane, *i.e.*, the plane of the geostationary orbit, over a range of ± 30 degrees from the positive and negative X axes in increments of 5 degrees or less.

(2) In planes rotated from the X–Z plane about the Z axis, over a range of ±60 degrees relative to the equatorial plane, in increments of 10 degrees or less.

(3) In both polarizations.

(4) At a minimum of three measurement frequencies determined with respect to the entire portion of the 17.3–17.8 GHz frequency band over which the space station is designed to transmit: 5 MHz above the lower edge of the band; at the band center frequency; and 5 MHz below the upper edge of the band.

(5) Over a greater angular measurement range, if necessary, to account for any planned spacecraft orientation bias or change in operating orientation relative to the reference coordinate system. The applicant must also explain its reasons for doing so.

(b) Each applicant for a space station license in the 17/24 GHz BSS must provide power flux density (pfd) calculations with its application that are based upon the predicted off-axis transmitting antenna gain information submitted in accordance with paragraph (a) of this section, as follows:

(1) The pfd calculations must be provided at the location of all prior-filed U.S. DBS space stations where the applicant's pfd level exceeds the coordination trigger of −117 dBW/m²/100 kHz in the 17.3–17.8 GHz band. In this rule, the term prior-filed U.S. DBS space station refers to any Direct Broadcast Satellite service space station application that was filed with the Commission (or authorization granted by the Commission) prior to the filing of the 17/24 GHz BSS application containing the predicted off-axis transmitting antenna gain information. The term prior-filed U.S. DBS space station does not include any applications (or authorizations) that have been denied, dismissed, or are otherwise no longer valid. Prior-filed U.S. DBS space stations may include foreign-licensed DBS space stations seeking authority to serve the United States market, but do not include foreign-licensed DBS space stations that have not filed applications with the Commission for market access in the United States.

(2) The pfd calculations must take into account the maximum permitted longitudinal station-keeping tolerance, orbital inclination and orbital eccentricity of both the 17/24 GHz BSS and DBS space stations, and must:

(i) Identify each prior-filed U.S. DBS space station at whose location the coordination threshold pfd level of −117 dBW/m²/100 kHz is exceeded; and

(ii) Demonstrate the extent to which the applicant's transmissions in the 17.3–17.8 GHz band exceed the threshold pfd level of −117 dBW/m²/100 kHz at those prior-filed U.S. DBS space station locations.

(3) If the calculated pfd level is in excess of the threshold level of −117 dBW/m²/100 kHz at the location of any prior-filed U.S. DBS space station, the applicant must also provide with its application certification that all affected DBS operators acknowledge and do not object to the applicants higher off-axis pfd levels. No such certification is required in cases where the DBS and 17/24 GHz BSS assigned operating frequencies do not overlap.

(c) No later than 9 months prior to launch, each 17/24 GHz BSS space station applicant or authorization holder must confirm the predicted transmitting antenna off-axis gain information provided in accordance with § 25.114(d)(15)(iv) by submitting measured transmitting antenna off-axis gain information over the angular ranges, measurement frequencies and polarizations described in paragraphs (a)(1) through (5) of this section. The transmitting antenna off-axis gain information should be measured under conditions as close to flight configuration as possible.

(d) No later than 9 months prior to launch, each 17/24 GHz BSS space station applicant or authorization holder must provide pfd calculations based upon the measured transmitting antenna off-axis gain information that is submitted in accordance with paragraph (c) of this section as follows:

(1) The pfd calculations must be provided:

(i) At the location of all prior-filed U.S. DBS space stations as defined in paragraph (b)(1) of this section, where the applicant's pfd level in the 17.3–17.8 GHz band exceeds the coordination trigger of −117 dBW/m²/100 kHz; and

(ii) At the location of any subsequently-filed U.S. DBS space station where the applicant's pfd level in the 17.3–17.8 GHz band exceeds the coordination trigger of −117 dBW/m²/100 kHz. In this rule, the term subsequently-filed U.S. DBS space station refers to any Direct Broadcast Satellite service space station application that was filed with the Commission (or authorization granted by the Commission) after the 17/24 GHz BSS operator submitted the predicted data required by paragraphs (a) through (b) of this section, but prior to the time the 17/24 GHz BSS operator submitted the measured data required in this paragraph. Subsequently-filed U.S. DBS space stations may include foreign-licensed DBS space stations seeking authority to serve the United States market. The term does not include any applications (or authorizations) that have been denied, dismissed, or are otherwise no longer valid, nor does it include foreign-licensed DBS space stations that have not filed applications with the Commission for market access in the United States.

(2) The pfd calculations must take into account the maximum permitted longitudinal station-keeping tolerance, orbital inclination and orbital eccentricity of both the 17/24 GHz BSS and DBS space stations, and must:

(i) Identify each prior-filed U.S. DBS space station at whose location the coordination threshold pfd level of −117 dBW/m²/100 kHz is exceeded; and

(ii) Demonstrate the extent to which the applicant's or licensee's transmissions in the 17.3–17.8 GHz band exceed the threshold pfd level of −117 dBW/m²/100 kHz at those prior-filed U.S. DBS space station locations.

(e) If the pfd level calculated from the measured data submitted in accordance with paragraph (d) of this section is in excess of the threshold pfd level of −117 dBW/m²/100 kHz:

(1) At the location of any prior-filed U.S. DBS space station as defined in paragraph (b)(1) of this section, then the 17/24 GHz broadcasting-satellite operator must either:

(i) Coordinate its operations that are in excess of the threshold pfd level of −117 dBW/m²/100 kHz with the affected prior-filed U.S. DBS space station operator, or

(ii) Adjust its operating parameters so that at the location of the prior-filed U.S. DBS space station, the pfd level of −117 dBW/m²/100 kHz is not exceeded.

(2) At the location of any subsequently-filed U.S. DBS space station as defined in paragraph (d)(1) of this section, where the pfd level submitted in accordance with paragraph (d) of this section, is also in excess of the pfd level calculated on the basis of the predicted data submitted in accordance with paragraph (a) of this section that were on file with the Commission at the time the DBS space station application was filed, then the 17/24 GHz broadcasting-satellite operator must either:

(i) Coordinate with the affected subsequently-filed U.S. DBS space station operator all of its operations that are either in excess of the pfd level calculated on the basis of the predicted antenna off-axis gain data, or are in excess of the threshold pfd level of −117 dBW/m²/100 kHz, whichever is greater, or

(ii) Adjust its operating parameters so that at the location of the subsequently-filed U.S. DBS space station, either the pfd level calculated on the basis of the predicted off-axis transmitting antenna gain data, or the threshold pfd level of −117 dBW/m²/100 kHz, whichever is greater, is not exceeded.

(3) No coordination or adjustment of operating parameters is required in cases where the DBS and 17/24 GHz BSS operating frequencies do not overlap.

(f) The 17/24 GHz BSS applicant or licensee must modify its license, or amend its application, as appropriate, based upon new information:

(1) If the pfd levels submitted in accordance with paragraph (d) of this section, are in excess of those submitted in accordance with paragraph (b) of this section at the location of any prior-filed or subsequently-filed U.S. DBS space station as defined in paragraphs (b)(1) and (d)(1)of this section, or

(2) If the 17/24 GHz BSS operator adjusts its operating parameters in accordance with paragraphs (e)(1)(ii) or (e)(2)(ii) or this section.

(g) Absent an explicit agreement between operators to permit more closely spaced operations, U.S. authorized 17/24 GHz BSS space stations and U.S. authorized DBS space stations with co-frequency assignments may not be licensed to operate at locations separated by less than 0.2 degrees in orbital longitude.

(h) All operational 17/24 GHz BSS space stations must be maintained in geostationary orbits that:

(1) Do not exceed 0.075° of inclination.

(2) Operate with an apogee less than or equal to 35,806 km above the surface of the Earth, and with a perigee greater than or equal to 35,766 km above the surface of the Earth (*i.e.*, an eccentricity of less than 4.7×10^{-4}).

(i) U.S. authorized DBS networks may claim protection from space path interference arising from the reverse-band operations of U.S. authorized 17/24 GHz BSS networks to the extent that the DBS space station operates within the bounds of inclination and eccentricity listed below. When the geostationary orbit of the DBS space station exceeds these bounds on inclination and eccentricity, it may not claim protection from any additional space path interference arising as a result of its inclined or eccentric operations and may only claim protection as if it were operating within the bounds listed below:

(1) The DBS space station's orbit does not exceed 0.075° of inclination, and

(2) The DBS space station's orbit maintains an apogee less than or equal to 35,806 km above the surface of the Earth, and a perigee greater than or equal to 35,766 km above the surface of the Earth (*i.e.,* an eccentricity of less than 4.7×10^{-4}).

[FR Doc. 2011–20593 Filed 8–12–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 390

[Docket No. FMCSA–2011–0146]

Regulatory Guidance: Applicability of the Federal Motor Carrier Safety Regulations to Operators of Certain Farm Vehicles and Off-Road Agricultural Equipment

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

ACTION: Notice of regulatory guidance.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) sought public comment on three issues related to the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to operators of farm vehicles: first, the interpretation of interstate commerce as it applies to movement of farm products; second, whether farmers operating under share-cropping agreements are common or contract carriers; and third, whether FMCSA should issue new guidance on implements of husbandry. After considering comments from the public, FMCSA has determined that no further guidance is needed on interpreting interstate commerce and implements of husbandry. FMCSA is issuing guidance that farmers operating under share-cropping or similar arrangements are not common or contract carriers and, therefore, are eligible for the CDL exemption if a State elects to adopt the exemption.

DATES: August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Phone (202) 366–4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Act of 1935 (74, 49 Stat. 543, August 9, 1935) (1935 Act) provides that the Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation (49 U.S.C. 31502(b)).

The Motor Carrier Safety Act of 1984 (98, Title II, 98 Stat. 2832, October 30, 1984) (1984 Act) provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to prescribe regulations that ensure that: (1) Commercial motor vehicles (CMVs) are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)(8) and (10), respectively).

The Commercial Motor Vehicle Safety Act of 1986 (99, Title XII, 100 Stat. 3207–170, October 27, 1986) (1986 Act) directs the Secretary of Transportation to prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle (49 U.S.C. 31305(a)). The States must use those standards in issuing commercial driver's licenses (CDLs) (49 U.S.C. 31311, 31314).

The FMCSA Administrator has been delegated authority under 49 CFR 1.73(L), (g), and (e)(1) to carry out the functions vested in the Secretary of Transportation by the 1935 Act, the 1984 Act, and the 1986 Act, respectively.

Background

On May 31, 2011, FMCSA issued a notice seeking public comment on three issues related to the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to operators of farm vehicles (76 FR 31279). Recognizing that changes in regulatory guidance (if implemented by a State) could have an impact on an individual farmer, the Agency sought as much public involvement and comment as possible on these issues.

It is worth repeating that neither the May 31 notice nor today's notice propose or proposed any rule change or new safety requirements. Instead, the Agency sought feedback from farm organizations, farmers, and the public on the agency's long-standing interpretations of existing rules, so it could then determine whether any adjustments were needed to improve understanding of the current safety regulations.

First, the Agency sought comment on whether it needed to provide additional guidance or information to explain the distinction between intra- and interstate commerce in the agricultural industry. Second, the Agency asked whether it should distinguish between indirect and direct compensation in deciding whether a farm vehicle driver is eligible for the exception to the commercial driver's license (CDL) requirements in 49 CFR 383.3(d)(1). Third, the Agency asked for comments on how best to define implements of husbandry so that such equipment is exempted from safety regulations in a uniform, practical

manner. In response to requests, FMCSA extended the initial comment period from June 30, 2011, to August 1, 2011. FMCSA received about 1,700 comments on the notice, including more than 155 from farm organizations and 13 from State governments.

Interstate Versus Intrastate Commerce

The issue of what constitutes interstate commerce has been adjudicated many times over many decades, and FMCSA's interpretations are governed by the findings of the Federal courts. Although the various cases are heavily fact-specific, the general rule is set forth in the Agency's guidance to Q. 6 under 49 CFR 390.3, which is posted on our Web site:

> Interstate commerce is determined by the essential character of the movement, manifested by the shipper's fixed and persistent intent at the time of the shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single State, the driver and CMV are subject to the FMCSRs.

Comments

Many commenters misinterpreted FMCSA's request for input on whether it needed to provide additional guidance on interstate versus intrastate commerce. Commenters almost uniformly opposed any interpretation of interstate commerce that would consider movement of products from a farm to a grain elevator in the same state as interstate commerce. The commenters argued that the farmer who moves a crop to a local elevator and sells it has no control over its ultimate destination and no knowledge of that destination, which could change from sale to sale. The elevator mixes crops from multiple farmers and sells the mixed crops without the farmers' involvement. Some of the crop may move out of state, but in many cases, the crop is sold to local processors. In either case, the farmer has no way of knowing the destination. They also argued that the movement from farm to elevator is generally local—5 to 10 miles—on rural roads with little traffic. They stated that FMCSA has not identified any safety risk that would justify imposing interstate operating rules on these local, seasonal moves. The primary concern of commenters expressed by many farm organizations was that by designating these farm-to-elevator moves as interstate the farmers would have to obtain a CDL and comply with other operating rules. The commenters noted the cost of obtaining a CDL and a medical certificate as well as the issue that CDLs are only available to those 21 years old or older. Commenters stated that many farm vehicles are driven by younger family members.

FMCSA Response

The Agency has concluded that new regulatory guidance concerning the distinction between interstate and intrastate commerce is not necessary. FMCSA believes that previously published guidance, such as that referenced in the May 31, 2011, notice, is useful and that attempting to address more scenarios in new regulatory guidance would not be helpful to the agricultural industry or enforcement officials. To the extent that novel fact-specific questions arise, the Agency will work with the parties involved to provide a clarification for the specific scenario. FMCSA notes that the farm exemption from the CDL rules is not linked to intrastate or interstate commerce. A State may exempt farmers from the CDL requirements if they operate in interstate commerce provided that they meet the other requirements of the exemption.

Contract Carriage

Comments

Commenters opposed any interpretation of the rules that would make a tenant farmer a contract carrier. They stated that for those with share cropping agreements, which can be either formal or informal, the farmer compensates the landowner by paying a portion of the proceeds from the sale of the crop after the crop is delivered to the grain elevator. They argued that because the farmer owns the crop until it is delivered for sale, whether the farmer is compensated directly or indirectly for transporting the grain is irrelevant. The farmer should be considered in private transportation.

FMCSA Response

FMCSA appreciates the information that it received on this issue and agrees with commenters that tenants should not be considered contract carriers. Since 1935, the Federal government has been required to regulate the safety, but not the commercial affairs, of carriers whose principal business is not transportation. This is usually called the ''primary business'' test (*see* 49 U.S.C. 13505). Section 383.3(d)(1)(iii) was meant to deny the CDL exception to drivers of vehicles ''used in the operations of a common or contract motor carrier'' when transportation is the principal business of the carrier, a conclusion that follows from the use of terminology created by the Motor Carrier Act of 1935 to describe two branches of the for-hire truck and bus industry, i.e., common and contract carriage. The exclusion from the CDL exception of drivers for common and contract carriers was not meant to reach drivers working for a primary business other than transportation whose driving is within the scope of, and furthers, that primary non-transportation business. Trucking is a necessary adjunct of agricultural production, but it is by no means the purpose of farming. Section 383.3(d)(1)(iii) therefore denies the CDL exemption to drivers for commercial common or contract carriers, but not to drivers hauling both the farmer's and the landlord's crops under a crop share agreement, even if the sharecropper is specifically compensated for performing the transportation. In other words, the CDL exemption is equally available to (1) Farmers who own their land and haul their crops to market; (2) farmers who rent their land for cash and haul their crops to market; and (3) farmers who rent their land for a share of the crops and haul their own and the landlord's crops to market. These farmers continue to be eligible for the CDL exemption if a State elects to provide the exemption.

Implements of Husbandry

Comments

Many commenters misinterpreted FMCSA's notice on implements of husbandry. FMCSA was seeking comment on whether it needed to issue additional interpretative guidance to clarify that implements of husbandry, such as tractors, cultivators, reapers, etc., were not considered CMVs even if they are occasionally driven on public roads. Many commenters, however, assumed that FMCSA intended to define this equipment as CMVs, which would expose the vehicles to different State requirements (higher registration fees, higher insurance requirements, etc.) and might require a CDL for the driver. They opposed any such extension of the CMV definition. Those commenters that addressed FMCSA's proposed guidance generally supported it, but made a number of suggestions for defining implements of husbandry based on varying State definitions and recommended restrictions that could be placed on these vehicles (e.g., speed limits, warning signs, distance traveled, etc.).

FMCSA Response

As FMCSA stated in the notice, its goal was to ensure that implements of husbandry were not considered CMVs for its purposes. Based on the variety of

State definitions and the varying restrictions States impose (e.g., speed limits, signs, etc.), FMCSA has decided that uniform guidance would be difficult to draft and that further discussions of this issue are better left to case-by-case analysis.

Conclusion

The FMCSA is sensitive to the critical role agriculture plays in our economy and farmers in our communities and it greatly appreciates the public comments to its May 31, 2011, notice. These comments have helped us better understand the complexity of farm lease arrangements and today's use of farm equipment on public roads.

Issued on: August 10, 2011.

William A. Bronrott,

Deputy Administrator.

[FR Doc. 2011–20663 Filed 8–12–11; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 76, No. 157
Monday, August 15, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Chapter III

Class II Gaming Regulation Proposals Submitted by Poarch Band of Creek Indians on Behalf of Tribal Gaming Working Group

AGENCY: National Indian Gaming Commission, Interior

ACTION: Request for comments.

SUMMARY: The National Indian Gaming Commission (NIGC) is publishing for comment Class II Gaming Regulation Proposals submitted on July 28, 2011 by the Poarch Band of Creek Indians (PBCI) on behalf of the Tribal Gaming Working Group (TGWG). PBCI and TGWG state their proposals were drafted with the intent of ensuring that all controls are covered in the current regulations, while at the same time removing some of the strict procedural steps and tasks not appropriately characterized as standards. PBCI and TGWG also assert that the current regulations are difficult to use and apply due to duplication across multiple sections, dated terminology, and procedures that are obsolete and not reflective of current technology.

DATES: Comments must be received on or before October 7, 2011.

ADDRESSES: You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- *E-mail comments to: reg.review@nigc.gov.*
- *Mail comments to:* Lael Echo-Hawk, Counselor to the Chair, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005.
- *Hand deliver comments to:* 1441 L Street, NW., Suite 9100, Washington, DC 20005.
- *Fax comments to:* Lael Echo-Hawk, Counselor to the Chair, National Indian Gaming Commission at 202–632–0045.

FOR FURTHER INFORMATION CONTACT: Lael Echo-Hawk, Counselor to the Chair, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005. Telephone: 202–632–7009; email: *reg.review@nigc.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

The National Indian Gaming Commission (NIGC) is requesting comments on the Class II Gaming Regulation Proposals submitted on July 28, 2011 by the Poarch Band of Creek Indians (PBCI) on behalf of the Tribal Gaming Working Group (TGWG). PBCI and TGWG state their proposals were drafted with the intent of ensuring that all controls are covered in 25 CFR Part 543, while at the same time removing some of the strict procedural steps and tasks not appropriately characterized as standards. PBCI and TGWG also assert that the current regulations are difficult to use and apply due to duplication across multiple sections, dated terminology, and procedures that are obsolete and not reflective of current technology.

A. How can I get copies of this document and other comments submitted in regard to this document?

You can access publicly available documents related to this document at *http://www.nigc.gov/Portals/0/NIGC%20Uploads/Tribal%20Consultation/Regulatory%20Review%202010-2011/NRRA/AAAFinalPackageSubmittedNIGCon072911.pdf.* Public comments related to this action can be found at *http://www.nigc.gov/Tribal_Consultation/Regulatory_Review_2011-2012/Group_3_25_CFR_Parts_543_547.aspx.*

B. What should I consider as I prepare my comments for NIGC?

When submitting comments, remember to:

1. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
2. Describe any assumptions and provide any technical information and/or date that you used.
3. If you estimate potential costs of burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
4. Provide specific examples to illustrate your concerns and suggest alternatives. Explain your views as clearly as possible.
5. Make sure to submit your comments by the comment period deadline identified.

II. What action is the agency taking?

NIGC is announcing the availability of Class II Gaming Regulation proposals from PCBI and TGWG and requesting comment from the public.

List of Subjects

Class II Minimum Internal Control Standards, Class II Technical Standards, and related Guidance and Bulletin documents.

Dated: August 10, 2011, Washington, DC.

Tracie L. Stevens,
Chairwoman.
Steffani A. Cochran,
Vice-Chairwoman.
Daniel J. Little,
Associate Commissioner.

[FR Doc. 2011–20721 Filed 8–12–11; 8:45 am]
BILLING CODE P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–254–FOR; OSM–2011–0005]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We are announcing receipt of a proposed amendment to the Kentucky Regulatory Program (hereinafter, the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On May 10, 2011, Kentucky submitted proposed bonding revisions to the Kentucky Revised Statutes (KRS) as authorized by House Bill 385 (HB 385), which passed during the State's regular 2011 legislative session. HB 385 amends the Kentucky Revised Statutes to require that, as of the effective date of the Act, any determination by the Energy and Environmental Cabinet (EEC) to change a bond requirement or bond amount

currently in use will result in a new administrative regulation that includes all bond requirements, including the bond amount; HB 385 also prohibits bond amounts from being instituted as policy. Finally, it requires an administrative regulation that fails to include bond amounts to be declared deficient automatically.

This document gives the times and locations that the Kentucky program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., E.S.T., September 14, 2011. If requested, we will hold a public hearing on September 9, 2011. We will accept requests to speak until 4 p.m., E.S.T., on August 30, 2011.

ADDRESSES: You may submit comments, identified by ''SATS No. KY–254–FOR; Docket Number OSM–2011–0005'' by either of the following two methods:

Federal eRulemaking Portal: http://www.regulations.gov. The proposed rule has been assigned Docket ID: OSM–2011–0005. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions; or

Mail/Hand Delivery/Courier: Joseph L. Blackburn, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section in this document.

Docket: In addition to obtaining copies of documents at *http://www.regulations.gov,* you may also obtain information at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Lexington Field Office.

Joseph L. Blackburn, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, (859) 260–3900.

Carl E. Campbell, Commissioner, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: Joseph L. Blackburn, *Telephone:* (859) 260–3900. *E-mail: jblackburn@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

On March 17, 2011, Governor Beshear signed House Bill (HB) 385 which was approved by the 2011 Kentucky General Assembly. HB 385 amends Kentucky Revised Statutes 350.060 to require as of the effective date of the Act that any determination by the Energy and Environmental Cabinet (EEC) to change a bond requirement or bond amount currently in use will result in a new administrative regulation that includes all bond requirements including the bond amount; proscribe bond amounts from being instituted as policy; require after the effective date of the Act an administrative regulation that fails to include bond amounts to be declared automatically deficient.

1. KRS 350.060 (11) Processing Permit Applications

The State proposes to delete ''The cabinet shall'' and insert ''Within thirty (30) days of a cabinet determination of a need to change a bond protocol currently in use, the cabinet shall immediately.'' This proposed State revision falls under the Federal provisions at 30 CFR 800.14 and section 509 of SMCRA.

2. KRS 350.060 (11) Processing Permit Applications

The State proposes to add new language at the end of (11) to ensure that Bond protocols will include the formula for establishing the amount of the bond or be automatically declared deficient in accordance to KRS Chapter 13A. This proposed State revision falls under the Federal provisions at 30 CFR 800.15 and section 509 of SMCRA.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the Kentucky program now satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve these revisions, they will become part of the Kentucky program.

Written or Electronic Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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. We will not consider anonymous comments.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under

FOR FURTHER INFORMATION CONTACT by 4 p.m., E.S.T. on August 30, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, that if possible, each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 13, 2011.

Michael K. Robinson,

Acting Regional Director, Appalachian Region.

[FR Doc. 2011–20660 Filed 8–12–11; 8:45 am]

BILLING CODE 4310–05–P

POSTAL SERVICE

39 CFR Part 111

Folded Self-Mailers and Unenveloped Mailpieces

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 201.3.14 to provide standards for creating folded self-mailers (FSM) and other unenveloped mailpieces such as forms, statements, and official notices that will improve processing of these pieces on automated Postal processing equipment.

DATES: We must receive your comments on or before September 14, 2011.

ADDRESSES: Mail or hand-deliver written comments to the manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza, SW., Room 4446, Washington, DC 20260–5015. Interested parties may review and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday. Email comments that contain the name and address of the commenter, may be sent to: *mailingstandards@usps.gov,* with a subject line of ''FSM.'' Faxed comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Craig Vance at 202–268–7595, or Susan Thomas at 202–268–8069.

SUPPLEMENTARY INFORMATION: In this proposed rule, the Postal Service defines letter-sized FSM, provides detailed standards about the basic elements of all FSM letter-sized pieces, and introduces ''panels'' as a basic element for constructing FSMs. Additionally, optional creative elements that are currently found in FSM designs, but are not defined in the DMM, are added.

History

To improve the quality of FSMs, the USPS, in collaboration with the mailing industry, implemented a series of tests designed to identify the characteristics of FSMs that could be processed successfully on automated letter-sorting machines. Industry members, recommended through the Mailers Technical Advisory Council (MTAC), Postal Customer Councils (PCC) and the Business Service Network, were asked to provide sample mailpieces for testing. A wide array of mail owners, mail service providers, and vendors participated. The collaboration resulted in a better understanding of the capabilities and needs of the mailing community and enabled the Postal Service to align terms commonly used in the mailing industry with those in the proposed standards. Working together, the Postal Service attempted to strike a balance between innovation and mailpiece machinability.

The outcome of this collaboration is a streamlined framework of proposed standards that aligns with existing letter-mail standards, provides specific information, and clearly defines the characteristics of additional design elements for mailers who create FSM mailpieces. Folded self-mailer maximum dimensions and weights are now proposed to align with other unenveloped letter standards. The dimensions will better delineate envelope and oversized cards when compared to unenveloped-type mail. Improved standards that are clear and easy to understand will encourage consistency and level-set the playing field minimizing delays in production and will help the Postal Service to control costs.

Postal letter sorting equipment is capable of processing letters at the rate of 10 pieces per second. When prepared according to current standards and processed at that speed, some FSM designs have higher rates of damage and cause jams in letter sorting equipment that result in diverting those pieces to flat sorters or manual handling. Both alternate processes are time consuming and costly. This proposed rule provides standards for FSM and other unenveloped letter designs so those mailpieces can better withstand the rigors of letter automation processing.

Testing

The collaborative testing focused on the primary characteristics of folded self-mailers. Four characteristics proved to be the most important—dimensions, basis weight of the paper that forms the

outer sheet, closure method, and closure placement.

Testing revealed a strong correlation between higher damage, equipment jam rates, and lower throughput as the basis weight of the paper decreased or as the size of the FSM increased. The closure method and placement of closures greatly affected machinability. Continuous glue lines were determined to be the optimal method of sealing a FSM. Use of a continuous glue line has been severely limited in the mailing industry, because the existing equipment used by many is not currently capable of producing continuous glue lines. As an alternative, the Postal Service introduced elongated glue lines (dashes) and patterns of glue spots to simulate glue lines. Testing also revealed that a one tab closure produces an insufficient seal, so we propose that two or more tabs be required depending on the design and total weight of the mailpiece. Other factors that affected automation compatibility were:

- Mailpiece thickness.
- Total piece weight.
- Fold orientation.
- Thickness of attachments or enclosures within a mailpiece.
- Flap size, style, and orientation.
- Number of panels.

Panels are created when sheets of paper are folded—each two-sided section created by folding is called a panel. The number of folds determines the number of panels within the mailpiece. In addition to these primary characteristics, the following optional design elements were also considered during testing:

- Loose inserts secured in pockets.
- Attachments to the interior and exterior of the mailpiece.
- Die-cut elements.
- Perforations.

The aggregate data generated from testing was analyzed using Lean Six Sigma (LSS) methodologies to develop a framework of potential minimum and maximum standards. The initial framework was based on optimized standards represented as 10 basic categories of FSMs. This framework was provided to the participants of the FSM study and meetings were conducted to begin the refinement process and develop a draft of proposed revised DMM standards. This collaborative process spanned six months. In addition to these meetings, the USPS reached out to others in the design and production segments of the industry to gain more specific knowledge and insight into their capabilities and needs. Based on participant feedback, the Postal Service restructured the original framework, aligned break-points, and crafted proposed standards beginning with a basic folded self-mailer profile. Additional optional creative elements were then incorporated to provide more design flexibility.

As the Postal Service worked through refinement of the initial proposed framework, built on Lean Six Sigma methodology, an attempt was made to find the balance between creativity and machinability that also allowed additional design options for FSM. The updated standards will be mutually beneficial.

A Folded Self-Mailer Reference Material document was developed as supporting information to this proposed rule. The document summarizes information of the proposed standards, includes illustrations that demonstrate some of the options for fold style, and includes closure methods and optional elements that may be incorporated into a basic folded self-mailer letter. The document can be found at: *https://ribbs.usps.gov/index.cfm?page=FSM.*

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR Part 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Letters and Cards

201 Physical Standards

* * * * *

3.0 Physical Standards for Machinable and Automation Letters and Cards

* * * * *

3.14 Folded Self-Mailers

[Delete current text of 3.14 in its entirety and replace with the following:]

3.14.1 Definition

A folded self-mailer is formed of panels that are created when one or more unbound sheets of paper are folded together and sealed to make a letter-size mailpiece. The number of panels is determined by the number of sheets in the mailpiece and the number of times the sheets are folded.

3.14.2 Size

Folded self-mailers are:

a. Length: A minimum of 5 inches and a maximum of 10½ inches.

b. Height: A minimum of 3½ inches and a maximum of 6 inches.

c. Thickness: A minimum of 0.007 inch; (0.009 inch if the height exceeds 4¼ inches or if the length exceeds 6 inches); the maximum thickness is ¼ inch.

d. Maximum Weight: 3 ounces.

e. Rectangular, with four square corners and parallel opposite sides.

f. Within an aspect ratio (length divided by height) of 1.3 to 2.5, inclusive (see 601.1.4).

g. Maximum number of panels, bi-fold, tri-fold and oblongs: 8.

Exception: Quarter folded self-mailers made of a minimum of 100 lb book grade paper may have 4 panels and those made of 55 lb newsprint must have at least 8 panels and may contain up to 16 panels.

3.14.3 Panels

Panels are created when a sheet of paper is folded. When a folded self-mailer is made of multiple sheets, multiply the number of sheets by the number of panels created when folding a single sheet to determine the total number of panels. The following conditions apply:

a. Panels created by folding must be equal or nearly equal in size.

b. The final folded edge must be the bottom of a folded self-mailer unless prepared as an oblong. The final folded edge of an oblong folded self-mailer must be the leading (right) edge.

c. Shorter panels must be internal to the mailpiece, covered by a full-size panel, and count toward the maximum number of panels.

d. The final folded panel creates the back (non-address) side of the mailpiece. The open edge of the back panel must be at the top or within 1

inch of the top or trail (left) edge of the mailpiece.

e. Folding methods and the subsequent number of panels created when folding a single sheet of paper are:

1. Bi-fold: Folded once forming two panels.

2. Tri-fold: Folded twice forming three panels.

3. Oblong: Paper with one elongated dimension and parallel opposite sides folded once to form two rectangular panels. The final folded edge must be the leading (shorter) edge.

4. Quarter-fold: Folded two times with each fold at a right angle (perpendicular) to the preceding fold. One sheet of paper quarter-folded creates four panels.

f. Flaps are formed when an extended portion of the final panel is folded over an interior panel and affixed to the unaddressed side of the mailpiece and must meet the following conditions:

1. Flaps begin at the top of the mailpiece and end one inch or more above the bottom edge. Flaps must be at least 1½ inches long when measured from the top of the mailpiece.

2. Flaps must be secured with a seal as described in 3.14.4.

3. Die-cut shaped flaps are firmly secured with a tab, glue line, glue spots or elongated glue lines. A ⅛-inch wide continuous glue line that seals the contour of the die-cut is strongly recommended.

4. Flaps on oblong mailpieces are at least 5 inches long at the longest point when measured from the leading edge and end more than one inch from the trailing edge.

g. Flaps and pockets prepared within folded self-mailers to stabilize enclosures are not counted as panels.

3.14.4 Sealing Methods

Folded self-mailers may be sealed using tabs or glue under the following conditions:

a. *Tabs.* When tabs are used to seal FSMs, use non-perforated paper tabs to seal folded self-mailers. Tabs with a tear strength of 50 grams force (gf) machine 55gf cross direction are recommended. The size and number of tabs required is determined by the weight of the mailpiece and optional design elements as follows:

1. To seal all bi-fold and tri-fold self-mailers and quarter-folded self-mailers that weigh one ounce or less, affix one tab either on the top edge within one inch of the leading and one tab within one inch of the trailing edge or affix one tab on the leading and one tab on the trailing edges within one inch of the top.

2. To seal oblong folded self-mailers, affix two tabs in the center of the top and trailing edges or on the trailing edge within one inch of the top and bottom. Tabs may not be applied to the bottom of an oblong mailpiece.

3. To seal quarter-folded mailpieces that weigh more than one ounce and quarter-folded mailpieces made of newsprint, affix two tabs on the leading and trailing edges within 1 inch from the top, with one additional tab affixed on the lower leading edge ½ inch from the bottom (see 3.14.5).

b. *Glue.* The glue must be positioned within ¼ inch of the open edges and be placed opposite the final fold or on the leading and trailing edge when the final panel fold is on the bottom. Apply glue by one of the following methods:

1. Continuous glue lines at least ⅛-inch wide (0.125 inch).

2. Three or four glue spots at least ⅜ inch (0.375 inch) in diameter.

3. Three or four elongated glue lines. Seal folded self-mailers that weigh up to one ounce with lines at least ½-inch long. Seal folded self-mailers that weigh more than one ounce with glue lines either ⅛-inch wide and at least 1-inch long or ¼-inch wide and at least ½-inch long.

4. Glue spots and elongated glue lines should be distributed evenly along open edges.

5. Quarter-folded self-mailers must be sealed with tabs.

3.14.5 Paper Weight and Sealing Requirements

All references in 3.0 to paper basis weight are for book-grade paper unless otherwise stated (see 3.2). When multiple optional design elements are incorporated in a single mailpiece, the standards for the design element with the highest paper weight and corresponding sealing methods apply. Folded self-mailer paper weights and sealing methods are:

a. Basic bi-fold, tri-fold, and oblong folded self-mailers as described in 3.14.3:

1. Up to 1 ounce: 70 lb paper sealed with a continuous glue line, three glue spots; or elongated glue lines under 3.14.4b; or two 1-inch tabs under 3.14.4a1 and 3.14.4a2.

2. Over 1 ounce: 80 lb paper sealed with a continuous glue line, four glue spots; or four elongated glue lines under 3.14.4b; or two 1½-inch tabs under 3.14.4a1 and 3.14.4a2.

b. Basic quarter folded self-mailers as described in 3.14.3:

1. Up to 1 ounce: 70 lb paper sealed with two 1-inch tabs.

2. Over 1 ounce: 80 lb paper sealed with three 1½-inch tabs.

3. Newsprint: 55 lb minimum paper. Seal pieces with three 1½ inches tabs, see 3.14.4a3.

c. Optional Design Elements: Die-cut openings and perforated panes. Folded self-mailers with die cut openings in the exterior panels as described in 3.14.6 or perforated panes as described in 3.14.7 must meet the following:

1. Up to 1 ounce: 100 lb paper sealed with glue under 3.14.4b, or two 1½ inches tabs under 3.14.4a1 and 3.14.4a2.

2. Over 1 ounce: 120 lb paper sealed with glue under 3.14.4b, or two 2-inch tabs under 3.14.4a1 and 3.14.4a2 or three 1½ inches tabs under 3.14.4a3.

d. Optional Design Elements: Loose enclosures and attachments. For folded self-mailers that have loose enclosures as described in 3.14.8 or attachments as described in 3.14.9, the following applies:

1. Up to 1 ounce: 80 lb paper sealed with glue under 3.14.4b or two 1½ inches tabs under 3.14.4a1 and 3.14.4a2.

2. Over 1 ounce: 100 lb paper sealed with glue under 3.14.4b, or two 2-inch tabs under 3.14.4a1 and 3.14.4a2 or three 1½ inches tabs under 3.14.4a3.

3.14.6 Die Cut Elements

Folded self-mailers may be produced with two distinct types of die cut elements in the exterior panels: address windows or die-cut reveal openings used to draw attention to important information within the mailpiece. Die cut openings may not be used to create die cut punched holes (that exist in the same location on all layers and panels so that there is an opening through the entire mailpiece). Prepare die cut elements as follows:

a. Die cut address windows (used to convey address information) must conform to all standards for window envelopes under 601.6.4 and meet the following additional conditions:

1. Windows may be up to 2 inches high by 4 inches long.

2. When an address window appears on a mailpiece, no other die cut shapes may be made on the exterior panels.

b. Die cut reveal openings (used to reveal the contents of the mailpiece), are:

1. Limited to two on only one of the external panels.

2. Either circular with a 2-inch maximum diameter or rectangular and a maximum of 1½ inches high by 2 inches long with slightly rounded ¼ inch radius corners.

3. Placed at least 1½ inches from all edges of the mailpiece if on the addressed side.

4. Placed at least 5 inches from the leading edge and 1½ inches from all other edges if on the non-addressed side.

5. Positioned at least 1½ inches apart when two or more die cut openings are used.

c. A single ½ inch semi-circular die cut thumb notch, used in conjunction with an opening device, may be on the trailing edge of the addressed or nonaddressed outer panel.

3.14.7 Perforated Strips and Panes

Folded self-mailers may be prepared with strips or panes that are pulled open to reveal the contents. These design elements are placed on the unaddressed side of the mailpiece and may be rectangular, circular, or oval shaped. Perforations, a row of small holes punched in a sheet of paper so that a part can be torn easily, are used to create the openings. They may be pull-open strips, pop-out, or pop-open panes subject to the following prepared requirements:

a. Two perforated lines creating a pull open strip must be parallel and spaced at least ½ inch apart. Position perforated strips parallel to the height (the short side) of the mailpiece at least 5 inches from the leading and 2 inches from the trailing edge. Position perforated strips parallel to the length (the long side) of the mailpiece at least 1 inch from the top. Perforations have a 2mm cut (max)/4mm tie (min) ratio or a 3mm cut (max)/3mm tie (min) ratio.

b. Pop-out panes have perforations around the entire perimeter. The full perimeter of the pop-out is a maximum of 4 inches long by 4 inches high, and:

1. Have panes placed at least 1 inch from any edge.

2. Are 2mm cut (max)/2mm tie (min) ratio.

3. When using two panes, must be spaced at least 1 inch apart.

4. May not have any address elements appear in perforated openings.

c. Pop-open panes have perforations on three sides and meet the following conditions:

1. The full perimeter of the pull-open panel is a maximum of 4 inches long by 4 inches high.

2. If prepared with multiple panes, they must be spaced at least 1 inch apart.

3. Panes must be placed at least 1 inch from all edges.

4. Perforation patterns have 2 mm cut (max)/2 mm tie (min) ratio.

d. Perforated panes may not be on mailpieces with die-cut design elements or on any mailpiece made of newsprint.

3.14.8 Loose Enclosures

Loose enclosures included within a folded self-mailer must be made of paper under the following conditions:

a. Must be secured within a folded self-mailer to ensure containment and prevent excessive shift during processing.

b. May be inserted in an interior pocket or secured by any other method that prevents excessive shift during processing. Pockets are not counted as panels.

c. Enclosures are fully covered by the outer panels of the mailpiece.

d. Folded self-mailers with die-cut openings may contain enclosures if the inserted material is larger than the die cut opening.

e. Enclosed material does not exceed the maximum thickness of:

1. 0.05 inch thick for weights up to 1 ounce.

2. 0.09 inch thick for weights over 1 ounce.

3.14.9 Attachments

Attachments may be secured on the outside of a folded self-mailer under 3.13. Attachments may be secured within folded self-mailers under the following conditions:

a. The attachment is affixed to an inside panel and secured it at least ½ inch from any edge.

b. The attached material may not exceed a maximum thickness of:

1. 0.05 inch thick for weights up to 1 ounce.

2. 0.09 inch thick for weights over 1 ounce.

c. Multiple attachments must remain nearly uniform in thickness.

d. When multiple attachments are affixed to separate panels in stacked alignment, the combined thickness of the attachments must be equal to or less than the maximum thickness.

e. When multiple attachments are affixed adjacent to each other across the length of a mailpiece, the thickest attachment must be equal to or less than the maximum thickness.

f. Quarter-folded self-mailer may only have one internal attachment not exceeding 0.012 inch thick. The attachment must be secured at least 0.5 inch from all edges.

3.14.10 Addressing

Printing addresses in a center or left-justified position within the optical character reader (OCR) area under 2.1 is recommended when folded self-mailers are prepared with uncoated paper.

3.15 Unenveloped Mailpieces

3.15.1 Lunch-Bag Style

Lunch-bag style mailpieces consists of two symmetrical horizontal panels sealed together along top and bottom edges. Lunch-bag style mailpieces must meet the following conditions:

a. Join panels using ⅛ (0.125) inch continuous glue lines.

b. If flaps are used, they must be a minimum of at least 1½ inches wide and created as inner flaps adhered at the leading and trailing edges to the panel from which the flap is formed.

c. All paper weight and sealing requirements in 3.14.5c and 3.14.5d must be met.

3.15.2 Tear-Off Strips

When mailpieces have tear-off opening devices on the leading or trailing edge, the unfolded edges must be sealed with an adhesive (glue) or by a cohesive method. Unlike glue that will adhere to any surface, a cohesive seal requires two fixative patterns placed on top of each other to create a bond. The top-sealed edges may have a perforated horizontal line no lower than 9⁄16 (0.5625) inch from the top that joins the leading and trailing edge perforations. Mailpieces with sealed sides must meet the following conditions.

a. Tear off strips may be up to 9⁄16 inch (0.5625) wide.

b. Tear lines (single lines of perforations) on pieces that weigh one ounce or less, must be 1 mm cut (max)/1 mm tie (min) ratio.

c. Tear lines (single lines of perforations) on pieces that weigh more than one ounce must be 1 mm cut (max)/2 mm tie (min) ratio.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–20615 Filed 8–12–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9451–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List: Deletion of the Sayreville Landfill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA), Region 2 is issuing a Notice of Intent to Delete the Sayreville Landfill Superfund Site (Site) located in Borough of Sayreville, Middlesex County, New Jersey from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive

Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of New Jersey, through the New Jersey Department of Environmental Protection, have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments concerning this Site must be received by September 14, 2011.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND—1983–0002, by one of the following methods:

- *http://www.regulations.gov* Follow on-line instructions for submitting comments.
- *E-mail: salkie.diane@epa.gov* Diane Salkie, Remedial Project Manager.
- *Fax:* (212) 637–4393.
- *Mail:* Diane Salkie, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19th Floor, New York, NY 10007–1866
- *Hand delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (*telephone:* 212–637–4308). Such deliveries are only accepted during the Docket's normal hours of operation (Monday thru Friday from 9 a.m. to 5 p.m.). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://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 e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail 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.

Docket

All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, *Phone:* 212–637–4308; *Hours:* Monday through Friday from 9 a.m. to 5 p.m., and

New Jersey Department of Environmental Protection, 401 East State Street, Trenton, New Jersey 08625–0402, *Phone:* 609–777–3373.

FOR FURTHER INFORMATION CONTACT: Diane Salkie, Remedial Project Manager, by mail at Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19th Floor, New York, NY 10007–1866; telephone at 212–637–4370; fax at 212–637–4393; or e-mail at *salkie.diane@epa.gov.*

SUPPLEMENTARY INFORMATION:

In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Sayreville Landfill Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct Final Notice of Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: August 4, 2011.

Judith Enck,

Regional Administrator, Region 2.

[FR Doc. 2011–20741 Filed 8–12–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 5

Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Negotiated Rulemaking Committee meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas.

DATES: Meetings will be held on September 20, 2011, 9:30 a.m. to 6 p.m.; September 21, 2011, 9 a.m. to 6 p.m.; and September 22, 2011, 9 a.m. to 3 p.m.

ADDRESSES: Meetings will be held at the Legacy Hotel and Meeting Centre, 1775 Rockville Pike, Rockville, Maryland 20852, (301) 881–2300.

FOR FURTHER INFORMATION CONTACT: For more information, please contact Jessica Sitko, Office of Policy Coordination,

Bureau of Health Professions, Health Resources and Services Administration, Room 9–29, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6861, E-mail: *jsitko@hrsa.gov* or visit *http://www.hrsa.gov/advisorycommittees/shortage/.*

SUPPLEMENTARY INFORMATION:

Status: The meeting will be open to the public.

Purpose: The purpose of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas is to establish a criteria and a comprehensive methodology for Designation of Medically Underserved Populations and Primary Care Health Professional Shortage Areas, using a Negotiated Rulemaking (NR) process. It is hoped that use of the NR process will yield a consensus among technical experts and stakeholders on a new rule for designation of medically underserved populations and primary care health professions shortage areas, which would be published as an Interim Final Rule in accordance with Section 5602 of the Affordable Care Act, Public Law 111–148.

Agenda: The meeting will be held on Tuesday, September 20; Wednesday, September 21; and Thursday, September 22. It will include a review of previous decisions and analyses regarding the proposed methodologies for identifying areas of shortage and underservice that are based on the recommendations of the Committee in the previous meeting. The Committee will seek to make final recommendations based on these analyses and deliberations. The Committee's final report is due to the Secretary by the end of October.

Members of the public will have the opportunity to provide comments during the meeting on Friday afternoon. Requests from the public to make oral comments or to provide written comments to the Committee should be sent to Jessica Sitko at the contact address above at least 10 days prior to the first day of the meeting, Wednesday, September 20. The meetings will be open to the public as indicated above, 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 above at least 10 days prior to the meeting.

Dated: August 10, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–20690 Filed 8–12–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1196]

Proposed Flood Elevation Determinations

Correction

In proposed rule document 2011–16640 appearing on pages 39063 through 39067 in the issue of Tuesday, July 5, 2011, make the following corrections:

1. On page 39064, in the table labeled ''Bossier Parish, Louisiana, and Incorporated Areas'', in the second row in reference to ''Red Chute Bayou'', ''Approximately 1,125 feet downstream of State Route 612 (Sligo Road)'' should appear as the final value in the ''Location of Referenced Elevation**'' column.

2. On the same page, in the same table, in the second row in reference to ''Red Chute Bayou'', ''+156'' should appear as the final value in the ''Effective'' column.

3. On the same page, in the same table, in the second row in reference to ''Red Chute Bayou'', ''+157'' should appear as the final value in the ''Modified'' column.

[FR Doc. C1–2011–16640 Filed 8–12–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–7786]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On June 20, 2008, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. FEMA published corrections to that table on September 9, 2008, and on May 12, 2009. This notice provides corrections to that table, to be used in lieu of the information published at 73 FR 35112, at 73 FR 52234, and at 74 FR 22151. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Plymouth County, Massachusetts (All Jurisdictions). Specifically, it addresses the following flooding sources: Aassawompsett Pond, Accord Brook, Atlantic Ocean, Bear Swamp, Doggett Brook, Fall Brook, French Stream, Great Quittacas Pond, Hathaway Pond, Hockomock River, Matfield River, Meadow Brook, Oldham Pond, Rocky Meadow Brook, Salisbury Plain River, Satucket River, Shumatuscacant River, Stream River, Third Herring Brook, Town River, Tributary A, Tributary to Meadow Brook, and Weweantic River.

DATES: Comments are to be submitted on or before November 14, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–7786, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other

Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Corrections

In the proposed rule published at 73 FR 35112, in the June 20, 2008, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Plymouth County, Massachusetts, and Incorporated Areas'' addressed the flooding source Atlantic Ocean. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for that flooding source. In addition, it did not include the following flooding sources: Aassawompsett Pond, Accord Brook, Bear Swamp, Doggett Brook, Fall Brook, French Stream, Great Quittacas Pond, Hathaway Pond, Hockomock River, Matfield River, Meadow Brook, Oldham Pond, Rocky Meadow Brook, Salisbury Plain River, Satucket River, Shumatuscacant River, Stream River, Third Herring Brook, Town River, Tributary A, Tributary to Meadow Brook, and Weweantic River.

In the correction published at 73 FR 52234, in the September 9, 2008, issue of the **Federal Register**, FEMA published a table entitled ''Plymouth County, Massachusetts (All Jurisdictions)'' containing information that addressed the flooding source Atlantic Ocean, to be used in lieu of that published on June 20, 2008.

In the correction published at 74 FR 22151, in the May 12, 2009, issue of the **Federal Register**, FEMA published a table entitled ''Plymouth County, Massachusetts (All Jurisdictions)'' containing information that addressed the flooding source Atlantic Ocean, to be used in lieu of that published on September 9, 2008.

In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published for Plymouth County, Massachusetts (All Jurisdictions).

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Plymouth County, Massachusetts (All Jurisdictions)				
Aassawompsett Pond	Entire shoreline within community	None	+55	Town of Middleborough.
Accord Brook	Approximately 3,300 feet upstream of State Route 228.	None	+115	Town of Norwell.
Atlantic Ocean	Approximately 150 feet south of the intersection of Brant Beach Avenue and Ocean View Avenue.	+17	+19	Town of Hingham, Town of Hull, Town of Marion, Town of Mattapoisett, Town of Wareham.
	Approximately 210 feet southeast of the intersection of Highland Avenue and Mount Pleasant Way.	+9	+22	
Bear Swamp	The area around State Route 105	None	+14	Town of Rochester.
Doggett Brook	The area around State Route 105	None	+14	Town of Rochester.
Fall Brook	The low land area between Azel Road and Howland Road.	None	+82	Town of Lakeville.
French Stream	Approximately 1,200 feet upstream of the Golf Cart Bridge.	None	+104	Town of Abington.
	Approximately 900 feet downstream of Spruce Street	None	+123	
Great Quittacas Pond	Entire shoreline within community	None	+55	Town of Middleborough, Town of Rochester.
Hathaway Pond	The area around State Route 105	None	+14	Town of Rochester.
Hockomock River	At the Town River confluence	None	+63	Town of Bridgewater.
	Approximately 1,000 feet downstream of the Maple Street Bridge.	None	+63	
Matfield River	At the Bridge Street bridge	None	+33	Town of East Bridgewater.
	Approximately 260 feet upstream of the Bridge Street bridge.	None	+33	
Meadow Brook	Approximately 300 feet downstream of State Route 18.	None	+75	Town of Whitman.
Oldham Pond	Entire shoreline within community	None	+59	Town of Hanson.
Rocky Meadow Brook	At the Weweantic River confluence	None	+77	Town of Middleborough.
	Approximately 0.75 mile upstream of France Street	None	+84	
Salisbury Plain River	Approximately 1 mile downstream of the Sergents Way Bridge.	None	+67	Town of West Bridgewater.
	Approximately 3,200 feet downstream of the Sergents Way Bridge.	None	+70	
Satucket River	Just upstream of the Pond Street Bridge	None	+42	Town of Halifax.
Shumatuscacant River	Approximately 1,000 feet upstream of the Essex Street Bridge.	None	+78	Town of Whitman.
	Approximately 3,000 feet upstream of the Essex Street Bridge.	None	+80	
Stream River	At the Shumatuscacant River confluence	None	+80	Town of Whitman.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 400 feet upstream of the Shumatuscacant River confluence.	None	+80	
Third Herring Brook	From downstream of the River Street Bridge to the North River confluence.	None	+8	Town of Hanover.
Town River	Approximately 1,200 feet upstream of the High Street Bridge.	None	+47	Town of Bridgewater.
	Approximately 1,500 feet upstream of the High Street Bridge.	None	+48	
	Approximately 1,100 feet upstream of the Forest Road Bridge.	None	+62	
	At the Hockomock River confluence	None	+63	
Tributary A	Just upstream of the Summer Street Bridge	None	+71	Town of Hanover.
Tributary to Meadow Brook	Approximately 1,300 feet upstream of the Meadow Brook confluence.	None	+75	Town of Whitman.
	Approximately 1,600 feet upstream of the Meadow Brook confluence.	None	+75	
Weweantic River	Approximately 1 mile downstream of State Route 58	None	+63	Town of Middleborough, Town of Wareham.
	At the Rocky Meadow Brook confluence	None	+77	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Abington
Maps are available for inspection at the Town Hall, 500 Gliniewicz Way, Abington, MA 02351.

Town of Bridgewater
Maps are available for inspection at the Town Hall, 66 Central Square, Bridgewater, MA 02324.

Town of East Bridgewater
Maps are available for inspection at the Town Hall, 175 Central Street, East Bridgewater, MA 02333.

Town of Halifax
Maps are available for inspection at the Town Hall, 499 Plymouth Street, Halifax, MA 02338.

Town of Hanover
Maps are available for inspection at the Town Hall, 550 Hanover Street, Suite 29, Hanover, MA 02339.

Town of Hanson
Maps are available for inspection at the Town Hall, 542 Liberty Street, Hanson, MA 02341.

Town of Hingham
Maps are available for inspection at the Town Hall, 210 Central Street, Hingham, MA 02043.

Town of Hull
Maps are available for inspection at the Town Hall, 253 Atlantic Avenue, Hull, MA 02045.

Town of Lakeville
Maps are available for inspection at the Town Hall, 346 Bedford Street, Lakeville, MA 02347.

Town of Marion
Maps are available for inspection at the Town Hall, 2 Spring Street, Marion, MA 02738.

Town of Mattapoisett
Maps are available for inspection at the Town Hall, 16 Main Street, Mattapoisett, MA 02739.

Town of Middleborough
Maps are available for inspection at the Town Hall, 10 Nickerson Avenue, Middleborough, MA 02346.

Town of Norwell
Maps are available for inspection at the Town Hall, 345 Main Street, Norwell, MA 02061.

Town of Rochester
Maps are available for inspection at the Town Hall, 1 Constitution Way, Rochester, MA 02770.

Town of Wareham
Maps are available for inspection at the Memorial Town Hall, Administration Department, 54 Marion Road, Wareham, MA 02571.

Town of West Bridgewater
Maps are available for inspection at the Town Hall, 65 North Main Street, West Bridgewater, MA 02379.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Town of Whitman				
Maps are available for inspection at the Town Hall, 54 South Avenue, Whitman, MA 02382.				

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

Dated: August 5, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–20713 Filed 8–12–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1126]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On June 3, 2010, FEMA published in the **Federal Register** a proposed rule that included an erroneous Base Flood Elevation (BFE) description for Rowell Creek and erroneous BFEs for Sal Taylor Creek Tributary 2 in Duval County, Florida. This notice corrects the errors previously published for Rowell Creek and Sal Taylor Creek Tributary 2 in Duval County, Florida.

DATES: Comments pertaining to the Rowell Creek BFEs, from the location approximately 650 feet upstream of Secluded Avenue to the location approximately 0.51 mile upstream of the intersection of Inspiration Avenue and D Avenue, and comments pertaining to the Sal Taylor Creek Tributary 2 BFEs, from the location at the confluence with Sal Taylor Creek to the location approximately 1,500 feet upstream of the confluence with Sal Taylor Creek Tributary 3, are to be submitted on or before November 14, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1126, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Corrections

In the proposed rule published at 75 FR 31347, in the June 3, 2010, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Duval County, Florida, and Incorporated Areas'' addressed a number of flooding sources, including Rowell Creek and Sal Taylor Creek Tributary 2.

The proposed rule incorrectly listed the Rowell Creek location description for the modified BFE of 80 feet, referenced to the North American Vertical Datum of 1988, as being approximately 650 feet upstream of Secluded Avenue. The correct location of this modified BFE is approximately 0.51 mile upstream of the intersection of Inspiration Avenue and D Avenue. The proposed rule also incorrectly listed the modified BFEs for Sal Taylor Creek Tributary 2, for both the location at the confluence with Sal Taylor Creek and the location approximately 1,500 feet upstream of the confluence with Sal Taylor Creek Tributary 3. The modified BFE for the location at the confluence with Sal Taylor Creek was listed as 61 feet, referenced to the North American Vertical Datum of 1988. The correct modified BFE for that location is 62 feet, referenced to the North American Vertical Datum of 1988. The modified BFE for the location approximately 1,500 feet upstream of the confluence with Sal Taylor Creek Tributary 3 was listed as 67 feet, referenced to the North American Vertical Datum of 1988. The correct modified BFE for that location is 68 feet, referenced to the North American Vertical Datum of 1988. The effective BFEs were listed correctly in the proposed rule.

This proposed rule correction is reopening the comment period for Rowell Creek, for the proposed BFE at the location approximately 650 feet upstream of Secluded Avenue, where a modified BFE of 67 feet, referenced to the North American Vertical Datum of 1988, is proposed, due to the error in listing the location description for the Rowell Creek BFE of 80 feet, referenced to the North American Vertical Datum of 1988, in the previously published proposed rule at 75 FR 31347. This proposed rule also is opening a comment period for Rowell Creek from the location approximately 650 feet upstream of Secluded Avenue to the location approximately 0.51 mile upstream of the intersection of

Inspiration Avenue and D Avenue, where a modified BFE of 80 feet, referenced to the North American Vertical Datum of 1988, is proposed, due to the error in listing the location description for the Rowell Creek BFE of 80 feet, referenced to the North American Vertical Datum of 1988, in the previously published proposed rule at 75 FR 31347. In addition, this proposed rule is reopening the comment period for Sal Taylor Creek Tributary 2, from the location at the confluence with Sal Taylor Creek, where a modified BFE of 62 feet, referenced to the North American Vertical Datum of 1988, is proposed, to the location approximately 1,500 feet upstream of the confluence with Sal Taylor Creek Tributary 3, where a modified BFE of 68 feet, referenced to the North American Vertical Datum of 1988, is proposed, due to the error in listing the modified BFEs for this flooding source in the previously published proposed rule at 75 FR 31347.

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

Dated: August 5, 2011.

Sandra K. Knight,

Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–20715 Filed 8–12–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

RIN 0648–XA619

Endangered and Threatened Species; 5-Year Reviews for 5 Evolutionarily Significant Units of Pacific Salmon and 1 Distinct Population Segment of Steelhead in California

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

ACTION: Notice of availability of 5-year reviews.

SUMMARY: We, the National Marine Fisheries Service (NMFS) Southwest Region, announce the availability of 5-year reviews for five ESUs of Pacific salmon (*Oncorhynchus sp.*) and one DPS of steelhead (*Oncorhynchus mykiss*) in California, as required by the ESA. After reviewing the best available scientific and commercial data, our 5-year reviews indicate that these species should remain listed as determined in 2005 and 2006, respectively. Our reviews recommend that the southward extension of boundaries for California Coastal Chinook salmon and Central California Coast coho salmon should be considered. Our 5-year review also recommends that six hatchery stocks should be removed from the California Coastal Chinook salmon ESU because those hatchery programs have been terminated.

ADDRESSES: Additional information about the 5-year review process, including copies of the 5-year review reports, may be obtained by visiting the NMFS Southwest Regional Office Web site at *http://swr.nmfs.noaa.gov/* or by writing to us at: NMFS Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802; Attn: Craig Wingert.

FOR FURTHER INFORMATION CONTACT: Craig Wingert at the above address or at (562) 980–4021.

SUPPLEMENTARY INFORMATION:

Background

Under the ESA, a list of endangered and threatened wildlife and plant species must be maintained. The list is published at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that NMFS conduct a review of listed species under its jurisdiction at least once every 5 years (''5-year reviews''). Pursuant to section 4(c)(2)(B) of the ESA, we determine whether any species should be delisted and removed from the list, reclassified from endangered to threatened, or reclassified from threatened to endangered on the basis of such reviews. In conducting 5-year reviews, we consider the best scientific and commercial data, including new information that has become available since the last listing determination or most recent status review of a species.

On March 18, 2010, NMFS announced the initiation of 5-year reviews for listed Pacific salmon ESUs and steelhead DPSs in California, Oregon, Washington, and Idaho (75 FR 13082). Both ESUs and DPSs are treated as ''species'' under the ESA and we use the term ''species'' to refer to both in the remainder of this notice. In the March 18, 2010 announcement, we requested new information regarding the biological status of these ESUs and DPSs and the factors that affect them from the public, concerned governmental agencies, Tribes, the scientific community, environmental entities, and other interested parties.

This notice of availability addresses our completed 5-year reviews for: (1) Southern Oregon/Northern California coho salmon; (2) California Coastal Chinook salmon; (3) Central California Coast coho salmon; (4) Sacramento River winter-run Chinook salmon; (5) Central Valley spring-run Chinook salmon; and (6) Central Valley steelhead. The results of 5-year reviews for the other ESUs and DPSs discussed in the March 18, 2010 notice of initiation will be announced in forthcoming notices from the NMFS Southwest and Northwest Regions, respectively.

We used a two-step process to complete the reviews. First, we asked scientists from our Southwest Fisheries Science Center to collect and analyze new information about each species' viability. To evaluate each species' viability, our scientists applied the agency's Viable Salmonid Population (VSP) framework, which relies on evaluating four key population parameters (abundance, productivity, spatial structure, and diversity). Using this framework, they compiled and evaluated all new relevant information on these four parameters and then updated the overall viability status of each species. They also considered new genetic and biogeographic information related to each species' freshwater and estuarine geographic boundaries. At the end of this process, the Center prepared a report detailing the results and conclusions from their analyses.

Fishery biologists from the Southwest Region and its field offices completed the second step in the review process. These biologists reviewed new information on the five ESA 4(a)(1) factors considered when determining if a species should be listed as threatened or endangered, including: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and, (5) other natural or man-made factors affecting its continued existence. They also evaluated new information on hatchery programs associated with each species to inform an updated assessment about whether specific hatchery programs should be considered part of the species that were evaluated. In doing so, they applied our Policy Addressing the Role of Artificially Propagated Pacific Salmon and Steelhead in Listing Determinations under the ESA (70 FR 37204). The 5-year review reports prepared by the Southwest Region, the Southwest Science Center's updated

status assessment, and additional information concerning these species are available on the Southwest Region's Web site: *http://swr.nmfs.noaa.gov/.*

With regard to the salmon and steelhead species subject to this notice of availability, we evaluated information that has become available on the species since they were previously reviewed in 2005 (70 FR 37160) and 2006 (71 FR 834), respectively. After considering the best available information, our 5-year reviews recommend that each of these species should remain listed as determined in 2005 and 2006. Our reviews also recommend that the southern boundaries of two species (California Coastal Chinook salmon and Central California Coast coho salmon ESUs) should be extended. Finally, our reviews also recommend that six hatchery stocks should be removed from the California Coastal Chinook salmon ESU based on information demonstrating the hatchery programs propagating these stocks have been terminated since the last status review.

In furtherance of these recommendations, we have already proposed to change the southern boundary of Central California Coast coho salmon (76 FR 6383). We will consider proposing the adjustment of the species boundary and hatchery status for California Coastal Chinook salmon in a separate rulemaking. We conclude that these 5-year reviews meet the requirements of the ESA.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 8, 2011.

Therese Conant,

Deputy Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–20459 Filed 8–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

RIN 0648–XA535

Endangered and Threatened Species; 5-Year Reviews for 17 Evolutionarily Significant Units and Distinct Population Segments of Pacific Salmon and Steelhead

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

ACTION: Notice of availability of 5-year reviews.

SUMMARY: NMFS Northwest Region announces the availability of 5-year reviews for 11 evolutionarily significant units (ESUs) of Pacific salmon (*Oncorhynchus sp.*) and 6 distinct population segments (DPSs) of steelhead (*Oncorhynchus mykiss*) in Oregon, Washington, and Idaho as required by the Endangered Species Act of 1973, as amended (ESA). The purpose of the reviews was to evaluate whether the listing classifications of these salmonids remains accurate or should be changed. After reviewing the best available scientific and commercial data, we conclude that the 11 ESUs of Pacific salmon and 6 DPSs of steelhead in Oregon, Washington, and Idaho shall remain listed as determined in 2005, 2006, and 2007.

ADDRESSES: Additional information about the 5-year reviews may be obtained by visiting the NMFS Northwest Regional Office Web site: *http://www.nwr.noaa.gov/,* or by writing to us at: NMFS Northwest Region, 1201 Lloyd Blvd., Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Eric Murray (503) 231–2378.

SUPPLEMENTARY INFORMATION:

Background

Under the ESA, a list of endangered and threatened wildlife and plant species must be maintained. The list is published at 50 CFR 17.11 and 50 CFR 223.102 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every 5 years. On the basis of such reviews under section 4(c)(2)(B), we determine whether any species should be removed from the list (delisted), or reclassified from endangered to threatened or from threatened to endangered. During 5-year reviews, we consider the best scientific and commercial data available, including new information that has become available since the last listing determination or most recent status review of a species.

On March 18, 2010, the NMFS Northwest and Southwest Regional Offices announced initiation of 5-year reviews of Pacific salmon ESUs and steelhead DPSs (75 FR 13082). Both ESUs and DPSs are treated as 'species' under the ESA, and we use the term 'species' to refer to both in the remainder of this notice. At the time of our announcement, we requested information on species viability, protective efforts, and threats to the species from the public, concerned governmental agencies, Tribes, the scientific community, environmental entities, and other interested parties.

This notice addresses the following salmon species: (1) Upper Columbia River spring-run Chinook salmon; (2) Snake River spring/summer-run Chinook salmon; (3) Puget Sound Chinook salmon; (4) Lower Columbia River Chinook salmon; (5) Upper Willamette Chinook salmon; (6) Snake River fall-run Chinook salmon; (7) Hood Canal summer-run chum salmon; (8) Columbia River chum salmon; (9) Lower Columbia River coho salmon; (10) Snake River sockeye salmon; and (11) Ozette Lake sockeye salmon. We did not complete a 5-year review for the Oregon Coast coho salmon because, as part of a legal settlement, we previously agreed to conduct a new review of the status of this species. On June 20, 2011, we issued a final rule re-promulgating the threatened listing for Oregon Coast coho salmon (76 FR 35755).

This notice also addresses the following steelhead species: (1) Upper Columbia River steelhead DPS; (2) Middle Columbia River steelhead DPS; (3) Snake River Basin steelhead DPS; (4) Lower Columbia River steelhead DPS; (5) Upper Willamette steelhead DPS; and (6) Puget Sound steelhead DPS. Information about these species can be found at our Northwest Regional Web site: *http://www.nwr.noaa.gov/.*

We used a two-step process to complete the reviews of the listed salmonid species in Oregon, Washington, and Idaho. First, we asked scientists from our Northwest Fisheries Science Center to collect and analyze new information about species viability. To evaluate viability, our scientists apply the Viable Salmonid Population (VSP) concept. The VSP concept relies on evaluating four criteria—abundance, productivity, spatial structure, and diversity—to assess species viability. They also considered new genetic and biogeographic information regarding species' boundaries. At the end of this process, the science team prepared a report detailing the results of their analyses. This report is available at our regional Web site.

Salmon management biologists from our Northwest Regional Office completed the second step in the review process. These biologists, organized into geographically-based teams, reviewed new information related to the five ESA section 4(a)(1) factors, which we consider when determining if a species should be listed as threatened or endangered or be de-listed. These are: (1) The present or threatened destruction, modification, or curtailment of the species' habitat or range; (2) overutilization for

commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or man-made factors affecting the species' continued existence. The biologists also evaluated new information on hatchery programs to inform an updated assessment of which hatchery programs should be included as part of the listed species. They applied our Policy Addressing the Role of Artificially Propagated Pacific Salmon and Steelhead in Listing Determinations under the ESA (70 FR 37204) to complete this evaluation. The 5-year review reports, the science team report, and additional information are available on our Web site: *http://nwr.noaa.gov.*

Findings

After considering the best available information, we conclude that all 11 Pacific salmon species and 6 steelhead species in Oregon, Washington, and Idaho shall remain listed as currently classified.

We also conclude that, based on the best information available, no adjustments to species boundaries are necessary. We did conclude that the species membership of several hatchery programs will need to be revised, and we also identified several errors in our current species descriptions in the list of threatened and endangered species found at 50 CFR 17.11, 223.102, and 224.102. We will adjust the hatchery memberships and correct any listing inaccuracies through a subsequent rulemaking.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 8, 2011.

Therese Conant,

Deputy Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–20453 Filed 8–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–BB13

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Program Improvement and Enhancement; Amendment 21–1

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

ACTION: Availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 21–1 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for review by the Secretary of Commerce (Secretary). Amendment 21–1 would further revise the FMP to support the trawl rationalization program, a catch share program, implemented in January 2011 through Amendments 20 and 21. Amendment 21–1 would modify the FMP to clarify that Amendment 21 supersedes the limited entry/open access allocations for groundfish species allocated through Amendment 21. Amendment 21–1 would also revise the formula in the FMP to allocate Pacific halibut bycatch to the limited entry trawl fishery.

DATES: Comments on Amendment 21–1 must be received no later than 5 p.m., local time on October 14, 2011.

ADDRESSES: You may submit comments, identified by RIN 0648–BB13 by any one of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*

Fax: 206–526–6736, *Attn:* Jamie Goen.

Mail: Barry Thom, Acting Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, *Attn:* Jamie Goen.

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

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

FOR FURTHER INFORMATION CONTACT: Jamie Goen, *phone:* 206–526–4656, *fax:* 206–526–6736, and e-mail *jamie.goen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. NMFS will consider public comments received during the comment period described above in determining whether to approve Amendment 21–1 to the FMP.

Amendment 21–1 would further revise the FMP to support the trawl rationalization program, a catch share program, implemented in January 2011 through Amendments 20 and 21. Amendment 21–1 would modify the FMP to: (1) Clarify that Amendment 21 supersedes the limited entry/open access allocations for groundfish species allocated through Amendment 21; and (2) revise the formula in the FMP to calculate the Pacific halibut bycatch mortality limit for the limited entry trawl fishery.

Amendment 21 to the FMP established allocations to the limited entry trawl fishery participants. As part of Amendment 21, allocations were established between the trawl and non-trawl sectors for certain groundfish species in preparation for the trawl rationalization program (called Amendment 21 species). In a letter to the Council dated August 9, 2010, NMFS disapproved part of Amendment 21 because the FMP language available to the public and to the Council during its decision making did not clearly state that Amendment 21 allocations supersede the previous limited entry/open access allocations for Amendment

21 species. In other words, the partial disapproval of Amendment 21 was because of a concern over the public record and procedural issues regarding the record. This issue has since been addressed through the Council process by providing FMP and regulatory language at the Council's March, April, and June 2011 meetings.

Amendment 21–1 would modify the FMP to explicitly state that, for Amendment 21 species, allocations decided under Amendment 21 supersede allocations previously decided between limited entry and open access fisheries. Limited entry and open access allocations were initially decided under Amendment 6 to the FMP, which established the limited entry fishery.

Amendment 21–1 would also revise the formula in the FMP to calculate the amount of Pacific halibut bycatch available to the limited entry trawl fishery. The allocation of Pacific halibut to the trawl fishery was initially implemented through Amendment 21 to the FMP. Halibut allocations under Amendment 21 set a total catch limit of Pacific halibut in the limited entry trawl fishery for the trawl rationalization program in order to reduce trawl bycatch of halibut in future fisheries to provide more yield to directed Area 2A (Washington, Oregon, and California) halibut fisheries (i.e., primary use of halibut is to provide fish for the directed tribal, commercial, and recreational fisheries). However, as the start date of the trawl rationalization program, January 2011, was getting closer, the Council and industry were concerned that the allocation established in Amendment 21 was too restrictive. In response, NMFS implemented interim measures for the 2011 groundfish fishery which interpreted the halibut allocation to be legal halibut of 130,000 lb net weight. This was in comparison to Amendment 21 language which stated legal and sub-legal halibut set at 15% of the International Pacific Halibut Commission's (IPHC's) constant exploitation yield (CEY) for legal sized halibut (over 32 inches in length), not to exceed 130,000 lbs annually for the first four years and not to exceed 100,000 lbs annually beginning in the fifth year. This resulted in a two part calculation of the limit by converting from net weight to round weight and by converting legal sized halibut to legal and sublegal sized halibut. This calculation reflects the difference between the total constant exploitation yield (TCEY) established by the IPHC (net weight of legal fish) and NMFS management of groundfish and halibut (round weight of legal and sublegal fish).

Because the interim measures are temporary and will expire at the end of 2011, the Council has recommended a long term solution by making further revisions to Amendment 21 for the calculation of halibut bycatch mortality available to the trawl fishery. For 2012 and beyond, the Council recommended amending the FMP through Amendment 21–1 to: (1) Specify that the total net weight of legal sized halibut would then be expanded, converting to total round weight of legal and sublegal sized halibut, and (2) by making the percentage cap based on the best estimate of TCEY from the IPHC (i.e., preliminary IPHC estimate from their interim meeting of TCEY).

A proposed rule to implement the provisions of Amendment 21–1 has been submitted by the Council for Secretarial review and approval. NMFS expects to publish and request public review and comment on the proposed regulations to implement Amendment 21–1 in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. The decision on the amendment must occur within 30 days of the end of the comment period on the notice of availability for the amendment. All comments received by the end of the comment period for the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision.

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

Dated: August 10, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–20678 Filed 8–12–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 157

Monday, August 15, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 10, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Export Certification, Accreditation of Non-Government Facilities.

OMB Control Number: 0579–0130.

Summary of Collection: The Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) is responsible for preventing plant diseases or insect pests from entering the United States, as well as, the spread of pests not widely distributed in the United States, and eradicating those imported when eradication is feasible. The Plant Protection Act (7 U.S.C. 7701 *et seq.*), authorizes the Department to carry out this mission. In addition to its mission, APHIS provides export certification services to ensure other countries that the plants and plant products they are receiving from the United States are free of plant diseases and insect pests.

Need and Use of the Information: APHIS will collect information for applications submitted by operator/owner of a non-government facility seeking accreditation to conduct laboratory testing or phytosanitary inspection. The application should contain the legal name and full address of the facility, the name, address, telephone and fax numbers of the facility's operator, a description of the facility, and a description of the specific laboratory testing or phytosanitary inspection services for which the facility is seeking accreditation. If these activities are not conducted properly, APHIS export certification program would be compromised, causing a disruption in plant and plant product exports that could prove financially damaging to U.S. exporters.

Description of Respondents: Business or other for profit; State, Local and Tribal Government.

Number of Respondents: 15.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 300.

Animal and Plant Health Inspection Service

Title: Importation of Tomatoes from Spain, Chile, France, Morocco, and Western Sahara.

OMB Control Number: 0579–0131.

Summary of Collection: Under the Plant Protection Act (PPA) (7 U.S.C. 7701—*et seq.*), the Secretary of Agriculture is authorized to carry out operations or measure to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the word are contained in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–50). These regulations allow tomatoes from Spain, Chile, France, Morocco, and Western Sahara to be imported into the United States (subject to certain conditions).

Need and Use of the Information: The Animal and Plant Health Inspection Service (APHIS) will collect information using the phytosanitary certificate certifying that the tomatoes were grown in registered greenhouses in a specified area of the exporting country. APHIS uses the information on this certificate to determine the pest condition of the shipment at the time of inspection in the foreign country. Without this information, all shipments would need to be inspected very thoroughly, thereby requiring considerably more time. This would slow the clearance of international shipments.

Description of Respondents: Business or other for profit; Federal Government.

Number of Respondents: 34.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,704.

Animal and Plant Health Inspection Service

Title: Karnal Bunt; Revision of Regulations for Importing Wheat.

OMB Control Number: 0579–0240.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Animal and Plant Health Inspection Service (APHIS), domestic Karnal bunt regulations are contained in Subpart-Karnal Bunt (7 CFR 301.89–1 through 301.89–16). Karnal bunt is a fungal disease of wheat. Karnal bunt is caused

by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed.

Need and Use of the Information: In order for APHIS to verify that the articles are being imported in compliance with the regulations, the articles would have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of the region of origin. The certificate must include a declaration stating that the regulated articles originated in areas where Karnal bunt is not known to occur, as attested to either by survey resulting or by testing for bunted karnals or spores.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 500.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 600.

Animal and Plant Health Inspection Service

Title: Pine Shoot Beetle Host Material from Canada.

OMB Control Number: 0579–0257.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Animal Plant and Health Inspection Service (APHIS) have established restrictions on the importation of pine shoot beetle host material into the United States from Canada. Pine shoot beetle (PSB) is a pest of pine trees. It can cause damage in weak and dying trees where reproductive and immature stages of PSB occur, and in the new growth of healthy trees. PSB can damage urban ornamental trees and can cause economic losses to the timber, Christmas trees, and nursery industries.

Need and Use of the Information: APHIS will collect the information using Compliance Agreements, Written Statements, and Canadian Phytosanitary Certificates to protect the United States from the introduction of pine shoot beetle and other plant diseases.

Description of Respondents: Business or other for profit; Federal Government.

Number of Respondents: 2,340.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 94.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–20737 Filed 8–12–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

South Central Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Central Idaho Resource Advisory Committee will meet in Jerome, Idaho. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review project applications for funding.

DATES: The meeting will be held August 31, 2011, 9:30 a.m.

ADDRESSES: The meeting will be held at the Idaho Department of Fish and Game, 319 S 417 E, Jerome, Idaho 83338. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Sawtooth National Forest, 2647 Kimberly Road East, Twin Falls, Idaho. Please call ahead to (208) 737–3200 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Julie Thomas, Designated Federal Official, Sawtooth National Forest, 208–737–3200, and *jathomas@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or proceedings may be made by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review project applications for funding. The meeting agenda may be previewed at the following Web site: *http://fs.usda.gov/sawtooth.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. This time will be set aside on the agenda as Public Forum. A summary of the meeting will be posted at *http://fs.usda.gov/sawtooth* within 21 days of the meeting.

Dated: August 9, 2011.

Julie A. Thomas,

Federal Designated Officer.

[FR Doc. 2011–20647 Filed 8–12–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by October 14, 2011.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5168 South Building, Washington, DC 20250–1522. *Telephone:* (202) 690–1078. *Fax:* (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires 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)). This notice identifies an information collection that the Agency is submitting to OMB as a revision to an existing collection. 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 will have practical utility; (b) 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; (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 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. Comments may be sent to: Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Development Utilities Programs, U.S. Department of Agriculture, STOP 1522, Room 5168, 1400 Independence Ave., SW., Washington, DC 20250–1522. *Fax:* (202) 720–8435.

Title: Accounting Requirements for Electric and Telecommunications Borrowers.

OMB Control Number: 0572–0003.

Type of Request: Revision of a currently approved collection.

Abstract: This collection of information covers requirements for RUS Electric and Telecommunications borrowers for maintaining financial accounting and recordkeeping. The collection consists of the requirement to maintain an index of records and the recordkeeping associated with the accounting system of the organization. The Agency believes that this is the minimum record retention requirements needed to carry out its due diligence responsibilities in loan underwriting and maintaining loan security. Agency borrowers should understand that they may be subject to additional record retention requirements imposed by other regulatory authorities such as FERC, FCC, state commissions and IRS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents and Recordkeepers: 1,150.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Hours per Recordkeeper: 50 hours.

Estimated Total Annual Burden on Respondents: 2,300 hours.

Estimated Total Annual Burden on Recordkeepers: 28,750 hours.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis, at (202) 720–0812, *Fax:* (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 5, 2011.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2011–20621 Filed 8–12–11; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the New Hampshire State Advisory Committee to the Commission will meet at 10:30 a.m. (EDT) on Monday, August 29, 2011, in Room 255 of the Student Center at the University of New Hampshire, 400 Commercial Street, Manchester, NH 03101. The purpose of the briefing meeting is to inform members on the operations of Federal advisory committees. The purpose of the planning meeting is to discuss future activities.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by September 29, 2011. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 624 9th Street, NW., Suite 740, Washington, DC 20425. They may be faxed to (202) 376–7548 or e-mailed to *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above e-mail or street address.

Deaf or hearing-impaired persons who will attend the meeting(s) and require the services of a sign language interpreter should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 10, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–20645 Filed 8–12–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Marianas Trench Marine National (MTMN) Monument Knowledge and Attitudes Survey.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 1,000.

Average Hours per Response: 20 minutes.

Burden Hours: 333.

Needs and Uses: President George W. Bush established the Marianas Trench Marine National Monument (Monument) on January 6, 2009, by Presidential Proclamation 8335. The Islands Unit of the Monument includes only the waters and submerged lands of the three northernmost Mariana Islands: Farallon de Pajaros or Uracas; Maug; and Asuncion, below the mean low water line. Within the Islands Unit, commercial fishing is prohibited but sustenance, recreational, and traditional indigenous fishing can be allowed on a sustainable basis.

Management activities under the Department of the Interior are anticipated to include public education programs and public outreach regarding the coral reef ecosystem and related marine resources and species of the Monument and efforts to conserve them; traditional access by indigenous persons, for culturally significant subsistence, cultural and religious uses within the Monument; a program to assess and promote Monument-related scientific exploration and research, tourism, and recreational and economic activities and opportunities in the Commonwealth of the Northern Mariana Islands (CNMI); a process to consider

requests for recreational fishing permits in certain areas of the Islands Unit, based on an analysis of the likely effects of such fishing on the marine ecosystems of these areas, sound professional judgment that such fishing will not materially interfere with or detract from the fulfillment of the purposes of this proclamation, and the extent to which such recreational fishing shall be managed as a sustainable activity; programs for monitoring and enforcement necessary to ensure that scientific exploration and research, tourism, and recreational and commercial activities do not degrade the Monument's coral reef ecosystem or related marine resources or species or diminish the Monument's natural character.

The Human Dimensions Research Program at NOAA Fisheries Pacific Islands Fisheries Science Center is initiating a survey to support development of a management plan for the Monument. Designation of the Monument was accompanied by social debate over the merits of designation, the economic benefits, increased federal management in the archipelago, the impacts to fishermen and fishing communities, and other effects. Now that the Monument has been established and management planning is beginning, there is a need for research to define CNMI and Guam residents' management preferences and perceptions of effects so this information is available to managers as they develop and begin to implement the plan. The survey contains questions on awareness, knowledge, and attitudes regarding the Monument, preferences for management and scientific research, and level of interest in becoming involved in Monument management and outreach activities. Additional questions include experiences with and attitudes toward existing uses of coastal and marine resources, to provide a context for interpreting responses regarding the Monument.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: OIRA_Submission @omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek @doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 10, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–20655 Filed 8–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Vessel Identification Requirements.

OMB Control Number: 0648–0361.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 1,330.

Average Hours per Response: For all but purse seine vessels, 45 minutes; for purse seine vessels, one hour and 15 minutes.

Burden Hours: 1,005.

Needs and Uses: This request is for extension of a current information collection.

Regulations at 50 CFR 660.704 require that all vessels with permits issued under authority of the National Marine Fishery Service's (NMFS) Fishery Management Plan for United States (U.S.) West Coast Highly Migratory Species Fisheries display the vessel's official number. The numbers must be of a specific size and format and located at specified locations. The display of the identifying number aids in fishery law enforcement.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: OIRA_Submission @omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek @doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 10, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–20659 Filed 8–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Vessel Identification Requirements.

OMB Control Number: 0648–0350.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 4,920.

Average Hours per Response: 45 minutes.

Burden Hours: 3,690.

Needs and Uses: This request is for extension of a current information collection.

Regulations at 50 CFR 648.8 and 697.8 require that owners of vessels over 25 ft (7.6 m) in registered length that have Federal permits to fish in the Northeast Region display the vessel's name and official number. The vessel's name and official number must be of a specific size at specified locations. The display of the identifying characters aids in fishery law enforcement.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: OIRA_Submission @omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek @doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 10, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–20656 Filed 8–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 52–2011]

Foreign-Trade Zone 163—Ponce, Puerto Rico Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by CODEZOL, C.D., grantee of FTZ 163, requesting authority to expand the zone in Caguas and Ponce, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 9, 2011.

FTZ 163 was established by the Board on October 18, 1989 (Board Order 443, 54 FR 46097, 11/1/89), and expanded on April 18, 2000 (Board Order 1091, 65 FR 24676, 4/27/00), on June 9, 2005 (Board Order 1397, 70 FR 36117, 6/22/05), on July 26, 2006 (Board Order 1467, 71 FR 44996, 8/8/06), on November 9, 2006 (Board Order 1487, 71 FR 67098, 11/20/06), on June 26, 2009 (Board Order 1631, 74 FR 34306–34307, 7/15/09), and on July 8, 2010 (Board Orders 1692 and 1693, 75 FR 41801, 7/19/10).

The zone project currently consists of fifteen sites (917.70 acres total) in Puerto Rico: *Site 1* (269 acres, 5 parcels)—within the Port of the Americas located at the Port of Ponce, at 3309 Avenida Santiago de los Caballeros, at Percon Industrial Park, at Phase 3A 100% and at Bayland, Ponce; *Site 2* (183.8 acres, 5 parcels)—Peerless Oil & Chemicals, Inc., petroleum terminal facilities in Peñuelas and Guaynilla; *Site 3* (3 acres)—Hato Rey Distribution Center, located at Angel Buonoma Street #361 and #71, San Juan; *Site 4* (14 acres)—Centro Automatriz Santa Rosa, Inc., State Road No. 3, Km 140.1, Guayama; *Site 5* (256 acres)—Mercedita Industrial Park, Rt. PR–9 and Las Americas Highway, Ponce; *Site 6* (86 acres)—Coto Laurel Industrial Park, Highways PR–56 and PR–52, Ponce; *Site 7* (17.2 acres)—Cesar Castillo warehouse, State Road No. 1, Km 21.1, Guaynabo; *Site 8* (5 acres)—Ayala Warehouse, Inc., 42 Salmon Street, Ponce; *Site 9* (6 acres, sunset 11/1/2011)—warehouse facility, PR Highway 2, Km 165.2, Hormigueros; *Site 10* (5.83 acres, sunset 6/30/2014)—Colomer & Suarez, Inc., Centro de Distribucion Playa de Ponce, Building 7, Avenida Santiago de los Caballeros, Ponce; *Site 11* (52 acres, sunset 6/30/2015)—ProCaribe, Road 385, Km 5.4, Bo. Tallaboa, Peñuelas; *Site 12* (5.97 acres, sunset 6/30/2015)—Yaucono Industrial Park, 2822 Las Americas Avenue, Corner Cuatro Calles, Ponce; *Site 13* (10 acres)—Rio Piedras Distribution Center, Quebrada Arena Industrial Park, PR Road #1, Km 26.0, San Juan; *Site 14* (2.1 acres, expires 5/31/2012)—Caribe Rx Industrial Park, PR Road #1, Km 39.9, Bo. Turabo, Caguas; and *Site 15* (1.8 acres, expires 5/31/2012)—Ortiz Auto Distributors Industrial Park, Baiora Industrial Subdivision Lot F, Road 189, Km 2.0, Caguas.

The applicant is requesting authority to expand the zone to include existing Sites 14 and 15 on a permanent basis and to include an additional site: *Proposed Site 16* (5.66 acres)—warehouse facilities of Destilería Serrallés, Inc., located within Reparto Industrial Reparada, Calle B Lots 5 and 6, Barrio Canas, Playa de Ponce, Ponce. The sites will provide public warehouse and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 14, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 31, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: August 9, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–20729 Filed 8–12–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Extension of Time Limit for Final Results of the Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Alan Ray, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5403.

Background

On June 30, 2011, the Department of Commerce (''Department'') published in the **Federal Register** the *Preliminary Results* of the antidumping duty changed circumstances review of diamond sawblades and parts thereof from the People's Republic of China.[1] Subsequent to the publication of the *Preliminary Results,* the Department received affirmative and rebuttal comments regarding the Department's preliminary determination. On July 25, 2011, the Department held a hearing in which interested parties presented arguments from their affirmative and rebuttal comments. The final results are currently due no later than August 18, 2011.

Extension of Time Limit for the Final Results

In the *Preliminary Results,* the Department stated that it was extending the time limit to issue the final results of the review by 55 days, thereby extending the previous deadline to August 18, 2011. However, it is not practicable to complete the review within this time period. Accordingly, pursuant to 19 CFR 351.302(b), we are extending the time limit by 30 days.

[1] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results and Preliminary Intent To Terminate, in Part, Antidumping Duty Changed Circumstances Review and Extension of Time Limit for Final Results,* 76 FR 38357 (June 30, 2011) (''*Preliminary Results*'').

The Department finds that it is not practicable to complete this review by the current deadline. The Department has determined that it requires additional time to analyze the case and rebuttal briefs submitted by interested parties and to consider the unique facts and legal questions surrounding this changed circumstances review. Consequently, in accordance with 19 CFR 351.302(b), the Department is extending the time period for issuing the final results in this review by 30 days. Therefore, the final results will be due no later than September 19, 2011, as September 17, 2011, is a Saturday.

We are issuing and publishing this notice in accordance with sections 751(b) and 771(i) of the Tariff Act of 1930, as amended.

Dated: August 10, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–20730 Filed 8–12–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Notice of Final Results of Antidumping Duty Changed Circumstances Review: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has determined that Toray Advanced Materials Korea, Inc. (Toray Advanced Materials) is the successor-in-interest to Toray Saehan, Inc. (Toray Saehan). As a result, Toray Advanced Materials will be accorded the same treatment previously accorded Toray Saehan with regard to the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from Korea, effective as of the date of publication of this notice in the **Federal Register**.

DATES: *Effective Date*: August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; *telephone:* (202) 482–6312 or (202) 482–0649, respectively.

Background

The Department published an antidumping duty order on PET film from Korea on June 5, 1991. *See Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea*, 56 FR 25669 (June 5, 1991). On September 26, 1997, the Department published the notice of final court decision and amended final determination on PET film from Korea. *See Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Notice of Final Court Decision and Amended Final Determination of Antidumping Duty Investigation*, 62 FR 50557 (September 26, 1997) (*Antidumping Duty Investigation Amended Final*). Based on the Department's redetermination on remand in *Antidumping Duty Investigation Amended Final*, Cheil Synthetics, Inc. (Cheil) was found to have been dumping at a margin of 36.33 percent.

On July 5, 1996, the Department revoked the antidumping duty order on PET film from Korea with respect to Cheil because Cheil had not sold the subject merchandise at LTFV for at least three consecutive periods of review. *See Polyethylene Terephthalate Film Sheet and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part*, 61 FR 35177 (July 5, 1996). Subsequently, prior to the first sunset review, the Department published the final results of a changed circumstances review in which it found that Saehan Industries, Inc. (Saehan) was the successor-in-interest to Cheil. *See Polyethylene Terephthalate Film, Sheet and Strip From the Republic of Korea; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 63 FR 3703 (January 26, 1998).

The Department conducted another changed circumstances review in May 2000 in which it determined that Toray Saehan was the successor-in-interest to Saehan (which, as explained above, was the successor-in-interest to Cheil). *See Polyethylene Terephthalate Film, Sheet and Strip From the Republic of Korea, Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 65 FR 34661 (May 31, 2000).

On December 21, 2010, Toray Advanced Materials filed a request for a changed circumstances review of the antidumping duty order on PET film from Korea. Toray Advanced Materials claimed it is the successor-in-interest to Toray Saehan in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216, and provided documentation supporting its assertion.

On May 10, 2011, the Department published its initiation and preliminary results of changed circumstances review of the antidumping duty order on PET film from Korea. *See Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 76 FR 27005 (May 10, 2011) (*Preliminary Results*). The Department preliminarily determined that Toray Advanced Materials is the successor-in-interest to Toray Saehan and should be treated as such for purposes of the antidumping duty order. In the *Preliminary Results*, we stated that interested parties could submit case briefs to the Department no later than 15 days after the publication of the *Preliminary Results* in the **Federal Register**, and submit rebuttal briefs, limited to the issues raised in those case briefs, five days subsequent to the case briefs' due date. No party submitted case briefs or other comments on the *Preliminary Results.*

Scope of the Order

Imports covered by the order are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick.

Polyethylene terephthalate film, sheet, and strip is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 3920.62.00. The HTSUS subheading is provided for convenience and for customs purposes. The written description of the scope of the order remains dispositive.

Final Results of Changed Circumstances Review

Based on the information provided by Toray Advanced Materials, the Department's analysis in the *Preliminary Results* (which we incorporate herein by reference), and in light of the fact that interested parties did not submit any comments during the comment period, the Department hereby determines that Toray Advanced Materials is the successor-in-interest to Toray Saehan and is entitled to Toray

Saehan's treatment under the order (*i.e.*, Toray Advanced Materials will inherit Toray Saehan's revocation from the order).

Instructions to U.S. Customs and Border Protection

The Department will instruct U.S. Customs and Border Protection to liquidate entries of merchandise produced or exported by Toray Advanced Materials without regard to antidumping duties, as Toray Advanced Materials' predecessor, Toray Saehan, is revoked from the order.

Notification

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/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 sanctionable violation.

This notice is in accordance with sections 751(b) and 777(i)(1) and (2) of the Act and 19 CFR 351.216(e).

Dated: August 5, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–20681 Filed 8–12–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA567

Taking and Importing Marine Mammals; Military Training Activities and Research Conducted Within the Mariana Islands Range Complex

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a letter of authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to Navy training, maintenance, and research, development, testing, and evaluation (RDT&E) activities to be conducted within the Mariana Islands Range Complex (MIRC) Study Area for the period of August 12, 2011, through August 11, 2012.

DATES: This authorization is effective from August 12, 2011, through August 11, 2012.

ADDRESSES: The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison or Brian D. Hopper, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Regulations governing the taking of marine mammals by the Navy incidental to MIRC training, maintenance, and RDT&E became effective on August 3, 2010 (75 FR 45527, August 3, 2010), and remain in effect through August 3, 2015. The MIRC study area encompasses a 501,873 square nautical mile area (nm^2) around the islands, including Guam, Tinian, Saipan, Rota, Farallon de Meinilla, and also includes ocean areas in both the Pacific Ocean and Philippine Sea. For detailed information on this action, please refer to the August 2010 final rule. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

Summary of Request

On April 18, 2011, NMFS received a request from the Navy for a renewal of an LOA issued on August 12, 2010, for the taking of marine mammals incidental to training and research activities conducted within the MIRC Study Area under regulations issued on August 3, 2010 (75 FR 45527). The Navy has complied with the measures required in 50 CFR 218.104 and 218.105, as well as the associated 2010 LOA, and submitted the reports and other documentation required in the final rule and the 2010 LOA.

Summary of Activity Under the 2010 LOA

As described in the Navy's exercise reports (both classified and unclassified), in 2010, the training activities conducted by the Navy were within the scope and amounts authorized by the 2010 LOA and the levels of take remain within the scope and amounts contemplated by the final rule. Between August 12, 2010 and February 15, 2011, the Navy conducted one Multi Strike Group Exercise. The exercise was conducted from September 16–21, 2010 and included one Sinking Exercise (SINKEX), one underwater demolition exercise, and one Air-to-Surface Missile Exercise (A–S MISSILEX).

Planned Activities and Estimated Take for 2011–2012

In 2011–2012, the Navy expects to conduct the same type and amount of training contemplated in the final rule and identified in the 2010 LOA. Therefore, for the 2011 LOA, NMFS authorizes the same amount of take that was authorized in 2010.

Summary of Monitoring, Reporting, and Other Requirements Under the 2010 LOA

Annual Exercise Reports

The Navy submitted their classified and unclassified 2010 exercise reports within the required timeframes and the unclassified report is posted on NMFS' Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* NMFS has reviewed both reports and they contain the information required by the 2010 LOA. The reports indicate the amounts of different types of training that occurred from August 12, 2010, through February 15, 2011. As mentioned above, the Navy conducted one Multi Strike Group Exercise consisting of various training exercises addressed in the rule (the rule analyzed the likely annual impacts of up to two SINKEXs, 50 underwater demolitions, and two A–S MISSILEXs).

The reports also list specific information gathered when marine mammals were detected by Navy watchstanders, such as how far an animal was from the vessel, whether sonar was in use, and whether it was powered or shut down. This information indicates that the Navy implemented the safety zone mitigation measures as required. During the Multi-Strike Group Exercise conducted in September, 2010, no instances of obvious behavioral disturbance were reported by the Navy watchstanders in their 10 marine mammal sightings

totaling 39 animals. Furthermore, safety zones were adhered to, and vessels and aircraft applied mitigation measures when marine mammals were observed within the requisite zones. There were two marine mammal sightings within 200 yards of a Mid-Frequency Active Sonar (MFAS) source during this exercise. In both instances, the proper mitigation was conducted and the source was shut down; no unusual behavior was observed.

2010 Monitoring

The Monitoring Plan for MIRC committed the Navy to conduct monitoring in 2010 and 2011 in anticipation of the MMPA regulations and LOAs being issued in March 2010. Due to unforeseen delays, the final rule and LOA were not issued until August 2010; however, the Navy had already prepared a draft Monitoring Plan for MIRC, and the visual surveys conducted January through April 2010 in collaboration with the NMFS Pacific Islands Fisheries Science Center (PIFSC) were consistent with its objectives. No additional visual surveys occurred between August 12, 2010 and February 12, 2011, but a winter survey was conducted from February 17 to March 3, 2011. In addition, a summer survey and the deployment of passive acoustic monitoring devices is scheduled for September 2011 and the Mariana Islands Sea Turtle and Cetacean Survey (MISTCS) acoustic data analysis is currently underway. The Navy's monitoring accomplishments are discussed in their 2010 Monitoring Report, which is posted on NMFS' Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*). The Navy submitted the 2010 Monitoring Report within the required timeframe. The report includes a summary of their 2010 monitoring effort and results (beginning on page 4 of the monitoring report) and the specific reports for each individual effort are presented in the appendix.

Visual Surveys

From January 20 to February 6, 2010, visual observations for cetaceans occurred during an 18-day transit from Hawaii to Guam aboard the NOAA R/V OSCAR ELTON SETTE. These monitoring efforts and their findings, if available, will be discussed in greater detail below.

The R/V SETTE surveyed 1,285 nm of trackline over 16 days. The visual observer teams encountered 25 cetacean groups and obtained group size estimates for all groups. Two of the sightings were made by an independent observer. Eight of the 25 cetacean groups were identified to species. Time and weather limitations prevented the ship's approach of more of the sighted cetacean groups.

The R/V SETTE also conducted visual observations for cetaceans during the 17-day transit from Guam to Hawaii from April 19 to May 3, 2010. The visual observer teams encountered 21 cetacean groups and obtained group size estimates for all groups. One sighting was made by an independent observer. Sixteen of the 21 cetacean groups were identified to species. Time and weather limitations prevented the ship's approach of more of the sighted cetacean groups; however, on one occasion the small boat was launched for biopsy sampling and photography of a group of pilot whales.

From March 20 to April 11, 2010, visual observations for cetaceans occurred during transit periods of a 23-day oceanography survey around Guam and the southern portion of the Northern Mariana Islands. The observer team encountered nine cetacean groups and was able to identify three to species. Neither photos nor biopsy samples were collected during this cruise because cetacean observations were ancillary to the primary objective and time constraints did not allow the ship to stop for photographing groups or collecting samples.

Small vessel surveys for marine mammals were conducted from January to April 2010 by NMFS' PIFSC around the islands of Guam, Saipan and Tinian. During the surveys conducted around Guam from February 9–18, 2010, the observer team encountered 11 groups of cetaceans and identified 10 of the groups to species. A total of 2,769 digital images were taken for species identification and individual recognition. Surveys conducted around Saipan and Tinian from February 22–March 3, 2010, encountered seven cetacean groups and all were identified to species. A total of 971 digital images were taken for the purposes of species identification and individual recognition.

Photo Data Collection and Biopsy Sampling

In conjunction with the vessel surveys from Hawaii to Guam, the SETTE's small boat was launched on two occasions for photography of sighted animals and biopsy sampling. A single biopsy sample was collected from a sei whale in the waters off of Wake Island. The sample was collected from the Safeboat using a dart fired from a crossbow. Upon collection, tissue samples are sectioned in half, with one half archived at PIFSC and the other sent to the genetics lab at the Southwest Fisheries Science Center for studies on the genetic population structure of cetaceans in the Pacific. During the transit from Guam to Hawaii, the SETTE's small boat was launched on one occasion for biopsy sampling and photography of a group of pilot whales. A total of 1,243 photos were collected. Most photos were taken from the flying bridge or bow of the SETTE. Over 200 photos were taken from the small boat during the pilot whale encounter. Most of these photos will be used for individual identification. Two biopsy sampling attempts were made, but no samples were collected.

During the small vessel surveys in the waters surrounding Guam, Saipan and Tinian, a total of 2,769 photos were taken and eight biopsy samples were collected. Photos will be used to study social behavior and movement patterns of identified individuals and to study external features such as morphology or coloration patterns, which may vary geographically. The genetic data from the biopsy samples will be used to study the population structure of the sampled cetacean group.

Passive Acoustic Monitoring

In addition to the visual observations conducted during the high seas surveys between Hawaii and Guam, a hydrophone array was towed behind the SETTE and sonobuoys were deployed to acoustically monitor for the presence of vocalizing cetaceans. The towed array was deployed throughout the cruise—collecting nearly continuous high-frequency clean acoustic data from the four hydrophones. Over 100 acoustic detections were collected, consisting primarily of sperm and minke whale vocalizations. In addition, 37 sonobuoys were deployed over 15 days. Cetacean vocalizations detected by the sonobuoys included humpback, sperm, minke, fin, and sei whale, as well as possible delphinid clicks and whistles. The SETTE also towed the hydrophone array and deployed sonobuoys during the 15-day transit from Guam to Hawaii. Over 150 hours of acoustic data were recorded by the four hydrophones. Sixty-seven vocalizations were detected, consisting primarily of sperm and minke whale; however, other acoustic detections included pilot whales, melon-headed whales, and false killer whales. In addition, six acoustic detections matched the visual sightings of the observation team. Similar to the first leg of the cruise, 37 sonobuoys were deployed over the course of 15 days. Cetacean vocalizations detected by the sonobuoys included delphinid whistles and sperm, minke, and fin whales.

The Navy purchased four passive acoustic monitoring devices that will be deployed around the Mariana Islands during the summer 2011 visual survey. These devices are capable of gathering data throughout the year. In addition, if funds permit, data from passive acoustic monitoring devices currently deployed off Saipan by other researchers will be analyzed cooperatively among the various agencies. Finally, data analysis is currently underway involving the four months of acoustic data gathered using towed arrays and sonobuoys during the MISTCS in 2007. This dataset represents a large compilation of acoustic detections, many of which also correlate to visual detections. Results from this analysis will be provided in the 2012 Annual Monitoring Report.

In conclusion, the Navy's implementation of the monitoring plan accomplished several goals, which contribute to a larger body of data intended to better characterize the abundance, distribution, life history, and behaviors of the species in the MIRC study area. In general, the monitoring conducted in 2010 satisfied the objectives of the monitoring plan and specifically contributed to the following: (1) A greater knowledge and understanding of the density and distribution of species within the MIRC study area; (2) the vocalizations of different species, which advances the development of automated classification software; and (3) establishment of a better baseline of species distribution and abundance that will assist the Navy and NMFS in determining, through adaptive management, whether a shift in monitoring is warranted.

NMFS concludes that the results of these monitoring efforts when taken together with the findings presented in the 2010 exercise report (see Annual Exercise Report section) do not warrant making changes to the current monitoring/mitigation requirements identified in the LOA. While the data collected by the Navy through monitoring and reporting builds upon the existing body of information in a valuable way, none of the new data contradict, or amend, the assumptions that underlie the findings in the 2010 rule in a manner that would suggest changing the current mitigation or monitoring.

Adaptive Management

In general, adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) if monitoring efforts should be modified if new information suggests that such modifications are appropriate. All of the 5-year rules and LOAs issued to the Navy include an adaptive management component, which includes an annual meeting between NMFS and the Navy. NMFS and the Navy conducted an adaptive management meeting in October, 2010, which representatives from the Marine Mammal Commission participated in, wherein we reviewed the Navy monitoring results through August 1, 2010, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. None of the information contained in the monitoring report or discussed at the annual adaptive management meeting led NMFS to recommend any modifications to the existing mitigation or monitoring measures.

Integrated Comprehensive Monitoring Report

The 2010 LOA required that the Navy update the ICMP Plan to reflect development in three areas, specifically: (1) Identifying more specific monitoring sub-goals under the major goals that have been identified; (2) characterizing Navy Range Complexes and study areas within the context of the prioritization guidelines described in the ICMP Plan; and (3) continuing to develop data management, organization and access procedures. The Navy has updated the ICMP Plan as required. Because the ICMP is an evolving Program, we have posted the ICMP on the NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Further, the Navy convened a monitoring meeting in October, 2010 to solicit input from NMFS and marine mammal and acoustic scientists regarding the comprehensive development and improvement of the more specific monitoring that should occur across the Navy's training areas. Subsequent to those discussions, the Navy assembled a scientific advisory group (of Navy and outside scientists) that will work on a proposed Navy training area-wide monitoring plan that better considers the biological, logistical, and resource-specific factors that are applicable in each area (and which are summarized in the updated ICMP) to maximize the effectiveness of Navy monitoring within the context of the information that is most needed. Subsequently, NMFS and MMC representatives will review this proposed Navy-wide monitoring plan, which will likely reflect monitoring differences in some Navy training areas from what has been required in the previous LOAs.

2011 Monitoring Meeting

The regulations that established the framework for authorizing the taking of marine mammals incidental to Navy training activities required the Navy, with guidance and support from NMFS, to convene a Monitoring Workshop in 2011 (50 CFR 218.108(d)(2)). The Marine Mammal Monitoring Workshop, which included scientists, representatives from non-governmental organizations, and Marine Mammal Commission staff, took place in June 2011. Pursuant to the regulations, this workshop presented a consolidated overview of monitoring activities conducted in 2009 and 2010, as well as the outcomes of selected monitoring-related research. In 2010, the Navy convened a Scientific Advisory Group (SAG), comprised of experts in the fields of marine mammals and underwater acoustics, to review the Navy's current monitoring plans and make recommendations. The results of the SAG's review were also presented at the meeting. Participants engaged in open discussion of the lessons learned, and discussed how to improve the Navy's monitoring plan moving forward. If changes to monitoring approaches are identified at the workshop that can be implemented during the annual LOA renewal process and subsequent 5-year regulations, the Navy and NMFS will modify the Navy-wide monitoring plan and propose appropriate changes to the monitoring measures in specific LOAs for the different Range Complexes and training areas. For training areas with substantive monitoring modifications, NMFS will subsequently publish proposed LOAs, with the modifications, in the **Federal Register** and solicit public input. After addressing public comments and making changes as appropriate, NMFS will issue new training area LOAs that reflect the new Navy-wide monitoring plan.

Authorization

The Navy complied with the requirements of the 2010 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2010 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized. Further, the level of taking authorized in 2011 for the Navy's MIRC activities is consistent with our previous findings made for the total taking allowed under the MIRC regulations. Finally, the record supports NMFS'

conclusion that the total number of marine mammals taken by the 2011 MIRC activities will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses.

Accordingly, NMFS has issued a one-year LOA for Navy training exercises conducted in the MIRC Study Area from August 12, 2011, through August 11, 2012.

Dated: August 9, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–20679 Filed 8–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0090]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Defense Manpower Data Center, Department of Defense (DoD).

ACTION: Notice of a Computer Matching Program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment; however, this notification will be completed by the DoD, the recipient agency. The DoD, as the recipient agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between the Office of Personnel Management (OPM), the source agency and Defense Manpower Data Center (DMDC) that their records are being matched by computer. The purpose of this agreement is for disclosure of Federal Employees Health Benefits (FEHB) Program and Federal employment information to DMDC. This disclosure by OPM will provide the DoD with the FEHB eligibility and Federal employment information necessary to determine continuing eligibility for the TRICARE Reserve Select (TRS) and TRICARE Retired Reserve (TRR) programs.

DATES: This proposed action will become effective September 14, 2011 and matching may commence unless changes to the matching program are required due to public comments or by Congressional or Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel P. Jenkins, Director for Privacy, Defense Privacy and Civil Liberties Office, 1901 S. Bell Street, Suite 920, Arlington, VA 22202–4512, or by phone at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and OPM have concluded an agreement to conduct a computer matching program between the agencies. The purpose of this agreement is to verify an individual's continuing eligibility for the TRICARE Reserve Select (TRS) and TRICARE Retired Reserve (TRR) Programs.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining the information needed by the OPM to identify individual's ineligible to continue the TRICARE Reserve Select and TRICARE Retired Reserve (TRR) Programs. If this identification is not accomplished by computer matching, but is done manually, the cost would be prohibitive and it is possible that not all individuals would be identified.

A copy of the computer matching agreement between OPM and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Office of Personnel Management, 1900 E Street, NW., Room 5415, Washington, DC 20415.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on August 9, 2011, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (61 FR 6435).

Dated: August 9, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Agreement Between the Office of Personnel Management and the Defense Manpower Data Center, Department of Defense for Disclosure of Federal Employees Health Benefits (FEHB) Program Eligibility in Determining Eligibility for Tricare Reserve Select (TRS) and TRICARE Retired Reserve Programs (TRR).

A. Participating Agencies: Participants in this computer matching program are the Office of Personnel Management (OPM) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The DMDC is the recipient agency and the OPM is the source agency.

B. Purpose of the Match: The purpose of this agreement is to establish the conditions, safeguards and procedures under which the Office of Personnel Management (OPM) will disclose FEHB eligibility and Federal employment information to the Defense Manpower Data Center (DMDC), Defense Enrollment and Eligibility Reporting System Office (DEERS), and the Office of the Assistant Secretary of Defense (Reserve Affairs). This disclosure by OPM will provide the DoD with the FEHB eligibility and Federal employment information necessary to determine continuing eligibility for the TRICARE Reserve Select (TRS) and TRICARE Retired Reserve (TRR) programs.

C. Authority for Conducting the Match: This CMA is executed to comply with the Privacy Act of 1974 (section 552a of title 5 United States Code (U.S.C.), as amended, (as amended by Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act (CMPPA) of 1988), the Office of Management and Budget (OMB) Circular A–130, titled

''Management of Federal Information Resources'' at 61 **Federal Register** (FR) 6435, February 20, 1996, and OMB guidelines pertaining to computer matching at 54 FR 25818, June 19, 1989. Section 706 of Public Law 109–364, the John Warner National Defense Authorization Act of 2007, amended section 1076d of title 10 U.S.C. to established the enhanced TRS benefit program as of October 1, 2007. Section 705 of Public Law 111–84, National Defense Authorization Act for Fiscal Year 2010, amended section 1076e of title 10 U.S.C. to establish the TRR benefit program as of October 29, 2009. Reserve Component (RC) Service members who are eligible for the FEHB program pursuant to chapter 89 of title 5 U.S.C. are not eligible to enroll in the TRS or TRR program. This agreement implements the additional validation processes needed by DoD to insure RC Service members eligible for the FEHB program may not enroll, or continue a current enrollment, in TRS or TRR.

The John Warner National Defense Authorization Act of 2007 (NDAA of 2007) established the enhanced TRICARE Reserve Select program as of Oct. 1, 2007. Selected Reserve members, who are eligible for FEHB under chapter 89 of title 5, U.S.C. are ineligible for TRICARE Reserve Select. This agreement implements the additional validation processes needed by DoD to insure Selected Reserve members eligible for FEHB are not enrolled in TRS. The National Defense Authorization Act for Fiscal Year 2010, Section 705 of Public Law 111–84, amended section 1076e of title 10 U.S.C. to establish the TRR health plan as of October 29, 2009.

D. Records to be Matched: The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

OPM will use the system of records identified as OPM/GOVT–1 entitled ''General Personnel Records,'' at 76 FR 32997 (July 7, 2011).

DoD will use the SOR identified as DMDC 02 DoD, entitled ''Defense Enrollment Eligibility Reporting System (DEERS), (August 9, 2009, 74 FR 39657).'' SSNs of DoD TRS and TRR Sponsors will be released to OPM pursuant to the routine use ''22'' set forth in the system notice, which provides that data may be released to OPM ''for support of the DEERS enrollment process and to identify individuals not entitled to health care under TRS and TRR.''

E. Description of Computer Matching Program: Under the terms of this matching agreement, DMDC will provide to OPM a file of records consisting of social security number (SSN), date of birth (DOB), and name for Service members of the Ready Reserve, Standby Reserve, and Retired Reserve of the Armed Forces of the United States. DMDC will update their database with FEHB program eligibility information from the OPM response file. OASD (RA) will be responsible for providing the verified information to the RCs to aid in processing of TRS and TRR eligibility determination.

OPM agrees to conduct two computer matches within a calendar year of the records of RC Service members provided by DMDC against the information found in OPM's EHRI for permanent employees in a current pay status. OPM will validate the identification of the RC records that matches against the Name, SSN and DOB provided by DMDC. OPM will provide a civilian agency indicator, the full FEHB Program Plan Code, a multiple record indicator, and a DOB match indicator. OPM will forward a response file to DMDC within 30 business days following the receipt of the initial finder file and for any subsequent files submitted.

F. Inclusive Dates of the Matching Program: This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time and thereafter on a quarterly basis. By agreement between OPM and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. Address for Receipt of Public Comments or Inquiries: Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512. Telephone (703) 607–2943.

[FR Doc. 2011–20677 Filed 8–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[OMB Control Number 0704–0259]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Types of Contracts

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through October 31, 2011. DoD proposes that OMB extend its approval for three additional years.

DATES: DoD will consider all comments received by October 14, 2011.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0259, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Follow the instructions for submitting comments.

○ *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0259 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Dustin Pitsch, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal

information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Dustin Pitsch, 703–602–0289. The information collection requirements addressed in this notice are available electronically on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.*

Paper copies are available from Dustin Pitsch, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 216, Types of Contracts, and related clauses at DFARS 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products; DFARS 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items, and DFARS 252.216–7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government; OMB Control Number 0704–0259.

Needs and Uses: The clauses at DFARS 252.216–7000, 252.216–7001, and 252.216–7003 require contractors with fixed-price economic price adjustment contracts to submit information to the contracting officer regarding changes in established material prices or wage rates. The contracting officer uses this information to make appropriate adjustments to contract prices.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 17,952.

Number of Respondents: 2,247.

Responses per Respondent: Approximately 2.

Annual Responses: 4,488.

Average Burden Per Response: Approximately 4 hours.

Frequency: On occasion.

Summary of Information Collection

Paragraph (c) of the clause at DFARS 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, requires the contractor to notify the contracting officer of the amount and effective date of each decrease in any established price. Paragraph (d) of the clause permits the contractor to submit a written request to the contracting officer for an increase in contract price.

Paragraph (f)(2) of the clause at DFARS 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items, requires the contractor to furnish a statement identifying the correctness of the established prices and employee hourly earnings that are relevant to the computation of various indices. Paragraph (f)(3) of the clause requires the contractor to make available all records used in the computation of labor indices upon the request of the contracting officer.

Paragraph (b)(1) of the clause at DFARS 252.216–7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government, permits the contractor to provide a written request for contract adjustment based on increases in wage rates or material prices that are controlled by a foreign government. Paragraph (c) of the clause requires the contractor to make available its books and records that support a requested change in contract price.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2011–20654 Filed 8–12–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Model Demonstration Projects for English Learners With or at Risk of Having a Disability

AGENCY: Office of Special Education Programs, Department of Education.

ACTION: Notice.

Overview Information: Technical Assistance and Dissemination To Improve Services and Results for Children with Disabilities—Model Demonstration Projects for English Learners With or At Risk of Having a Disability; Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326M.

DATES: Applications Available: August 15, 2011.

Deadline for Transmittal of Applications: September 14, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute or otherwise authorized in the statute (see sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1463 and 1481(d)).

Absolute Priority: For FY 2011 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Model Demonstration Projects for English Learners With or At Risk of Having a Disability (84.326M).

Background:

By the year 2030, English Learners [1] will comprise an estimated 40 percent of the K–12 student population in the United States (National Symposium on Learning Disabilities in English Language Learners, 2003). While total enrollment of students in schools has increased by 20 percent over 15 years, there has been a 160-percent growth of English Learners enrolled in schools

[1] States use the definition of *Limited English Proficient* (LEP) from Section 9101(25) of the Elementary and Secondary Education Act, as amended (ESEA), 20 U.S.C. 7801(25), as a basis for their definition of LEP students or English Learners. This definition is as follows:

The term ''limited English proficient,'' when used with respect to an individual, means an individual—(A) Who is aged 3 through 21; (B) who is enrolled or preparing to enroll in an elementary school or secondary school; (C)(i) Who was not born in the United States or whose native language is a language other than English; (ii)(I) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and (II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—(i) The ability to meet the State's proficient level of achievement on State assessments described in section 1111(b)(3); (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or (iii) the opportunity to participate fully in society.

For purposes of this priority, the term *English Learners* refers to those students considered to be Limited English Proficient (LEP) students or English Learners, as those terms are defined under ESEA and in the State in which the grantee implements its model demonstration projects under this priority.

during the same time period (National Clearinghouse for English Language Acquisition [NCELA], 2008). Some States experienced up to a 700-percent growth in the number of English Learners in their schools between 1994–1995 and 2004–2005 (Payán & Nettles, n.d.). Given this growth in the number of English Learners enrolled in schools, we expect the number of English Learners with disabilities to increase.

Identifying English Learners with disabilities poses unique challenges for educators. This is because of the difficulty in determining whether a student's lack of academic development in reading is due to a disability or due to English not being the student's first language. As a group, English Learners receive lower grades and have higher dropout rates compared to their non-English Learner peers (Ballantyne, Sanderman, & Levy, 2008; McCardle, MeleMcCarthy, Cutting, Leos, & D'Emilio, 2005; Nation's Report Card, 2007). Many English Learners also exhibit low vocabulary levels in English and, therefore, do not always benefit from reading comprehension and writing supports that have proven effective in improving reading achievement [2] with their English-speaking counterparts (Francis, Rivera, Lesaux, Kieffer, & Rivera, 2006). While an English Learner's low vocabulary levels may be due to the fact that English is not the student's first language, educators need to evaluate whether low vocabulary levels, low reading achievement scores, or other performance measures are indicators that a child has, or is at risk of having, a disability. However, due to the difficulty in determining if an English Learner's lack of academic progress in reading is due to a disability or due to English not being the student's first language, practitioners may wait up to five years to allow an English Learner to develop language skills before assessing whether the student has a learning disability (Limbos & Geva, 2001). For English Learners with, or at risk of having, a learning disability, waiting to intervene can negatively affect their academic progress—that is, delaying the identification of a student as a student with a disability delays the delivery of special education and related services that can help the student make academic progress.

Therefore, local educational agencies (LEAs) face two immediate challenges: improving the reading achievement of English Learners and then appropriately identifying those English Learners with, or at risk of having, a disability. There is emerging evidence supporting the use of multi-tiered instructional frameworks that include an emphasis on progress monitoring and culturally responsive principles to assist LEAs in addressing both challenges (Zehr, 2010).

A multi-tiered instructional framework integrates assessment and intervention to maximize student achievement. With a multi-tiered instructional framework, schools screen students to identify those at risk for poor learning outcomes, monitor student progress, provide evidence-based interventions, and adjust the intensity and nature of those interventions depending on a student's responsiveness to instruction (Office of Special Education Programs, 2011). Multi-tiered instructional frameworks include a varying number of tiers (or levels) of intensity of instruction. Commonly used frameworks typically describe three tiers. The primary level includes high-quality core instruction. The secondary level includes evidence-based intervention(s) of moderate intensity. The tertiary level includes individualized intervention(s) of increased intensity for students who show minimal response to instruction at the secondary level. At all levels, attention should be on fidelity of implementation, with consideration for cultural and linguistic responsiveness and recognition of student strengths (National Center on Response to Intervention, 2011).

Progress monitoring. Progress monitoring is an important component of a multi-tiered instructional framework that includes formative assessments administered at regular intervals to inform instructional decisionmaking and to determine if the interventions are meeting the needs of students. Progress monitoring has demonstrated promise as a means for early identification of students with disabilities, particularly students with learning disabilities (Fuchs & Fuchs, 2006; Kamps & Greenwood, 2005; Shapiro, Zigmond, Wallace, & Marston, 2011; Vaughn, 2003). In addition, researchers highly recommend progress monitoring as a means for working with English Learners and for assisting struggling readers (Gersten, Compton, Connor, Dimino, Santoro, Linan-Thompson, Tilly, 2008; Gersten, Baker, Shanahan, Linan-Thompson, Collins, P., Scarcella, 2007).

Culturally-responsive principles. Culturally responsive principles promote ''redesigning the learning environments'' and can support the development and success of all students, including English Learners. Some examples of incorporating culturally responsive principles into learning environments include communicating high expectations to all students, incorporating students' cultural and home experiences into lessons by reshaping the curriculum to reflect students' experiences, and engaging students in activities where they can converse with one another on topics that tap into their background knowledge and experiences (Gay, 2000; King, Artiles, & Kozleski, 2010). Culturally responsive principles can be applied to progress monitoring.

In 2006, the Office of Special Education Programs (OSEP) funded model demonstration projects that identified, developed, and refined exemplars of progress monitoring. Under those previously funded model demonstration projects, OSEP required a multi-tiered instructional framework that included universal screening, progress monitoring, and instructional interventions at varying levels of intensity. In those model demonstration projects, progress monitoring within a multi-tiered framework showed evidence of effectiveness in increasing reading achievement of students with and without disabilities in classrooms where the models were implemented (Shapiro, Zigmond, Wallace, & Marston, 2011). Through this priority, we seek to support projects that will systematically implement and evaluate multi-tiered instructional frameworks, which include progress monitoring, incorporate culturally responsive principles into the learning environment, and provide reading instruction and reading interventions at varying levels of intensity to improve outcomes for English Learners with, or at risk of having, a disability.

Priority:

The purpose of this priority is to support the establishment and operation of three model demonstration projects that will adapt, refine, and evaluate multi-tiered instructional frameworks as well as their components—progress monitoring, culturally responsive principles, reading instruction, and reading interventions—to determine if and to what extent the multi-tiered instructional frameworks: (1) Help to improve reading achievement and language development for English Learners with, or at risk of having, a

[2] For the purpose of this priority, when we refer to a student's ''academic progress,'' ''reading achievement,'' or ''language development,'' or to test score outcomes, we are referring to the student's academic progress, reading achievement, or language development, or test score outcomes in content or a focus of study that is delivered in the English language.

disability and (2) are useful in assisting educators to determine if English Learners who are experiencing reading difficulties have a disability.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. Each model demonstration project (Project) funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed Project. A logic model communicates how a Project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the Project to be conducted by the grantee;

Note: The following Web sites provide more information on logic models: *http://www.researchutilization.org/matrix/logicmodel_resource3c.html* and *http://www.tadnet.org/model_and_performance.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed Project's logic model, for a formative evaluation of the proposed Project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed Project, including objective measures of progress in implementing the Project and ensuring the quality of products and services. This formative evaluation must be distinct from any independent evaluation the Department may conduct of the Project;

(d) A description of the proposed model demonstration that must include a multi-tiered instructional framework that uses progress monitoring and incorporates culturally responsive principles into the learning environment to address the needs of English Learners with, or at risk of having, a disability. In addition, a description of all other components within the multi-tiered instructional framework, including reading instruction and reading interventions provided at varying intensity levels;

(e) A description of the research evidence that supports the effectiveness of the proposed multi-tiered instructional framework as a whole, as well as each of its components;

(f) A description of the methods to be used for recruiting and selecting at least five elementary schools with kindergarten through third grade (K–3) students, of which at least 40 percent and no fewer than 100 K–3 students have been identified as English Learners. To the extent the applicant identifies in its application schools willing to participate in the applicant's model demonstration, include a description of the demographics of the student population typically served by these schools, including information about the cultural and linguistic diversity of the students enrolled in the schools;

Note: As specified in paragraph (b) of the *Project Activities* section of this priority, participating schools will be randomly assigned either to a pilot group or a non-pilot group. The pilot groups will be comprised of three schools that will participate in the applicant's model demonstration and the non-pilot groups will be comprised of at least two schools that do not participate in the applicant's model demonstration (see paragraphs (b)(1) and (b)(2) of the *Project Activities*). Final site selection will be determined in consultation with the OSEP Project Officer following the kick-off meeting. Random assignment to the pilot or non-pilot groups will be conducted by an independent entity, such as the OSEP-funded Model Demonstration Coordination Center (MDCC). Pilot schools will participate in a continuous evaluation of the applicant's model demonstration. Evaluation data from schools in the non-pilot group will be limited to available district data; and

(g) A budget for attendance at the following:

(1) A 1½-day kick-off meeting to be held in Washington, DC within 4 weeks after receipt of the award and a 1-day annual planning meeting held in Washington, DC with the OSEP Project Officer during each subsequent year of the project period. At the kick-off meeting, OSEP personnel and the grantees, in consultation with MDCC, will assign responsibilities for the literature review, outline a project data coordination plan, identify cross-project data collection instruments, and determine common evaluation questions. As part of the cross-project coordination, projects funded under this priority must collect data across common measures that may or may not be the same as those proposed by the applicant. In addition to the measures listed here, other common measures may include observations or data that provide information that can be used to describe the context of schools, classrooms, or students participating in the project, as well as schools, classrooms, or students who are not part of the project. These data will support the formative and summative evaluations of the Projects and will provide information on the contexts in which models are implemented and to determine the usefulness and generalizability of the models.

(2) A 3-day Project Directors' Conference in Washington, DC during each year of the project period.

(3) Two 2-day trips annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP.

Project Activities. To meet the requirements of this priority, each Project, at a minimum, must conduct the following activities:

(a) During year one of the Project, collaborate with other Projects funded under this priority and prepare a literature review (a plan for this review will be discussed during the kick-off meeting described above) that synthesizes the research on policies and practices related to progress monitoring, culturally responsive principles, reading instruction, and reading interventions at varying intensity levels for English Learners with or at risk of having a disability. In conducting this literature review, the Projects must use standards that are consistent with those used by the What Works Clearinghouse and the definitions of strong and moderate evidence contained in the Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs published in the **Federal Register** on December 15, 2010 (75 FR 78486). If the Projects determine that they cannot conduct the review using these standards, they must develop and use other rigorous standards. The literature review prepared under this paragraph must present the research in a format accessible to the Projects' relevant audiences, including State educational agencies (SEAs), LEAs, and schools. The literature review must be subject to external peer review and must include a summary of research on the effectiveness of multi-tiered instructional frameworks that use progress monitoring and incorporate culturally responsive principles into the learning environment and include reading instruction and reading interventions at varying intensity levels to—

(a)(1) Improve reading achievement and language development of English Learners with or at risk of having a disability; and

(2) Assist educators in determining if English Learners experiencing reading difficulties have or are at risk of having a disability.

(b) Implement, after consultation with the OSEP Project Officer and the MDCC, a random assignment design with longitudinal data collection in at least five elementary schools with grades K–3 (schools A, B, C, D, E, etc.), using the following approach:

(1) Three of the schools will be randomly assigned to a pilot group that participates in the Project's model demonstration (pilot group). School A in the pilot group will begin in year one of the project period and will implement the Project's model demonstration for at least three years. Schools B and C of the pilot group will begin implementing the Project's model demonstration in year two and will implement the model demonstration for two years.

(2) The remaining schools (schools D, E, *etc.*) will be assigned to a non-pilot group that will continue ''business as usual'' (non-pilot group) during the years the schools in the pilot group implement the Project's model demonstration.

(3) Cooperate with any Department-sponsored independent evaluation of the model demonstration by providing the Department or its contractor with district administrative records on the participating schools and their students.

(c) In grades K–3 in the three elementary schools in the pilot group, implement model demonstrations that—

(1) Use multi-tiered instructional frameworks that—

(i) Use progress monitoring and incorporate culturally responsive principles in the learning environment; and

(ii) Include reading instruction and reading interventions at varying intensity levels;

(2) Assess the usefulness of progress monitoring, culturally responsive principles, reading interventions, and reading instruction at varying intensity levels in improving reading achievement and language development of all students who participate in the Project's model demonstration;

(3) Assess the usefulness of progress monitoring and culturally responsive principles in assisting educators in determining if English Learners experiencing reading difficulties have or are at risk of having a disability; and

(4) Describe the unique characteristics of the school and the cultural and linguistic diversity of the students that may affect reading achievement and language development of the students who participate in the Project's model demonstration.

(d) In accordance with the data coordination plan for the funded projects, which will be developed at the kick-off meeting described in paragraph (g)(1) of the *Application Requirements,* collect formative data on the following factors:

(1) Reading achievement and language development, including trajectories of reading achievement and language development, of all students who participate in the Project's model demonstration as well as the individual and contextual factors that affect reading achievement and language development.

(2) The usefulness of progress monitoring and culturally responsive principles to assist educators in determining if English Learners experiencing reading difficulties have or are at risk of having a disability.

(3) Quality of instruction, the language of instruction, the types of academic and language support available in grades K–3 at the schools in the pilot groups.

(4) Student engagement, instructional decisionmaking (including the use of data in making instructional decisions), and classroom social climate.

(5) Estimates of the cost of implementing the model, including costs of the various components of the model;

(e) Develop a framework for educators that would provide developmental benchmarks in reading and language development and contribute to appropriate identification of English Learners with or at risk of having a disability;

(f) Provide initial and ongoing professional development to general educators, special educators, related services providers, and administrators who are implementing the model demonstration at the schools in the pilot groups. Establish a process for providing feedback to these personnel on their implementation of the components (*e.g.,* progress monitoring, culturally responsive principles, reading instruction and reading interventions that are provided at varying intensity levels) of the instructional framework used in the model demonstration; and

(g) Implement a formative evaluation plan that includes a detailed description of the Project's model demonstration and its components, a description of the school and district characteristics required to successfully implement and continue use of the model demonstration after the end of the Project period, and the processes for collecting and analyzing—in accordance with its data coordination plan—common cross-project data related to the extent to which the Project's model demonstration—

(1) Contributes to improved English Learners' reading achievement and language development;

(2) Assists educators to determine if English Learners who are experiencing reading difficulties have a disability;

(3) Is implemented with fidelity with acceptable variations based on school contexts and the cultural and linguistic diversity of students that may affect their reading achievement and language development;

(4) Provides effective professional development to personnel implementing the model demonstration.

(h) Participate in discussions, facilitated by the MDCC, with the three projects about developing a data coordination plan, cross site data collection instruments, common evaluation questions, how to synthesize and analyze the data collection, monitor fidelity of implementation, ensure reliability of data, and foster dissemination of information.

(i) Identify methods for ongoing communication and collaboration among families, students, school staff, and project staff to support the implementation and evaluation of the model demonstration;

(j) Communicate and collaborate on an ongoing basis with Department-funded projects, including the National Center on Response to Intervention (*http://rti4success.org*) and the Center on Instruction (*http://www.centeroninstruction.org*) to share information on successful strategies and implementation challenges regarding progress monitoring, reading instruction, reading interventions, culturally responsive principles for English Learners with or at risk of having a disability;

(k) Prior to developing any new product, submit a proposal for the product to the TACC database for approval from the OSEP Project Officer. The development of new products should be consistent with the product definition and guidelines posted on the TACC Web site (*http://www.tadnet.org*);

(l) Maintain ongoing telephone and e-mail communication with the OSEP Project Officer and other Projects funded under this priority; and

Note: The MDCC will provide support for monthly teleconferences with all projects to discuss cross-project activities.

(m) If the Project maintains a Web site, include relevant information about the model demonstration and documents in a form that meets government or industry recognized standards for accessibility.

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Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1463 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $1,200,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of unfunded applicants from this competition.

Estimated Average Size of Award: $400,000.

Estimated Range of Awards: $375,000–$400,000.

Maximum Awards: We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, *toll free:* 1–877–433–7827. *Fax:* (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, *toll free:* 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its *e-mail address: edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.326M.

To obtain a copy from the program office, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 70 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 15, 2011.

Deadline for Transmittal of Applications: September 14, 2011.

Applications for grants under this competition may be submitted electronically using the *Grants.gov* Apply site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via *Grants.gov,* you must (1) Be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *http://www.Grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We are participating as a partner in the Governmentwide *Grants.gov* Apply site. Model Demonstration Projects on the Use of Progress Monitoring for English Learners (including those with disabilities) to Improve Reading Achievement and Language Development and to Support Disability Identification competition, CFDA number 84.326M, is included in this project. We request your participation in *Grants.gov.*

If you choose to submit your application electronically, you must use the Governmentwide *Grants.gov* Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Model Demonstration Projects on the Use of Progress Monitoring for English Learners (including those with disabilities) to Improve Reading Achievement and Language Development and to Support Disability Identification competition at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.326, not 84.326M).

Please note the following:

• Your participation in *Grants.gov* is voluntary.

• When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov,* we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*

• You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• If you submit your application electronically, you must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. (This notification indicates receipt by *Grants.gov* only, not receipt by the Department.) The Department then will retrieve your application from *Grants.gov* and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov,* please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov,* along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.326M), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.326M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between

8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. *Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:*

In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. These measures focus on the extent to which projects provide high-quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

Grantees will be required to report information on their project's performance in annual reports to the Department (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

For Further Information Contact: Dr. Grace Zamora Durán, U.S. Department of Education, 400 Maryland Avenue, SW., room 4088, Potomac Center Plaza (PCP), Washington, DC 20202–2550. *Telephone:* (202) 245–7328.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 9, 2011 .

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–20698 Filed 8–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Special Demonstration Programs—National Technical Assistance Projects To Improve Employment Outcomes for Individuals With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: Special Demonstration Programs—National Technical Assistance Projects to Improve Employment Outcomes for Individuals with Disabilities.

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.235M.

DATES: *Applications Available:* August 15, 2011.

Deadline for Transmittal of Applications: September 14, 2011.

Deadline for Intergovernmental Review: November 14, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to expand and improve the provision of rehabilitation and other services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act), or to support activities that increase the provision, extent, availability, scope, and quality of rehabilitation services provided under the Rehabilitation Act.

Priorities: This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Absolute priority: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

National Technical Assistance Projects to Improve Employment Outcomes for Individuals with Disabilities Program.

Authority: 29 U.S.C. 773(b).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, and 99. (b) The regulations for this program in 34 CFR parts 373. (c) The notice of final priority, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $650,000–$800,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of unfunded applicants from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $800,000 for a single budget period of 24 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* Public or nonprofit agencies or organizations, including institutions of higher education or consortia that meet the requirements of 34 CFR 75.128 and 75.129.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program as follows: CFDA number 84.235M.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 60 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the

application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 15, 2011.

Deadline for Transmittal of Applications: September 14, 2011.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (*http://www.Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) Be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *http://www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the National Technical Assistance Projects to Improve Employment Outcomes for Individuals with Disabilities, CFDA number 84.235M, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the National Technical Assistance Projects to Improve Employment Outcomes for Individuals with Disabilities at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.235, not 84.235M).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors,

including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Thomas Finch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5147, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7591.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.235M), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand,

on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.235M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

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We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this program, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

One goal of this project is to provide technical assistance (TA) in areas of national need identified by the grantee in consultation with RSA and RSA's regional Technical Assistance and Continuing Education (TACE) centers. A second goal is to increase the transfer, utilization, and dissemination of information on promising practices and knowledge from research on topics of national significance in the field of rehabilitation that can be used in providing TA to improve the performance of State vocational rehabilitation (VR) agencies.

As required by the absolute priority in paragraph (f), the grantee must conduct an evaluation of the national TA provided by the project. To measure the success of the grantee in meeting the goals of the project, the grantee is also required to submit annual performance reports detailing its activities and providing quantitative and qualitative evidence that its performance met or exceeded the goals and objectives set forth in its application. The report must include, at a minimum, the following information:

(1) The number of technical assistance activities conducted, the identified needs to which these activities responded, and the target audience for each activity;

(2) The number and types of TA products organized and archived;

(3) The number of visits to the grantee's Web site on a monthly and annual basis; and

(4) A quantitative analysis of any customer satisfaction survey findings including information derived from questions about product quality, relevance, and utility.

In addition, the Department will use the following measures to assess the extent to which:

(1) The two-year plan is developed on time and appropriately reflects the need for national TA on high priority issues;

(2) The plan includes cost-effective and efficient options for delivering TA at the national level;

(3) The need for TA was addressed by the technical assistance provided;

(4) The TA products are readily available and in a useful format; and

(5) The TA products and materials are used by State VR agencies, TACE centers, and other RSA grantees.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in

compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

For Further Information Contact: Thomas Finch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5147, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Telephone: (202) 245–7343 or by e-mail: *Tom.Finch@ed.gov.*

If you use a TDD call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 10, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–20709 Filed 8–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Special Demonstration Programs—National Technical Assistance Projects To Improve Employment Outcomes for Individuals With Disabilities

Catalog of Federal Domestic Assistance (CFDA) Number: 84.235M.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces a priority under the Special Demonstration Programs authorized under section 303(b) of the Rehabilitation Act of 1973, as amended (Rehabilitation Act). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2011 and later years. We take this action to focus technical assistance (TA) on areas of national need identified by the Rehabilitation Services Administration (RSA) through analyses of information obtained during monitoring and oversight of its vocational rehabilitation (VR) programs. We intend the priority to increase the transfer, utilization, and dissemination of information on promising practices and knowledge from research on topics in the field of rehabilitation that have national significance and to improve the performance of State VR agencies.

DATES: *Effective Date:* This priority is effective September 14, 2011.

FOR FURTHER INFORMATION CONTACT: Thomas Finch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5147, Potomac Center Plaza (PCP), Washington, DC 20202–2800. *Telephone:* (202) 245–7343 or by *e-mail: Tom.Finch@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of this program is to expand and improve the provision of rehabilitation and other services authorized under the Rehabilitation Act, or to support activities that increase the provision, extent, availability, scope, and quality of rehabilitation services provided under the Rehabilitation Act.

Program Authority: 29 U.S.C. 773(b).

We published a notice of proposed priority for this program in the **Federal Register** on June 20, 2011 (76 FR 35864). The notice contained background information and our reasons for proposing the particular priority.

There are differences between the notice of proposed priority and this notice of final priority as discussed in the *Analysis of Comments and Changes* section below.

Public Comment: In response to our invitation in the notice of proposed priority, two parties submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raise concerns not directly related to the proposed priority.

However, as a result of our further review of the proposed priority since publication of the notice of proposed priority, we have made minor changes for purposes of clarification.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: One commenter asserted that the purposes of the priority would be best served by building on the existing capacity of grantees funded under RSA's Training programs, such as current partnerships with the National Clearinghouse of Rehabilitation Training Materials (NCRTM), the regional Technical Assistance and Continuing Education (TACE) centers, and State VR agencies. For example, the commenter stated that the NCRTM currently collaborates with the 10 regional TACE centers to support a centralized resource for training materials. This commenter also emphasized the need to tailor technical assistance to the unique needs and demands of customers.

Discussion: It is our intention that the applicant funded under this priority build upon the work of, and collaborate with, current providers of training and technical assistance in the field of rehabilitation, including the TACE centers and the NCRTM.

As stated in the June 20, 2011, notice of proposed priority, the activities conducted under this priority would supplement the TA provided by the TACE centers by supporting cost-effective and efficient mechanisms for delivering TA at the national level. For example, prior to developing its annual work plan for the provision of TA and continuing education (CE), each regional TACE center conducts an annual needs assessment of State VR agencies and agency partners in its region to identify TA topics. The grantee under this priority would work with the TACE centers to identify topics that would be most appropriately addressed nationally.

The role of the NCRTM is to identify and gather rehabilitation information and training materials for use in conducting pre-service and in-service education and training for rehabilitation personnel and to disseminate rehabilitation information and state-of-the-art training materials and methods. The grantee funded under this priority would be responsible for organizing and making readily available TA materials used and developed under this priority and would not duplicate the work of the NCRTM. We do believe, however, that the expertise of the NCRTM would be of value in assisting the grantee to carry out the activities under this priority.

Finally, while we would expect the successful applicant selected to carry out this priority to have sufficient expertise to appropriately tailor the TA and materials to the unique needs of its audience, we agree that clarifying language would be beneficial.

Changes: We have inserted language in paragraph (c) of the priority to clarify that formats that best meet the needs of the target audience must be used by the grantee in preparing for and conducting TA. In addition, we have revised paragraph (g) of the priority to require the grantee to collaborate with the NCRTM.

Comment: This commenter also encouraged RSA to standardize measures of effectiveness across the providers of training and technical assistance so that quality outcomes can be consistently measured by users or customers.

Discussion: While we recognize that the development of standardized measures of effectiveness that could be used across RSA's TA investments would be beneficial, such an effort is not consistent with the intended scope and resources available for this priority. However, we have added a paragraph to the priority in order to clarify the intent of the requirement in proposed paragraph (c) of the priority to conduct evaluations of the national TA that has been provided.

Change: We have deleted the language at the end of paragraph (c) of the priority describing the grantee's responsibility to conduct evaluations of the technical assistance provided, and have included this requirement in a new paragraph (f) of the priority that clarifies what elements the evaluation must address.

Comment: One commenter applauded the Department for its emphasis on national training programs. This commenter stated that in addition to the value of the information obtained from presentations, national conferences provide networking opportunities for VR professionals who are working in specialized program areas, such as vocational rehabilitation of individuals who are deaf or deaf-blind.

This commenter also expressed the value of having a mechanism for housing and making available TA products. Finally, the commenter emphasized the need to ensure that sufficient funds are available under this grant to support accommodations that may be necessary for VR professionals to fully participate and to support stipends for professionals who otherwise would not be able to attend presentations and national conferences because of State travel and funding restrictions.

Discussion: While we generally agree with these comments, we would like to emphasize that the purpose of this priority is to provide technical assistance in areas of national need and it is not our intent to establish another training program. The Department provides support for the training of VR professionals through the Training programs under section 302 of the Rehabilitation Act (29 U.S.C. 772).

Change: None.

Comment: None.

Discussion: In reviewing the proposed priority further, we decided that it would be important to clarify that the TA products and materials to be organized and archived by the grantee are those that are developed or used in providing TA conducted under this priority. We also wanted to emphasize that the Web site developed by the grantee needs to be easily accessed and used by RSA, the TACE centers, and other RSA grantees.

Changes: As a result of our review, we added clarifying language in paragraphs (d) and (e) of the priority to address these concerns.

Final Priority:

National Technical Assistance.

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority to support a grant under the Special Demonstration Programs to fund a project to provide national technical assistance (TA) to State vocational rehabilitation (VR) agencies and other entities that carry out VR-related programs administered by the Rehabilitation Services Administration (RSA) to increase the transfer, utilization, and dissemination of current promising practices and knowledge in VR and the employment of individuals with disabilities. The Department intends to award this grant as a cooperative agreement to ensure that there is substantial involvement, communication, and collaboration between RSA and the grantee in carrying out the activities of the grant. (34 CFR 75.200(b)(4)).

In coordination with the Department, the grantee must—

(a) Consult with RSA staff and staff from the Technical Assistance and Continuing Education (TACE) centers to identify issues that may affect State VR agency service delivery, as well as TA needs that are most appropriately addressed on a national basis;

(b) Develop a proposed two-year plan for delivering national TA to VR professionals through conferences, webinars, or other mechanisms, based on the activities conducted under paragraph (a) of this priority. The proposed two-year plan must be developed and approved by RSA within the first three months of the project period and include a schedule for delivering high priority TA activities, recommended methods of delivery, and the estimated costs of providing such TA;

(c) Organize and provide national TA in accordance with the two-year plan approved by RSA, including overseeing all activities related to preparing for and conducting national TA. These activities include, but are not limited to, the following: Determining the target audience for the TA; organizing conferences, webinars, and other national TA; identifying presenters; providing TA and preparing materials in formats that best meet the needs of the target audience; arranging for reasonable accommodations for individuals with disabilities; making logistical arrangements for the national TA; providing travel reimbursement and stipends, where appropriate, to State VR personnel; and providing for continuing education credits;

(d) Organize and archive all TA products and materials developed or used in providing TA conducted under this priority for use by RSA, the TACE centers, and other TA providers, as needed;

(e) Develop and maintain a Web site to make available the products and materials that are developed and/or used in providing TA conducted under this priority so that they can be easily accessed and used by RSA, the TACE centers, and other RSA grantees. The Web site must be capable of supporting other features including, but not limited to, conference and webinar registration, a calendar of events, and links to other related Web sites and resources;

(f) Conduct an evaluation of the national TA provided under this priority, including, at a minimum, the following: The number of TA activities conducted, the identified needs to which these activities responded, and

the target audience for each activity; the number and types of TA products organized and archived; the number of visits to the grantee's Web site on a monthly and annual basis; and a quantitative analysis of any customer satisfaction survey findings including information derived from questions about product quality, relevance, and utility; and

(g) Collaborate with other RSA-funded TA providers, including, but not limited to, the TACE centers, the National Clearinghouse of Rehabilitation Training Materials, the American Indian Vocational Rehabilitation Technical Assistance Center, and the Independent Living Training and Technical Assistance Center, in the provision and support of TA activities.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits of the priority justify the costs.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of potential costs and benefits:

TA targeted to the specific needs of grantees helps them to improve their performance and to achieve their objectives. Specifically, the provision of cost effective TA to State VR agencies in areas of national need should result in higher quality employment outcomes for the individuals with disabilities whom these agencies serve.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550.

Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 10, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–20708 Filed 8–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–382]

Application To Export Electric Energy; Glacial Energy of Texas, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Glacial Energy of Texas, Inc. (Glacial) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before September 14, 2011.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) 202–586–5260.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On July 14, 2011, DOE received an application from Glacial for authority to transmit electric energy from the United States to Mexico for five years as a power marketer using existing international transmission facilities. Glacial does not own any electric transmission facilities nor does it hold a franchised service area.

The electric energy that Glacial proposes to export to Mexico would be

surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by Glacial have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (385.214). Fifteen copies of each comment, protest, or motion to intervene should be filed with DOE on or before the date listed above.

Comments on the Glacial application to export electric energy to Mexico should be clearly marked with Docket No. EA–382. An additional copy is to be filed directly with Michael B. Giery, Senior Corporate Counsel, 5326 Yacht Haven Grande #36, St. Thomas, VI 00802. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on August 9, 2011.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2011–20661 Filed 8–12–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[DOE/EIS–0458]

Notice of Availability of the Final Environmental Impact Statement for a Proposed Federal Loan Guarantee To Support Construction and Start-up of the Topaz Solar Farm, San Luis Obispo County, CA

AGENCY: U.S. Department of Energy.

ACTION: Notice of Availability of the Final Environmental Impact Statement.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of the Final Environmental Impact Statement for the DOE Loan Guarantee to Royal Bank of Scotland for Construction and Startup of the Topaz Solar Farm, San Luis Obispo County, California (DOE/EIS–0458) (Final EIS). The Final EIS, prepared under the National Environmental Policy Act (NEPA), analyzes the potential environmental impacts of the DOE's proposed action of issuing a Federal loan guarantee to support construction and start-up of the Topaz Solar Farm Project located in San Luis Obispo County, California (Proposed Project). The Proposed Project is a nominal 550-megawatt solar power generating facility based on photovoltaic (PV) technology on approximately 3,500 acres of private land in San Luis Obispo County, California. DOE considered all comments received in preparing the EIS and incorporated both the comments and DOE's responses in the Final EIS.

DATES: DOE will publish a Record of Decision no sooner than 30 days after publication of EPA's Notice of Availability in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this EIS, or to receive a copy of the Final EIS, contact Angela Colamaria by *telephone:* 202–287–5387; *toll-free number:* 800–832–0885 *ext.* 75387; or *electronic mail: Angela.Colamaria@hq.doe.gov.* For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; *telephone:* 202–586–4600; *facsimile:* 202–586–7031; *electronic mail: askNEPA@hq.doe.gov*; or leave a toll-free message at 800–472–2756.

SUPPLEMENTARY INFORMATION: Title XVII of Energy Policy Act 2005 (EPAct) established a Federal loan guarantee program for eligible energy projects, and was amended by the American Recovery and Reinvestment Act of 2009 to create Section 1705 of Title XVII (42 U.S.C. 16516), authorizing a new program for rapid deployment of renewable energy projects and related manufacturing facilities, electric power transmission projects, and leading edge biofuels projects. The Section 1705 Program is designed to address the current economic conditions of the nation, in part, through financing such projects.

The Royal Bank of Scotland plc, as Lender-Applicant, with Topaz Solar Farms, LLC (Topaz) as the borrower, applied to DOE for a federal loan guarantee under the Solicitation entitled, ''Federal Loan Guarantees for Commercial Technology Renewable Energy Generation Projects under the Financial Institution Partnership Program'' (Solicitation No. DE–FOA–0000166), issued on October 7, 2009.

The purpose and need for action by DOE is to comply with its mandate under EPAct 2005 by selecting eligible projects that meet the goals of the Section 1705 Program, as summarized above. The EIS informs DOE's decision on whether to issue a loan guarantee to support the Proposed Project. DOE's proposed action is to issue a loan guarantee to support construction and startup of the Topaz Solar Farm (Proposed Project). The Proposed Project would be located in an unincorporated portion of eastern San Luis Obispo County, California, adjacent to Highway 58 and east of Bitterwater Road. Topaz has options to purchase approximately 10,000 acres of land in the project area. The Proposed Project would be developed on approximately 3,500 acres of private land.

The Proposed Project would consist of: a solar field of approximately nine million ground-mounted PV modules, within up to 460 PV arrays, that collect solar radiation to produce electricity; an electrical collection system that converts generated power from direct current (DC) to alternating current (AC) and delivers it to a new Project substation which collects and converts the generated power from 34.5 kV to 230 kV for delivery via a new Pacific Gas and Electric (PG&E) switching station to PG&E's existing Morro Bay-Midway 230–kV transmission line which runs in an east-to-west direction through the site and portions of Kern County; and the aforementioned PG&E switching station that interconnects the Proposed Project to PG&E's existing transmission line. After construction, PG&E would own and operate the switching station. As part of the Proposed Project, Topaz would construct and operate a Monitoring and Maintenance Facility, and may also construct a Solar Energy

Learning Center within the Proposed Project's site boundary. The Proposed Project would also include up to 22 miles of on-site access roads as well as leach field and septic systems for the facilities listed above.

Generated electricity would be sold to PG&E under a long-term power purchase agreement. Topaz has interconnection agreements in place for the first 400 MW of Project capacity. The California Independent System Operator has determined that network upgrades would be required to accommodate the Proposed Project's remaining 150 MW, as well as other generation projects in the region. Network upgrades could include the reconductoring of 35 miles of the 230–kV transmission lines between the new PG&E switching station and the Midway Substation. Such upgrades would extend the height of every other existing tower by 20 feet, but would not introduce a new structure.

Alternatives

In determining the range of reasonable alternatives to be considered in the EIS for the Proposed Project, DOE identified the reasonable alternatives that would satisfy the underlying purpose and need for agency action. Rather than being directly responsible for the siting, construction, and operation of respective projects selected in response to solicitations under EPAct 2005, DOE's actions are limited to guaranteeing the debt obligation for the project. Therefore, DOE's overall decision will be to either provide a loan guarantee for the Proposed Project or to decline to provide a loan guarantee (*i.e.,* the No Action Alternative, as discussed below). The potential environmental impacts of a No Action alternative, as well as two project-specific alternatives, are analyzed in the EIS. The project-specific alternatives include alternate configurations for the solar arrays.

Within the Proposed Project site, Topaz identified two Study Areas (Study Area A and Study Area B) that would be suitable for the Proposed Project and that were evaluated in the Draft EIS (Project-Specific Alternative A and Project-Specific Alternative B). In the Final EIS, DOE revised the analysis to include a County-approved project layout located wholly within Project Specific Alternative A (Study Area A) and to identify a Preferred Alternative. Council on Environmental Quality (CEQ) implementing regulations require a lead agency to identify a Preferred Alternative in the Final EIS unless another law prohibits the expression of such a preference (40 CFR 1502.14[e]). DOE's Preferred Alternative is to issue a loan guarantee for Alternative A with County-Approved Project Layout (termed Alternative 3B.1 in the San Luis Obispo County Final EIR and approved by the County of San Luis Obispo Planning through its conditional use permit process). Alternative A with County-Approved Project Layout involves a project layout that is contained within Study Area A. Alternative A with County-Approved Project Layout would involve a solar facility with a footprint of 3,500 acres, approximately 600 acres less than the development site analyzed under Alternative A in the Draft EIS. While the County approved a PV solar facility within the Alternative A footprint, Alternative B is retained for continuity between the Draft and Final EIS.

Under the No Action Alternative, DOE would not provide the loan guarantee to Topaz. Although Topaz may still pursue the Project without the loan guarantee, as defined above, for purposes of the EIS analysis, it is assumed that the No Action Alternative would result in no Project or in a no build scenario.

Floodplain Assessment

In the October 22, 2010 Notice of Intent to Prepare an Environmental Impact Statement (75 FR 65306), DOE provided notice of a proposed DOE action in a floodplain pursuant to DOE Floodplain and Wetland Environmental Review Requirements (10 CFR Part 1022). Overhead electrical lines would need to cross 100-year floodplains (unnamed drainages within the Carrizo Plain, northwest of Soda Lake). Since some of the floodplains on the project site are greater than 200 feet wide and posts are needed every 200 feet to support overhead lines, the installation of posts within the floodplain is anticipated. DOE has prepared a floodplain assessment as required by DOE regulations. The floodplain assessment is incorporated into the Draft EIS and Final EIS, and the Floodplain Statement of Findings will be included in the Record of Decision for the Proposed Project.

Scope of Final EIS and Environmental Review Process

The DOE prepared this Final EIS pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), the CEQ NEPA regulations, and the DOE NEPA implementing procedures. The Final EIS analyzes the environmental consequences that may result from the Proposed Action, including the project-specific alternatives, the Preferred Alternative, and the No Action Alternative. Because the Proposed Project may affect listed species under the Endangered Species Act (ESA), DOE consulted with the U.S. Department of the Interior's Fish and Wildlife Service (USFWS) under Section 7 of the ESA. Consultation with USFWS resulted in a Biological Opinion for the Proposed Project that is included in the Final EIS.

The Proposed Project site would affect waters subject to the jurisdiction of the U.S. Army Corps of Engineers (USACE); therefore the Proposed Project will require a Clean Water Act (CWA) Section 404 Permit. As a result, USACE has participated as a cooperating agency in the preparation of this Final EIS. USACE will issue a separate decision document on the CWA Section 404 Permit for the Proposed Project that will incorporate the environmental analyses from this EIS.

The DOE has used the NEPA public comment process to satisfy the public involvement requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). DOE invited Federally-recognized American Indian Tribes that have historic interests in the area to also participate in government-to-government consultation regarding the Proposed Project. In addition to these Federally-recognized tribes, the California Native American Heritage Commission provided DOE with a Native American contacts list in the project area. DOE contacted parties on the list to solicit concerns or comments on the Proposed Project. The outcome of Section 106 consultation with Federally-recognized American Indian Tribes and other consulting parties is included in the Final EIS.

Public Comment Period

Copies of the Draft EIS were distributed to Members of Congress; Native American Tribal governments, Federal, State, and local officials; and agencies, organizations and individuals who may be interested or affected by the Proposed Project. The public comment period was open from March 25, 2011 through May 9, 2011, and a public hearing was held in Santa Margarita, CA, on April 13, 2011. DOE considered all comments received during the comment period during the preparation of this Final EIS, and the Final EIS contains revisions and new information based in part on these comments. The comments and DOE's responses to these comments are included in the Final EIS.

Availability of the Final EIS: The Final EIS is available on the Department of Energy's NEPA Web site at *http://nepa.energy.gov* under ''DOE NEPA Documents'' and on the Loan Program Office's Web site at *http://*

www.lgprogram.energy.gov/NEPA_EIS.html. Copies of the Final EIS are also available for review at the Simmler Public Library/California Valley Community Service District; 13080 Soda Lake Road; California Valley, CA 93453 and the San Luis Obispo County Department of Planning and Building; 976 Osos St. Room 300; San Luis Obispo, CA 93408.

Issued in Washington, DC on August 9, 2011.

Jonathan M. Silver,

Executive Director, Loan Programs Office.

[FR Doc. 2011–20662 Filed 8–12–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0911; FRL–9451–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Lead-Based Paint Pre-Renovation Information Dissemination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Lead-Based Paint Pre-Renovation Information Dissemination—TSCA Sec. 406(b); EPA ICR No. 1669.06, OMB No. 2070–0158. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before September 14, 2011.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OPPT–2010–0911 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Pamela Myrick, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, *Mail code:* 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–554–1404; *e-mail address: TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 13, 2011 (76 FR 20659), EPA sought comments on this renewal ICR. EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA EPA–HQ–OPPT–2010–0911, which is available for online viewing at *http://www.regulations.gov,* or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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 the Pollution Prevention and Toxics Docket is 202–566–0280. Use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public 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 above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov.* The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov.* For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Lead-Based Paint Pre-Renovation Information Dissemination—TSCA Sec. 406(b).

ICR numbers: EPA ICR No. 1669.06, OMB Control No. 2070–0158.

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: This information collection involves third-party notification to owners and occupants of housing that will inform such individuals about the dangers of lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations of housing where lead-based paint is present, thereby aiding them in avoiding potentially hazardous exposures and protecting public health. Since young children are especially susceptible to the hazards of lead, owners and occupants with children can take action to protect their children from lead poisonings. Section 406(b) of the Toxic Substances Control Act (TSCA) requires EPA to promulgate regulations requiring certain persons who perform renovations for compensation on target housing to provide a lead hazard information pamphlet (developed under TSCA section 406(a)) to the owner and occupants of such housing prior to beginning the renovation. Further, the firm performing the renovation must keep records acknowledging receipt of the pamphlet on file for three years after completion of work. Those who fail to provide the pamphlet or keep records as required may be subject to both civil and criminal sanctions.

Responses to the collection of information are mandatory (see 40 CFR 745, Subpart E). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

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**, are listed in 40 CFR part 9 and included on the related

collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 0.23 hours per response. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Entities potentially affected by this action are certain persons performing renovations of target housing, constructed prior to 1978, for compensation.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: 35.4.

Estimated No. of Respondents: 320,504.

Estimated Total Annual Burden on Respondents: 2,577,280 hours.

Estimated Total Annual Costs: $140,498,539.

Changes in Burden Estimates: This request reflects a decrease of 545,206 hours (from 3,122,486 hours to 2,577,280 hours) in the total estimated respondent burden from that currently in the OMB Inventory of Approved ICR Burdens. This decrease reflects EPA's change in methodology for calculating the number of target housing renovation events compared to that used in the 2008 Renovation, Repair and Painting rule analysis. The Supporting Statement provides details on the change in burden estimate. The change is an adjustment.

Dated: August 9, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–20739 Filed 8–12–11; 8:45 am]

BILLING CODE 6560–50–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 application also will 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 September 9, 2011.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *FNB United Corp.,* Asheboro, North Carolina; to acquire 100 percent of the voting shares of Bank of Granite Corporation, and thereby indirectly acquire voting shares of Bank of Granite, both in Granite Falls, North Carolina.

Board of Governors of the Federal Reserve System, August 10, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–20670 Filed 8–12–11; 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 application also will 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 September 8, 2011.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *The PNC Financial Services Group, Inc.,* Pittsburgh, Pennsylvania, and PNC Bancorp, Inc., Wilmington, Delaware; to acquire voting shares of RBC Bank (USA), Raleigh, North Carolina.

Board of Governors of the Federal Reserve System, August 9, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–20592 Filed 8–12–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 2011–20130) published on pages 48862 and 48863 of the issue for Tuesday, August 9, 2011.

Under the Federal Reserve Bank of New York heading, the entry for ES Bancshares, Newburgh, New York, is revised to read as follows:

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *ES Bancshares Inc.,* Newburgh, New York; to engage *de novo* through its newly formed subsidiary, Empire Lockbox Settlements, Inc., Newburgh, New York, in servicing extensions of credit, including factoring, for the company's account or the account of others, pursuant to section 225.28(b)(1) of Regulation Y.

Comments on this application must be received by August 24, 2011.

Board of Governors of the Federal Reserve System, August 9, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–20591 Filed 8–12–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''Lifeline Facebook App Challenge''; Correction

AGENCY: Office of the Assistant Secretary for Preparedness and Response, HHS.

ACTION: Correction notice.

SUMMARY: This document corrects a technical error that appeared in the notice published in the August 10, 2011 **Federal Register** entitled, Announcement of Requirements and Registration for ''Lifeline Facebook App Challenge''.

DATES: This correction is effective August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Stacy Elmer, 202–205–4246.

I. Background

In FR Doc. 2011–20296, there was a technical error that we are identifying and correcting in the ''Correction of Errors'' section below. The provisions in this correction notice are effective as if they had been included in the document published August 10, 2011. Accordingly, the corrections are effective August 15, 2011.

II. Summary of Errors

In the August 10, 2011 notice (76 FR 49485/FR Doc. 2011–20296) an award approving official is named, additional eligibility requirements have been added to the section entitled ''Eligibility Rules for Participating in the Competition''. A new section, entitled ''Payment of Prize'', has also been added and the date period during which applications will be accepted has been changed to August 22, 2011 through November 4, 2011.

III. Correction of Errors

In FR Doc. 2011–20296 of August 10, 2011 (76 FR 49485) make the following corrections:

1. On page 49485, in column 2, between the ''**AGENCY**'' and ''**ACTION**'' lines, add the following: Award Approving Official: Stacy Elmer, Special Assistant to the Assistant Secretary for Preparedness and Response.

2. On page 49486, in column 1, between lines 49 and 50, insert the following:

(4) Shall not be an HHS employee working on their applications or submission during assigned duty hours.

(5) Shall not be an employee of the Assistant Secretary for Preparedness and Response.

(6) Federal grantee may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award and specifically requested to do so due to competition design.

(7) 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.

(8) Shall have complied with all the requirements under this section.

3. On page 49486, in column 2, line 44, change to ''Dates: Submission period for initial entries begins 12:01 am, EDT, August 22nd, 2011, and ends 11:59 pm, EDT, November 4th, 2011''.

4. On page 49486, in column 2, between lines 64 and 65, insert the following:

Payment of Prize

Prizes awarded under this competition will be paid by electronic funds transfer and may be subject to Federal income taxes. HHS will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Dated: August 10, 2011.

Nicole Lurie,

Assistant Secretary for Preparedness and Response (ASPR).

[FR Doc. 2011–20760 Filed 8–12–11; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Grants to States for Access and Visitation.

OMB No. 0970–0204.

Description: On an annual basis, States must provide OCSE with data on programs that the Grants to States for Access and Visitation Program has funded. These program reporting requirements include, but are not limited to, the collection of data on the number of parents served, types of services delivered, program outcomes, client socio economic data, referrals sources, and other relevant data including the number of noncustodial parents who were able to obtain increased parenting time with their children.

Respondents: State Child Access and Visitation Programs and State and/or local service providers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State and Local Child Access Program Survey	350	1	15	5,250

Estimated Total Annual Burden Hours: 5,250

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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 of the proposed collection of information; (c) 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. Consideration will be given to

comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–20614 Filed 8–12–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Objective Work Plan (OSP), Objective Progress Report (OPR) and Project Abstract.

OMB No. 0980–0204.

Description: Content changes are being made to the OPR and OWP only. The information in the OPR is being collected on a quarterly basis to monitor the performance of grantees and better gauge grantee progress. The OWP is utilized by applications when they submit their proposals and then by grantees to monitor their projects once awarded. ANA has reworded and renumbered the OPR questions to allow for better flow and clarity. The majority of content being requested from the grantees is the same and has not changed.

OPR: Following are content changes being made:

Objective Work Plan Update: Content is the same. Questions 1 and 2 were originally questions 3 and 4 on the previous OPR. ANA has also reduced the number of objectives under this section to 3. ANA is also separating out the current status of expected results and the current status of expected benefits. This will match ANA's revised OWP.

Partnerships and Leveraged Resources: Content is the same. Questions 3 and 4 were originally part of questions 11–13. The leveraged resources table under question 4 has been reformatted to allow for easier data collection.

Impact indicator: The content requested in this section is similar to the previous OPR with some additional information being requested. Question 5 was originally captured under question 11 of the previous OPR. ANA has added additional fields to this section: Tracking mechanism, pre-grant status, and three-year target to align with ANA's funding opportunity announcement. Questions 5a and 5b are new and ask the grantee for the status of the impact indicator at the end of each budget period. This information was captured quantitatively in the previous OPR.

Native American Youth and Elder Opportunities: Content is the same. Questions 6 and 6a were originally questions 14 and 14a on the previous OPR.

Staffing: Content is the same. Questions 7 and 7a were originally question 16 on the previous OPR. Question 7b was originally question 15 on the previous OPR. ANA has added one field to this table: Type of position.

Challenges: Content is the same. Questions 8 and 9 were originally questions 1 and 5 on the previous OPR. For question 9 ANA has added a table to capture information that was previously provided in a narrative format. Questions 10 and 11 were originally questions 2 and 6 on the previous OPR.

Project Sustainability: Content is the same. Questions 12 and 13 were originally questions 18 and 17 on the previous OPR.

Financial: The content requested in this section is similar to the previous OPR with some additional information being requested. Questions 14 and 16a were originally questions 9, 10, and 7 on the previous OPR. Question 17 is a new question. This question will not require the grantee to conduct additional work as they will be able to respond to this question utilizing the required OPR and 425 forms. Question 18 was originally question 8 on the previous OPR.

Four additional questions have been added that are specific to a special initiative ANA is funding this year. These questions are only to be filled out by the Asset for Independence Grantees.

OWP: ANA has reformatted the OWP (content is same). ANA has added a field for applicants to include problem statement identified in grant application; has separated the results and benefits expected to align with ANA's funding opportunity announcement. ANA is no longer requesting data on non-personnel hours. On the previous OWP ANA requested applicants to provide the position responsible for each activity. This title has changed to 'position performing the activity' and applicants will be asked to identify the lead person in one cell and other support in a second cell.

Project Abstract: ANA is no longer managing this form. Grants.gov has taken control of this form and will submit any additional requests for this submission.

Respondents: Tribal Government, Native non-profit organizations, Tribal Colleges & Universities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OWP	500	1	3	1,500
OPR	275	4	1	1,100

Estimated Total Annual Burden Hours: 2,600.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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 of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–20646 Filed 8–12–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) Residential Energy Assistance Challenge Program (REACH) Model Plan.

OMB No.: 0970–0348.

Description: States, including the District of Columbia, Tribes, Tribal organizations and Territories applying for LIHEAP REACH funds must Submit an annual application prior to receiving Federal funds. The Human Services Amendments of 1994 (Pub. L. 103–252) amended the LIHEAP statute to add Section 2607B, which established the REACH program. REACH was funded for the first time in FY 1996 and is intended to: (1) Minimize health and safety risks that result from high energy burdens on low-income Americans; (2) reduce home energy vulnerability and prevent homelessness as a result of the inability to pay energy bills; (3) increase the efficiency of energy usage by low-income families, helping them achieve energy self-sufficiency; and (4) target energy assistance to individuals who are most in need. The REACH Model Plan clarifies the information being requested and ensures the submission of all the information required by statute. The form facilitates our response to numerous queries each year concerning the information that should be included in the REACH application. Submission of a REACH application and use of the REACH Model Plan is voluntary. Grantees have the option to use another format.

Respondents: State Governments, Tribal governments, Insular Areas, the District of Columbia, and the Commonwealth of Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Reach model plan	51	1	72	3,672

Estimated Total Annual Burden Hours: 3,672.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–20613 Filed 8–12–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0577]

Draft Guidance for Industry and Food and Drug Administration Staff; Factors to Consider When Making Benefit-Risk Determinations in Medical Device Premarket Review; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance document entitled ''Factors to Consider When Making Benefit-Risk Determinations in Medical Device Premarket Review.'' The recommendations in this guidance are intended to provide greater clarity on FDA's decisionmaking process with regard to benefit-risk determinations in the premarket review of medical devices. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit electronic or written comments on the draft guidance by November 14, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Factors to Consider When Making Benefit-Risk Determinations in Medical Device Premarket Review'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: *For Devices Regulated by CDRH:* Rachel Turow, Center for Devices and

Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5449, Silver Spring, MD 20993–0002, 301–796–5094.

For Devices Regulated by CBER: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

There are many factors that go into weighing the probable benefit of a device versus its probable risk. This draft guidance sets out the factors FDA considers when making this determination and explains them in detail. This draft guidance also gives examples of how the factors interrelate and how they may affect FDA's decisions. By clarifying FDA's decisionmaking process in this way, we hope to improve the predictability, consistency, and transparency of the review process for applicable devices.

This draft guidance also includes for public comment a draft worksheet that reviewers may use in making benefit-risk determinations. The worksheet is attached as appendix A to the guidance. This level of documentation is very helpful to maintaining the consistency of review across the different review divisions and better assuring that an appropriate decision is reached.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance, when finalized, will represent the Agency's current thinking on factors to consider when making benefit-risk determinations in medical device premarket review. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at either *http://www.regulations.gov* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*. To receive ''Factors to Consider When Making Benefit-Risk Determinations in Medical Device Premarket Review'' from CDRH, you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1772 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no new collections of information. This draft guidance refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. 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.

Dated: August 10, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–20652 Filed 8–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0567]

Draft Guidance for Industry, Clinical Investigators, and Food and Drug Administration Staff; Design Considerations for Pivotal Clinical Investigations for Medical Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Design Considerations for Pivotal Clinical Investigations for Medical Devices.'' This document is intended to provide guidance to those involved in designing clinical studies intended to support premarket submissions for medical devices and for FDA staff who review those submissions. This guidance document describes different study design principles relevant to the development of medical device clinical studies that can be used to fulfill premarket clinical data requirements. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 14, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Design Considerations for Pivotal Clinical Investigations for Medical Devices'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002, or to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Greg Campbell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 2110, Silver Spring, MD 20993–0002, 301–796–5750.

For devices regulated by CBER: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance document is intended to provide guidance to those involved in designing clinical studies intended to support premarket submissions for medical devices and for FDA staff who review those submissions. Although the Agency has articulated policies related to design of studies intended to support specific device types, and a general policy of tailoring the evidentiary burden to the regulatory requirement, the Agency has not attempted to describe the different clinical study designs that may be appropriate to support a device premarket submission or to define how a sponsor should decide which pivotal clinical study design should be used to support a submission for a particular device. The draft guidance document describes different study design principles relevant to the development of medical device clinical studies that can be used to fulfill premarket clinical data requirements. The draft guidance is not intended to provide a comprehensive tutorial on the best clinical and statistical practices for investigational medical device studies.

A medical device pivotal study is a definitive study in which evidence is gathered to support the safety and effectiveness evaluation of the medical device for its intended use. Evidence from one or more pivotal clinical studies generally serves as the primary basis for the determination of reasonable assurance of safety and effectiveness of the medical device of a premarket approval application (PMA) and FDA's overall risk-benefit assessment. In some cases, a PMA may include multiple studies designed to answer different scientific questions.

The draft guidance describes principles that should be followed for the design of premarket clinical studies that are pivotal in establishing the safety and effectiveness of a medical device. Practical issues and pitfalls in pivotal clinical study design are discussed, along with their effects on the conclusions that can be drawn from the studies concerning safety and effectiveness.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on design considerations for pivotal clinical investigations for medical devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available from CBER at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm* or on the Division of Dockets Management Internet site at *http://www.regulations.gov*. To receive ''Design Considerations for Pivotal Clinical Investigations for Medical Devices,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1776 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. 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.

Dated: August 9, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–20603 Filed 8–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee. This meeting was announced in the **Federal Register** of July 14, 2011 (76 FR 41507). The amendment is being made to reflect a change in the *Procedure* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Shanika Craig, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1613, Silver Spring, MD 20993–0002, 301–796–6639, *Shanika.Craig@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 14, 2011, FDA announced that a meeting of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee would be held on September 8 and 9, 2011. On page 41508, in the first column, the *Procedure* section is changed to add, directly after the first full paragraph, the following paragraph:

FDA will work with the manufacturers of surgical mesh products who wish to make presentations to ensure that adequate time, separate from the 10 a.m. to 11 a.m. time slots from the general open public hearing, is provided. Manufacturers interested in making formal presentations to the committee should notify the contact person on or

before August 22, 2011. Manufacturers with common interest are urged to coordinate their oral presentations.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: August 9, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–20644 Filed 8–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 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 Inherited Disease Research Access Committee.

Date: September 9, 2011.

Time: 11:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Camilla E. Day, PhD, Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301–402–8837, *camilla.day@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 9, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20688 Filed 8–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

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 Human Genome Research Institute, 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, National Human Genome Research Institute.

Date: September 26–27, 2011.

Time: September 26, 2011, 8 a.m. to 7 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Fifth Floor Conference Room, 50 Center Drive, Bethesda, MD 20892.

Time: September 27, 2011, 8 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Fifth Floor Conference Room, 50 Center Drive, Bethesda, MD 20892.

Contact Person: Claire Kelso, Intramural Program Specialist, Division of Intramural Research, Office of the Scientific Director, National Human Genome Research Institute, 50 South Drive, Building 50, Room 5222, Bethesda, MD 20892–8002, 301 435–5802, *claire@nhgri.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 9, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20687 Filed 8–12–11; 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; Oncology AREA Review.

Date: September 15–16, 2011.

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: Manzoor Zarger, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroplasticity and Neurotransmitters Study Section.

Date: September 19–20, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Seattle, 1900 Fifth Avenue, Seattle, WA 98101.

Contact Person: Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.

Date: September 26–27, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: W Chicago Lakeshore, 644 North Lakeshore Drive, Chicago, IL 60611.

Contact Person: Lee S. Mann, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group; Cancer Genetics Study Section.

Date: September 26–27, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Bioengineering, Technology and Surgical Sciences Study Section.

Date: September 26–27, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Khalid Masood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.

Date: September 26–27, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Stacey FitzSimmons, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, 301–451–9956, *fitzsimmonss@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 9, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20685 Filed 8–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE in Childhood ALL, Skin, Brain, Lung and Gastrointestinal Cancers.

Date: September 14–16, 2011.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Caron A Lyman, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd, Room 8119, Bethesda, MD 20892–8328, 301–451–4761, *lymanc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cellular and Tissue Oncology.

Date: October 4–5, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Shakeel Ahmad, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd, Room 8139, Bethesda, MD 20892–8328, 301–594–0114, *ahmads@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 9, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20684 Filed 8–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0018]

Protected Critical Infrastructure Information (PCII) Stakeholder Survey

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments; New Information Collection Request: 1670–NEW

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NPPD is soliciting comments concerning New Information Collection Request, Protected Critical Infrastructure Information (PCII) Stakeholder Survey. DHS previously published this ICR in the **Federal Register** on March 31, 2011, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until September 14, 2011. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, Office of Civil Rights and Civil Liberties. Comments must be identified by DHS–2011–0018 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

OMB is particularly interested in comments that:

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, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Emily Hickey, DHS/NPPD/IP, *Emily.Hickey@dhs.gov.*

SUPPLEMENTARY INFORMATION: The PCII Program was created by Congress under the Critical Infrastructure Information Act of 2002 (CII Act), Sections 211–215, Title II, Subtitle B of the Homeland Security Act of 2002, Public Law 107–296, to encourage voluntary information sharing by owners and operators of critical infrastructure and protected systems. The PCII Program is implemented by 6 CFR Part 29, Procedures for Handling Critical Infrastructure Information; Final Rule (the Regulation), which was issued in 2006. PCII refers to validated and marked critical infrastructure information not customarily in the public domain and related to the security of critical infrastructure or protected systems, which is voluntarily submitted to DHS for homeland security purposes. The PCII Program offers protection from public disclosure through the Freedom of Information Act (FOIA), state and local sunshine laws, and civil litigation. The PCII Program is administered by DHS/NPPD/IP's Infrastructure Information Collection Division.

The PCII Program helps government analysts, emergency responders, and other homeland security professionals access data about facilities and systems on which the country depends. The PCII Program is responsible for ensuring compliance with the Regulation's uniform procedures for the handling, use, dissemination, and safeguarding of PCII. In this capacity, the PCII Program oversees a community of stakeholders, including submitters of CII, authorized users of PCII and accredited Federal, state, and local entities with homeland security duties. This survey is designed to gather information from PCII Officers that can be used to improve these relationships and to maximize the value that the PCII Program is offering to its Federal, state, and local government users. Both the CII Act and its implementing regulations stress the voluntary nature of the PCII Program, so collecting information that will assist in making the PCII Program attractive to its stakeholders will allow the PCII Program to better accomplish the statute's goals.

The data collected in this survey will be used by the PCII Program to improve relationships with stakeholders and maximize the value of the program. The survey data collected is for internal PCII Program and DHS/NPPD/IP use only. The PCII Program will use the results from the stakeholder to determine levels of satisfaction with the PCII Program and identify areas that require additional communication, identify areas for improvement with the PCII Management System (PCIIMS), and help determine the future direction of the Program.

The survey is administered using a web-based survey tool, Vovici Enterprise Feedback Management (EFM). Automating the PCII Stakeholder Survey reduces the respondent burden of responding to a paper survey or a telephone interview. The staff burden of manually administering a survey and accurately collecting data is also reduced. Automation also captures participants' typed comments, eliminating time-consuming transcription and manual inaccuracies.

The PCII Stakeholder Survey does not collect personally identifiable information. The survey instrument states that the survey is voluntary and the information will be kept private or anonymous to the extent allowable by law.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection.

Title: Protected Critical Infrastructure Information (PCII) Stakeholder Survey.

OMB Number: 1670–NEW.

Frequency: Annually.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 100 respondents.

Estimated Time per Respondent: .1333 hours.

Total Burden Hours: 13.5 annual burden hours.

Total Burden Cost (capital/startup): $10,566.

Total Burden Cost (operating/maintaining): $4,158.

Dated: August 3, 2011.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011–20738 Filed 8–12–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt, LP., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt, LP., as an approved commercial gauger and accredited laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt, LP, Road 127 KM 13.4 Bo. Magas Arriba, P.R., has been approved to gauge and test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Saybolt, LP, Inc., Guayanilla, P.R., as commercial gauger and accredited laboratory became effective on March 11, 2010. The next triennial inspection date will be scheduled for March 2013.

FOR FURTHER INFORMATION CONTACT: Donald Cousins, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 5, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–20623 Filed 8–12–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt, LP., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt, LP., as an approved commercial gauger and accredited laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt, LP., 414 Weschester, Corpus Christi, TX 78469, has been approved to gauge and test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operationssupport/labsscientificsvcs/commercial gaugers/.*

DATES: The accreditation and approval of Saybolt, LP., Inc., Corpus Christi, TX, as commercial gauger and accredited laboratory became effective on April 6, 2011. The next triennial inspection date will be scheduled for April 2014.

FOR FURTHER INFORMATION CONTACT: Donald Cousins, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 5, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–20622 Filed 8–12–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Harbor Maintenance Fee

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information: 1651–0055.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Harbor Maintenance Fee (CBP Forms 349 and 350). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 26311) on May 6, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before September 14, 2011.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Harbor Maintenance Fee.

OMB Number: 1651–0055.

Form Number: CBP Forms 349 and 350.

Abstract: The Harbor Maintenance Fee (HMF) and Trust Fund is used for the operation and maintenance of certain U.S. channels and harbors by the Army Corps of Engineers. U.S. Customs and Border Protection (CBP) is required to collect the HMF from importers, domestic shippers, and passenger vessel operators using Federal navigation projects. Commercial cargo loaded on or unloaded from a commercial vessel is subject to a port use fee of 0.125 percent of its value if the loading or unloading occurs at a port that has been designated by the Army Corps of Engineers. The HMF also applies to the total ticket value of embarking and disembarking passengers and on cargo admissions into a Foreign Trade Zone (FTZ).

CBP Form 349, *Harbor Maintenance Fee Quarterly Summary Report, and CBP Form 350, Harbor Maintenance Fee Amended Quarterly Summary Report,* are completed by domestic shippers, foreign trade zones applicants, and passenger vessel operators and submitted with payment to CBP. CBP proposes to amend Form 349 to add the respondent's email address and fax number.

CBP uses the information collected on CBP Forms 349 and 350 to verify that the fee collected is timely and accurately submitted. These forms are authorized by the Water Resources Development Act of 1986 (26 U.S.C. 4461, *et seq.*) and provided for by 19 CFR 24.24, which also includes the list of designated ports. CBP Forms 349 and 350 are accessible at *http://www.cbp.gov/xp/cgov/toolbox/forms/* or they may be completed and filed electronically at *http://www.pay.gov.*

Current Actions: This submission is being made to extend the expiration date of this information collection with a change to the burden hours resulting from revised estimates of the number of responses. CBP also proposes to add the respondent's email address and fax number to Form 349. There are no proposed changes to CBP 350.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 575.

Estimated Number of Responses: 2,300.

Estimated Time per Respondent: 130 minutes.

Estimated Total Annual Burden Hours: 1,246.

Dated: August 9, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–20624 Filed 8–12–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–2010–N290; 70133–1265–0000–S3]

Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement, Arctic National Wildlife Refuge, Fairbanks, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for comments; announcement of public meetings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and draft environmental impact statement (DEIS) for the Arctic National Wildlife Refuge (Refuge) for public review and comment. In this document, we describe goals and objectives, management direction, and alternatives to manage the Refuge for the 15 years following approval of the final CCP. Also available for review in the document are draft compatibility determinations, a draft wilderness review, and a draft wild and scenic river review prepared in association with the CCP, as well as supporting documents required by the National Environmental Policy Act (NEPA).

DATES: To ensure consideration, please send your written comments by November 14, 2011. We will hold public meetings in communities within and near the Refuge, and also in the cities of Anchorage and Fairbanks, in Alaska. We will announce these upcoming public meetings in local news media.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. You may request a 20-page summary of the CCP; a 1,200-page hard copy of the full CCP; or a CD–ROM of the summary and full document.

Agency Web Site: Download a copy of the summary or full CCP document at *http://arctic.fws.gov/ccp.htm.*

E-mail: ArcticRefugeCCP@fws.gov. Include ''Arctic National Wildlife Refuge draft CCP and draft EIS'' in the subject line of the message.

Fax: Attn: Sharon Seim, Planning Team Leader, (907) 456–0428.

U.S. Mail: Sharon Seim, Planning Team Leader, Arctic National Wildlife Refuge, 101 12th Ave., Rm. 236, Fairbanks, AK 99701.

In-Person Pickup or Drop-off: You may pick up a copy or drop off comments during regular business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Sharon Seim, Planning Team Leader, at the address listed above, by phone at (907) 456–0501, or by e-mail at *ArcticRefugeCCP@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for the Arctic National Wildlife Refuge. We started this process through a notice of intent in the **Federal Register** (75 FR 17763; April 7, 2010).

The Arctic National Wildlife Refuge includes nearly 19.3 million acres, three wild rivers, and one of the largest areas of designated Wilderness in the United States. The rugged Brooks Range, with peaks and glaciers to 9,000 feet, extends east to west in a band 75 miles wide, rising abruptly from a tundra-covered plain. This treeless plain is cut by numerous braided rivers and streams. South of the continental divide, rivers wind serpentine courses through broad spruce-covered valleys dotted with lakes and sloughs. Nearly 180 species of birds, 45 species of mammals, and 36 species of fish have been documented on Arctic Refuge. Vast mountains, diverse wildlife, and a wealth of habitats give this unspoiled wildlife refuge high cultural-heritage, scenic, scientific, and wilderness values.

Background

The CCP Process

The Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2371; ANILCA) requires us to develop a CCP for each refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. We will review and update the CCP at least every 20 years in accordance with ANILCA.

Public Outreach

We started the CCP for Arctic Refuge in April 2010. At that time and throughout the planning process, we requested public comments and considered and incorporated them in numerous ways. In April 2010, we mailed a planning newsletter to more than 2,000 individuals, agencies, and organizations describing the planning process for the CCP revision and telling the public how they could be informed or involved. It informed the public about the Refuge vision and draft goals identified by the planning team and Refuge staff. The newsletter contained a comment form that provided an opportunity for people to identify issues they thought should be addressed in the CCP or to provide suggestions on how best to accomplish Arctic Refuge purposes. The newsletter and comment form were also made available over the Internet.

To gather additional input from the public, members of the planning team and Refuge staff held eight public open house meetings—five in communities adjacent to or within the boundaries of the Arctic Refuge; one in Washington, DC; one in Anchorage, Alaska; and one in Fairbanks, Alaska.

Individuals and organizations provided 94,061 comments during the scoping process. The responses came in e-mails, Web forms, postcards, faxes, letters, and public hearing transcripts. Approximately 300 people spoke at meetings in 8 communities. The responses were reviewed, coded, and

analyzed. Comments were sorted into six categories:

(1) General comments expressing support for, or opposition to, wilderness designation and development within the Refuge;

(2) Analysis—These comments spoke to the scope and content of the draft CCP/EIS, with the major theme being the need to update studies and to employ effective monitoring and inventories. A minor theme was the adequacy of the studies—the data concerns related to climate change, wildlife, invasive plants, recreation, oil and gas, water, and air;

(3) Process—Commenters provided input on process considerations for CCP preparation, including comments on decisionmaking philosophy, outreach, public involvement process, public meetings, and the influence of politics and special interests in the process;

(4) Activities and Uses—The comments received covered four major areas of activities and uses:

- Commercial activities, either support or opposition—*e.g.,* concern about potential impacts to Refuge resources, or impact of permitted users on Native groups;
- Government Activities—*e.g.,* scientific research, species management, structures within the Refuge, and alternative energy;
- Private Activities; and
- Native/Tribal activities on the Refuge, including support or opposition to recreational activities, large groups and growing crowds, with comments focused on potential impacts of Refuge regulations and policies to Native Alaskans;

(5) Land and Resource Management—The focus of these comments included discussions about Refuge purposes and mandates (asking the Service to avoid changing or manipulating the natural environment in the Refuge); support for, and opposition to, further Wilderness and Wild and Scenic River designations; opposition to naming of features; and both ensuring compliance with Refuge treaties and agreements and concern from Alaska Natives that treaties have been used to manipulate their lifestyles;

(6) Legal Consistency—This category included comments about the legal consistency of various laws, treaties, and policies that affect the Refuge—*e.g.,* asking for clarification of the roles of the Service and Congress related to Wilderness designation and management within the ''1002'' area of the Refuge, and the role of Refuge planning to ensure that planning efforts for the CCP are consistent with laws, regulations, and policies.

We have considered and evaluated these issues and public concerns, and we have used them to develop various aspects of the draft CCP/EIS, such as management objectives, management guidelines, and alternatives.

CCP Alternatives We Are Considering

We developed and evaluated the following alternatives, summarized in the table below. A full description of each alternative is in the draft EIS.

Alternatives	Issue 1: Should additional Wilderness Study Areas be recommended for inclusion in the National Wilderness Preservation System, and if so, which areas?	Issue 2: Should additional Wild and Scenic Rivers be recommended for inclusion in the Wild and Scenic River System, and if so, which rivers?	Issue 3: How will the Refuge manage Kongakut River visitor use to protect natural resources and visitor experience?
A (No Action)	No new Wilderness recommended	No new Wild and Scenic Rivers recommended.	Group size limits exist for commercially guided groups (7 hikers, 10 floaters). There are no group size limits for non-guided visitors. Commercial service providers have permits, with occasional compliance checks. In the Kongakut Valley, air taxi permits are granted under condition that the holders limit landing to non-vegetated surfaces only; subject to safety and weather, they must maintain minimum 2,000 feet above ground level flight operations, with no intentional low flights over camps or people; aircraft operations must not harass wildlife or interfere with refuge users. Visitor-use monitoring occurs every other year or less often. Campsite conditions are monitored periodically.
B	Recommend the Brooks Range Wilderness Study Area.	Recommend the Kongakut, Hulahula, and Marsh Fork of the Canning Rivers.	Same as Alternative A, with the following additional actions: Develop and initiate monitoring physical and social conditions to evaluate management effectiveness. Develop targeted public education materials explaining preferred practices to minimize impacts, such as proper waste disposal, avoiding wildlife impacts, and alleviating crowding among groups.
C	Recommend the Coastal Plain Wilderness Study Area.	Recommend the Atigun River	Same as Alternative B.
D	Recommend the Brooks Range and Porcupine Plateau Wilderness Study Areas.	Recommend the Kongakut, Marsh Fork of the Canning, and Atigun Rivers, and those portions of the Hulahula River that are on Refuge lands.	Same as Alternative B, except: Increase efforts to enforce compliance with permit conditions and regulations. Reduce the number of groups on the river during heavy use periods (late June and mid-August) by working with commercial guides to modify their use of the river throughout the season. Work with commercial air taxi operators to disperse flight paths over the river.

Alternatives	Issue 1: Should additional Wilderness Study Areas be recommended for inclusion in the National Wilderness Preservation System, and if so, which areas?	Issue 2: Should additional Wild and Scenic Rivers be recommended for inclusion in the Wild and Scenic River System, and if so, which rivers?	Issue 3: How will the Refuge manage Kongakut River visitor use to protect natural resources and visitor experience?
E	Recommend the Brooks Range, Porcupine Plateau, and Coastal Plain Wilderness Study Areas.	Recommend the Kongakut, Marsh Fork of the Canning, Hulahula, and Atigun Rivers.	Same as Alternative D, except: Detailed step-down planning would start within 2 years of completing the Record of Decision for the CCP.
F	Same as Alternative A	Same as Alternative A	Same as Alternative B, except: A detailed step-down plan would decide how to enforce compliance with permit conditions and regulations. Step-down planning would start within 2 years after completing the Record of Decision for the CCP.

Public Availability of Documents

In addition to any methods in **ADDRESSES**, you can view or obtain documents at our Web site: *http://arctic.fws.gov/ccp.htm.*

Public Meetings

We will involve the public through open houses, hearings, meetings, and written comments. We will mail documents to our national and local Refuge mailing lists. Public open house meetings will be held in the communities of Arctic Village, Fort Yukon, Kaktovik, and Venetie, Alaska, and public hearings in will be held in Anchorage and Fairbanks, Alaska. Dates, times, and locations of each meeting or open house will be announced in advance in local media.

Submitting Comments/Issues for Comment

We particularly seek comments on the following issues:

- Issue 1—Should one or more areas of the Arctic Refuge be recommended for Wilderness designation?
- Issue 2—Should additional Wild and Scenic Rivers be recommended for inclusion in the National Wild and Scenic River System?
- Issue 3—How will the Refuge manage Kongakut River visitor use to protect resources and visitor experience?

We consider comments substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document;
- Question, with reasonable basis, the adequacy of the environmental assessment;
- Present reasonable alternatives other than those presented in the draft CCP and the EIS; and/or
- Provide new or additional information relevant to the assessment.

Next Steps

After this comment period ends, we will analyze the comments and address them in the form of a final CCP and decision document.

Public Availability of Comments

Before including your address, phone number, e-mail 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: July 15, 2011.

Geoffrey L. Haskett,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 2011–20448 Filed 8–12–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially accepted the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the date specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: The BLM will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, on September 14, 2011. This survey was executed at the request of the U.S. Fish and Wildlife Service to meet certain administrative and management purposes.

The lands surveyed are:

The plat constituting the entire survey record of the survey of certain islands in the Snake River, Tps 1 and 2 N., R. 3 West, T. 2 N., R. 4 W., T. 3 N., R. 4 W., T. 3 N., R. 5 W., and T. 4 N., R. 5 W., Boise Meridian, Idaho, was accepted July 29, 2011.

The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**. This survey was executed at the request of the U.S. Fish and Wildlife Service to meet certain administrative and management purposes.

Dated: August 2, 2011.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2011–20668 Filed 8–12–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA930000.L58790000.EU0000; CACA 50168 13]

Notice of Realty Action: Direct Sale of Public Land in San Benito County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM), Hollister Field Office, proposes to sell a parcel of public land consisting of approximately 15.61 acres in San Benito County, California. The public land would be sold to Windfield Ranch, LLC, a California Limited Liability Company,

for the appraised fair market value of $16,000.

DATES: Written comments regarding the proposed sale must be received by the BLM on or before September 29, 2011.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Field Manager, BLM Hollister Field Office, 20 Hamilton Court, Hollister, California 95023.

FOR FURTHER INFORMATION CONTACT: Christine Sloand, Realty Specialist, BLM Hollister Field Office, 20 Hamilton Court, Hollister, California 95023, phone (831) 630–5022 or visit the Web site at *http://www.blm.gov/ca/st/en/fo/hollister/realty.html*. 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 public land described below is proposed for direct sale to Windfield Ranch, LLC, the adjoining landowner, in accordance with Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended (43 U.S.C. 1713 and 1719):

Mount Diablo Meridian

T. 14S., R. 6E.,
Sec. 4, lot 7;
Sec. 9, lot 2.

The area described contains approximately 15.61 acres, more or less, in San Benito County.

The public land was first identified as suitable for disposal in the 1984 BLM Hollister Resource Management Plan (RMP) and remains available for sale under the 2007 Hollister RMP revision. The land is not needed for any other Federal purpose and its disposal would be in the public interest. The purpose of the sale is to dispose of public land which is difficult and uneconomic to manage as part of the public lands. The land proposed for sale is difficult and uneconomic for the BLM to manage because it is a small, isolated parcel which lacks legal access. The BLM is proposing a direct sale to Windfield Ranch, LLC, the owner of the adjoining land on three sides of the public land proposed for sale. A competitive sale is not considered appropriate because the public land lacks legal access and has no practical utility except to be incorporated into the adjacent ranch land. The only other adjoining landowner has informed the BLM that they have no interest in purchasing the land and do not object to the sale of the land to Windfield Ranch, LLC. The BLM has completed a mineral potential report which concluded there are no known mineral values in the land proposed for sale. The BLM proposes that conveyance of the Federal mineral interests would occur simultaneously with the sale of the land.

On August 15, 2011, the above described land will be segregated from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of the FLPMA. Until completion of the sale, the BLM will no longer accept land use applications affecting the identified public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2802.15 and 2886.15. The temporary segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on August 15, 2013, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. The land would not be sold until at least October 14, 2011. Windfield Ranch, LLC, would be required to pay a $50 nonrefundable filing fee for processing the conveyance of the mineral interests. Any conveyance document issued would contain the following terms, conditions, and reservations:

1. A reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

2. A condition that the conveyance be subject to all valid existing rights of record;

3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented land; and

4. Additional terms and conditions that the authorized officer deems appropriate.

Detailed information concerning the proposed land sale including the appraisal, planning and environmental documents, and a mineral report are available for review at the BLM Hollister Field Office at the address above, by calling (831) 630–5022 or visiting our Web site at *http://www.blm.gov/ca/st/en/fo/hollister/realty.html*.

Public comments regarding the proposed sale may be submitted in writing to the attention of the BLM Hollister Field Manager (see **ADDRESSES** above) on or before September 29, 2011. Comments received in electronic form, such as e-mail or facsimile, will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2(a) and (c)

Tom Pogacnik,
Deputy State Director, Natural Resources.

[FR Doc. 2011–20658 Filed 8–12–11; 8:45 am]
BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–48649, LLCAD06000 L51010000 ER0000 LVRWB09B2490]

Notice of Availability of the Record of Decision for the Desert Sunlight Holdings, LLC, Desert Sunlight Solar Farm (DSSF) and California Desert Conservation Area Plan Amendment, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD)/Approved Amendment to the California Desert Conservation Area (CDCA) Plan, the applicable Resource Management Plan (RMP) for the project site and the surrounding areas, located in the California Desert District. The Secretary of the Interior approved the ROD on August 9, 2011, which constitutes the final decision of the Department.

ADDRESSES: Copies of the ROD/Approved Amendment to the CDCA Plan are available upon request from the Field Manager, Palm Springs—South Coast Field Office, Bureau of Land

Management, 1201 Bird Center Drive, Palm Springs, California 92262, or via the Internet at the following Web site: *http://www.blm.gov/ca/st/en/fo/palmsprings.html.*

FOR FURTHER INFORMATION CONTACT: Allison Shaffer, BLM Project Manager; telephone (760) 833–7100; through mail at the address above; or e-mail *Allison_Shaffer@blm.gov.*

SUPPLEMENTARY INFORMATION: Desert Sunlight Holdings, LLC, a wholly owned subsidiary of First Solar, Inc., filed right-of-way (ROW) application CACA–48649 for the Desert Sunlight Solar Farm Project (DSSF). The DSSF is a solar photovoltaic (PV) facility, capable of producing 550 MW of electrical output. Southern California Edison (SCE) filed a ROW application to construct the 500-to-220 kiloVolt (kV) RedBluff substation (CACA–052682) where the project would interconnect with the SCE regional transmission system. The DSSF, along with the RedBluff Substation and other facilities, will be on 4,144 acres of BLM-managed lands approximately 6 miles north of Interstate-10 and the rural community of Desert Center in Riverside County, California. The project area is within 2 miles of Joshua Tree National Park. In addition to the project site, the project includes a distribution line, a 220-kV electrical gen-tie transmission line, fiber optic lines, and an access road. The RedBluff substation includes an access road and two offsite microwave telecommunication facilities. The gen-tie line will feed power into SCE's existing Devers-Palo Verde 1 500-kV transmission line.

The project site is in the California Desert District within the planning boundary of the CDCA Plan, which is the applicable RMP for the project site and the surrounding areas. The CDCA Plan, while recognizing the potential compatibility of solar generation facilities on public lands, requires that all sites associated with power generation or transmission not already identified in the Plan be considered through the BLM's land use plan amendment process. As a result, prior to approval of a ROW grant to the DSSF, the BLM must amend the CDCA Plan to allow the solar generating project on that site The approved Amendment to the CDCA Plan specifically revises the CDCA Plan to allow for the development of the DSSF and ancillary facilities on land managed by the BLM.

The BLM preferred Alternative would result in construction of the solar farm, capable of generating approximately 550 MW of electricity, the RedBluff Substation, and associated ancillary facilities. This 550-MW alternative and substation were evaluated in the Final Environmental Impact Statement (EIS). The Notice of Availability of the Final EIS for the DSSF, RedBluff Substation, and the proposed CDCA Plan amendment was published in the **Federal Register** on April 15, 2011 (76 FR 21402).

Publication of the Notice of Availability for the Final EIS initiated a 30-day protest period for the proposed amendment to the CDCA Plan. At the close of the 30-day period on May 16, 2011, seven timely and complete written protests were received and resolved. Their resolution is summarized in the Director's Protest Summary Report attached to the ROD. The proposed amendment to the CDCA Plan was not modified as a result of the protest resolution. Simultaneously with the protest period, the Governor of California conducted a 30-day consistency review of the proposed CDCA Plan amendment to identify any inconsistencies with State or local plan, policies or programs; no inconsistencies were identified.

Because this decision is approved by the Secretary of the Interior, it is not subject to administrative appeal (43 CFR, 4.410(a)(3)).

Authority: 40 CFR 1506.6.

Robert V. Abbey,

Director, Bureau of Land Management.

[FR Doc. 2011–20671 Filed 8–12–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–0714–7930; 8381–1001–NZW]

Water Resources Management Plan/Environmental Impact Statement, Mojave National Preserve, San Bernardino County, CA

AGENCY: National Park Service, Interior.

ACTION: Notice of Extension of Scoping Period for Water Resources Management Plan/Environmental Impact Statement for Mojave National Preserve.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service is preparing a Water Resources Management Plan/Environmental Impact Statement (WRMP/EIS). This plan is intended to guide future management of ground and surface water sources within Mojave National Preserve. The original Notice of Intent to prepare an EIS (published in the **Federal Register** on May 11, 2011) announced a 60-day public comment period. In recognition of the complexity and scope of the forthcoming EIS, and with deference to interest from the public and interested organizations, the comment period has been extended.

DATES: Comments must be received by August 12, 2011.

SUPPLEMENTARY INFORMATION: It will not be necessary for individuals, orgnaizations, and agencies that have already commented to do so again. All comments must now be postmarked or transmitted not later than August 12, 2011. Those respondents who prefer to comment electronically may do so via the project Web site, *http://parkplanning.nps.gov/mojave_water*, or letters may be submitted via regular mail to: Stephanie Dubois, Superintendent, Mojave National Preserve, *Attn:* Mojave WRMP, 2701 Barstow Road, Barstow, California 92311. Up-to-date information may be obtained by contacting Mojave National Preserve at (760) 252–6100.

Before including your address, phone number, e-mail 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: July 8, 2011.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 2011–20620 Filed 8–12–11; 8:45 am]

BILLING CODE 4310–6E–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0711–8064; 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before July 23, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National

Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 30, 2011. Before including your address, phone number, e-mail 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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

COLORADO

Huerfano County

Veta Pass, 3652, 3665, 3688 Cty. Rd. 443, La Veta, 11000607

Pueblo County

Pueblo Christopher Columbus Monument, Median in 100 Blk. of E. Abriendo Ave., Pueblo, 11000608

CONNECTICUT

Fairfield County

Graham House, Address Restricted, Stamford, 11000609

Hartford County

Sigourney Square Historic District (Boundary Increase), 207 Garden St., Hartford, 11000610

New Haven County

Academy of Our Lady of Mercy at Lauralton Hall, 200 High St., Milford, 11000611

Armstrong, M. and Company Carriage Factory, 433 Chapel St., New Haven, 11000612

IDAHO

Blaine County

Fox-Worswick House, 119 E. Bullion St., Hailey, 11000613

MASSACHUSETTS

Berkshire County

Wheeler Family Farmstead, 817 S. Main St., Great Barrington, 11000614

Worcester County

Hassanamisco Reservation, 80 Brighton Hill Rd., Grafton, 11000615

MICHIGAN

Wayne County

Tushiyah United Hebrew School—Scott Memorial Methodist Episcopal Church, 609 E. Kirby, Detroit, 11000616

MISSOURI

St. Louis Independent City

St. Louis Place Historic District, Roughly bounded by 21st, 22nd, 23rd, 25th, Benton, Montgomery, & N. Market Sts., Rauschenbach & St. Louis Aves., St. Louis (Independent City), 11000617

NEBRASKA

Morrill County

Mud Springs Station Archeological District (Boundary Increase), (Conflict & Warfare in the North & South Platte Valleys of Nebraska, 1864–1865 MPS) Address Restricted, Dalton, 11000618

Rush Creek Battlefield, (Conflict & Warfare in the North & South Platte Valleys of Nebraska, 1864–1865 MPS) Address Restricted, Broadwater, 11000619

NEW YORK

New York County

Fourth Church of Christ, Scientist, The, 551 Ft. Washington Ave., Manhattan, 11000620

NORTH CAROLINA

Gates County

Reid's Grove School, 931 Main St., Gatesville, 11000621

Orange County

Eno Cotton Mill, 437 Dimmocks Mill Rd., Hillsborough, 11000622

Rowan County

Christ Episcopal Church, 3430 Old US 70, Cleveland, 11000623

OREGON

Douglas County

Mill-Pine Neighborhood Historic District (Boundary Decrease), Roughly bounded by Short St., Mosher Ave., Stephens St. and Rice Ave., Roseburg, 11000624

Multnomah County

Powers, Ira F., Warehouse and Factory, 123 NE. 3rd Ave., Portland, 11000625

WASHINGTON

King County

Liggett Building, 1424 4th Ave., Seattle, 11000626

Pierce County

Skansie, Andrew & Bertha, Net Shed and House, 3207 Harborview Dr., Gig Harbor, 11000627

[FR Doc. 2011–20619 Filed 8–12–11; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–379 and 731–TA–788, 790–793; Second Review]

Stainless Steel Plate From Belgium, Italy, Korea, South Africa, and Taiwan

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty order on stainless steel plate from South Africa and revocation of the antidumping duty orders on stainless steel plate from Belgium, Korea, South Africa, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] The Commission further determines that revocation of the antidumping duty order on stainless steel plate from Italy would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Background

The Commission instituted these reviews on June 1, 2010 (75 FR 30434) and determined on September 7, 2010 that it would conduct full reviews (75 FR 59744, September 28, 2010). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 27, 2010 (75 FR 81309). The hearing was held in Washington, DC, on May 26, 2011, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on August 9, 2011. The views of the Commission are contained in USITC Publication 4248

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson dissent with respect to the determinations regarding stainless steel plate from Belgium, Korea, South Africa, and Taiwan.

[3] Commissioner Charlotte R. Lane dissents with respect to the determination regarding stainless steel plate from Italy.

(August 2011) entitled *Stainless Steel Plate from Belgium, Italy, Korea, South Africa, and Taiwan: Investigation Nos. 701–TA–379 and 731–TA–788, 790–793 (Second Review).*

By order of the Commission.

Issued: August 9, 2011.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2011–20630 Filed 8–12–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0087]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–Day Notice of Information Collection Under Review: eForm 6 Access Request.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This notice requests comments from the public and affected agencies concerning the proposed information collection. Comments are encouraged and will be accepted for ''sixty days'' until October 14, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attn:* DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact William Majors, *William.Majors@atf.gov*, Chief, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, WV 25405 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Summary of Collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* eForm6 Access Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5013.3 Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None.

Need for Collection:

Respondents must complete the eForm 6 Access Request form in order to receive a user ID and password to obtain access to ATF's eForm 6 System. The information is used by the Government to verify the identity of the end users prior to issuing passwords.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete an 18-minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 150 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street, NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–20628 Filed 8–12–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0097]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Supplemental Information on Water Quality Considerations

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This notice requests comments from the public and affected agencies concerning the proposed information collection. Comments are encouraged and will be accepted for ''sixty days'' until October 14, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attn:* DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Kirchoff, *Gary.Kirchoff@atf.gov* Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25405 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Supplemental Information on Water Quality Considerations.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5000.30. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None.

Need for Collection

The data supplied by the applicant is used by ATF to determine if any environmental impact statement or environmental permit is necessary for the proposed operation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 680 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 340 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street, NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–20629 Filed 8–12–11; 8:45 am]

BILLING CODE 4810–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0017]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Annual Firearms Manufacturing and Exportation Report

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This notice requests comments from the public and affected agencies concerning the proposed information collection. Comments are encouraged and will be accepted for ''sixty days'' until October 14, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Thomas DiDomenico, *AFMERQuestions @atf.gov,* Firearms & Explosives Service Division, 244 Needy Road, Martinsburg, West Virginia, 25405 or call the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed information collection are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Firearms Manufacturing and Exportation Report Under 18 U.S.C. chapter 44 Firearms

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5300.11. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: Federal Government, State, Local, or Tribal Government.

Need for Collection

The Annual Firearms Manufacturing and Exportation Report (AFMER) primary purpose is to collect and disseminate data regarding the number of firearms produced by licensed manufacturers within one calendar year. The information from the AFMER report is used to compile statistics on the manufacture and exportation of firearms.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 4,300 respondents will complete a 20 minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 1,433 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, Room 2E–508,

145 N Street, NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–20627 Filed 8–12–11; 8:45 am]

BILLING CODE 4410–FYP

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0014]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Application for Registration, Application for Registration Renewal, Affidavit for Chain Renewal, Application for Modification of Registration for Online Pharmacies DEA Forms 224, 224a, 224b, 224c

ACTION: 60-Day Notice of Information Collection under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 14, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John W. Partridge, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies' 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.

Overview of information collection 1117–0014:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Registration; Application for Registration Renewal; Affidavit for Chain Renewal; Application for Modification of Registration for Online Pharmacies.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Forms 224, 224a, 224b, 224c.

Component: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-profit institutions; State, local, or tribal government.

Abstract: All firms and individuals who dispense controlled substances must register with the DEA under the Controlled Substances Act. Pharmacies wishing to be online pharmacies must apply to modify their registrations. Such registration is mandatory under the law and needed for control measures over legal handlers of controlled substances and to monitor their activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

	Number of annual respondents	Average time per response	Total annual hours
DEA–224 (paper)	5,465	0.2 hours (12 minutes)	1,093
DEA–224 (electronic)	75,342	0.13 hours (8 minutes)	10,045.6
DEA–224a (paper)	66,006	0.2 hours (12 minutes)	792,072
DEA–224a (electronic)	311,300	0.07 hours (4 minutes)	20,753.333
DEA–224b (chain renewal)*	23	5 hours	115
DEA–224c	0	0.25 hours (15 minutes)	0
Total	458,136		824,078.93

*In total, 68 chain pharmacies represent 36,490 individual pharmacy registrants. Pharmacies register for a three-year registration period. In calendar year 2010, the year for which estimates are calculated, 23 chains registered 22,780 individual pharmacies.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 824,079 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–20625 Filed 8–12–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Office for Victims of Crime Trafficking Information Management System (TIMS)

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice, Office of Justice Programs, Office for Victims of Crime, will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until October 14, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Pamela Leupen, Associate Director, National Training and Program Development (NTPD), Office for Victims of Crime, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agencies/components, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *The Title of the Form/Collection:* Trafficking Information Management System (TIMS) Online.

(3) *The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number(s):* N/A. Office for Victims of Crime, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* OVC Services to Victims of Human Trafficking Grant recipients (OVC Grantees). *Abstract:* The OVC Trafficking Information Management System (TIMS) Online is a Web-based database and reporting system, designed to simplify performance reporting required by the OVC Services to Victims of Human Trafficking Grant Initiative. Once approved, OVC will require OVC Grantees to use this electronic tool to submit grant performance data, including demographics about human trafficking victims. OVC intends to publish an annual analysis of these data to provide the crime victims' field with stronger evidence for practices and programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 30–38 OVC Services to Victims of Human Trafficking Grantees per six-month reporting period. On average, it should take each grantee one hour to seven hours, depending on client case load per reporting period, to enter information into TIMS Online. There are two reporting periods per year.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There is no public burden associated with the collection. This system only pertains to OVC grantees.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Planning and Policy Staff, Justice Management Division, Two Constitution Square, 145 N Street, NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 2011–20626 Filed 8–12–11; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that one meeting of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending time is approximate):

Literature (application review): September 14–16, 2011 in Room 716. This meeting, from 9 a.m. to 6:30 p.m. on September 14th and 15th, and from 9 a.m. to 4:30 p.m. on September 16th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2011, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: August 8, 2011.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2011–20610 Filed 8–12–11; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web-site: *http://www.nsf.gov.* This information may also be requested by telephoning, 703–292–8182.

Dated: August 10, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–20669 Filed 8–12–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0183]

Request for Comments on the Draft Policy Statement on Volume Reduction and Low-Level Radioactive Waste Management

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is revising its 1981 Policy Statement on Low-Level Waste (LLW) Volume Reduction. This statement encouraged licensees to take steps to reduce the amount of waste generated and to reduce its volume once generated. The purpose of the revised statement is to recognize that progress in reducing waste volume has been achieved since the 1981 Policy Statement was published and to acknowledge that factors other than volume reduction may be used by licensees to determine how best to manage their LLW. This draft Policy Statement is being issued for public comment.

DATES: Comments on the draft Policy Statement should be submitted by September 14, 2011. Comments received after this date 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 this date.

ADDRESSES: Please include Docket ID NRC–2011–0183 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, see Section I, ''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–2011–0183. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *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.

FOR FURTHER INFORMATION CONTACT: Donald Lowman, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5452; e-mail: *donald.lowman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted 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, O1–F21, 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 the 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, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site*: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0183.

II. Background

In 1981, the NRC published a Policy Statement regarding the volume

reduction of LLW. The Policy Statement addressed:

- The need for a volume reduction policy;
- Suggested volume reduction techniques;
- That NRC would take expeditious action on requests for licensing of volume reduction systems; and
- The need for waste generators to minimize the quantity of waste produced.

The NRC issued the Policy Statement in response to a General Accounting Office (now U.S. Government Accountability Office (GAO)) report that recommended that NRC take this step to help preserve disposal facility space (GAO, 1980). The Policy Statement was issued when disposal space was scarce since two of the three operating low level radioactive waste (LLRW) disposal sites had been threatening to close, and one had recently reduced the annual amount authorized for disposal by half. Further, volume reduction techniques were not yet in widespread use and NRC's Policy Statement was meant to encourage the use of these techniques.

On April 7, 2010, staff published SECY–10–0043, ''Blending of Low-Level Radioactive Waste'' and addressed the Policy Statement in response to stakeholder comments that large-scale blending may not be consistent with the Policy Statement because it would enable licensees to avoid the use of an available volume reduction technology. In the blending paper, staff stated in Option 2:

> The staff believes that the Policy Statement could be updated to recognize the progress that has been achieved, and to acknowledge that other factors may be used by licensees in determining how best to manage their LLRW. Specifically, the Policy Statement could be revised to acknowledge that volume reduction continues to be important, but that risk-informed, performance-based approaches to managing waste are also appropriate in managing LLRW safely and that volume reduction should be evaluated in this light.

In the Staff Requirements Memorandum for SECY–10–0043, the Commission approved Option 2, which included the staff's proposed changes noted above. Consequently, a revised Policy Statement on Volume Reduction and Low-Level Radioactive Waste Management is being published for public comment.

III. Draft Policy Statement of the U.S. Nuclear Regulatory Commission on Volume Reduction and Low-Level Radioactive Waste Management

Summary

In 1981, the Commission published a Policy Statement (46 FR 51100; October 16, 1981) regarding the volume reduction of LLW. On April 7, 2010, the NRC staff published SECY–10–0043 ''Blending of Low-Level Radioactive Waste'' in which it recommended updating the Policy Statement to acknowledge that volume reduction continues to be important, but that risk-informed, performance-based approaches to managing waste are also needed to safely manage LLRW. The Commission approved the staff's recommendation thus the Policy Statement is being revised.

Policy Statement

The Commission recognizes the substantial progress made by licensees in reducing volumes of LLRW for disposal since the publication of the 1981 Volume Reduction Policy Statement. Nuclear industry groups have also played a central part in this effort by encouraging volume reduction practices among their members. Widespread use of these volume reduction practices has resulted in a significant reduction in the amount of LLW produced by licensees. The Commission recognizes that the high cost of disposal has been a factor, along with lack of disposal access, in the increased use of volume reduction techniques.

The Commission continues to believe that volume reduction is an important component in the management of LLW; a continued focus on volume reduction will extend the operational lifetime of the existing commercial low-level disposal sites and reduce the number of waste shipments.

Administrative controls and operational enhancements are the foundation of a successful radioactive waste management program. Therefore, the Commission encourages licensees to continue to adopt procedures that will reduce the volume of waste being transferred to disposal facilities. Additionally, as currently required by Title 10 of the *Code of Federal Regulations* (10 CFR) 20.1406, applicants for licenses shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, the generation of radioactive waste.

The Commission also recognizes that volume reduction is only one aspect of an effective radioactive waste management program. While the Commission continues to favor the disposal of LLRW over storage, it recognizes that licensees may manage waste in a variety of ways, consistent with NRC regulations and guidance. In addition to ensuring public health and safety, licensees should consider operational efficiency, reductions in occupational exposures, security, and cost in determining how best to manage LLRW. As part of their radioactive waste management strategies, licensees should consider all means available to manage waste in a manner that is secure and protects public health and safety, such as:

- Waste minimization.
- Short-term storage and decay.
- Long-term storage.
- Use of the alternate disposal provision contained in 10 CFR 20.2002.
- Use of waste processing technologies.
- Use of licensed disposal facilities.

The Commission understands that limited disposal access means that many licensees will be forced to store at least some of their LLW. Agreement State and NRC licensees must continue to ensure waste is safely and securely managed. However, disposal is considered the safest and most secure long-term management approach.

Paperwork Reduction Act Statement

This Policy Statement does not contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget, approval numbers 3150–0014 and 3150–0151.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

IV. Public Comments

Based on the comments received in both written and electronic form, the Commission will then be in a better position to proceed with the issuance of a final Policy Statement. The final Policy Statement, when issued by the Commission, will be published in the **Federal Register**.

Dated at Rockville, Maryland, this 5th day of August, 2011.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Acting Director, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–20666 Filed 8–12–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65065; File No. SR–NYSEArca–2011–56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 7.10, Clearly Erroneous Executions, To Extend the Effective Date of the Pilot Until January 31, 2012

August 9, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 5, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 self-regulatory organization. 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 NYSE Arca Rule 7.10, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate until January 31, 2012. The pilot is currently scheduled to expire on August 11, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://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 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 those 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 parts 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 NYSE Arca Equities Rule 7.10, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate, until January 31, 2012.[4]

On September 10, 2010, the Commission approved, on a pilot basis, market-wide amendments to exchanges' rules for clearly erroneous executions to set forth clearer standards and curtail discretion with respect to breaking erroneous trades. In connection with this pilot initiative, the Exchange amended NYSE Arca Equities Rule 7.10(c), (e)(2), (f), and (g). The amendments provide for uniform treatment of clearly erroneous execution reviews (1) In Multi-Stock Events [5] involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[6] The amendments also eliminated appeals of certain rulings made in conjunction with other exchanges with respect to clearly erroneous transactions and limited the Exchange's discretion to deviate from Numerical Guidelines set forth in the Rule in the event of system disruptions or malfunctions.

If the pilot were not extended, the prior versions of paragraphs (c), (e)(2), (f), and (g) of NYSE Arca Equities Rule 7.10 would be in effect, and NYSE Arca would have different rules than other exchanges and greater discretion in connection with breaking clearly erroneous transactions. The Exchange proposes to extend the pilot amendments to NYSE Arca Equities Rule 7.10 until January 31, 2012 in order to maintain uniform rules across markets and allow the pilot to continue to operate without interruption during the same period that the Rule 7.11 trading pause rule pilot is also in effect. Extension of the pilot would permit the Exchange, other national securities exchanges and the Commission to further assess the effect of the pilot on the marketplace, including whether additional measures should be added, whether the parameters of the rule should be modified or whether other initiatives should be adopted in lieu of the current pilot.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [7] of the Act, in general, and furthers the objectives of Section 6(b)(5) [8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the NYSE Arca believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NYSEArca–2010–58). *See also* Securities Exchange Act Release Nos. 63482 (December 9, 2010), 75 FR 78331 (December 15, 2010) (SR–NYSEArca–2010–113) and 64234 (April 7, 2011), 76 FR 20399 (April 12, 2011) (SR–NYSEArca–2011–15).

[5] Terms not defined herein are defined in NYSE Arca Equities Rule 7.10.

[6] Separately, the Exchange has proposed extend [sic] the effective date of the trading pause pilot under NYSE Arca Equities Rule 7.11, which requires to [sic] the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day. *See* SR–NYSEArca–2011–55.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[11] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–56 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–NYSEArca–2011–56. This file number should be included on the subject line if e-mail 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 NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2011–56 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20636 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65061; File No. SR–ISE–2011–51]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 2128 To Extend the Pilot Program

August 9, 2011.

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 August 5, 2011, 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 and II, below, which items have been prepared by the self-regulatory organization. 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 Rule 2128 (Clearly Erroneous Trades) to extend the expiration of the pilot rule.

The text of the proposed rule change is available on the Exchange's Internet Web site at *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 Exchange proposes to amend ISE Rule 2128 (Clearly Erroneous Trades) to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

extend the expiration of the pilot rule. Amendments to ISE Rule 2128 to provide for uniform treatment of certain clearly erroneous execution reviews and transactions that occur before a trading pause is in effect on the Exchange were approved by the Securities and Exchange Commission (''Commission'') on September 10, 2010 on a pilot basis to end on April 11, 2011.[3] The Exchange then extended this pilot to expire upon the earlier of August 11, 2011 or the date on which the limit up/limit down mechanism to address extraordinary market volatility applies.[4] The Exchange now proposes to extend the date by which this pilot rule will expire to January 31, 2012. Extending this pilot program will provide the exchanges with a continued opportunity to assess the effect of this rule proposal on the markets.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[5] which requires the rules of an exchange to promote just and equitable principles of trade, 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[6] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions relating to clearly erroneous trades in a security when there are significant price movements.

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 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[9] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2011–51 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–2011–51. This file number should be included on the subject line if e-mail 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2011–51 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20633 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release Nos. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–ISE–2010–62) (Extending the pilot period to December 10, 2010); 63481 (December 9, 2010), 75 FR 78275 (December 15, 2010) (Extending the pilot period to April 11, 2011).

[4] *See* Securities and Exchange Commission Release No. 64231 (April 7, 2011), 76 FR 20733 (April 13, 2011) (SR–ISE–2011–19).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78k–1(a)(1).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self- regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65064; File No. SR–NYSE–2011–41]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 128, Clearly Erroneous Executions, To Extend the Effective Date of the Pilot Until January 31, 2012

August 9, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 5, 2011, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 self-regulatory organization. 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 NYSE Rule 128, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate until January 31, 2012. The pilot is currently scheduled to expire on August 11, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://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 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 those 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 parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 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 NYSE Rule 128, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate, until January 31, 2012. The pilot is currently scheduled to expire on August 11, 2011.[4]

On September 10, 2010, the Commission approved, on a pilot basis, market-wide amendments to exchanges' rules for clearly erroneous executions to set forth clearer standards and curtail discretion with respect to breaking erroneous trades. In connection with this pilot initiative, the Exchange amended NYSE Rule 128(c), (e)(2), (f), and (g). The amendments provide for uniform treatment of clearly erroneous execution reviews (1) in Multi-Stock Events [5] involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[6] The amendments also eliminated appeals of certain rulings made in conjunction with other exchanges with respect to clearly erroneous transactions and limited the Exchange's discretion to deviate from Numerical Guidelines set forth in the Rule in the event of system disruptions or malfunctions.

If the pilot were not extended, the prior versions of paragraphs (c), (e)(2), (f), and (g) of Rule 128 would be in effect, and the NYSE would have different rules than other exchanges and greater discretion in connection with breaking clearly erroneous transactions. The Exchange proposes to extend the pilot amendments to NYSE Rule 128 until January 31, 2012 in order to maintain uniform rules across markets and allow the pilot to continue to operate without interruption during the same period that the Rule 80C trading pause rule pilot is also in effect. Extension of the pilot would permit the Exchange, other national securities exchanges and the Commission to further assess the effect of the pilot on the marketplace, including whether additional measures should be added, whether the parameters of the rule should be modified or whether other initiatives should be adopted in lieu of the current pilot.

[4] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NYSE–2010–47). *See also* Securities Exchange Act Release Nos. 63479 (December 9, 2010), 75 FR 78274 (December 15, 2010) (SR–NYSE–2010–80) and 64232 (April 7, 2011), 76 FR 20735 (April 13, 2011) (SR–NYSE–2011–17).

[5] Terms not defined herein are defined in NYSE Rule 128.

[6] Separately, the Exchange has proposed [sic] extend the effective date of the trading pause pilot under NYSE Rule 80C, which requires to [sic] the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day. *See* SR–NYSE–2011–40.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [7] of the Act, in general, and furthers the objectives of Section 6(b)(5) [8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the NYSE believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

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

Because the foregoing proposed rule change does not: (i) Significantly affect

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[11] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–41 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–NYSE–2011–41. This file number should be included on the subject line if e-mail 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2011–41 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20635 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65066; File No. SR–NYSEAmex–2011–58]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 128, Clearly Erroneous Executions, To Extend the Effective Date of the Pilot Until January 31, 2012

August 9, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 5, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') 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 self-regulatory organization. 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 NYSE Amex Equities Rule 128, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate until January 31, 2012. The pilot is currently scheduled to expire on August 11, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://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 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 those 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 parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 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 NYSE Amex Equities Rule 128, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate, until January 31, 2012.[4]

On September 10, 2010, the Commission approved, on a pilot basis, market-wide amendments to exchanges' rules for clearly erroneous executions to set forth clearer standards and curtail discretion with respect to breaking erroneous trades. In connection with this pilot initiative, the Exchange amended NYSE Amex Equities Rule 128(c), (e)(2), (f), and (g). The amendments provide for uniform treatment of clearly erroneous execution reviews (1) In Multi-Stock Events[5] involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[6] The amendments also eliminated appeals of certain rulings made in conjunction with other exchanges with respect to clearly erroneous transactions and limited the Exchange's discretion to deviate from Numerical Guidelines set forth in the Rule in the event of system disruptions or malfunctions.

If the pilot were not extended, the prior versions of paragraphs (c), (e)(2), (f), and (g) of NYSE Amex Equities Rule 128 would be in effect, and the NYSE Amex would have different rules than other exchanges and greater discretion in connection with breaking clearly erroneous transactions. The Exchange proposes to extend the pilot amendments to NYSE Amex Equities Rule 128 until January 31, 2012 in order to maintain uniform rules across markets and allow the pilot to continue to operate without interruption during the same period that the Rule 80C trading pause rule pilot is also in effect. Extension of the pilot would permit the Exchange, other national securities exchanges and the Commission to further assess the effect of the pilot on the marketplace, including whether additional measures should be added, whether the parameters of the rule should be modified or whether other initiatives should be adopted in lieu of the current pilot.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Act, in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the NYSE Amex believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[11] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[4] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NYSEAmex–2010–60). *See also* Securities Exchange Act Release Nos. 63480 (December 9, 2010), 75 FR 78333 (December 15, 2010) (SR–NYSEAmex–2010–116) and 64233 (April 7, 2011), 76 FR 20736 (April 13, 2011) (SR–NYSEAmex–2011–024).

[5] Terms not defined herein are defined in NYSE Amex Equities Rule 128.

[6] Separately, the Exchange has proposed extend [sic] the effective date of the trading pause pilot under NYSE Amex Equities Rule 80C, which requires to [sic] the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day. *See* SR–NYSEAmex–2011–57.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–58 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–NYSEAmex–2011–58. This file number should be included on the subject line if e-mail 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 NYSE Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2011–58 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20637 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65068; File No. SR–NASDAQ–2011–114]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to the Clearly Erroneous Rule

August 9, 2011.

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 August 5, 2011, The NASDAQ Stock Market LLC (''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 the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of recent amendments to Rule 11890, concerning clearly erroneous transactions, so that the pilot will now expire on January 31, 2012.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

11890. Clearly Erroneous Transactions

The provisions of paragraphs (C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, shall be in effect during a pilot period set to end on *January 31, 2012* [the earlier of August 11, 2011, or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies]. If the pilot is not either extended or approved permanent by *January 31, 2012* [the earlier of August 11, 2011, or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies], the prior versions of paragraphs (C), (c)(1), and (b) shall be in effect.

(a)–(f) No change.

* * * * *

[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 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

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., and National Stock Exchange, Inc., to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.[3] The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[4] On March 31, 2011, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on the earlier of August 11, 2011, or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5]

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

[4] Securities Exchange Act Release No. 63489; (December 9, 2010), 75 FR 78281 (December 15, 2010).

[5] Securities Exchange Act Release No. 64238 (April 7, 2011), 76 FR 20780 (April 13, 2011) (SR–NASDAQ–2011–043).

The Exchange believes that the pilot program has been successful in providing greater transparency and certainty to the process of breaking erroneous trades. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary.

Accordingly, the Exchange is filing to further extend the pilot program until January 31, 2012, and to eliminate language from the rule concerning the ''limit up/limit down'' mechanism.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[6] which requires the rules of an exchange to promote just and equitable principles of trade, 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[10] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–114 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–2011–114. This file number should be included on the subject line if e-mail 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 NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2011–114 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20638 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self- regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65069; File No. SR–Phlx–2011–106]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct a Typographical Error in Exchange Rule 1080

August 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on August 3, 2011, 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 is filing with the Commission a proposal to amend Exchange Rule 1080 (Phlx XL and XL II) to correct a typographical error.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to correct a typographical error in subsection (m)(iii)(D) of Rule 1080.

On July 13, 2011, the Exchange filed an immediately effective proposal to amend Phlx Rule 1080(m)[3] to make certain changes consistent with the upcoming implementation of Rule 15c3–5 under the Act (the ''Market Access Rule'').[4] There is a typographical error in new subsection (m) of Rule 1080. Inadvertently, the new text in Rule 1080(m) was labeled as Rule 1080(m)(iii)(D) rather than correctly as Rule 1080(m)(iii)(E). Therefore, the exchange is hereby correcting the error by relabeling the new subsection as Rule 1080(m)(iii)(E). Phlx is making no other changes to Rule 1080.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to promote just and equitable principles of trade, 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. The proposed rule change makes a minor clerical change to an existing Phlx rule.

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

Pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(3) thereunder,[8] NASDAQ has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, the Exchange believes that this proposal is immediately effective and operative upon filing.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–106 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–2011–106. This file number should be included on the subject line if e-mail 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 Number SR–Phlx–2011–106 and should be submitted on or before September 6, 2011.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64900 (July 18, 2011) (SR–Phlx–2011–99).

[4] 17 CFR 240.15c3–5.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20639 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65074; File No. SR–EDGA–2011–25]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.13 To Extend the Operation of a Pilot Program Pursuant to the Rule Until January 31, 2012

August 9, 2011.

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 August 5, 2011, the EDGA Exchange, Inc. (the ''Exchange'' or the ''EDGA'') 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 self-regulatory organization. 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 EDGA Rule 11.13 to extend the operation of a pilot pursuant to the Rule (the ''Pilot'') until January 31, 2012. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 the Statutory Basis for, the Proposed Rule Change

Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions, Rule 11.13, through January 31, 2012.

Background

The rule, explained in further detail below, was initially approved to operate under a Pilot program set to expire on December 10, 2010.[3] Then, it was subsequently extended by the Exchange to April 11, 2011.[4] Then, it was further extended by the Exchange through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5]

On September 10, 2010, the Commission approved, on a Pilot basis, changes to EDGA Rule 11.13 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[6] The Exchange also adopted additional changes to Rule 11.13 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.13.[7] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should be approved to continue on a Pilot basis through January 31, 2012.

Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[8] which requires the rules of an exchange to promote just and equitable principles of trade, 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. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous.

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 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGA–2010–03).

[4] *See* Securities Exchange Act Release No. 63517 (December 10, 2010), 75 FR 78318 (December 15, 2010) (SR–EDGA–2010–24).

[5] *See* Securities Exchange Act Release No. 64230 (April 7, 2011), 76 FR 20770 (April 13, 2011) (SR–EDGA–2011–12).

[6] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGA–2010–03).

[7] *Id.*

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self- regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

erroneous transactions.[11] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2011–25 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–EDGA–2011–25. This file number should be included on the subject line if e-mail 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 publicly available. All submissions should refer to File Number SR–EDGA–2011–25 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20696 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65073; File No. SR–EDGX–2011–24]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.13 To Extend the Operation of a Pilot Program Pursuant to the Rule Until January 31, 2012

August 9, 2011.

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 August 5, 2011, the EDGX Exchange, Inc. (the ''Exchange'' or the ''EDGX'') 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 self-regulatory organization. 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 EDGX Rule 11.13 to extend the operation of a pilot pursuant to the Rule (the ''Pilot'') until January 31, 2012. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 the Statutory Basis for, the Proposed Rule Change

Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions, Rule 11.13, through January 31, 2012.

Background

The rule, explained in further detail below, was initially approved to operate under a Pilot program set to expire on December 10, 2010.[3] Then, it was subsequently extended by the Exchange to April 11, 2011.[4] Then, it was further extended by the Exchange through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5]

On September 10, 2010, the Commission approved, on a Pilot basis, changes to EDGX Rule 11.13 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[6] The Exchange also adopted additional changes to Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGX–2010–03).

[4] *See* Securities Exchange Act Release No. 63515 (December 10, 2010), 75 FR 78319 (December 15, 2010) (SR–EDGX–2010–23).

[5] *See* Securities Exchange Act Release No. 64229 (April 7, 2011), 76 FR 20738 (April 13, 2011) (SR–EDGX–2011–11).

[6] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGX–2010–03).

11.13 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.13.[7] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should be approved to continue on a Pilot basis through January 31, 2012.

Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[8] which requires the rules of an exchange to promote just and equitable principles of trade, 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. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous.

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 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[11] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2011–24 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–EDGX–2011–24. This file number should be included on the subject line if e-mail 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 website 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 publicly available. All submissions should refer to File Number SR–EDGX–2011–24 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20695 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[7] *Id.*

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self- regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65072; File No. SR–ISE–2011–52]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 2102 To Extend the Pilot Program

August 9, 2011.

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 August 5, 2011, 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 and II below, which items have been prepared by the self-regulatory organization. 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 Rule 2102 (Hours of Business) to extend the expiration of the pilot rule.

The text of the proposed rule change is available on the Exchange's Internet Web site at *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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend ISE Rule 2102 to extend the expiration of the pilot rule. Initial amendments to ISE Rule 2102 to allow the Exchange to pause trading in an individual stock when the primary listing market for such stock issues a trading pause were approved by the Securities and Exchange Commission (''Commission'') on June 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot was then extended to expire on April 11, 2011.[4] On March 21, 2011, ISE Rule 2101 was amended to state that the pilot would expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, would apply.[5]

On September 10, 2010, ISE Rule 2102 was amended to expand the pilot rule to apply to the Russell 1000® Index and other specified exchange traded products.[6] On June 23, 2011, ISE Rule 2102 was amended again to expand the pilot rule to apply to all NMS Stocks.[7] The Exchange now proposes to extend the date by which this pilot rule will expire to January 31, 2012. Extending this pilot program will provide the exchanges with a continued opportunity to assess the effect of this rule proposal on the markets.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[8] which requires the rules of an exchange to promote just and equitable principles of trade, 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[9] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

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 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change as operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

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[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–ISE–2010–48).

[4] *See* Securities Exchange Act Release No. 63506 (December 9, 2010), 75 FR 78301 (December 15, 2010) (SR–ISE–2010–117).

[5] *See* Securities Exchange Act Release No. 64193 (April 5, 2011), 76 FR 20062 (April 11, 2011) (SR–ISE–2011–17).

[6] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–ISE–2010–66).

[7] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–ISE–2011–028).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2011–52 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–ISE–2011–52. This file number should be included on the subject line if e-mail 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–ISE–2011–52 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20694 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65071; File No. SR–FINRA–2011–038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Effective Date of the Trading Pause Pilot

August 9, 2011.

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 August 5, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to amend FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) to extend the effective date of the pilot, which is currently scheduled to expire on August 11, 2011, until January 31, 2012.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend FINRA Rule 6121.01 to extend the effective date of the pilot by which such rule operates, which is currently scheduled to expire on August 11, 2011, until January 31, 2012.

FINRA Rule 6121.01 provides that if a primary listing market has issued an individual stock trading pause under its rules, FINRA will halt trading otherwise than on an exchange in that security until trading has resumed on the primary listing market. The pilot was developed and implemented as a market-wide initiative by FINRA and other self-regulatory organizations (''SROs'') in consultation with Commission staff, and is currently applicable to the S&P 500® Index,[4] the Russell 1000® Index and a pilot list of Exchange Traded Products.[5] Beginning August 8, 2011, the pilot will cover all NMS stocks covered by the trading pause pilot rules of a primary listing market.[6]

The extension proposed herein would allow the pilot to continue to operate without interruption while FINRA and the other SROs further assess the effect of the pilot on the marketplace and whether other initiatives should be adopted in lieu of the current pilot.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

Additionally, extension of the pilot to January 31, 2012 would allow the pilot to continue to operate without

[4] *See* Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (Order Approving File No. SR–FINRA–2010–025).

[5] *See* Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (Order Approving File No. SR–FINRA–2010–033).

[6] *See* Securities Exchange Act Release No. 64735 (June 24, 2011), 76 FR 38243 (June 29, 2011) (Order Approving File No. SR–FINRA–2011–023).

[7] 15 U.S.C. 78*o*–3(b)(6).

interruption while FINRA and the other SROs further assess the effect of the pilot on the marketplace and whether other initiatives should be adopted in lieu of the current pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

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

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change as operative upon filing.[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.

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 e-mail to *rule-comments@sec.gov.* Please include File No. SR–FINRA–2011–038 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–FINRA–2011–038. This file number should be included on the subject line if e-mail 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 website 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 FINRA. 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–FINRA–2011–038 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20693 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires FINRA to give the Commission written notice of FINRA's 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 of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65070; File No. SR–CBOE–2011–076]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Extension of the CBSX Individual Stock Trading Pause Pilot Program

August 9, 2011.

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 August 5, 2011 the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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 Exchange has designated the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the individual stock trading pause pilot program pertaining to the CBOE Stock Exchange (''CBSX,'' the CBOE's stock trading facility). This rule change simply seeks to extend the pilot. No other changes to the pilot are being proposed. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 6.3C, *Individual Stock Trading Pauses Due to Extraordinary Market Volatility,* was approved by the Commission on June 10, 2010 on a pilot basis. The pilot is currently set to expire on the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Stocks.[5] The rule was developed in consultation with U.S. listing markets to provide for uniform market-wide trading pause standards for certain individual stocks that experience rapid price movement.[6] As the duration of the pilot expires on the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Stocks, the Exchange is proposing to extend the effectiveness of Rule 6.3C through January 31, 2012.

2. Statutory Basis

Extension of the pilot period will allow the Exchange to continue to operate the pilot on an uninterrupted basis. Accordingly, the Exchange believes the proposed rule change is consistent with the Act[7] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1)[10] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a stock when there are significant price movements.

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

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change as operative upon filing.[17]

[5] *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010)(SR–CBOE–2010–047)(approval order establishing pilot through December 10, 2010), 63502 (December 9, 2010), 75 FR 78306 (December 15, 2010)(SR–CBOE–2010–112)(extension of pilot through April 11, 2011) and 64194 (April 5, 2011), 76 FR 20389 (April 12, 2011)(SR–CBOE–2011–031)(extension of pilot through the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Stocks). *See also* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011)(notice of filing of national market system plan to address extraordinary market volatility, which contains a limit up-limit down mechanism for NMS stocks).

[6] The pilot list of stocks originally included all stocks in the S&P 500 Index, but it has been expanded over time to include all NMS stocks. *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010)(SR–CBOE–2010–065)(order approving expansion of the individual stock trading pause pilot to include all stocks in the Russell 1000 index and a pilot list of Exchange Traded Products) and 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011)(SR–CBOE–2011–049)(order approving further expansion of the individual stock trading pause pilot to include all NMS stocks effective August 8, 2011).

[7] 15 U.S.C. 78a *et seq.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2011–076 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–CBOE–2011–076. This file number should be included on the subject line if e-mail 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–CBOE–2011–076 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20692 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65057; File No. SR–CBOE–2011–070]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule To Waive the Trading Permit Holder Application Fee on the CBOE Stock Exchange for the Month of August 2011

August 8, 2011.

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 July 29, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 waive the Trading Permit Holder application fee on the CBOE Stock Exchange (''CBSX'') for the month of August 2011. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX normally applies the CBOE Trading Permit Holder Application Fees to any applicant that applies to be a CBSX Trading Permit Holder. CBSX hereby proposes, for the month of August 2011 only, to waive such fees and not charge any fees for applications to become a CBSX Trading Permit Holder. The purpose of this ''pricing special'' is to incentivize broker-dealers and other market participants who are not currently CBSX Trading Permit Holders to apply to become CBSX Trading Permit Holders and begin to effect transactions on CBSX. To that end, CBSX is willing to subsidize the application costs for the month of August 2011. The proposed waiver should incentivize broker-dealers and other market participants to apply to become CBSX Trading Permit Holders, and the increased number of Trading Permit Holders on CBSX will bring greater liquidity to CBSX, which would benefit all current CBSX Trading Permit Holders.

The proposed rule change will take effect on August 1, 2011 and cease effectiveness on August 31, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(4)[4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using Exchange facilities. A one-month, temporary waiver of a regular application fee is certainly reasonable because it makes applying to become a CBSX Trading Permit Holder free. The temporary waiver is equitable and not unfairly discriminatory because it waives the application fees for any party applying during August 2011 to become a CBSX Trading Permit Holder. The proposed waiver should incentivize

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

broker-dealers and other market participants to apply to become CBSX Trading Permit Holders, and the increased number of Trading Permit Holders on CBSX will bring greater liquidity to CBSX, which would benefit all current CBSX Trading Permit Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act [5] and subparagraph (f)(2) of Rule 19b–4 [6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–070 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–070. This file number should be included on the subject line if e-mail 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 Number SR–CBOE–2011–070 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20691 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65058; File No. SR–Phlx–2011–110]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to the Clearly Erroneous Rule

August 9, 2011.

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 August 5, 2011, NASDAQ OMX PHLX LLC (''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 the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of recent amendments to Rule 3312, concerning clearly erroneous transactions, so that the pilot will now expire on January 31, 2012.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 3312. Clearly Erroneous Transactions

The provisions of paragraphs (a)(2)(C), (b), and (c)(1) of this Rule, as amended by SR–Phlx–2010–125, shall be in effect during a pilot period set to end on *January 31, 2012*[the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies]. If the pilot is not either extended or approved permanent by *January 31, 2012*[the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies], the prior versions of paragraphs (a)(2)(C), (b), and (c)(1) shall be in effect.

(a)–(f) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[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

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., and National Stock Exchange, Inc. (collectively, the ''Exchanges''), to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.[3] The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. In connection with its resumption of trading of NMS Stocks through PSX, the Exchange amended Rule 3312 to conform it to the newly-adopted changes to the Exchanges' clearly erroneous rules, so that it could participate in the pilot program.[4] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[5] On March 31, 2011, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[6]

The Exchange believes that the pilot program has been successful in providing greater transparency and certainty to the process of breaking erroneous trades. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary.

Accordingly, the Exchange is filing to further extend the pilot program until January 31, 2012 and to eliminate language from the rule concerning the ''limit up/limit down'' mechanism.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[7] which requires the rules of an exchange to promote just and equitable principles of trade, 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[8] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[11] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PHLX–2011–110 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–2011–110. This file number should be included on the subject line if e-mail 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

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

[4] Securities Exchange Act Release No. 63023 (September 30, 2010), 75 FR 61802 (October 6, 2010).

[5] Securities Exchange Act Release No. 63491; (December 9, 2010), 75 FR 78297 (December 15, 2010).

[6] Securities Exchange Act Release No. 64239 (April 7, 2011), 76 FR 20789 (April 13, 2011) (SR–Phlx–2011–45).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1(a)(1).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 PHLX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–PHLX–2011–110 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20631 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65063; File No. SR–NASDAQ–2011–110]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Clerical Change to NASDAQ Options Market Rules

August 9, 2011.

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 August 2, 2011, The NASDAQ Stock Market LLC (the ''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 the Substance of the Proposed Rule Change

The Exchange proposes to renumber a subsection of NASDAQ Options Market Chapter VI, Section 10. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[3] NASDAQ proposes to implement the proposed rule change immediately.

* * * * *

Chapter VI, Trading Systems.

* * * * *

Section 10. Book Processing.

System orders shall be executed through the Nasdaq Book Process set forth below:

(1)–(5) No Change.

([5]*6*) Exception: Anti-Internalization—Quotes and orders entered by Options Market Makers using the same market participant identifier will not be executed against quotes and orders entered on the opposite side of the market by the same market maker using the same identifier. In such a case, the System will cancel the oldest of the quotes or orders back to the entering party prior to execution.

* * * * *

[3] Changes are marked to the rules of the Exchange found at *http://nasdaqomxbx.cchwallstreet.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 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

NASDAQ proposes to make a clerical correction to the NASDAQ rulebook. Specifically, NASDAQ proposes to renumber NASDAQ Options Market Chapter VI, Section 10. On June 14, 2011, NASDAQ submitted a proposed rule filing to adopt anti-internalization functionality for registered market makers on the NASDAQ Options Market. The Commission published the notice of filing and immediate effectiveness on June 23, 2011.[4] Although the rule change was effective upon filing, the change is not operative until August 1, 2011. The Exchange is renumbering this previously approved rule because another rule change has been approved that uses the same number. There is no change to the substance of the rule.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change makes a minor clerical change to an existing NASDAQ rule.

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.

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

Pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(3) thereunder,[8] NASDAQ has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, NASDAQ

[4] Securities Exchange Act Release No. 64696 (June 17, 2011), 76 FR 36950 (June 23, 2011) (SR–NASDAQ–2011–083).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(3).

believes that its proposal should become immediately effective.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–110 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–2011–110. This file number should be included on the subject line if e-mail 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 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–NASDAQ–2011–110 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20634 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65059; File No. SR–BX–2011–054]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to the Clearly Erroneous Rule

August 9, 2011.

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 August 5, 2011, NASDAQ OMX BX, Inc. (''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 the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of recent amendments to Rule 11890, concerning clearly erroneous transactions, so that the pilot will now expire on January 31, 2012.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

11890. Clearly Erroneous Transactions

The provisions of paragraphs (C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, shall be in effect during a pilot period set to end on *January 31, 2012* [the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies]. If the pilot is not either extended or approved permanent by *January 31, 2012* [the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies], the prior versions of paragraphs (C), (c)(1), and (b) shall be in effect. (a)–(f) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., and National Stock Exchange, Inc., to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.[3] The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

on April 11, 2011.[4] On March 31, 2011, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5]

The Exchange believes that the pilot program has been successful in providing greater transparency and certainty to the process of breaking erroneous trades. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary.

Accordingly, the Exchange is filing to further extend the pilot program until January 31, 2012 and to eliminate language from the rule concerning the ''limit up/limit down'' mechanism.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[6] which requires the rules of an exchange to promote just and equitable principles of trade, 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[10] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2011–054 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–2011–054. This file number should be included on the subject line if e-mail 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 BX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2011–054 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20632 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[4] Securities Exchange Act Release No. 63490 (December 9, 2010), 75 FR 78299 (December 15, 2010) (SR–BX–2010–086).

[5] Securities Exchange Act Release No. 64240 (April 7, 2011), 76 FR 20732 (April 13, 2011) (SR–BX–2011–019).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65078; File No. SR–CHX–2011–24]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Relating to Clearly Erroneous Transactions

August 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on August 8, 2011, the Chicago Stock Exchange, Inc. (''CHX'' or the ''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 CHX. CHX has filed this proposal pursuant to Exchange Act Rule 19b–4(f)(6) [3] which is effective upon filing with the Commission.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend its rules to extend the pilot program relating to clearly erroneous transactions. The text of this proposed rule change is available on the Exchange's Web site at (*http://www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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

In September, 2010, CHX obtained Commission approval of a filing amending its rules relating to clearly erroneous transactions on a pilot basis until December 10, 2010.[4] This program was subsequently extended until April 11, 2011 [5] and then extended again until August 11, 2011.[6] The proposed rule change merely extends the duration of the pilot program to January 31, 2011. Extending the pilot in this manner will allow the Commission more time to consider the impact of the pilot program.

2. Statutory Basis

Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1) [9] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning reviews of potentially clearly erroneous executions in various contexts, including reviews in the context of a Multi-Stock Event involving twenty or more securities and reviews resulting from a Trigger Trade and any executions occurring immediately after a Trigger Trade but before a trading pause is in effect on the Exchange. Further, the Exchange believes that the proposed changes enhance the objectivity of decisions made by the Exchange with respect to clearly erroneous executions.

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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)(iii) thereunder.[11] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[12] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 34–62886 (September 10, 2010), 75 FR 56613 September 16, 2010) approving SR–CHX–2010–13.

[5] *See* Securities Exchange Act Release No. 34–63487 (December 9, 2010), 75 FR 78279 December 15, 2010) regarding SR–CHX–2010–23.

[6] *See* Securities Exchange Act Release No. 64228 (April 7, 2011), 75 FR 20792 April 13, 2011) regarding SR–CHX–2011–06.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2011–24 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–CHX–2011–24. This file number should be included on the subject line if e-mail 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 publicly available. All submissions should refer to File Number SR–CHX–2011–24 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20700 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65076; File No. SR–BATS–2011–024]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

August 9, 2011.

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 July 29, 2011, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. 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 [sic] amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on August 1, 2011.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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 parts 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 the ''Options Pricing'' section of its fee schedule to: (i) Increase the fees applicable to removing liquidity from the BATS options market (''BATS Options''); (ii) decrease the rebates applicable to adding liquidity to BATS Options; (iii) decrease the rebates paid, subject to average daily volume requirements, for orders that set either the national best bid (the ''NBB'') or the national best offer (the ''NBO''); (iv) adopt a program to incentivize sustained, aggressive quoting in certain specified options series (the ''Quoting Incentive Program'' or ''QIP''); and (v) adopt a change to the standard routing fee for the CYCLE, RECYCLE, Parallel D, Parallel 2D, and Destination Specific routing strategies[6] charged for routing Customer[7] orders to certain markets.

(i) Increase to Liquidity Removal Fees

The Exchange currently charges standard fees of $0.30 per contract for Customer orders and $0.40 per contract for Firm and Market Maker[8] orders that remove liquidity from BATS Options. The Exchange proposes to increase this fee to $0.32 per contract for Customer orders and $0.42 per contract for Firm and Market Maker orders that remove liquidity from BATS Options, subject to potential reduction for any Member with an ADV of 0.30% or more of average TCV on BATS Options, as described below.

The Exchange currently maintains a tiered pricing structure through which Members can realize lower liquidity removal fees if such Members have an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] As defined in BATS Rules 21.1(d)(7) and 21.9(a)(2).

[7] As defined on the Exchange's fee schedule, a ''Customer'' order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (''OCC'').

[8] As set forth on the Exchange's fee schedule, and consistent with the definition of a Customer order, classification as Firm and Market Maker orders depends on the identification by a Member of the applicable clearing range at the OCC.

average daily volume (''ADV'')[9] equal to or greater than 0.30% of average total consolidated volume (''TCV'').[10] For Members reaching this volume threshold, the Exchange currently charges a fee of $0.27 per contract for Customer orders and $0.37 per contract for Firm and Market Maker orders. Thus, such Members currently save $0.03 per contract as compared to the standard fee to remove liquidity. While the Exchange proposes [sic] maintain this $0.03 savings per contract for those reaching the volume tier, due to the proposed increase described above for standard liquidity removal, the Exchange proposes to increase liquidity removal fees for Members that reach the volume tier by $0.02 per contract. Accordingly, for Members reaching the volume threshold, the Exchange will charge a fee of $0.29 per contract for Customer orders and $0.39 per contract for Firm and Market Maker orders.

(ii) Decrease to Liquidity Adding Rebate

The Exchange currently provides a rebate of $0.25 per contract for all Customer orders that add liquidity to BATS Options. The Exchange proposes to reduce the rebate for adding liquidity to $0.22 for Customer orders.

The Exchange currently provides a rebate of $0.25 per contract for Firm and Market Maker orders that are removed by Customer orders and $0.35 per contract for orders that are removed by Firm or Market Maker orders. The removing Member's fee is determined without regard to the capacity of the adding party. Consistent with the reduction of Customer rebates described above, the Exchange proposes to reduce each of these liquidity adding rebates by $0.03. Accordingly, the Exchange proposes to provide a rebate of $0.22 per contract for Firm and Market Maker orders that are removed by Customer orders and $0.32 per contract for orders that are removed by Firm or Market Maker orders. As is the case under the current pricing structure, the removing Member's fee will be determined without regard to the capacity of the adding party.

The Exchange believes that, because Members can neither see the capacity of orders in the Exchange's order book nor determine the capacity of the Member that removes an order, the proposal will not disadvantage public investors or Members. Lastly, the Exchange believes that the proposed change to the fee schedule is substantively similar to a pricing plan in place at NASDAQ OMX PHLX.[11]

(iii) Decrease to Rebates for NBBO Setter Rebate Program

The Exchange currently offers a rebate upon execution for all orders that add liquidity that sets either the NBB or NBO (the ''NBBO Setter Rebate''),[12] subject to certain volume requirements. The NBBO Setter Rebate currently offered by the Exchange to such Members is $0.40 per contract for Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and $0.50 per contract for Members with an ADV equal to or greater than 1% of TCV. The Exchange proposes to reduce the rebates paid to Members under the NBBO Setter Program by $0.05 per contract. Accordingly, the Exchange will provide an NBBO Setter Rebate of $0.35 per contract for Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and $0.45 per contract for Members with an ADV equal to or greater than 1% of TCV.

(iv) Adoption of Quoting Incentive Program (QIP)

BATS Options proposes to introduce a Quoting Incentive Program (QIP), through which BATS Options will provide a rebate of $0.03 per contract, in addition to any other liquidity rebate other than an NBBO Setter Program liquidity rebate, for executions subject to the QIP. The QIP will only apply to executions in options overlying XLF, CSCO, PFE, ORCL, and XRT. To qualify for the QIP a BATS Options Market Maker must be at the NBB or NBO 70% of the time for series trading between $0.03 and $5.00 for the front three (3) expiration months in that underlying during the current trading month. A Member not registered as a BATS Market Maker can also qualify for the QIP by quoting at the NBB or NBO 80% of the time in the same series.

The Exchange will determine whether a market maker qualifies for QIP rebates at the end of each month by looking back at each Member's (including BATS Options Market Makers) quoting statistics during that month. If at the end of the month a Market Maker meets the 70% criteria or a Member that is not registered as a BATS Options Market Maker meets the 80% criteria, the Exchange will provide the additional rebate for all executions subject to the QIP executed by that Market Maker or Member during that month. The Exchange will provide Members with a report on a daily basis with quoting statistics so such Members can determine whether or not they are meeting the QIP criteria. As noted above, the QIP will not be additive to NBBO Setter Program rebates. The Exchange is not proposing to impose any ADV requirements in order to qualify for the QIP at this time.

(v) Change to Standard Routing Fee

The Exchange currently charges a flat fee per contract of $0.06 for all executions of Customer orders routed through the CYCLE, RECYCLE, Parallel D, Parallel 2D and Destination Specific routing strategies in non-''Make/Take'' issues,[13] if applicable, routed to NYSE Amex, NYSE Arca, the Boston Options Exchange, the Chicago Board Options Exchange, the International Securities Exchange, or NASDAQ OMX PHLX. The Exchange's current fee of $0.06 per contract is the same amount per contract as the direct clearing costs paid by the Exchange in connection with the routing of Customer orders. However, there are additional infrastructure costs, including membership fees and connectivity costs, that are not captured by this fee. In order to recover additional fees to account for infrastructure costs related to routing, the Exchange proposes to increase this routing fee to $0.10 per contract. In contrast to Customer orders, the Exchange's fees for Firm and Market Maker orders already provide the Exchange with some additional revenue to cover infrastructure costs. Accordingly, the Exchange is not proposing to adjust its fees for routed Firm or Market Maker orders at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[9] As defined on the Exchange's fee schedule, ADV is average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis. The fee schedule also provides that routed contracts are not included in ADV calculation.

[10] As defined on the Exchange's fee schedule, TCV is total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

[11] *See* Securities Exchange Act Release No. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR–Phlx–2008–08) (notice of filing and immediate effectiveness to amend fees applicable to the Philadelphia Stock Exchange, including adopting a tiered subsidy that does not apply to Customer-to-Customer transactions).

[12] An order that is entered at the most aggressive price both on the BATS Options book and according to then current OPRA data will be determined to have set the NBB or NBO for purposes of the NBBO Setter Rebate without regard to whether a more aggressive order is entered prior to the original order being executed.

[13] As defined on the fee schedule, Make/Take pricing refers to executions at the identified Exchange under which ''Post Liquidity'' or ''Maker'' rebates (''Make'') are credited by that exchange and ''Take Liquidity'' or ''Taker'' fees (''Take'') are charged by that exchange.

the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[14] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it 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 changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also creating incentives to providing aggressively priced displayed liquidity. While Members that remove liquidity from the Exchange and/or route Customer orders through the Exchange's standard routing strategies will pay higher fees and Members that add liquidity to the Exchange will receive lower rebates due to the proposal, the increased revenue received by the Exchange will be used to fund programs that the Exchange believes will attract additional liquidity and thus improve the depth of liquidity available on the Exchange. Accordingly, the Exchange believes that the higher access and routing fees and lower rebates will benefit Members' results in trading on the Exchange to the extent the tiered rebate structure offered by the Exchange for adding liquidity, the continued operation of the NBBO Setter Program, and the adoption of the Quoting Incentive Program (QIP) incentivize liquidity providers to provide more aggressively priced liquidity.

Despite the increase in fees and decrease in rebates for all Members, the Exchange also believes that its proposed fee structure is fair and equitable as the Exchange's standard fees generally still remain lower, and standard rebates generally still remain higher, than standard fees charged and rebates paid by other markets with similar fee structures, such as NYSE Arca and Nasdaq. The Exchange further believes that the proposed change to the Exchange's standard routing fee for Customer orders to certain venues is competitive, fair and reasonable, and non-discriminatory in that the increase will allow the Exchange to cover additional infrastructure costs attendant with offering routing services. The Exchange also notes that although routing options are available to all Members, Members are not required to use the Exchange's routing services, but instead, the Exchange's routing services are completely optional. Members can manage their own routing to different options exchanges or can utilize a myriad of other routing solutions that are available to market participants. Additional revenue generated through the increased liquidity removal and routing fees as well as reduction of certain rebates, as described above, will allow the Exchange to offer competitive pricing and incentives, such as the NBBO Setter Program and QIP.

The Exchange believes that continuing to base its tiered fee structure and NBBO Setter Program based on overall TCV, rather than a static number of contracts irrespective of overall volume in the options industry, is a fair and equitable approach to pricing. Volume-based tiers such as the tiers in place on the Exchange have been widely adopted in the equities markets, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

Additionally, the Exchange believes that the proposed Quoting Incentive Program, similar to a fee structure in place on at least one of the Exchange's competitors,[16] will incentivize the provision of competitively priced, sustained liquidity that will create tighter spreads, benefitting both Members and public investors. The Exchange further believes that conditioning a Member's ability to receive the QIP's additional rebate on reaching one of the Exchange's quoting tiers is consistent with the Act for the reasons described above with respect to volume-based tiers. The Exchange also believes that providing a slightly lower threshold for meeting the QIP to registered BATS Options Market Makers appropriately incentivizes Members of BATS Options to register with the Exchange as Options Market Makers. While the Exchange does wish to allow participation in the QIP by all Members, the Exchange believes that registration by additional Members as Market Makers will help to continue to increase the breadth and depth of quotations available on the Exchange. The Exchange notes that in addition to the fact that the QIP will be available to all Members, the proposal is not unfairly discriminatory despite a slightly higher quotation requirement for non-Market Makers due to the fact that registration as a BATS Options Market Maker is equally available to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act[17] and Rule 19b–4(f)(2) thereunder,[18] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] *See* Securities Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25) (notice of filing and immediate effectiveness of changes to fees and rebates including adoption of specific rebates for market makers qualifying for the Market Maker Plus program).

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2011–024 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–BATS–2011–024. This file number should be included on the subject line if e-mail 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–BATS–2011–024 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20699 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65075; File No. SR–FINRA–2011–037]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to FINRA Rule 11892 Governing Clearly Erroneous Transactions

August 9, 2011.

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 August 5, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) to extend the effective date of the pilot, which is currently scheduled to expire on August 11, 2011, until January 31, 2012.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA proposes to amend FINRA Rule 11892.02 to extend the effective date of the amendments set forth in File No. SR–FINRA–2010–032 (the ''pilot''), which are currently scheduled to expire on August 11, 2011, until January 31, 2012.[4]

The pilot was drafted in consultation with other self-regulatory organizations (''SROs'') and Commission staff to provide for uniform treatment: (1) Of clearly erroneous execution reviews in Multi-Stock Events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect for transactions otherwise than on an exchange. FINRA also implemented additional changes to the Rule as part of the pilot that reduce the ability of FINRA to deviate from the objective standards set forth in the Rule.[5]

The extension proposed herein would allow the pilot to continue to operate without interruption while FINRA and the other SROs further assess whether the pilot should be adopted permanently and whether other initiatives should be adopted in lieu of the current pilot.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the clearly erroneous rules of other SROs and will promote the goal of transparency and uniformity across markets concerning reviews of potentially clearly erroneous executions in various contexts. Further, FINRA

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 64237 (April 7, 2011), 76 FR 20782 (April 13, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2011–014).

[5] *See* Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (Order Approving File No. SR–FINRA–2010–032).

[6] 15 U.S.C. 78*o*–3(b)(6).

believes that the proposed changes enhance the objectivity of decisions made by FINRA with respect to clearly erroneous executions.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6)(iii) thereunder.[8] FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[9] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2011–037 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–FINRA–2011–037. This file number should be included on the subject line if e-mail 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2011–037 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20697 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that FINRA has satisfied this requirement.

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65062; File No. SR–NYSE–2011–39]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Credits to Supplemental Liquidity Providers

August 9, 2011.

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 August 1, 2011, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2011 Price List (''Price List'') for equity transactions to amend the tiered structure of credits to Supplemental Liquidity Providers (''SLPs'') for adding liquidity to the Exchange in NYSE-listed securities with a per share stock price of $1.00 or more, to include criteria based on an SLP's Average Daily Volume (''ADV'') in added liquidity in the applicable month. The amended pricing will take effect on August 1, 2011. The text of the proposed rule change is available at the Exchange, at *http://www.nyse.com,* at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov.*

[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 those 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 parts 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 tiered structure of credits to SLPs for adding liquidity to the Exchange in NYSE-listed securities. The Exchange proposes to change the tiered volume requirements in the Price List from numerical thresholds (*e.g.,* 50 million shares) to a combination of numerical thresholds and percentage thresholds of US ADV (*e.g.,* 1.25% of US ADV).[3] The percentage threshold volume requirements to reach the tiered pricing levels will be fixed and not variable and will result in share volume that will adjust each month based on US average daily consolidated share volume in Tape A securities (''US Tape A ADV'') for that given month. US Tape A ADV is equal to the volume reported by all exchanges and trade reporting facilities to the Consolidated Tape Association (''CTA'') Plan for Tape A securities. The Exchange currently makes this data publicly available on a T + 1 basis from a link at *http://www.nyxdata.com/US-andEuropean-Volumes.* The percentage approach is in line with those adopted by NYSE Arca, Inc. (''NYSE Arca''), NASDAQ Stock Market LLC and EDGX Exchange, Inc. for liquidity providers.[4]

Under the current tiered structure of credits, SLPs that meet the 10% average or more quoting requirement in an assigned security pursuant to NYSE Rule 107B receive a credit per share per transaction for adding liquidity, based on total ADV of added liquidity in the applicable month for all assigned SLP securities, as follows:[5]

- $0.0022 credit per share per transaction if total ADV of added liquidity is more than 50 million shares;
- $0.0021 credit per share per transaction if total ADV of added liquidity is more than 20 million shares but not more than 50 million shares;
- $0.0020 credit per share per transaction if total ADV of added liquidity is more than 10 million shares but not more than 20 million shares.[6]

The Exchange proposes to amend such credits with respect to SLP transactions as described below. SLPs that meet the 10% average or more quoting requirement in an assigned security pursuant to NYSE Rule 107B will receive a credit per share per transaction for adding liquidity, based on total ADV of added liquidity in the applicable month for all assigned SLP securities, as follows:

- 0.0022 credit per share per transaction if added liquidity is the greater of (a) an ADV of more than 35 million shares or (b) more than 1.25% of US Tape A ADV (''SLP Tier 1'');
- $0.0021 credit per share per transaction if added liquidity is the greater of (a) an ADV of more than 15 million shares but not more than 35 million shares or (b) more than 0.50% but not more than 1.25% of US Tape A (''SLP Tier 2''); and
- $0.0020 credit per share per transaction if added liquidity is an ADV of more than 10 million shares but not more than the greater of 15 million shares or 0.50% of US Tape A ADV (''SLP Tier 3'').

The following table sets forth the differences between the current thresholds for the SLP credits as well as the proposed structure:

SLP Tier	SLP Credit per share per qualified provide share	Current daily provide ADV requirement	Proposed new daily provide ADV requirement
1	$0.0022	More than 50,000,000 shares	More than 1.25% of US Tape A ADV or 35,000,000 shares, whichever is greater.
2	0.0021	More than 20,000,000 shares but not more than 50,000,000 shares.	More than 0.50% of US Tape A ADV or 15,000,000 shares, whichever is greater, but not more than 1.25% of US Tape A ADV or 35,000,000 shares, whichever is greater.
3	0.0020	More than 10,000,000 shares but not more than 20,000,000 shares.	More than 10,000,000 shares but not more than 0.50% of US Tape A ADV or 15,000,000 shares, whichever is greater.

The proposed ADV thresholds for SLP Tiers 1 and 2 will fluctuate according to monthly market volumes, but will be subject to fixed minimum numerical thresholds as shown in the following example.

Example: In a month in which the US Tape A ADV is 3.5 billion shares, the requirement for SLP Tier 1 would be 1.25% or 43.75 million shares ADV, and the requirement for SLP Tier 2 would be 0.5% or 17.5 million shares ADV. In a month in which US Tape ADV falls to 2 billion shares, the requirement for Tier 1 would be the greater of 35 million shares and 1.25% of US Tape A ADV, or 25 million shares, so the minimum would be 35 million shares. In that same month, the requirement for SLP Tier 2 would be the greater of 15 million shares ADV and 0.5% of US Tape A, or 10 million shares, so the minimum ADV would be 15 million shares.

The minimum numerical thresholds for SLP Tier 2 of 15 million and for SLP Tier 1 of 35 million are set lower than the current numerical thresholds of 20 million for SLP Tier 2 and 50 million for SLP Tier 1 because current equity market volume has declined from recent historical levels.

The Exchange is proposing to add numerical minimum ADV thresholds to

[3] For purposes of transaction fees and Supplemental Liquidity Provider liquidity credits, ADV calculations exclude early closing days.

[4] *See* Securities Exchange Act Release Nos. 64627 (June 8, 2011), 76 FR 34788 (June 14, 2011) (SR–NYSEArca–2011–35); 64453 (May 10, 2011), 76 FR 28252 (May 16, 2011) (SR–NASDAQ–2011–062); 64632 (June 8, 2011), 76 FR 34792 (June 14, 2011) (SR–EDGX–2011–17). In addition, other exchanges have included both percentage thresholds and minimum numeric thresholds as tier requirements. *See, e.g.,* Securities Exchange Act Release No. 64820 (July 6, 2011, 76 FR 40974 (July 12, 2011) (SE–NYSEArca–2011–41).

[5] *See* Securities Exchange Act Release No. 63642 (January 4, 2011), 76 FR 1653 (January 11, 2011) (SR–NYSE–2010–87).

[6] For all other SLP transactions that add liquidity to the Exchange but do not qualify for any of the foregoing credits, the credit is $0.0015 per share per transaction. In addition, in its first calendar month as an SLP, an SLP qualifies for the tiered credits regardless of whether it meets the requirement to provide liquidity with an ADV of more than 10 million shares.

the percentage ADV thresholds in SLP Tier 1 and SLP Tier 2 in order to facilitate the determination of the applicable credits per share and prevent crossing between tiers in low volume months. For example, in a month with less than 2 billion US Tape A ADV, SLP Tier 2's 0.50% percentage ADV threshold would fall below the SLP Tier 3 requirement (e.g., 0.50% of 1.5 billion US Tape A ADV is equal to 7.5 million ADV, which is less than the 10 million SLP Tier 3 requirement.)

The Exchange believes that the SLP Tier 3 minimum requirement of 10 million ADV, which remains unchanged and not tied to any percentage ADV threshold, continues to be an appropriate minimum requirement for the SLP program, given that it is a reasonable requirement to get a significantly larger increase of $.0005 over the client rebate of $.0015, and that the larger volume requirements needed for SLP Tier 2 and SLP Tier 1 are likely to be more sensitive to fluctuations in market volumes. In addition, the SLP Tier 3 maximum requirement is being lowered from 20 million ADV to 15 million ADV in order to correspond to, and avoid overlap with, the minimum 15 million ADV requirement in SLP Tier 2.

For two of its SLP Tiers, NYSE is moving to an approach that will compare the liquidity added by an SLP to the greater of a numerical threshold or a percentage threshold based upon the average daily traded volume of the relevant security, for several reasons. The percentage threshold will adjust each calendar month based on the U.S. average daily consolidated share volume in Tape A Securities for that month, while the numerical threshold remains unchanged from month to month, thereby providing a consistent floor against which to measure the SLPs' performance. The Exchange also believes that the proposed approach will provide a more straightforward way to communicate floating volume tiers, while maintaining a minimum threshold, which, as noted above, is an approach similar to that adopted by other exchanges.[7] The Exchange notes that the combined approach will allow tiers to move in sync with consolidated volume while maintaining a numerical threshold. While the percentage thresholds will result in lower minimum share volume requirements for SLP Tier 1 and SLP Tier 2 when consolidated volumes are lower, they will also result in higher minimum share volume requirements when consolidated volumes are higher. Such higher and lower consolidated volumes will have a similar impact on the maximum share requirements for SLP Tier 2 and SLP Tier 3; however, the minimum share requirement for SLP Tier 3 will remain unchanged at 10 million shares.

These changes are intended to be effective immediately for all transactions beginning August 1, 2011 and are only applicable to those NYSE-listed securities with a per share stock price of $1.00 or more.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''), in general, and Section 6(b)(4) of the Act,[8] 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 member organizations and other market participants will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms.

With respect to the addition of percentage ADV thresholds to the existing share thresholds for certain of NYSE's existing pricing tiers, NYSE believes that the change is reasonable, because the levels of liquidity provision required to receive the applicable credits will move month to month with respect to the levels of market volumes. NYSE believes the levels of activity required to achieve higher tiers will be generally consistent with existing requirements for these tiers. Moreover, like existing pricing tiers tied to volume levels, as in effect at NYSE and other markets, the proposed pricing tiers are equitable and non-discriminatory because they are open to all SLPs on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher volumes.

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 or changes a due, fee, or other charge imposed on its members by the Exchange. 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 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2011–39 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.

[7] *See* note 2, *supra.*

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

All submissions should refer to File Number SR–NYSE–2011–39. This file number should be included on the subject line if e-mail 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–NYSE–2011–39 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20640 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65060; File No. SR–CBOE–2011–077]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Extension of a CBSX Clearly Erroneous Policy Pilot Program

August 9, 2011.

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 August 5, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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 Exchange has designated the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a clearly erroneous policy pilot program pertaining to the CBOE Stock Exchange (''CBSX'', the CBOE's stock trading facility). This rule change simply seeks to extend the pilot. No other changes to the pilot are being proposed. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Certain amendments to Rule 52.4, *Clearly Erroneous Policy,* were approved by the Commission on September 10, 2010 on a pilot basis. The pilot is currently set to expire on the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Stocks as defined in Interpretation and Policy .03 of Rule 6.3C.[5] The clearly erroneous policy changes were developed in consultation with other markets and the Commission staff to provide for uniform treatment: (i) Of clearly erroneous execution reviews in Multi-Stock Events involving twenty or more securities; and (ii) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange. Additional changes were also made to Rule 52.4 that reduce the ability of the Exchange to deviate from the objective standards set forth in the Rule. As the duration of the pilot expires on the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Stocks as defined in Interpretation and Policy .03 of Rule 6.3C, the Exchange is proposing to extend the effectiveness of the clearly erroneous policy changes to Rule 52.4 through January 31, 2012.

2. Statutory Basis

Extension of the pilot period will allow the Exchange to continue to operate the pilot on an uninterrupted basis. Accordingly, the Exchange believes the proposed rule change is consistent with the Act[6] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any

[5] Securities Exchange Act Release Nos. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–CBOE–2010–056) (approval order establishing pilot through December 10, 2010), 63485 (December 9, 2010), 75 FR 78278 (December 15, 2010) (SR–CBOE–2010–113) (extension of pilot through April 11, 2011), and 64227 (April 7, 2011), 76 FR 20796 (April 13, 2011) (SR–CBOE–2011–032) (extension of pilot through the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Stocks as defined in Interpretation and Policy .03 of Rule 6.3C, *Individual Stock Trading Pause Due to Extraordinary Market Volatility*).

[6] 15 U.S.C. 78a *et seq.*

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78(f)(b)(5).

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 proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6)(iii) thereunder.[10] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[11] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–077 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–077. This file number should be included on the subject line if e-mail 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2011–077 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20641 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65067; File No. SR–NSX–2011–09]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules To Extend Pilot Program Regarding Clearly Erroneous Executions

August 9, 2011.

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 August 5, 2011, National Stock Exchange, Inc. 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 comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing to amend its rules to extend a certain pilot program regarding clearly erroneous executions.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.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 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

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to extend the pilot program currently in effect regarding clearly erroneous executions under NSX Rule 11.19. Currently, unless otherwise extended or approved permanently, this pilot program will expire on August 11, 2011 or the date on which the limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Securities as defined in Commentary .05 of Rule 11.20. The instant rule filing proposes to [sic] the pilot program until January 31, 2012.

NSX Rule 11.19 (Clearly Erroneous Executions) was approved by the Securities and Exchange Commission (the ''Commission'') on September 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot program end date was subsequently extended until April 11, 2011.[4] Similar rule changes were adopted by other markets in the national market system in a coordinated manner. During the pilot period, the Exchange, in conjunction with the Commission and other markets, has continued to assess the effectiveness of the pilot program. The pilot program end date was further extended until August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted applies.[5] The Exchange, in consultation with other markets and the Commission, has determined that the duration of this pilot program should be extended until January 31, 2012. Accordingly, pursuant to the instant rule filing, the expiration date of the pilot program referenced in the first two sentences of Rule 11.19 is proposed to be changed from ''the earlier of August 11, 2011 or the date on which the limit up/limit down mechanism, if adopted, applies to the Circuit Breaker Securities'' to ''January 31, 2012.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) and Section 11A of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed, among other things, to promote clarity, transparency and full disclosure, in so doing, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. Moreover, the proposed rule change is not discriminatory in that it uniformly applies to all ETP Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written 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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[10] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2011–09 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–NSX–2011–09. This file number should be included on the subject line if e-mail 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

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NSX–2010–07).

[4] *See* Securities Exchange Act Release No. 63484 (December 9, 2010), 75 FR 78330 (December 15, 2010) (SR–NSX–2010–16).

[5] *See* Securities Exchange Act Release No. 34–64242 (April 7, 2011), 76 FR 20763 (April 15, 2011) (SR–NSX–2011–05).

[6] 15 U.S.C. 78f(b) and 15 U.S.C. 78k–1, respectively.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NSX–2011–09 and should be submitted on or before September 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20642 Filed 8–12–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12647 and #12648]

Oklahoma Disaster Number OK–00052

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–1989–DR), dated 06/21/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 05/22/2011 through 05/25/2011.

Effective Date: 08/03/2011.

Physical Loan Application Deadline Date: 08/22/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 03/21/2012.

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 President's major disaster declaration for Private Non-Profit organizations in the State of Oklahoma, dated 06/21/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Craig, Nowata.

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. 2011–20650 Filed 8–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12653 and #12654]

North Dakota Disaster Number ND–00024

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1981–DR), dated 06/24/2011.

Incident: Flooding.

Incident Period: 02/14/2011 through 07/20/2011.

Effective Date: 08/04/2011.

Physical Loan Application Deadline Date: 08/23/2011.

EIDL Loan Application Deadline Date: 03/21/2012.

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 State of North Dakota, dated 06/24/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Physical Damage and Economic Injury Loans): Benson.

Contiguous Counties: (Economic Injury Loans Only): North Dakota: Eddy, Wells.

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. 2011–20651 Filed 8–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12586 and #12587]

North Dakota Disaster Number ND–00025

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA–1981–DR), dated 05/10/2011.

Incident: Flooding.

Incident Period: 02/14/2011 through 07/20/2011.

Effective Date: 08/04/2011.

Physical Loan Application Deadline Date: 07/11/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/10/2012.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of North Dakota, dated 05/10/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Sioux, Standing Rock Indian Reservation.

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. 2011–20653 Filed 8–12–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7555]

Waiver of Restriction on Assistance to Lebanon

Pursuant to Section 7086(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117), as carried forward by the Full-Year Continuing Appropriations Act, 2011 (Div. B, Pub. L. 112–10) (''the Act''), and Department of State

Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7086(c)(1) of the Act with respect to Lebanon and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: June 6, 2011.

Thomas Nides,

Deputy Secretary of State, Management and Resources, Department of State.

[FR Doc. 2011–20689 Filed 8–12–11; 8:45 am]

BILLING CODE 4710–31–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved or Rescinded for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved or rescinded by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: June 1, 2011, through June 30, 2011.

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; e-mail: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval or rescission 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. Talisman Energy USA Inc., Pad ID: 05 253 Senn W, ABR–201106001, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: June 2, 2011.

2. EQT Production Company, Pad ID: Wohler, ABR–201106002, Chest Township, Clearfield County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: June 6, 2011.

3. SWEPI LP, Pad ID: Drake 274, ABR–201106003, Lawrence Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 9, 2011.

4. Chesapeake Appalachia, LLC, Pad ID: Ford, ABR–201106004, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 9, 2011.

5. Chesapeake Appalachia, LLC, Pad ID: Sophia, ABR–201106005, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 10, 2011.

6. SWEPI LP, Pad ID: Wood 626, ABR–201106006, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 10, 2011.

7. Chesapeake Appalachia, LLC, Pad ID: GB, ABR–201106007, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 13, 2011.

8. Chief Oil & Gas LLC, Pad ID: Polovitch East Drilling Pad #1, ABR–201106008, Nicholson Township, Wyoming County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: June 13, 2011.

9. Citrus Energy Corporation, Pad ID: Johnston 1 Pad, ABR–201106009, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: June 13, 2011.

10. Chesapeake Appalachia, LLC, Pad ID: Neal, ABR–201106010, Leroy Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 14, 2011.

11. SWEPI LP, Pad ID: Watkins 820, ABR–201106011, Chatham Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 14, 2011.

12. Chesapeake Appalachia, LLC, Pad ID: Mel, ABR–201106012, Franklin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 17, 2011.

13. Chesapeake Appalachia, LLC, Pad ID: Knickerbocker, ABR–201106013, Franklin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 17, 2011.

14. Chesapeake Appalachia, LLC, Pad ID: IH, ABR–201106014, Stevens Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 17, 2011.

15. Chesapeake Appalachia, LLC, Pad ID: J & J, ABR–201106015, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 20, 2011.

16. Chesapeake Appalachia, LLC, Pad ID: Wootten, ABR–201106016, Mehoopany Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 21, 2011.

17. SWEPI LP, Pad ID: Brucklacher 734, ABR–201106017, Jackson Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 21, 2011.

18. Chesapeake Appalachia, LLC, Pad ID: Quail, ABR–201106018, Fox Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 21, 2011.

19. Anadarko E&P Company LP, Pad ID: Larrys Creek F&G Pad H, ABR–201106019, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 24, 2011.

20. Anadarko E&P Company LP, Pad ID: H Lyle Landon Pad A, ABR–201106020, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 24, 2011.

21. Chesapeake Appalachia, LLC, Pad ID: T&T, ABR–201106021, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 27, 2011.

22. Chesapeake Appalachia, LLC, Pad ID: Arch, ABR–201106022, Sweden Township, Potter County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 27, 2011.

23. Chesapeake Appalachia, LLC, Pad ID: Lambs Farm, ABR–201106023, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 27, 2011.

24. Chesapeake Appalachia, LLC, Pad ID: Nichols, ABR–201106024, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 27, 2011.

25. Talisman Energy USA Inc., Pad ID: 07 185 Camp Comfort, ABR–201106025, Middletown Township, Susquehanna County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: June 27, 2011.

26. SWEPI LP, Pad ID: Youst 405, ABR–201106026, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 30, 2011.

27. Anadarko E&P Company LP, Pad ID: COP Tract 728 Pad B, ABR–201106027, Watson Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 30, 2011.

28. Novus Operating, LLC, Pad ID: Lucca, ABR–201106028, Covington and Sullivan Townships, Tioga County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: June 30, 2011.

29. Talisman Energy USA Inc., Pad ID: 02 011 DCNR 587, ABR–201106029, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: June 30, 2011.

30. EXCO Resources (PA), LLC, Pad ID: Poor Shot East Drilling Pad #2, ABR–20100681.1, Anthony Township, Lycoming County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: June 30, 2011.

Rescinded Approvals By Rule Issued Under 18 CFR 806.22(f):

1. Hydro Recovery, LP, Blossburg Municipal Authority, ABR–201010061, Blossburg Borough, Tioga County, Pa.; Consumptive Use of up to 0.100 mgd; Approval Date: October 21, 2010, Rescinded Date: June 30, 2011.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: August 5, 2011.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2011–20609 Filed 8–12–11; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic (1) Galvanized ground bushing (¾″–4″) for electrical systems; (2) Form 5/Form 7 conduit body assembly (1.5″, 2″); and (3) sealing locknuts (1.5″, 2″), for Federal-aid project #X–STP–5900 (212), South Auditorium lighting, phase 1, in Portland, Oregon.

DATES: The effective date of the waiver is August 16, 2011.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via e-mail at *gerald.yakowenko@dot.gov*. For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via e-mail at *michael.harkins@dot.gov*. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate to use non-domestic (1) Galvanized ground bushing (¾″–4″) for electrical systems; (2) Form 5/Form 7 conduit body assembly (1.5″, 2″); and (3) sealing locknuts (1.5″, 2″), for Federal-aid project #X–STP–5900(212), South Auditorium lighting, phase 1, in Portland, Oregon.

In accordance with Division A, section 123 of the ''Consolidated Appropriations Act, 2010'' (Pub. L. 111–117), the FHWA published a notice of intent to issue a waiver on its Web site for (1) Galvanized ground bushing (¾″–4″) for electrical systems; (2) Form 5/Form 7 conduit body assembly (1.5″, 2″); and (3) Sealing Locknuts (1.5″, 2″) for the Federal-aid project in Oregon (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=52*) on January 10th. The FHWA received six comments in response to the publication. Four comments opposed the approval of the waiver request but did not suggest any domestic manufacturer of the galvanized ground bushing (¾″–4″), Form 5/Form 7 conduit body assembly (1.5″, 2″), or sealing locknuts (1.5″, 2″). One commenter supported granting the waiver, and the sixth commenter did not express support or opposition toward the waiver. During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers for galvanized ground bushing (¾″–4″), Form 5/Form 7 conduit body assembly (1.5″, 2″), and sealing locknuts (1.5″, 2″). Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers of galvanized ground bushing (¾″–4″), Form 5/Form 7 conduit body assembly (1.5″, 2″), and sealing locknuts (1.5″, 2″) for the Federal-aid project #X–STP–5900(212).

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the Oregon waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.

Issued on: August 4, 2011.

Victor M. Mendez,

Federal Highway Administrator.

[FR Doc. 2011–20667 Filed 8–12–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Regulatory Guidance Concerning Household Goods Carriers Requiring Shippers To Sign Blank or Incomplete Documents

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice of Regulatory Guidance.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) issues regulatory guidance to clarify the appropriate and intended use of blank or incomplete documents under 49 CFR 375.501(d). Carriers may require shippers to sign incomplete, but not blank, documents so long as the omitted information is limited to: (1) The actual weight of the shipment, in the case of non-binding estimates; and (2) unforeseen charges incurred in transit. This guidance also clarifies that carriers may not require shippers to sign ''Revised Written Estimates,'' ''Rescissions of Old Estimate,'' or other documents authorizing the carrier to rescind an estimate unless the shipper and carrier mutually agree to amend the estimate, and the shipper signs a new estimate before the carrier loads the shipment.

DATES: Effective date: This regulatory guidance is effective on August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Rodgers, Division Chief, Commercial Enforcement, 1200 New Jersey Avenue, SE., Washington, DC 20590, *telephone:* (202) 366–0073.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Interstate Commerce Commission Termination Act of 1995 (ICCTA)

(Pub. L. 104–88, 109 Stat. 803) provides that ''the Secretary may issue regulations, including regulations protecting individual shippers, in order to carry out this part with respect to the transportation of household goods by motor carriers subject to jurisdiction under subchapter I of chapter 135. The regulations and paperwork required of motor carriers providing transportation of household goods shall be minimized to the maximum extent feasible consistent with the protection of individual shippers.'' (49 U.S.C. 14104(a)(1)). In the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, December 9, 1999, 113 Stat. 1750), which established FMCSA as a separate agency within the U.S. Department of Transportation (DOT), Congress authorized the Agency to regulate motor carriers transporting household goods for individual shippers.

Background

This document provides regulatory guidance on the Agency's interpretation of 49 CFR 375.501(d)(1) and (2). Those sections, which were adopted as a part of a technical amendment in 2004 (69 FR 10570 (Mar. 5, 2004)), provide:

(d)(1) You may provide the individual shipper with blank or incomplete estimates, orders for service, bills of lading, or any other blank or incomplete documents pertaining to the move.

(2) You may require the individual shipper to sign an incomplete document at origin provided it contains all relevant shipping information except the actual shipment weight and any other information necessary to determine the final charges for all services performed.

The original version of § 375.501(d), published as an interim final rule, prohibited carriers from requiring individual shippers to sign blank or incomplete estimates, orders for service, bills of lading, or any other blank or incomplete documents pertaining to the move. (68 FR 35064 (June 11, 2003)). In response to industry comments, the Agency amended § 375.501(d) to permit carriers to require shippers to sign incomplete documents so long as the documents contain all of the relevant shipping information. In doing so, the Agency recognized that certain information, such as actual final weight and other transit charges, may not be available until after the shipment is in transit.

Basis for This Notice

The Agency has received numerous consumer complaints concerning household goods carriers and brokers that are requiring shippers to sign blank or incomplete documents and then adding unauthorized charges later. Specifically, the complaints identify carriers that required shippers to sign a blank or incomplete form entitled ''Revised Written Estimate'' or ''Rescission of Old Estimate.'' This form, when fully executed and completed, authorizes the carrier to rescind the original estimate and give a new estimate under the guise of ''changed circumstances.'' ''Changed circumstances'' generally occur when a shipper requests additional services or provides additional goods for shipment. Although the form, on its face, may be used for legitimate changes requested by shippers, in many cases, it is being used to defraud shippers who have not requested additional services or changes to their moves.

Verified consumer complaints show that some carriers require shippers to execute this incomplete or blank document before loading shipments and then use the form to rescind the original estimates. The carrier then improperly converts non-binding estimates to binding estimates for significantly increased amounts or alters the pre-existing binding estimates once the shipment is in transit. The carrier makes these changes without the shippers' knowledge after the shipment is in transit. The practical effect of this practice is to force shippers unknowingly to waive their rights to the consumer protection regulations as set forth at 49 CFR 375.403 and 375.405.

Carriers using these practices interpret § 375.501(d)(2) to authorize this conduct. Such carriers also cite § 375.501(d)(2) to support using ''Revised Written Estimate''/''Rescission of Old Estimate'' forms, which were specifically designed in response to the 2004 technical amendments. The FMCSA rejects this interpretation and believes that such conduct is unlawful. The 2004 amendments were intended to address the fact that certain information related to the shipment could not be determined until after the shipment was in transit. The FMCSA did not amend § 375.501(d) to allow carriers to supersede the stringent consumer protections provided in part 375. In most cases brought to the Agency's attention, carriers have used blank or incomplete documents to increase estimates after loading without the consent or knowledge of shippers.

The FMCSA rejects these carriers' interpretation of 49 CFR 375.501(d) and believes that their conduct violates existing regulations in part 375. The FMCSA is issuing this regulatory guidance to eliminate any ambiguity or confusion concerning the scope of these regulatory provisions and to protect consumers from future harm.

Regulatory Guidance

Part 375—Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations

Sections interpreted

Section 375.501(d)(1) and (2) Blank or incomplete documents:

Question 1: May household goods motor carriers require shippers to sign blank documents before loading a shipment?

Guidance: No, movers may not require shippers to sign blank documents before loading a shipment. Movers may provide blank documents to shippers for information purposes only.

Question 2: May household goods movers require shippers to sign incomplete documents before loading the shipment?

Guidance: A mover may require a shipper to sign an incomplete, but not blank, document before loading at the shipment's origin so long as the document contains all of the relevant shipment information. Movers may only omit information that cannot be determined before loading, such as actual shipment weight in the case of shipments moved under non-binding estimates or unforeseen charges incurred in transit.

Question 3: May household goods movers require shippers to sign ''Revised Written Estimates,'' ''Rescissions of Old Estimate'' or other documents authorizing the mover to rescind the estimate as a condition of loading a shipment?

Guidance: Movers may not require shippers to sign ''Revised Written Estimates,'' ''Rescissions of Old Estimate'' or other documents authorizing the mover to rescind the estimate as a condition of loading the shipment unless the shipper and carrier mutually agree to amend the estimate and the shipper signs a new estimate before the carrier loads the shipment. In accordance with 49 CFR 375.501(f), 375.401(h) and 375.403(a)(6), both the shipper and the mover must mutually agree to any amendment to a shipping order before loading the shipment. Section 375.501(d) does not alter this requirement.

Issued on: August 8, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–20665 Filed 8–12–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2011–0136]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA published a notice with request for comments in the **Federal Register** on June 9, 2011 (76 FR 33808) on an information collection under Office of Management and Budget (OMB) Control No. 2137–0622, titled ''Pipeline Safety: Public Awareness Program'' and received no comments. PHMSA is now forwarding the information collection request to the OMB and providing an additional 30 days for comments.

DATES: Interested persons are invited to submit comments to OMB on or before September 14, 2011.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for the U.S. Department of Transportation, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue, SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to OMB for renewal and extension. The information collection expires October 31, 2011, and is identified under Control No. 2137–0622, titled: ''Pipeline Safety: Public Awareness Program.'' The following information is provided for this information collection: (1) Title of the information collection; (2) OMB control number; (3) Type of request; (4) Abstract of the information collection activity; (5) Description of affected public; (6) Estimate of total annual reporting and recordkeeping burden; and (7) Frequency of collection. PHMSA will request a three-year term of approval for this information collection activity. PHMSA requests comments on the following information collection:

Title: Pipeline Safety: Public Awareness Program.

OMB Control Number: 2137–0622.

Type of Request: Renewal of a currently approved information collection.

Abstract: The Federal Pipeline Safety Regulations require each operator to develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's Recommended Practice RP 1162. Upon request, operators must submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate state agency. The operator's program documentation and evaluation results must also be available for periodic review by appropriate regulatory agencies (49 CFR 192.616 and 195.440).

Affected Public: Operators of natural gas and hazardous liquid pipelines.

Estimated number of responses: 22,500.

Estimated annual burden hours: 517,480 hours.

Frequency of collection: Annual.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) 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;

(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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Issued in Washington, DC, on August 9, 2011.

Linda Daugherty,

Deputy Associate Administrator for Policy and Programs, Pipeline Safety.

[FR Doc. 2011–20657 Filed 8–12–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Advisory Council on Transportation Statistics; Notice of Meeting

AGENCY: Research and Innovative, Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting of the Advisory Council on Transportation Statistics (ACTS). The meeting will be held on Wednesday, September 28, 2011, from 9 a.m. to 4:30 p.m. E.S.T. in the Oklahoma City Room at the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC. Section 5601(o) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) directs the U.S. Department of Transportation to establish an Advisory Council on Transportation Statistics subject to the Federal Advisory Committee Act (5 U.S.C., App. 2) to advise the Bureau of Transportation Statistics (BTS) on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department. The following is a summary of the draft meeting agenda: (1) USDOT welcome and introduction of Council Members; (2) Overview of prior meeting; (3) Discussion of the FY 2012 budget; (4) Discussion of private sources of transportation data; (5) Council Members review and discussion of statistical programs; (6) future Council activities and (7) Public Comments and Closing Remarks. Participation is open to the public. Members of the public who wish to participate must notify Courtney Freiberg at *Courtney.Freiberg@dot.gov,* not later than September 15, 2011. Members of the public may present oral statements at the meeting with the approval of Steven K. Smith, Deputy Director of the Bureau of Transportation Statistics. Noncommittee members wishing to present oral statements or obtain information should contact Courtney Freiberg via e-mail no later than September 15, 2011.

Questions about the agenda or written comments may be e-mailed or submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of

Transportation Statistics, *Attention:* Courtney Freiberg, 1200 New Jersey Avenue, SE., Room # E34–429, Washington, DC 20590, *Courtney.Freiberg@dot.gov,* or faxed to (202) 366–3640. BTS requests that written comments be received by September 15, 2011. Access to the DOT Headquarters building is controlled therefore all persons who plan to attend the meeting must notify Mrs. Courtney Freiberg at 202–366–1270 prior to September 15, 2011. Individuals attending the meeting must report to the main DOT entrance on New Jersey Avenue, SE. for admission to the building. Attendance is open to the public, but limited space is available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Mrs. Freiberg at 202–366–1270 at least seven calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 1st day of August 2011.

Steven K. Smith,

Deputy Director, Bureau of Transportation Statistics.

[FR Doc. 2011–20674 Filed 8–12–11; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF VETERANS AFFAIRS

Pilot Program of Enhanced Contract Care Authority for Veterans in Highly Rural Areas

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is implementing § 403 of Public Law (Pub. L.) 110–387, ''Veterans' Mental Health and Other Care Improvements Act of 2008,'' which requires VA to establish a pilot program to contract with non-VA health care providers to provide health services to highly rural veterans. This program will assist veterans who often have great difficulty obtaining VA health care due to physical distance to VA facilities.

DATES: *Effective Date*: This notice is effective August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Patricia Suh, Department of Veterans Affairs, 810 Vermont Ave, NW., Washington, DC 20420, (202) 461–7157. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 308 of Public Law 111–163, the ''Caregivers and Veterans Omnibus Health Services Act of 2010,'' amended the ''Veterans' Mental Health and Other Care Improvements Act of 2008,'' Public Law 110–387, § 403, which had required VA to establish a pilot program under which we provide covered health services to eligible veterans through qualifying non-VA health care providers. Based on the amendments made by § 308, VA can immediately implement the pilot program. This notice will describe how VA will implement the program.

Pursuant to the authorizing legislation, VA will contract with medical professionals to provide care to covered veterans, as defined by § 403(b), as amended. Under § 403(b), a covered veteran is any enrolled veteran as of the date of the commencement of the pilot program or eligible under section 1710(e)(3) of Title 38, who resides in a location that is ''more than 60 minutes driving distance from the nearest Department health care facility providing primary care services, if the veteran is seeking such services; more than 120 minutes driving distance from the nearest Department health care facility providing acute hospital care, if the veteran is seeking such care; or more than 240 minutes driving distance from the nearest Department health care facility providing tertiary care, if the veteran is seeking such care.''

Under § 403(d), VA must determine whether a particular entity or individual is qualified to furnish health care through the pilot program. VA will determine that an entity or individual is qualified to provide care through the pilot program using the contracting process. Contracts under the pilot program will specify that the entity or individual must meet specified, appropriate credentialing, patient safety, and quality requirements and standards identified in the solicitation package. These requirements and standards will be as similar as possible to the requirements and standards generally used by VA when VA contracts for non-VA care. This is consistent with the legislation, which requires VA to use contracts in order to arrange for the provision of care through the pilot program. See Public Law 110–387, § 403(f).

Section 403(a)(4) of Public Law 110–387 establishes specific criteria for the selection of five Veterans Integrated Service Networks (VISNs) in which VA is authorized to conduct the pilot program. These specific, congressionally mandated criteria eliminate from consideration all but the following five VISNs: VISNs 1, 6, 15, 18, and 19.

Pursuant to Public Law 110–387, § 403(e), veteran participation in the program will be voluntary. The law requires VA to permit veterans to elect to receive covered services through this program ''in such form * * * as the Secretary shall specify.'' We have determined that all that is necessary is the veteran's consent because VA will already be in possession of sufficient information to administer the pilot program for a specific veteran based on the veteran's eligibility for VA health care. Veterans who wish to participate will need to provide a signed consent form which can be obtained by contacting VA health care facilities within VISNs 1, 6, 15, 18, and 19.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the **Federal Register** for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on September 23, 2010, for publication.

Dated: August 10, 2011.

William F. Russo,

Deputy Director, Office of Regulation Policy & Management, Department of Veterans Affairs.

[FR Doc. 2011–20675 Filed 8–12–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Monday,

No. 157 August 15, 2011

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Revised Critical Habitat for Southwestern Willow Flycatcher; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2011–0053; MO 92210–0–0009]

RIN 1018–AX43

Endangered and Threatened Wildlife and Plants; Designation of Revised Critical Habitat for Southwestern Willow Flycatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise critical habitat for the southwestern willow flycatcher (*Empidonax traillii extimus*) (flycatcher) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 3,364 km stream kilometers (2,090 stream miles) are being proposed for designation as critical habitat. These areas are being proposed as stream segments, with the lateral extent including the riparian areas and streams that occur within the 100-year floodplain or flood-prone areas. The proposed critical habitat is located on a combination of Federal, State, Tribal, and private lands in Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, and Ventura Counties in California; Clark, Lincoln, and Nye Counties in southern Nevada; Kane, San Juan, and Washington Counties in southern Utah; Alamosa, Conejos, Costilla, La Plata, and Rio Grande Counties in southern Colorado; Apache, Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai, and Yuma Counties in Arizona; and Catron, Cibola, Dona Ana, Grant, Hidalgo, McKinley, Mora, Rio Arriba, Santa Fe, San Juan, Sierra, Soccoro, Taos, and Valencia Counties in New Mexico.

DATES: We will accept comments received or postmarked on or before October 14, 2011. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by September 29, 2011.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter Docket No. FWS–R2–ES–2011–0053, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2011–053; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Rd., Suite 103, Phoenix, AZ 85021; telephone 602–242–0210; 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:

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of southwestern willow flycatcher habitat;

(b) What areas that were occupied at the time of listing that contain features essential to the conservation of the species should be included in the designation and why;

(c) What areas not occupied at the time of listing that meet our criteria for being essential to the conservation of the species should be included in the designation and why;

(d) Special management considerations or protection that may be needed for the physical or biological features essential to the conservation of the species in the critical habitat areas we are proposing, including managing for the potential effects of climate change;

(e) Stream segments, many of which are highlighted in the Southwestern Willow Flycatcher Recovery Plan (Recovery Plan) (Service 2002) and included in this proposed rule, that are not now known to have flycatcher nesting territories or known to only have few nesting flycatchers that may be capable of being improved for flycatcher recovery purposes. We specifically seek information about streams within the Amargosa, Salton, Mohave, Powell, San Juan, Santa Cruz, and Hassayampa and Agua Fria Management Units. Please provide information on flycatcher distribution and abundance, habitat quality, habitat locations, habitat improvement projects, management actions needed to improve habitat, habitat quality limitations, habitat recovery potential, and any other flycatcher or flycatcher-habitat-specific information, and;

(f) Flycatcher habitat suitability in specific areas within the Santa Ana and San Diego Management Units in southern California. Please provide information on flycatcher habitat suitability for recovery at the following areas: (1) Entirety of Temescal Wash including Alberhill Creek in Riverside County; (2) entirety of Murrieta Creek in Riverside County; (3) Potrero Creek near the city of Beaumont in Riverside County; (4) Cajon Creek from Lone Pine Canyon to California State Highway 138 in San Bernardino County; and (5) Tijuana River from Dairy Mart Road to the Tijuana River Estuary in San Diego County.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the flycatcher, the features essential to its conservation and the areas proposed as critical habitat.

(5) Any probable economic, national security, environmental, cultural, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act, in particular.

(a) For specific lands that we should consider for exclusion under section 4(b)(2) of the Act, please provide us management plans, conservation easements, agreements, Habitat Conservation Plans (HCP), or other appropriate information, which describe the commitment and assurances of protection of the physical or biological features of flycatcher critical habitat; property boundaries; flycatcher status, distribution, and abundance; and management actions to protect the physical or biological features of flycatcher habitat.

(b) For lands we evaluated and excluded from critical habitat under section 4(b)(2) of the Act during the 2005 flycatcher critical habitat designation and those who wish to seek exclusion for this re-designation, please resubmit your request. In addition to your request, please include any updated information that pertains to the commitment and assurances of protection of flycatcher habitat; the physical or biological features of flycatcher critical habitat; property boundaries; flycatcher status, distribution, and abundance; and management actions to protect the physical or biological features of flycatcher habitat. Include the specific results of implementing these management plans since our 2005 flycatcher critical habitat designation.

(c) Information concerning the benefits of excluding or retaining lands we identify in this proposed critical habitat rule under consideration for exclusion under section 4(b)(2) of the Act. We specifically seek information about the possible exclusion of Elephant Butte Reservoir; areas within the operating pool of the reservoir may be subject to exclusion under 4(b)(2) of the Act if we determine that the benefits of excluding the area due to potential impacts to water operations outweigh the benefits to the subspecies of including the area as critical habitat.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or e-mail address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office in Phoenix, Arizona (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to include only those topics directly relevant to the designation of critical habitat for the southwestern willow flycatcher (flycatcher) in this proposed rule. Background information on the flycatcher can be found in the final flycatcher critical habitat rule published in the **Federal Register** on October 19, 2005 (70 FR 60886); our October 12, 2004, proposed critical habitat rule (69 FR 60706); the Southwestern Willow Flycatcher Recovery Plan (Recovery Plan) (Service 2002); our first flycatcher critical habitat designation, published July 22, 1997 (62 FR 39129), and August 20, 1997 (62 FR 44228); the final flycatcher listing rule (60 FR 10694; February 27, 1995); the 10-year flycatcher study in central Arizona (Paxton *et al.* 2007a); the 2007 rangewide status report (Durst *et al.* 2008); and flycatcher survey protocol and natural history summary (Sogge *et al.* 2010). Other reports can be retrieved from the U.S. Geological Survey's (USGS) flycatcher site at *http://sbsc.wr.usgs.gov/cprs/research/projects/swwf.* The current 2005 critical habitat rule remains in effect while this rulemaking process proceeds.

The flycatcher is a small, insect-eating, neotropical migrant bird, from the taxonomic order Passeriformes. It grows to about 15 centimeters (5.8 inches) in length. The flycatcher is one of four subspecies of the willow flycatcher currently recognized (Hubbard 1987, pp. 3–6; Unitt 1987, pp. 137–144), although Browning (1993, p. 248) suggests a possible fifth subspecies (*Empidonax traillii campestris*) in the central and midwestern United States. As an insect-eating generalist (Service 2002, p. 26), the flycatcher eats a wide range of invertebrate prey including flying, and ground- and vegetation-dwelling, insect species of terrestrial and aquatic origins (Drost *et al.* 2003, pp. 96–102). The flycatcher spends the winter in locations such as southern Mexico, Central America, and probably South America (Ridgely and Gwynne 1989, p. 303; Stiles and Skutch 1989, pp. 321–322; Howell and Webb 1995, pp. 496–497; Unitt 1997, pp. 70–73; Koronkiewicz *et al.* 1998, p. 12; Unitt 1999, p. 14).

All willow flycatcher subspecies spend time migrating and breeding in the United States from April to September. Use of riparian habitats along major drainages in the Southwest during migration has been documented (Sogge *et al.* 1997, pp. 3–4; Yong and Finch 1997, p. 253; Johnson and O'Brien 1998, p. 2; McKernan and Braden 1999, p. 17; Koronkiewicz *et al.* 2004, pp. 9–11). Many of the willow flycatchers found migrating are detected in riparian habitats or patches (small areas of riparian vegetation) that would be unsuitable for nest placement (the vegetation structure is too short or sparse, or the patch of vegetation is too small). In these drainages migrating flycatchers may use a variety of riparian habitats, including ones dominated by native or exotic plant species, or mixtures of both (Service 2002, p. E–3). Willow flycatchers, like most small, migratory, insect-eating birds, require food-rich stopover areas in order to replenish energy reserves and continue their northward or southward migration (Finch *et al.* 2000, pp. 71, 78, and 79; Service 2002, pp. E–3 and 42). Migration stopover areas are likely critically important for flycatcher productivity and survival (Sogge *et al.* 1997, p. 13; Yong and Finch 1997, p. 253; Service 2002, pp. E–3,19).

The historical breeding range of the flycatcher includes southern California, southern Nevada, southern Utah, Arizona, New Mexico, western Texas, southwestern Colorado, and extreme northwestern Mexico. The flycatcher's current range is similar to the historical range, but the quantity of suitable habitat within that range is reduced from historical levels (Service 2002, pp. 7–10).

The known geographical area historically occupied by this flycatcher subspecies was once larger (Service 2002, pp. 7–10). Historical records described nesting birds in southern California, Nevada, Utah; Arizona and New Mexico; western Texas; southwestern Colorado; and extreme northwestern Mexico (Hubbard 1987, pp. 6–10; Unitt 1987, pp. 144–152; Browning 1993, pp. 248, 250). At the time of listing in February 1995 (60 FR 10694), the distribution and abundance of nesting flycatchers, their natural history, and areas occupied by nonbreeding, migrating, and dispersing flycatchers were not well known. In February 1995, 359 territories were

known only from California, Arizona, and New Mexico. Unitt (1987, p. 156) estimated the entire population was, ''well under 1,000 pairs, more likely 500,'' and 230 to 500 territories were estimated to exist in the July 23, 1993, flycatcher listing proposal (58 FR 39495, p. 39498).

At the time of listing, breeding sites in California, Nevada, Utah, and Colorado described by Unitt (1987, pp. 149–152) were adopted as the subspecies' northern boundary. However, the collection and analysis of genetic material across this part of the bird's range has since refined this boundary (Paxton 2000, pp. 3, 18–20), and reduced the extent of the northern boundary of this southwestern subspecies in Utah and Colorado (Service 2002, Figure 3). Territories once believed to be held by southwestern willow flycatchers in Utah and Colorado are now more accurately known to be occupied by a different, non-listed willow flycatcher subspecies. As a result, the southwestern subspecies' range only occurs in the southernmost portions of Utah and Colorado. This genetic work also confirmed the identity of southwestern willow flycatcher subspecies throughout the rest of its range.

The USGS has continued to collect genetic information to help refine the northern boundary of the subspecies' range in Utah, Colorado, and New Mexico (Paxton *et al.* 2007b). They reconfirmed the genetic markers that identify differences among flycatcher subspecies, with breeding sites clustering into two groups separated approximately along the currently recognized boundary; however, they noted a distinct genetic boundary line between the subspecies does not exist (Paxton *et al.* 2007b, p. 17). Instead of a distinct boundary, they suggested that the boundary should be thought of as a ''region of genetic overlap'' (Paxton *et al.* 2007b, p. 17). They also described that this genetic overlap region will likely widen and contract over time based upon habitat changes (Paxton *et al.* 2007b, p. 17). An additional complication in refining the subspecies' northern boundary is that this region is sparsely populated with breeding flycatchers, and therefore only minimal information is available that would help narrow down the location of a boundary (Paxton *et al.* 2007b, p. 16). We continue to seek out territories and collect genetic samples to further our understanding of this area, but we currently recognize the northern geographic boundary of the flycatcher as described in the Recovery Plan (Service 2002, Figures 3, 4).

The flycatcher currently breeds in areas from near sea level to over 2,600 meters (m) (8,500 feet [ft]) (Durst *et al.* 2008, p. 14) in vegetation alongside rivers, streams, or other wetlands (riparian habitat). It establishes nesting territories, builds nests, and forages where mosaics of relatively dense and expansive growths of trees and shrubs are established, near or adjacent to surface water or underlain by saturated soil (Sogge *et al.* 2010, p. 4). Habitat characteristics such as dominant plant species, size and shape of habitat patch, tree canopy structure, vegetation height, and vegetation density vary widely among breeding sites. Nests are typically placed in trees where the plant growth is most dense, where trees and shrubs have vegetation near ground level, and where there is a low-density canopy. Some of the more common tree and shrub species currently known to comprise nesting habitat include Goodings willow (*Salix gooddingii*), coyote willow (*Salix exigua*), Geyers willow (*Salix geyerana*), arroyo willow (*Salix lasiolepis*), red willow (*Salix laevigata*), yewleaf willow (*Salix taxifolia*), boxelder (*Acer negundo*), tamarisk (also known as saltcedar, *Tamarix ramosissima*), and Russian olive (*Eleagnus angustifolia*) (Service 2002, p. D–2). While there are exceptions, generally flycatchers are not found nesting in areas without willows, tamarisk, or both.

A breeding site is simply an area along the river that has been described while surveying for flycatcher territories (Service 2002, p. C–4; Sogge *et al.* 2010, p. 34). A breeding site can contain none, only one, or many territories. However, within this proposed rule, we refer to breeding sites as areas where flycatcher territories were detected. A territory is defined as a discrete area defended by a resident single flycatcher or pair of flycatchers within a single breeding season (Sogge *et al.* 2010, p. 34). This is usually evidenced by the presence of a singing male, and possibly one or more mates (Sogge *et al.* 2010, p. 34).

At the end of 2007, 1,299 flycatcher breeding territories were estimated to occur throughout southern California, southern Nevada, southern Utah, southern Colorado, Arizona, and New Mexico (Durst *et al.* 2008, p. 4). Some of the flycatcher breeding sites having the highest number of territories are found along the middle Rio Grande and upper Gila River in New Mexico, and Roosevelt Lake and the San Pedro and Gila River confluence area in central Arizona.

Flycatchers are believed to exist and interact as groups of metapopulations (Service 2002, p. 72). A metapopulation is a group of geographically separate flycatcher breeding populations connected to each other by immigration and emigration (Service 2002, p. 72). Flycatcher populations are most stable where many connected sites or large populations exist (Service 2002, p. 72). Metapopulation persistence or stability is more likely to improve by adding more breeding sites than with the addition of territories to existing sites (Service 2002, p. 72). This would distribute birds across a greater geographical range, minimize risk of simultaneous catastrophic population loss, and avoid genetic isolation (Service 2002, p. 72).

Flycatchers have higher site fidelity (to a local area) than nest fidelity (to a specific nest location) and can move among sites within stream drainages and between drainages (Kenwood and Paxton 2001, pp. 29–31). Within-drainage movements are more common than between-drainage movements (Kenwood and Paxton 2001, p. 18). Juvenile flycatchers were the group of flycatchers that moved (dispersed) the farthest to new and distant breeding sites from the area where they hatched (Paxton *et al.* 2007a, p. 74). The USGS's 10-year flycatcher study in central Arizona (Paxton *et al.* 2007a) is the key movement study that has generated these conclusions, augmented by other flycatcher banding and re-sighting studies (Sedgwick 2004, p. 1103; McLeod *et al.* 2008, p. 110).

The difference in flycatcher dispersal distance among different study areas and regions reflects the varying spatial arrangement of breeding habitat, illustrating how dispersal tendencies are influenced by the geographic distribution of habitat at the stream segment, drainage, and landscape scales (Paxton *et al.* 2007a, p. 75). While USGS' study focused its effort in central Arizona at two of the largest breeding sites, it also included multiple auxiliary sites (up to 444 km or 275 mi away), along with other researchers and surveyors across the flycatcher's range paying attention to whether flycatchers were banded or not. As a result, the broad scope of the study of flycatcher movement extends broadly beyond a localized, regional area, where habitat configuration dominates the results.

Banded flycatchers from season-to-season (and sometimes within season) were recorded moving from 50 m (150 feet) to 444 km (275 mi) to try and nest. Some long-distance season-to-season movement records captured flycatchers moving from the Basin and Mohave Recovery Unit to the Lower Colorado Recovery Unit and from the Lower

Colorado Recovery Unit to the Gila Recovery Unit.

The USGS assimilated all of the flycatcher movement information and concluded that rapid colonization and increased metapopulation stability could be accomplished by establishing breeding sites within 30 to 40 km (18 to 25 mi) of each other (Paxton *et al.* 2007a, p. 4). Flycatchers at breeding sites configured in this way would be able to regularly disperse to new breeding sites or move between known breeding sites within the same year or from year-to-year. This proximity of sites would increase the connectivity and stability of the metapopulation and smaller, more distant breeding sites.

Because the breeding range of the flycatcher encompasses a broad geographic area with much site variation, management of recovery is approached in the Recovery Plan by dividing the flycatcher's range into 6 Recovery Units, each of which are further subdivided into 4 to 7 Management Units (for a total of 32 Management Units) (Service, pp. 61–63). This provides an organizational strategy to ''characterize flycatcher populations, structure recovery goals, and facilitate effective recovery actions that should closely parallel the physical, biological, and logistical realities on the ground'' (Service 2002, p. 61). Recovery goals are recommended for 29 of the 32 Management Units (see Methodology Overview section). Recovery Units are defined based on large watershed and hydrologic units. Within each Recovery Unit, Management Units are based on watershed or major drainage boundaries at the Hydrologic Unit Code Cataloging Unit level (standard watershed boundaries which have already been defined for other purposes). The ''outer'' boundaries of some Recovery Units and Management Units were defined by the flycatcher's range boundaries. This proposed designation of critical habitat is organized geographically within these Recovery Units and Management Units (see ''Methodology Overview'' section below).

The Recovery Plan (Service 2002) provides reasonable actions recommended to recover the flycatcher and provides two criteria, either of which can be met, in order to consider downlisting the species to threatened (Service 2002, pp. 77–78). The first alternative for downlisting requires reaching a total population of 1,500 flycatcher territories geographically distributed among all Recovery Units and maintained for 3 years with habitat protections (Service 2002, pp. 77–78). Habitat protections include a variety of options such as HCPs, conservation easements, or safe harbor agreements. The second alternative approach for downlisting calls for reaching a population of 1,950 territories also strategically distributed among all Recovery and Management Units for 5 years without additional habitat protection (Service 2002, pp. 77–78).

In order to delist this flycatcher subspecies (to remove it from the List of Endangered and Threatened Wildlife and Plants), the Recovery Plan recommends that a minimum of 1,950 territories are geographically distributed among all Recovery and Management Units, and that twice the amount of habitat is provided to maintain these territories over time. Second, these habitats must be protected from threats to assure maintenance of these populations and habitat for the foreseeable future through development and implementation of conservation management agreements (Service 2002, pp. 79–80). Third, all of these delisting criteria must be accomplished and their effectiveness demonstrated for a period of 5 years (Service 2002, pp. 79–80). This critical habitat proposal is structured to allow the Service to work toward achieving the numerical, geographical, and habitat-related recovery goals.

Twice the amount of suitable habitat is needed to support the numerical territory goals, because the long-term persistence of flycatcher populations cannot be assured by protecting only those habitats in which flycatchers currently breed (Service 2002, p. 80). It is important to recognize that most flycatcher breeding habitats are susceptible to future changes in site hydrology (natural or human-related), human impacts such as development or fire, and natural catastrophic events such as flood or drought (Service 2002, p. 80). Furthermore, as the vegetation at sites matures, it can lose the structural characteristics that make it suitable for breeding flycatchers (Service 2002, p. 80). These and other factors can destroy or degrade breeding sites, such that one cannot expect any given breeding site to remain suitable in perpetuity (Service 2002, p. 80). Thus, it is necessary to have additional suitable habitat available to which flycatchers, displaced by such habitat loss or change, can readily move (Service 2002, p. 80).

Previous Federal Actions

The flycatcher was listed as endangered on February 27, 1995 (60 FR 10694). On July 22, 1997, we published a final critical habitat designation for the flycatcher along 964 river km (599 river mi) in Arizona, California, and New Mexico (62 FR 39129). We published a correction notice on August 20, 1997, on the lateral extent of critical habitat (62 FR 44228).

As a result of a 1998 lawsuit from the New Mexico Cattlegrower's Association, on October 19, 2005 (70 FR 60886), we published a revised final flycatcher critical habitat rule for portions of Arizona, California, New Mexico, Nevada, and Utah, totaling approximately 48,896 ha (120,824 ac) or 1,186 km (737 mi). River segments were designated as critical habitat in 15 of the 32 Management Units described in the Recovery Plan (Service 2002, p. 63).

We were sued by the Center for Biological Diversity over our 2005 critical habitat rule, and on July 13, 2010, we agreed to redesignate critical habitat. The resulting settlement left the existing critical habitat designation from 2005 in effect, and required that we deliver a proposed rule for new revised critical habitat to the **Federal Register** by July 31, 2011, and a final rule by July 31, 2012.

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 seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain physical or biological features which are essential to the conservation of the species and which may require special management considerations or protection. 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), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the Act, 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. 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. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

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 determine 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, or other unpublished materials and expert opinion or personal knowledge.

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 required 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, 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 sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species (in this case a subspecies) at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the flycatcher and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features required for the flycatcher from studies of this subspecies' habitat, ecology, and life history as described below. The most comprehensive, current, and thorough documents are the Recovery Plan (Service 2002, Appendix D), Survey Protocol and Natural History Summary (Sogge *et al.* 2010), and 10-year central Arizona ecology study (Paxton *et al.* 2007a).

In general, the areas proposed for designation as critical habitat are designed to provide sufficient riparian habitat for breeding, non-breeding, territorial, dispersing, and migrating flycatchers in order to reach the

geographic distribution, abundance, and habitat-related recovery goals described in the Recovery Plan (Service 2002, pp. 77–85). We are not proposing any areas as critical habitat solely because they serve as a migration habitat. Instead, the areas we are proposing serve a variety of functions, including habitat to be used by migrating flycatchers. The habitat components important for conservation of this subspecies were determined from studies of flycatcher behavior and habitat use throughout the bird's range (see Background section).

In general, the physical or biological features of critical habitat for nesting flycatchers are found in the riparian areas within the 100-year floodplain or flood-prone area. Flycatchers use riparian habitat for feeding, sheltering, and cover while breeding, migrating, and dispersing. It is important to recognize that flycatcher habitat is ephemeral in its presence, and its distribution is dynamic in nature because riparian vegetation is prone to periodic disturbance (such as flooding) (Service 2002, p. 17). Even with the dynamic shifts in habitat conditions, one or more of the primary constituent elements described below are found throughout each of the units that we are proposing as critical habitat.

Flycatcher habitat may become unsuitable for breeding through maturation or disturbance of the riparian vegetation, but it may remain suitable for use during migration or for foraging. This situation may be only temporary, and vegetation may cycle back into suitability as breeding habitat (Service 2002, p. 17). Therefore, it is not practical to assume that any given breeding habitat area will remain suitable over the long term or persist in the same location (Service 2002, p. 17). Over a 5-year period, flycatcher habitat can, in optimum conditions, germinate, be used for migration or foraging, continue to grow, and eventually be used for nesting. Thus, flycatcher habitat that is not currently suitable for nesting at a specific time, but is useful for foraging and migration, can still be important for flycatcher conservation. Feeding sites and migration stopover areas are important components for the flycatcher's survival, productivity, and health, and they can also be areas where new breeding habitat develops as nesting sites are lost or degraded (Service 2002, p. 42). These successional cycles of habitat change are important for long-term persistence of flycatcher habitat.

Based on our current knowledge of the life history and ecology of the flycatcher and the relationship of its life-history functions to its habitat, as summarized in the ''Background'' section above and in more detail in the Recovery Plan (Service 2002, Chapter II), it is important to recognize the interconnected nature of the physical or biological features that provide the primary constituent elements of critical habitat. Specifically, we consider the relationships between river function, hydrology, floodplains, aquifers, and plant growth, which form the environment essential to the conservation of the flycatcher.

The hydrologic regime (stream flow pattern) and supply of (and interaction between) surface and subsurface water is a driving factor in the long-term maintenance, growth, recycling, and regeneration of flycatcher habitat (Service 2002, p. 16). As streams reach the lowlands, their gradients typically flatten and surrounding terrain opens into broader floodplains (Service 2002, p. 32). In these geographic settings, the stream-flow patterns (frequency, magnitude, duration, and timing) will provide the necessary stream-channel conditions (wide configuration, high sediment deposition, periodic inundation, recharged aquifers, lateral channel movement, and elevated groundwater tables throughout the floodplain) that result in the development of flycatcher habitat (Poff *et al.* 1997, pp. 770–772; Service 2002, p. 16). Allowing the river to flow over the width of the floodplain, when overbank flooding occurs, is integral to allow deposition of fine moist soils, water, nutrients, and seeds that provide the essential material for plant germination and growth. An abundance and distribution of fine sediments extending farther laterally across the floodplain and deeper underneath the surface retains much more subsurface water, which in turn supplies water for the development of the vegetation that provides flycatcher habitat and micro-habitat conditions (Service 2002, p. 16). The interconnected interaction between groundwater and surface water contributes to the quality of riparian vegetation community (structure and plant species) and will influence the germination, density, vigor, composition, and the ability of vegetation to regenerate and maintain itself (Arizona Department of Water Resources 1994, pp. 31–32).

In many instances, flycatcher breeding sites occur along streams where human impacts are minimized enough to allow more natural processes to create, recycle, and maintain flycatcher habitat. However, there are also breeding sites that are supported by various types of supplemental water including agricultural and urban run-off, treated water outflow, irrigation or diversion ditches, reservoirs, and dam outflows (Service 2002, p. D–15). Although the waters provided to these habitats might be considered ''artificial,'' they are often important for maintaining the habitat in appropriate condition for breeding flycatchers within the existing environment.

In considering the specific physical or biological features essential for the conservation of the flycatcher, it is also important to consider longer-term processes that may influence habitat changes over time, such as climate change. Climate change is a long-term shift in the statistics of the weather (including its averages). In its *Fourth Assessment Report,* the Intergovernmental Panel on Climate Change (IPCC) defines climate change as, ''a change in the state of the climate that can be identified by changes in the mean and/or variability of its properties and that persists for an extended period, typically decades or longer'' (Solomon *et al.* 2007, p. 943). Changes in climate already are occurring. Examples of observed changes in the physical environment include an increase in global average sea level and declines in mountain glaciers and average snow cover in both the northern and southern hemispheres (IPCC 2007a, p. 30). At continental, regional and ocean basin scales, observed changes in long-term trends of other aspects of climate include: A substantial increase in precipitation in eastern parts of North American and South America, northern Europe, and northern and central Asia; declines in precipitation in the Mediterranean, southern Africa, and parts of southern Asia; and an increase in intense tropical cyclone activity in the North Atlantic since about 1970 (IPCC 2007a, p. 30).

Projections of climate change globally and for broad regions through the 21st century are based on the results of modeling efforts using state-of-the-art Atmosphere-Ocean General Circulation Models and various greenhouse gas emissions scenarios (Meehl *et al.* 2007, p. 753; Randall *et al.* 2007, pp. 596–599). As is the case with all models, there is uncertainty associated with projections due to assumptions used and other features of the models. However, despite differences in assumptions and other parameters used in climate change models, the overall surface air temperature trajectory is one of increased warming in comparison to current conditions (Meehl *et al.* 2007, p. 762; Prinn *et al.* 2011, p. 527). Among the IPCC's projections for the 21st century are the following: (1) It is virtually certain there will be warmer

and more frequent hot days and nights over most of the earth's land areas; (2) it is very likely there will be increased frequency of warm spells and heat waves over most land areas, and the frequency of heavy precipitation events will increase over most areas; and (3) it is likely that increases will occur in the incidence of extreme high sea level (excludes tsunamis), intense tropical cyclone activity, and the area affected by droughts in various regions of the world (IPCC 2007b, p. 8).

Changes in climate can have a variety of direct and indirect ecological impacts on species, and can exacerbate the effects of other threats. Climate-associated environmental changes to the landscape, such as decreased stream flows, increased water temperatures, reduced snowpack, and increased fire frequency, affect species and their habitats. The vulnerability of a species to climate change impacts is a function of the species' sensitivity to those changes, its exposure to those changes, and its capacity to adapt to those changes. The best available science is used to evaluate the species' response to these stressors. We recognize that future climate change may present a particular challenge evaluating habitat conditions for species like the flycatcher because the additional stressors may push species beyond their ability to survive in their present location.

Exactly how climate change will affect precipitation in the specific areas with flycatcher habitat is uncertain. However, consistent with recent observations of regional effects of climate change, the projections presented for the Southwest predict warmer, drier, and more drought-like conditions (Hoerling and Eischeid 2007, p. 19; Seager *et al.* 2007, p. 1181). For example, climate simulations of the Palmer Drought Severity Index (PSDI) (a calculation of the cumulative effects of precipitation and temperature on surface moisture balance) for the Southwest for the periods of 2006 to 2030 and 2035 to 2060 show an increase in drought severity with surface warming. Additionally, drought still increases even during wetter simulations because of the effect of heat-related moisture loss through evaporation and evapotranspiration (Hoerling and Eischeid 2007, p. 19). Annual mean precipitation is likely to decrease in the Southwest, as is the length of snow season and snow depth (IPCC 2007b, p. 887). Most models project a widespread decrease in snow depth in the Rocky Mountains and earlier snowmelt (IPCC 2007b, p. 891). In summary, we expect that climate change will result in a warmer, drier climate, and reduced surface water across the flycatcher's range.

In the recent past, drought has had both negative and positive effects on breeding flycatchers and their habitat, which can provide insight into how climate change may affect flycatchers and flycatcher habitat. For example, the extreme drought of 2002 caused near complete reproductive failure of the 146 flycatcher territories at Roosevelt Lake in central Arizona (Smith *et al.* 2003, pp. 8, 10), and caused a dramatic rise in the prevalence of non-breeding and unpaired flycatchers (Paxton *et al.* 2007a, p. 4). While extreme drought during a single year can generate impacts to breeding success, drought can also have localized short-term benefits in some regulated environments. For instance, at some reservoirs (such as Roosevelt Lake, Arizona, and Lake Isabella, California), drought led to reduced water storage, which increased the exposure of wet soils at the lake's perimeter. Continued drought in those areas allowed the exposed areas to grow vegetation and become new flycatcher nesting habitat (Ellis *et al.* 2008, p. 44). These short-term and localized habitat increases are not likely sustainable with persistent drought or long-term predictions of a drier environment, because of the overall importance of the presence of surface water and elevated groundwater needed to grow dense riparian forests for flycatcher habitat. As a result, we expect long-term climate trends associated with a drier climate to have an overall negative effect on the available rangewide habitat for flycatchers.

Considering these issues and other information regarding the biology and ecology of the species, we have determined that the flycatcher requires the essential physical or biological features described below.

Space for Individual and Population Growth and for Normal Behavior

Streams of lower gradient and more open valleys with a wide and broad floodplain are the geological settings that are known to support flycatcher breeding habitat from near sea level to about 2,600 m (8,500 ft) in elevation in southern California, southern Nevada, southern Utah, southern Colorado, Arizona, and New Mexico (Service 2002, p. 7). Lands with moist conditions that support riparian plant communities are areas that provide flycatcher habitat. Conditions like these typically develop in lower elevation floodplains as well as where streams enter impoundments, either natural (such as beaver ponds) or human-made (reservoirs). Low-gradient stream conditions may also occur at high elevations, as in the marshy mountain meadows supporting flycatchers in the headwaters of the Little Colorado River near Greer, Arizona, or the flat-gradient portions of the upper Rio Grande in south-central Colorado and northern New Mexico (Service 2002, p. 32). Sometimes, the low-gradient wider floodplain exists only at the habitat patch itself within a stream that is otherwise steeper in gradient (Service 2002, p. D–12).

Relatively steep, confined streams can also support flycatcher breeding habitat (Service 2002, p. D–13). For instance, a portion of the San Luis Rey River in California supports a substantial flycatcher population and stands out among flycatcher habitats as having a relatively high gradient and being confined in a fairly narrow, steep-sided valley (Service 2002, p. D–13). Even a steep, confined canyon or mountain stream may present local conditions where just a small area less than a hectare (acre) in size of flycatcher breeding habitat may develop (Service 2002, p. D–13). Such sites are important individually and in aggregate to contribute to metapopulation stability, site connectivity, and gene flow (Service 2002, p. D–13). Flycatchers can occupy very small, isolated habitat patches and may occur in fairly high densities within those small patches.

Many willow flycatchers are found along streams using riparian habitat during migration (Yong and Finch 1997, p. 253; Service 2002, p. E–3). Migration stopover areas can be similar to breeding habitat or riparian habitats with less vegetation density and abundance compared to areas for nest placement (the vegetation structure is too short or sparse or the patch is too small) (Service 2002, p. E–3). For example, many locations where migrant flycatchers were detected on the lower Colorado River (Koronkiewicz *et al.* 2004, pp. 9–11) and throughout Arizona in 2004 (Munzer *et al.* 2005, Appendix C) were areas surveyed for nesting birds, but no breeding was detected. Such migration stopover areas, even though not used for breeding, are critically important resources affecting productivity and survival (Service 2002, p. E–3). The variety of riparian habitat occupied by migrant flycatchers ranges from small patches with shorter and sparser vegetation to larger more complex breeding habitats.

Therefore, based on the information above, we identify streams of lower gradient and more open valleys with a wide or broad floodplain an essential physical or biological feature of flycatcher habitat. In some instances,

streams in relatively steep, confined area can also support flycatcher breeding habitat (Service 2002, p. D–13). These areas support the abundance of riparian vegetation used for flycatcher nesting, foraging, dispersal, and migration.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Food

The flycatcher is somewhat of an insect generalist (Service 2002, p. 26), taking a wide range of invertebrate prey including flying, and ground- and vegetation-dwelling species of terrestrial and aquatic origins (Drost *et al.* 2003, pp. 96–102). Wasps and bees (Hymenoptera) are common food items, as are flies (Diptera), beetles (Coleoptera), butterflies, moths and caterpillars (Lepidoptera), and spittlebugs (Homoptera) (Beal 1912, pp. 60–63; McCabe 1991, pp. 119–120). Plant foods such as small fruits have also been reported (Beal 1912, pp. 60–63; Roberts 1932, p. 20; Imhof 1962, p. 268), but are not a significant food during the breeding season (McCabe 1991, pp. 119–120). Diet studies of adult flycatchers (Drost *et al.* 1998, p. 1; DeLay *et al.* 1999, p. 216) found a wide range of prey taken. Major prey items were small (flying ants) (Hymenoptera) to large (dragonflies) (Odonata) flying insects, with Diptera and Hemiptera (true bugs) comprising half of the prey items. Willow flycatchers also took non-flying species, particularly Lepidoptera larvae. From an analysis of the flycatcher diet along the South Fork of the Kern River, California (Drost *et al.* 2003, p. 98), flycatchers consumed a variety of prey from 12 different insect groups. Flycatchers have been identified targeting seasonal hatchings of aquatic insects along the Salt River arm of Roosevelt Lake, Arizona (Paxton *et al.* 2007a, p. 75).

Flycatcher food availability may be largely influenced by the density and species of vegetation, proximity to and presence of water, saturated soil levels, and microclimate features such as temperature and humidity (Service 2002, pp. 18, D–12). Flycatchers forage within and above the tree canopy, along the patch edge, in openings within the territory, over water, and from tall trees as well as herbaceous ground cover (Bent 1960, pp. 209–210; McCabe 1991, p. 124). Flycatchers employ a ''sit and wait'' foraging tactic, with foraging bouts interspersed with longer periods of perching (Prescott and Middleton 1988, p. 25).

Therefore, based on the information above, we identify the presence of a wide range of invertebrate prey, including flying and ground- and vegetation-dwelling species of terrestrial and aquatic origins to be an essential physical or biological feature of flycatcher habitat.

Water

Flycatcher nesting habitat is largely associated with perennial (persistent) stream flow that can support the expanse of vegetation characteristics needed by breeding flycatchers, but there are exceptions. Flycatcher nesting habitat can persist on intermittent (ephemeral) streams that retain local conditions favorable to riparian vegetation (Service 2002, p. D–12). The range and variety of stream flow conditions (frequency, magnitude, duration, and timing) (Poff *et al.* 1997, pp. 770–772) that will establish and maintain flycatcher habitat can arise in different types of both regulated and unregulated flow regimes throughout its range (Service 2002, p. D–12). Also, flow conditions that will establish and maintain flycatcher habitat can be achieved in regulated streams, depending on scale of operation and the interaction of the primary physical characteristics of the landscape (Service 2002, p. D–12).

In the Southwest, hydrological conditions at a flycatcher breeding site can vary remarkably within a season and between years (Service 2002, p. D–12). At some locations, particularly during drier years, water or saturated soil is only present early in the breeding season (May and part of June) (Service 2002, p. D–12). At other sites, vegetation may be immersed in standing water during a wet year, but be hundreds of meters from surface water in dry years (Service 2002, p. D–12). This is particularly true of reservoir sites such as the Kern River at Lake Isabella, California; Roosevelt Lake, Arizona; and Elephant Butte Reservoir, New Mexico (Service 2002, p. D–12). Similarly, where a river channel has changed naturally, there may be a total absence of water or visibly saturated soil for several years. In such cases, the riparian vegetation and any flycatchers breeding within it may persist for several years (Service 2002, p. D–12).

In some areas, natural or managed hydrologic cycles can create temporary flycatcher habitat, but may not be able to support it for an extended amount of time, or may support varying amounts of habitat at different points in the cycle. Some dam operations create varied situations that allow different plant species to thrive when water is released below a dam, held in a lake, or removed from a lakebed, and consequently, varying degrees of flycatcher habitat are available as a result of dam operations (Service 2002, p. 33). The riparian vegetation that constitutes flycatcher breeding habitat requires substantial water (Service 2002, p. D–12). Because flycatcher breeding habitat is often where there is slow-moving or still water, these slow and still water conditions may also be important in influencing the production of insect prey base for flycatcher food (Service 2002, p. D–12). These slow-moving water situations can also be managed or mimicked through manipulated supplemental water originating from sources such as agricultural return flows or irrigation canals (Service 2002, p. D–15).

Therefore, based on the information above, we identify flowing streams with a wide range of stream flow conditions that support expansive riparian vegetation as an essential physical or biological feature of flycatcher habitat. The most common stream flow conditions are largely perennial (persistent) stream flow with a natural hydrologic regime (frequency, magnitude, duration, and timing). However, in the Southwest, hydrological conditions can vary, causing some flows to be intermittent, but the floodplain can retain surface moisture conditions favorable to expansive and flourishing riparian vegetation. These appropriate conditions can be supported by managed water sources and hydrological cycles that mimic key components of the natural hydrologic cycle.

Sites for Germination or Seed Dispersal

Subsurface hydrologic conditions may in some places (particularly at the more arid locations of the Southwest) be equally important to surface water conditions in determining riparian vegetation patterns (Lichivar and Wakely 2004, p. 92). Where groundwater levels are elevated to the point that riparian forest plants can directly access those waters, it can be an area for breeding, non-breeding, territorial, dispersing, foraging, and migrating flycatchers. Elevated groundwater helps create moist soil conditions believed to be important for nesting conditions and prey populations (Service 2002, pp. 11, 18), as further discussed below.

Depth to groundwater plays an important part in the distribution of riparian vegetation (Arizona Department of Water Resources 1994, p. 31) and consequently, flycatcher habitat. The

greater the depth to groundwater below the land surface, the less abundant the riparian vegetation (Arizona Department of Water Resources 1994, p. 31). Localized, perched aquifers (a saturated area that sits above the main water table) can and do support some riparian habitat, but these systems are not extensive (Arizona Department of Water Resources 1994, p. 31).

The abundance and distribution of fine sediment deposited on floodplains is critical for the development, abundance, distribution, maintenance, and germination of the plants that grow into flycatcher habitat (Service 2002, p. 16). Fine sediments provide seed beds to facilitate the growth of riparian vegetation for flycatcher habitat. In almost all cases, moist or saturated soil is present at or near breeding sites during wet and non-drought years (Service 2002, p. 11). The saturated soil and adjacent surface water may be present early in the breeding season, but only damp soil is present by late June or early July (Service 2002, p. D–3). Microclimate features (temperature and humidity) facilitated by moist or saturated soil, are believed to play an important role where flycatchers are detected and nest, their breeding success, and availability and abundance of food resources (Service 2002, pp. 18, D–12).

Therefore, based on the information above, we identify elevated subsurface groundwater tables and appropriate floodplain fine sediments as essential physical or biological features of flycatcher habitat. These features provide water and seedbeds for the germination, growth, and maintenance of expansive growth of riparian vegetation needed by the flycatcher.

Cover or Shelter

Riparian vegetation (described more in detail within the *Sites for Breeding or Rearing (or Development) of Offspring* section) also provides the flycatcher cover and shelter while migrating and nesting. Placing nests in dense vegetation provides cover and shelter from predators or nest parasites that would seek out flycatcher adults, nestlings, or eggs. Similarly, using riparian vegetation for cover and shelter during migration provides food-rich stopover areas, a place to rest, and shelter or cover along migratory flights (Service 2002, pp. D–14, F–16). Riparian vegetation used by migrating flycatchers can sometimes be less dense and abundant than areas used for nesting (Service 2002, p. D–19). However, migration stopover areas, even though not used for breeding, may be critically important resources affecting local and regional flycatcher productivity and survival (Service 2002, p. D–19).

Therefore, based on the information above, we identify riparian tree and shrub species (described in more detail below) that provide cover and shelter for nesting, breeding, foraging, dispersing, and migrating flycatchers as essential physical or biological features of flycatcher habitat.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Reproduction and Rearing of Offspring

Riparian habitat characteristics such as dominant plant species, size and shape of habitat patches, tree canopy structure, vegetation height, and vegetation density are important parameters of flycatcher breeding habitat, although they may vary widely at different sites (Service 2002, p. D–1). The accumulating knowledge of flycatcher breeding sites reveals important areas of similarity, which constitute the basic concept of what is suitable breeding habitat (Service 2002, p. D–2). These habitat features are generally discussed below.

Flycatchers nest in thickets of trees and shrubs ranging in height from 2 m to 30 m (6 to 98 ft) (Service 2002, p. D–3). Lower-stature thickets (2–4 m or 6–13 ft tall) tend to be found at higher elevation sites, with tall-stature habitats at middle- and lower-elevation riparian forests (Service 2002, p. D–2). Nest sites typically have dense foliage at least from the ground level up to approximately 4 m (13 ft) above ground, although dense foliage may exist only at the shrub level, or as a low, dense tree canopy (Service 2002, p. D–3).

Regardless of the plant species' composition or height, breeding sites usually consist of dense vegetation in the patch interior, or an aggregate of dense patches interspersed with openings creating a mosaic that is not uniformly dense (Service 2002, p. 11). Common tree and shrub species currently known to comprise nesting habitat include Goodings willow, coyote willow, Geyers willow, arroyo willow, red willow, yewleaf willow, pacific willow (*Salix lasiandra*), boxelder, tamarisk, and Russian olive (Service 2002, pp. D–2, D–11). Other plant species used for nesting have been buttonbush (*Cephalanthus occidentalis*), cottonwood, stinging nettle (*Urtica dioica*), alder (*Alnus rhombifolia, Alnus oblongifolia, Alnus tenuifolia*), velvet ash (*Fraxinus velutina*), poison hemlock (*Conium maculatum*), blackberry (*Rubus ursinus*), seep willow (*Baccharis salicifolia, Baccharis glutinosa*), oak (*Quercus agrifolia, Quercus chrysolepis*), rose (*Rosa californica, Rosa arizonica, Rosa multiflora*), sycamore (*Platinus wrightii*), giant reed (*Arundo donax*), false indigo (*Amorpha californica*), Pacific poison ivy (*Toxicodendron diversilobum*), grape (*Vitus arizonica*), Virginia creeper (*Parthenocissus quinquefolia*), Siberian elm (*Ulmus pumila*), and walnut (*Juglans hindsii*) (Service 2002, pp. D–3, D–5, D–9). Other species used by nesting flycatchers may become known over time as more studies and surveys occur.

Canopy density (the amount of cover provided by tree and shrub branches measured from the ground) at various nest sites ranged from 50 to 100 percent (Service 2002, p. D–3). Flycatcher breeding habitat can be generally organized into three broad habitat types—those dominated by native vegetation (typically willow), by exotic (nonnative) vegetation (typically salt cedar), and those with mixed native and those dominated by exotic plants (typically salt cedar and willow).

These broad habitat descriptors reflect the fact that flycatchers inhabit riparian habitats dominated by both native and nonnative plant species. Salt cedar and Russian olive are two exotic plant species used by flycatchers for nest placement and also foraging and shelter (Service 2002, p. D–4). The riparian patches used by breeding flycatchers vary in size and shape (Service 2002, p. D–2). They may be relatively dense, linear, contiguous stands or irregularly-shaped mosaics of dense vegetation with open areas (Service 2002, pp. D–2–D–11).

Flycatchers use tamarisk (or salt cedar) and Russian olive for nest placement, foraging, roosting, cover, migration, and dispersal. Fewer than half (44 percent) of the known flycatcher territories occur in habitat patches that are greater than 90 percent native vegetation in composition (Durst *et al.* 2008, p. 15). About 50 percent of all known flycatcher territories are located at breeding sites that include mixtures of native and exotic plant species (mostly tamarisk) (Durst *et al.* 2008, p. 15). In many of these areas, exotic plant species are significant contributors to the habitat structure by providing the dense lower strata vegetation that flycatchers prefer (Durst *et al.* 2008, p. 15). A USGS comparative study (Sogge *et al.* 2005, p. 1) found no difference in flycatcher physiology, immunology, site fidelity, productivity, or survivorship between flycatchers nesting in tamarisk-dominated habitat versus native-dominated habitats. Tamarisk habitats vary with respect to

suitability for breeding flycatchers across their range, just as do native habitats (Sogge *et al.* 2005, p.1). While the literature refutes or questions the negative environmental impacts of tamarisk (Glenn and Nagler 2005, pp. 1–2, USGS 2010, pp. vi–xviii), many riparian vegetation improvement projects focus on the eradication or control of tamarisk. The implementation of these projects requires careful evaluation (see Special Management Considerations or Protections below) and success can rely on the improvement of the physical or biological features included in this proposal associated with river flow and groundwater (Service 2002, Appendices H and K).

Flycatchers have been recorded nesting in patches as small as 0.1 ha (0.25 ac) along the Rio Grande, and as large as 70 ha (175 ac) in the upper Gila River, New Mexico (Service 2002, p. 17). The mean reported size of flycatcher breeding patches was 8.6 ha (21.2 ac), with the majority of sites toward the smaller end, as evidenced by a median patch size of 1.8 ha (4.4 ac) (Service 2002, p. 17). Mean patch size of breeding sites supporting 10 or more flycatcher territories was 24.9 ha (62.2 ac). Aggregations of occupied breeding patches within a breeding site may create a riparian mosaic as large as 200 ha (494 ac), such as areas like the Kern River (Whitfield 2002, p. 2), Alamo Lake, Roosevelt Lake (Paradzick *et al.* 1999, pp. 6–7), and Lake Mead (McKernan 1997, p. 13).

Flycatchers can cluster their territories into small portions of riparian sites (Whitfield and Enos 1996, p. 2; Sogge *et al.* 1997, p. 24), and major portions of the site may only be used briefly or not at all in any given year. Habitat modeling based on remote sensing and GIS data has found that breeding site occupancy at reservoir sites in Arizona is influenced by vegetation characteristics of habitat adjacent to the actual nesting areas (Hatten and Paradzick 2003, pp. 774, 782); therefore, areas adjacent to nest sites can be an important component of a breeding site. How size and shape of riparian patches relate to factors such as flycatcher nest-site selection and fidelity, reproductive success, predation, and brood parasitism is unknown (Service 2002, p. D–11).

With only some exceptions, flycatchers are generally not found nesting in confined floodplains (typically those bound within a narrow canyon) (Hatten and Paradzick 2003, p. 780) or where only a single narrow strip of riparian vegetation less than approximately 10 m (33 ft) wide develops (Service 2002, p. D–11). While riparian vegetation too mature, too immature, or of lesser quality in abundance and breadth may not be used for nesting, it can be used by breeding flycatchers for foraging (especially if it extends out from larger patches) or during migration for foraging, cover, and shelter (Sogge and Tibbitts 1994, p. 16; Sogge and Marshall 2000, p. 53).

Therefore, based on the information above, we identify a variety of riparian tree and shrub species as essential physical or biological features of flycatcher habitat. Typically, dense expansive riparian forests provide habitat to place nests. Riparian vegetation of broader quality, with a mosaic of open spaces, typically surround locations to place nests or along river segments and provide vegetation for foraging, perching, dispersal, and migration, and habitat that can develop into nesting areas through time.

Primary Constituent Elements for Southwestern Willow Flycatcher

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the flycatcher in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

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 following elements are the primary constituent elements specific to the flycatcher:

(1) Primary Constituent Element 1—*Riparian vegetation.* Riparian habitat in a dynamic river or lakeside, natural or manmade successional environment (for nesting, foraging, migration, dispersal, and shelter) that is comprised of trees and shrubs (that can include Gooddings willow, coyote willow, Geyers willow, arroyo willow, red willow, yewleaf willow, pacific willow, boxelder, tamarisk, Russian olive, buttonbush, cottonwood, stinging nettle, alder, velvet ash, poison hemlock, blackberry, seep willow, oak, rose, sycamore, false indigo, Pacific poison ivy, grape, Virginia creeper, Siberian elm, and walnut) and some combination of:

(a) Dense riparian vegetation with thickets of trees and shrubs that can range in height from about 2 m to 30 m (about 6 to 98 ft). Lower-stature thickets (2 to 4 m or 6 to 13 ft tall) are found at higher elevation riparian forests and tall-stature thickets are found at middle- and lower-elevation riparian forests; and/or

(b) Areas of dense riparian foliage at least from the ground level up to approximately 4 m (13 ft) above ground or dense foliage only at the shrub or tree level as a low, dense canopy; and/or

(c) Sites for nesting that contain a dense (about 50 percent to 100 percent) tree or shrub (or both) canopy (the amount of cover provided by tree and shrub branches measured from the ground); and/or

(d) Dense patches of riparian forests that are interspersed with small openings of open water or marsh or areas with shorter and sparser vegetation that creates a variety of habitat that is not uniformly dense. Patch size may be as small as 0.1 ha (0.25 ac) or as large as 70 ha (175 ac); and

(2) Primary Constituent Element 2—*Insect prey populations.* A variety of insect prey populations found within or adjacent to riparian floodplains or moist environments, which can include: flying ants, wasps, and bees (Hymenoptera); dragonflies (Odonata); flies (Diptera); true bugs (Hemiptera); beetles (Coleoptera); butterflies, moths, and caterpillars (Lepidoptera); and spittlebugs (Homoptera).

With this proposed designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the primary constituent elements sufficient to support the life-history processes of the species.

Physical or Biological Features and Primary Constituent Elements Summary

The discussion above outlines those physical or biological features essential to the conservation of the flycatcher and presents our rationale as to why those features are being proposed. The primary constituent elements described above are results of the dynamic river or lakeside environment that germinates, develops, maintains, and regenerates the riparian forest and provides food for breeding, non-breeding, dispersing, territorial, and migrating flycatchers.

Anthropogenic factors such as dams, irrigation ditches, or agricultural field return flow can assist in providing or mimic the conditions that support flycatcher habitat. In regulated environments, riparian vegetation improvement projects associated with

planting, irrigation, and cultivation may also require manual manipulation to maintain suitability over the long term.

Because the flycatcher exists in disjunct breeding populations across a wide geographic and elevation range and its habitat is subject to dynamic events, the quantity and spatial arrangement of critical habitat river segments described below are essential for the flycatcher to maintain metapopulation stability, connectivity, and gene flow, and to protect against catastrophic loss. All river segments proposed as flycatcher critical habitat are either: (1) Within the known range of the subspecies, representing areas known to be occupied at the time of listing; or (2) essential areas for the conservation of the species not known to be occupied by the flycatcher at the time of listing, but now may or may not be known to have flycatchers present. These areas contain at least one of the primary constituent elements of the physical or biological features essential for the conservation of the subspecies. It is important to recognize that the primary constituent elements such as riparian vegetation with trees and shrubs of a certain type and insect prey populations are present throughout the river segments selected, but the specific quality of riparian habitat for nesting (which involve elements such as specific configuration of riparian foliage, sites for nesting, and interspersion of small openings), migration, foraging, and shelter will not remain constant in condition or location over time due to succession (plant germination and growth) and the dynamic environment in which they exist.

In order to reach the goal of conserving the subspecies by recovering an adequate geographical and ecological distribution of the flycatcher population, the distribution and abundance of flycatcher habitat and breeding populations must improve across the 29 Management Units (see Background section). The recovery goal is 1,950 flycatcher territories geographically and numerically distributed in the appropriate Management Units along with twice the habitat needed to maintain these territories (see Background section). Also, these areas must hold these populations for a number of years and be protected through conservation agreements or other means. The most recent rangewide flycatcher assessment estimated that there were about 1,300 flycatcher territories (Durst *et al.* 2008, p. 13). The Lower Colorado, Upper Colorado, and Basin and Range Recovery Units need the most growth in known territories and habitat to reach recovery goals. While there is still great variance in the known number of territories within the Coastal California, Gila, and Rio Grande Recovery Units, these areas are closer in number of territories and amount of habitat to the established recovery goals. The numeric territory goals established per Management Unit are in denominations of 25. The goal for some Management Units may be as few as 25 territories or as many as 325.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

As mentioned briefly or referenced in this proposed rule, the flycatcher and its habitat are threatened by a multitude of factors occurring at once. Threats to those features that define critical habitat (elements of physical or biological features) are caused by various factors. We believe the essential features within the areas proposed as critical habitat will require some level of management or protection (or both) to address the current and future threats and maintain the quality, quantity, and arrangement of the elements of physical or biological features essential to flycatcher conservation.

Essential features in need of special management occur not only at the immediate locations where the flycatcher may be present, but at additional areas needed to reach recovery goals and areas that can provide for normal population fluctuations and habitat succession that may occur in response to natural and unpredictable events. The flycatcher may be dependent upon habitat components beyond the immediate areas where individuals of the species occur if they are important in maintaining ecological processes such as hydrologic regimes; plant germination, growth, maintenance, and regeneration (succession); sedimentation; groundwater elevations; plant health and vigor; or maintenance of prey populations.

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 flycatcher. Federal activities outside of critical habitat are still subject to review under section 7 of the Act if they may affect the flycatcher or its critical habitat (such as groundwater pumping, developments, watershed condition). Prohibitions of section 9 of the Act also continue to apply both inside and outside of designated critical habitat.

A detailed discussion of threats to the flycatcher and its habitat can be found in the final listing rule (60 FR 10694, February 27, 1995), the previous critical habitat designations (62 FR 39129, July 22, 1997; 70 FR 60886, October 19, 2005), and the final Recovery Plan (Service 2002, pp. 33–42, Appendix F). Some of the special management actions that may be needed for essential features of flycatcher habitat are briefly summarized below.

(1) Restore adequate water-related elements to improve and expand the quality, quantity, and distribution of riparian habitat. Special management may: increase efficiency of groundwater management; use urban water outfall and irrigation delivery and tail waters for vegetation improvement; maintain, improve, provide, or reestablish instream flows to expand the quality, distribution, and abundance of riparian vegetation; increase the width between levees to expand the active channel during overbank flooding; and manage regulated river flows to more closely resemble the natural hydrologic regime.

(2) Retain riparian vegetation in the floodplain. Special management may include the following actions: avoid clearing channels for flood flow conveyance or plowing of flood plains; and implement projects to minimize clearing of vegetation (including exotic vegetation) to help ensure that desired native species and exotic vegetation persist until an effective riparian vegetation improvement plan can be implemented.

(3) Manage biotic elements and processes. Special management may include the following actions: manage livestock grazing to increase flycatcher habitat quality and quantity by determining appropriate areas, seasons, and use consistent within the natural historical norm and tolerances; reconfigure grazing units, improve fencing, and improve monitoring and documentation of grazing practices; manage wild and feral hoofed-mammals (ungulates) (*e.g.*, elk, horses, burros) to increase flycatcher habitat quality and quantity; and manage keystone species such as beaver to restore desired processes to increase habitat quality and quantity.

(4) Protect riparian areas from recreational impacts. Special management may include actions such as managing trails, campsites, off-road vehicles, and fires to prevent habitat

development and degradation in flycatcher habitat.

(5) Manage exotic plant species, such as tamarisk or Russian olive, by reducing conditions that allow exotics to be successful, and restoring or reestablishing conditions that allow native plants to thrive. Throughout the range of the flycatcher, the success of exotic plants within river floodplains is largely a symptom of land and water management (for example, groundwater withdrawal, surface water diversion, dam operation, and unmanaged grazing) that has created conditions favorable to exotic plants over native plants. Special management may include the following actions: eliminate or reduce dewatering stressors such as surface water diversion and groundwater pumping to increase stream flow and groundwater elevations; reduce salinity levels by modifying agricultural practices and restoring natural hydrologic regimes and flushing flood flows; in regulated streams, restore more natural hydrologic regimes that favor germination and growth of native plant species. Improve timing of water draw down in lake bottoms to coincide with the seed dispersal and germination of native species; and restore ungulate herbivory to intensities and levels under which native riparian species are more competitive.

(6) Manage fire to maintain and enhance habitat quality and quantity. Special management may include the following actions: suppress fires that occur; reduce risk of fire by restoring elevated groundwater levels, base flows, flooding, and natural hydrologic regimes in order to prevent drying of riparian areas and more flammable exotic plant species from developing; and reduce risk of recreational fires.

(7) Evaluate and conduct exotic plant species removal and native plant species restoration on a site-by-site basis. If habitat assessments reveal a sustained increase in exotic plant abundance, conduct an evaluation of the underlying causes and conduct vegetation improvement under measures described in the Recovery Plan (Service 2002, Appendices H and K). Remove exotics only if: underlying causes for dominance have been addressed; there is evidence that exotic species will be replaced by vegetation of higher functional value; and the action is part of an overall vegetation improvement plan. Native riparian vegetation improvement plans should include: a staggered approach to create mosaics of different aged successional tree and shrub stands; consideration of whether the sites are presently occupied by nesting flycatchers; and management of stressors that can improve the germination, growth, and maintenance of preferred vegetation.

(8) Manage or reduce the occurrence, spread, and effects of biocontrol agents on flycatcher habitat. Exotic biocontrol tamarisk leaf beetle insects (leaf beetles) were brought into and released in many locations throughout the western United States. This specific U.S. Department of Agriculture program was terminated in 2010, largely because these insects are moving farther and thriving in the southwestern United States (within the flycatcher's breeding range) where it was initially believed they would not persist (APHIS 2010, p. 2). However, leaf beetles still exist within the United States, and specifically within the northern range of the flycatcher in Nevada, Arizona, and New Mexico. It is unknown to what extent these leaf beetles will continue to move throughout the Southwest. Their overall impact or benefit to the flycatcher, flycatcher habitat, and other wildlife species is also unknown, but there are predictions that the beetles could occur throughout the western United States and into northern Mexico (Tracy *et al.* 2008, pp. 1–3). There is concern about effects to the flycatcher in places throughout much of its range where the landscape does not support healthy native riparian vegetation (even in the absence of tamarisk). Along the Virgin River in southwestern Utah, flycatcher breeding attempts have failed concurrent with leaf beetle impacts to the vegetation (Paxton *et al.* 2010, p. 1). Rangewide, tamarisk is a habitat component of over half of all known flycatcher territories (Durst *et al.* 2007, p. 15). Therefore, it would be beneficial to prevent purposeful or accidental intra- or interstate transport of leaf beetles to locations that would increase the likelihood of beetles dispersing to flycatcher habitat. Similarly, because insects can travel or be moved large distances, prevent the additional release of leaf beetles (in all their varieties) into the environment where they can eventually occur within flycatcher habitat. Where leaf beetle-related impacts may occur or are happening, consider the previous items in this list and the Recovery Plan for strategies to help improve the germination and growth of native plants (Service 2002, p. Appendix K).

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species (or in this instance, a willow flycatcher subspecies). In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of this flycatcher subspecies. We are proposing to designate critical habitat in areas within the geographical area known to be occupied by nesting flycatchers at the time of listing in 1995. We also are proposing to designate specific areas outside the geographical area occupied by nesting flycatchers at the time of listing (but that are within its known historical breeding distribution), because such areas are essential for the conservation of the species as supported by the geographical and numerical flycatcher territory and habitat-related recovery goals established in the Recovery Plan (Service 2002, pp. 84–85).

Stream Segments as Critical Habitat

We are proposing to use ''stream segments'' as the descriptor for the designated area of flycatcher critical habitat (which, in some areas also includes exposed reservoir bottoms). Stream segments are appropriate for delineating critical habitat because in addition to providing stream-side vegetation for flycatchers to place nests, stream segments satisfy other various flycatcher life needs adjacent to or between nesting sites (foraging habitat, stream, elevated groundwater tables, moist soils, flying insects, and other alluvial floodplain habitats) (see *Physical or Biological Features* section). Also, the dynamic processes of riparian vegetation succession (loss and regrowth) and river hydrology allow for stream segments to provide both current and future areas for flycatcher habitat to grow. Riparian vegetation in these segments is expected to naturally expand and contract from flooding, inundation, drought, and the resulting changes in the extent and location of floodplains and river channels (Service 2002, pp. 18, D–13–D–15). Therefore, while one or more of the physical or biological features are currently present, over time these habitat features will fluctuate in quality or location throughout these stream segments. Management of stream flows and other anthropogenic (manmade) factors, such as agricultural practices, can also influence the location and quality of the riparian vegetation in many of these stream segments. The lateral extent of each river segment occurs within the 100-year floodplain (see *Physical or*

Biological Features section) and is further described below (see Lateral Extent section). Therefore, designating stream segments as critical habitat will provide for the variety of flycatcher uses and allow for ever-changing streamside vegetation habitat quality (in location and abundance).

Occupancy at the Time of Listing

We identified areas occupied at the time of listing in 1995 as those streams where flycatchers were found nesting in any one season from surveys conducted from 1991 to 1994 (Sogge and Durst 2008). The flycatcher rangewide database (Sogge and Durst 2008) is the authoritative source for determining nesting areas because our 1995 flycatcher listing rule did not list all known data regarding flycatcher distribution and abundance. We considered a broader area to be occupied than just the specific site where a nest was located because flycatchers are a neotropical migrant traveling between Central America (and possibly northern South America) and the United States, and they are known to move to different nest areas from year-to-year.

Because flycatchers are neotropical migrants that occupy riparian areas along rivers while traveling between wintering and breeding grounds, we expect that abundant small areas along long stretches of stream can be irregularly occupied by migrant flycatchers from year-to-year. North- and south-bound migrating flycatchers are frequently found occupying stopover areas along streams upstream of, downstream of, and between known breeding sites (Yong and Finch 1997, pp. 265–266; Service 2002, pp. E2–E3; Koronkiewicz *et al.* 2004, pp. 9–11). In Arizona, migrant flycatchers were detected at 204 sites Statewide along 15 of 19 river drainages surveyed for nesting flycatchers over a 10-year period (Ellis *et al.* 2008, p. 26). Over 600 migrant willow flycatchers (subspecies not known) were detected along the length of the lower Colorado River in 2004 (Ellis *et al.* 2008, p. 26), where only a relatively few known breeding sites exist.

Similarly, flycatchers are known to have fidelity to a larger area along stream drainages (rather than specific nest site fidelity), and can regularly move their nesting locations about 30 to 40 km (18 to 25 mi) from year-to-year (Paxton *et al.* 2007a, p. 4). And sometimes, flycatchers can even move to a very distant location, dispersing as far as 444 km (275 mi) from a previous year's nesting area (Paxton *et al.* 2007a, p. 2). These year-to-year movements are facilitated by the dynamic nature of flycatcher habitat, changing in quality and location over time. More dramatic changes in habitat quality caused by events such as flooding or inundation can force flycatchers to move their breeding location, thus causing them to use broader locations and habitat quality.

Therefore, for this wide-ranging bird, it is difficult to precisely determine known occupied areas due to the following considerations: (1) The flycatcher's neotropical migratory habits of occupying stopover areas along streams upstream of, downstream of, and between breeding sites; and (2) the season-to-season variation in habitat quality and subsequent lack of specific nest-site fidelity. As a result, for the purpose of this proposed critical habitat designation, we believe it is most conservative and reasonable to conclude that any stream segment along a stream where flycatchers were found nesting from 1991 to 1994 also be considered occupied at the time of listing. Those stream segments considered occupied at the time of listing and those considered not occupied at the time of listing that we are proposing as revised critical habitat are organized by Recovery and Management Units listed in Table 1 and described briefly in the unit descriptions below. All of the stream segments occupied at the time of listing contain one or more of the elements of physical or biological features which may require special management considerations or protection as described above. We also include whether flycatcher territories were detected on proposed stream segments not known to be occupied at the time of listing (but are essential for the conservation of the flycatcher).

Recovery Plan Guidance

We relied heavily on the Recovery Plan (Service 2002) to help us identify the areas that we are proposing as revised critical habitat because the Recovery Plan represents a compilation of the best scientific data available to us. We particularly used the information from the Recovery Plan, such as distribution and abundance of flycatchers, flycatcher natural history and habitat needs, and stream segments with substantial recovery value, to help identify stream segments that should be proposed as critical habitat because they are essential to flycatcher conservation.

The Recovery Plan's strategy, rationale, and science for conservation of the flycatcher guided our efforts to identify the quantity and spatial arrangement of features and areas of critical habitat (Service 2002, pp. 61–95). Because of the wide distribution of this bird and the dynamic nature of its habitat, it was important to propose critical habitat in areas throughout all of the breeding range of the flycatcher that have stated recovery goals. This widespread distribution of habitat is intended to allow flycatchers to function as a group of metapopulations, realize gene flow throughout its range, provide ecological connectivity among disjunct populations, allow for breeding site colonization potential, and prevent catastrophic population losses.

The Recovery Plan (Service 2002, pp. 74–76) identifies important factors to consider in minimizing the likelihood of extinction. These factors were also considered in our approach to proposing areas for critical habitat designation: (1) The territory is the appropriate unit of measure for numerical flycatcher recovery goals; (2) populations should be distributed throughout the bird's range; (3) populations should be distributed close enough to each other to allow for movement among them; (4) large populations contribute most to metapopulation stability, while smaller populations can contribute to metapopulation stability when arrayed in a matrix with high connectivity; (5) as the population of a site increases, the potential to disperse and colonize increases; (6) increase and decrease in one population affects other populations; (7) some Recovery and Management units have stable metapopulations, but others do not; (8) maintaining or augmenting (or both) existing populations is a greater priority than establishing new populations; and (9) establishing habitat close to existing breeding sites increases the chance of colonization.

Methodology Overview

Our goal is to propose stream segments as critical habitat within 29 of the 32 Management Units (which are geographic areas clustered within 6 Recovery Units) in order to meet the specific numerical flycatcher territory and habitat-related recovery goals (Service 2002, pp. 84–85), which are the same criteria that we are using to identify physical or biological features and designate areas that are essential to flycatcher conservation. Three of the 32 Management Units (Lower Gila, Pecos, and Texas) do not have any goals identified in the Recovery Plan because of either the lack of habitat, the inability for habitat to recover, or the determination that meaningful populations could not be established and persist. Therefore, no critical habitat is proposed for these three

Management Units. Numerical flycatcher territory recovery goals for each of the 29 Management Unit vary throughout the flycatcher's range from as few as 25 territories to as many as 325 (Service 2002, pp. 84–85).

In relying on these recovery goals and strategies, we used a methodology with two basic strategies to identify areas and, subsequently, river segments within those areas to propose as critical habitat. First, we identified areas based upon the presence of large breeding populations and areas with multiple small breeding populations that when found in proximity, form a large population. Once these areas were established, we identified the specific end points of the stream segments of flycatcher habitat. Second, for those Management Units with a specific number of territories required to meet recovery goals, but no, or very few, known flycatcher territories, we used information from the Recovery Plan (Service 2002, pp. 86–92) and other relevant sources to identify river segments with flycatcher habitat. The results of this strategy were the identification of streams that: (1) Were known to be occupied by flycatchers at the time of listing with the physical or biological features; (2) the identification of essential areas that were not known to be occupied by flycatchers at the time of listing but that also include elements of the physical or biological features of critical habitat; and (3) the identification of areas for critical habitat that have never been known to be occupied by flycatchers but are essential for the conservation of the flycatcher in order to meet recovery goals.

Areas With Large Populations

To identify the areas with flycatcher habitat in each Management Unit, we first considered specific areas that are known since 1991 to have had large populations of nesting flycatchers. Since the time of listing in 1995, the known distribution and abundance of flycatcher territories has increased primarily due to increased survey effort (Durst *et al.* 2008, p. 4). Population increases have also been detected at specific areas where habitat quality and quantity improved. As a result of more extensive surveys and research, and in particular re-establishing known occupancy of breeding sites in Nevada, Utah, and Colorado, the extent of streams known to be used by migrating, non-breeding, and dispersing flycatchers has also expanded. Following the most recent rangewide estimate in 2007, 1,299 territories were described occurring in California, Nevada, Utah, Colorado, Arizona, and New Mexico (Durst *et al.* 2008, p. 4). Additional sites have been detected in the following years, but an updated rangewide estimate has not yet been compiled.

The locations of breeding sites were generated from standardized flycatcher surveys conducted from 1991 to 2010. There has been a standardized survey protocol since the 1995 listing of the flycatcher that biologists have used to confirm the presence of flycatcher territories that has produced reliable and accurate information (Tibbitts *et al.* 1994, p. 1; Sogge *et al.* 1997, p. 1; Sogge *et al.* 2010, p. 1). To help ensure the protocol is being used properly, the Service and our partners provide annual training on protocol implementation and flycatcher status, identification, and natural history.

A variety of sources were used to determine breeding site location and information from 1991 to 2010. The Recovery Plan (Service 2002), the U.S. Geological Survey flycatcher rangewide database (Sogge and Durst 2008), the 2007 flycatcher rangewide report (Durst *et al.* 2008), and recent survey information for the 2008, 2009, and 2010 breeding seasons were all used as authoritative sources of information on breeding flycatcher distribution and abundance. The flycatcher rangewide database developed and maintained by USGS (Sogge and Durst 2008) compiles the results of surveys conducted throughout the bird's range since 1991. We also examined 2008 to 2010 data that the Service in Arizona, Nevada, Utah, and Colorado compiled and entered into separate databases and spreadsheets. The USGS and U.S. Bureau of Reclamation provided the post-2007 Statewide database results for California and New Mexico, respectively. However, these post-2007 flycatcher data were difficult to comprehensively incorporate into this proposed rule because they have not yet been analyzed and synthesized into the overall rangewide database. Therefore, much of our compiled rangewide information ends following the 2007 breeding season. A summary of known historical breeding records can be found in the Recovery Plan (Service 2002, pp. 8–10). We also evaluated data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles, agency reports, and databases; and regional Geographic Information System (GIS) coverages and habitat models.

In order to identify areas with large flycatcher populations, we first considered and defined a ''large'' population. We defined a large population as a single breeding site or collection of smaller connected breeding sites that support 10 or more territories in a single year. We selected 10 or more territories to identify a large population because the flycatcher population viability analysis indicates a breeding site exhibits greatest long-term stability with at least 10 territories (Service 2002, p. 72). Large populations persist longer than small ones, and produce more dispersers capable of emigrating to other populations or colonizing new areas (Service 2002, p. 74). In addition, smaller populations with high connectivity to other small populations can provide as much or more stability than a single isolated larger population with the same number of territories because of the potential to disperse colonizers throughout the network of breeding sites (Service 2002, p. 75).

Once the distribution and abundance of flycatcher breeding sites were identified and mapped, we considered the degree of connectivity to assign smaller separate flycatcher breeding sites and the distance from large populations to evaluate these areas as proposed critical habitat. In other words, how much area around breeding sites should be considered as proposed critical habitat? To determine these distances, we examined the known between-year movements of banded adult and juvenile flycatchers. The USGS's 10-year flycatcher study in central Arizona is the key movement study that has generated these conclusions (Paxton *et al.* 2007a, pp. 59–80), augmented by other flycatcher banding and re-sighting studies (Sedgwick 2004, p. 1103; McLeod *et al.* 2008, pp. 93–112). These studies found that flycatchers have higher site fidelity than nest fidelity and can move among breeding sites within drainages and between drainages (Kenwood and Paxton 2001, pp. 30–31). Within-drainage movements are more common than between-drainage movements (Paxton *et al.* 2007a, p. 77). Juveniles disperse the farthest and were the only group of flycatchers to connect very distant populations (Paxton *et al.* 2007a, p. 74). Banded flycatchers from season-to-season were recorded moving across a wide area from 50 m (150 feet) to 444 km (275 mi) (Paxton *et al.* 2007a, p. 2).

Because of the broad range of flycatcher movements, it is a challenge to apply a single distance to characterize the degree of connectivity of separated flycatcher breeding sites. However, USGS (Paxton *et al.* 2007a, pp. 4, 76, 84, 139, 140) assimilated all of the movement information and concluded that rapid colonization of flycatcher

breeding sites and increased metapopulation stability could be accomplished by establishing breeding sites within 30 to 40 km (18 to 25 mi) of each other. Flycatchers at these breeding sites would regularly disperse or move between sites within the same year or from year-to-year. This proximity of these sites would increase the connectivity and stability of the metapopulation and smaller, more distant breeding sites.

As a result of USGS's conclusion, we decided to use 35 km (22 mi), the average of the reported range, as a radius to identify an area surrounding known large flycatcher breeding sites and the distance to connect smaller populations to identify a large population. Because there was no distinction by USGS of a distance within this 30 to 40 km (18 to 25 mi) range that was more valuable to flycatchers, we believe the average is the best representation. After a large population area was established, we determined whether other breeding sites in proximity occurred. If so, this would add to our large population area, generate an additional 35-km (22-mi) radius and extend our area, and so on. We also used this 35-km (22-mi) radius to identify those highly connected breeding sites with a small number of territories that together equaled a large flycatcher population.

Following the identification of these areas that surround large flycatcher populations, we determined where flycatcher habitat occurred on streams and where to establish end points for proposed critical habitat. We used the Recovery Plan and other literature sources and local knowledge to identify stream segments. In combination with these areas of flycatcher habitat, we then considered the numerical and habitat-related recovery goals, and current and previous number of known territories. We also considered site-specific knowledge of these streams, aerial photography, agency reports, and input from other resource managers. The proximity and connectivity of segments to known populations and metapopulation stability were also key aspects of the flycatcher's natural history we considered in delineating river segment end points.

Our methods were unable to distinguish a more specific area, in contrast to other Management Units, within the San Diego and Santa Ana Management Units in the Coastal California Recovery Unit. Instead, because of the wide distribution and proximity of occupied streams segments, nearly these entire Management Units were identified as a large population area.

Also, our methodology discussed above was unable to distinguish areas within some Management Units where neither large populations nor small populations with high connectivity were known to occur. For example, in the Amargosa, Santa Cruz, San Francisco, Hassayampa and Agua Fria, San Juan, Powell, and Lower Rio Grande Management Units, there are no known breeding sites with 10 or more flycatcher territories, nor are any known territories in high connectivity that create a large population. Similarly, in some Management Units a large population and surrounding area was identified, but that area was found not to be of adequate size to include enough river segments needed to support the number of territories called for in the recovery goals. This situation occurred in the Little Colorado, Santa Ynez, and Santa Clara Management Units. In all of these cases, we used the guidance from the Recovery Plan, local knowledge about habitat, and other information available to identify additional stream segments to propose as critical habitat to meet recovery goals.

When generating the river segments in the situations where there were few territories to help guide us, we relied heavily upon recommendations and strategies provided in the Recovery Plan and local knowledge of habitat conditions, maps, and flycatcher natural history. The Recovery Plan identified portions of streams for each Management Unit that would contribute significantly toward recovery (Service 2002, pp. 86–92). These streams were not listed for the purpose of proposing critical habitat nor were they intended to be the only streams that were important for recovery, but they did identify streams of substantial recovery value. Also, we have generated additional information since the Recovery Plan was completed about river segments and whether they have or do not have substantial recovery value. Still, the list of stream segments described in the Recovery Plan (Service 2002, pp. 86–92) provides important guidance, especially for Management Units where there are few known flycatcher sites, to guide our critical habitat proposal. Site-specific knowledge of these streams, aerial photography, agency reports, and input from other resource managers were also considered. The proximity and connectivity of segments to known populations and metapopulation stability were also key aspects of the flycatcher's natural history we considered in delineating these areas.

The streams included as proposed critical habitat for the flycatcher are described below. Those streams included in this proposal that were not occupied at the time of listing were determined to be essential for the conservation of the flycatcher.

Migratory Habitat

Habitat for migrating flycatchers is captured in this proposal by our approach to propose critical habitat as ''river segments'' and distributing segments across 29 Management Units throughout the southwestern United States. We are currently unable to distinguish the value of specific locations along particular streams for flycatcher migration because stopover areas contain broad habitat quality in wide-ranging locations, are only for short-term use, and have uncertain occurrence from year-to-year (Finch *et al.* 2000, pp. 73, 76–77). Additionally, southwestern willow flycatchers are difficult to distinguish from other flycatcher species and subspecies during migration (Finch *et al.* 2000, pp. 71–72). Migrant flycatchers can sometimes be found in unusual locations away from riparian areas (Finch *et al.* 2000, p. 76), but many, if not most, are detected while searching for nesting flycatchers (McLeod *et al.* 2005, pp. 9–11; Ellis *et al.* 2008, pp. 26–27). An extensive look at flycatcher use along the Lower Colorado River (from Lake Mead to Mexico) and some of its major tributaries in Arizona and southern Nevada and Utah found migrating flycatchers in consecutive years occurring in nearly all of their study areas and over half of their survey sites (McLeod *et al.* 2005, pp. 9–11; Koronkiewicz *et al.* 2006, pp. 11–13). Similarly, regular migratory movement of flycatchers was detected along the Middle Rio Grande (Yong and Finch 1997, p. 255). As a result of these factors, we expect similar flycatcher migration behavior for the other major drainages where flycatchers breed throughout its range and where these locations are included within this designation. Therefore, flycatcher migration habitat is captured within our methods for designating critical habitat to reach recovery goals, because: (1) We are designating areas as broader river segments; (2) our areas will be geographically located across a broad area of the Southwest encompassing most of the range of the flycatcher; and (3) we are proposing areas surrounding nesting sites where migrant flycatchers are most often detected.

Lateral Extent

For the lateral extent of flycatcher proposed critical habitat stream segments, we considered the variety of purposes riparian habitat serves the flycatcher; the dynamic nature of rivers and riparian habitat; the relationship between the location of rivers, flooding, and riparian habitat; and the expected boundaries, over time, of these habitats. Flycatchers use riparian habitat in a variety of conditions for breeding, feeding, sheltering, cover, dispersal, and migration stopover areas. Riparian habitat is dependent on the location of river channels, floodplain soils, subsurface water, and floodplain shape, and is driven by the wide variety of high, medium, and low flow events. In addition, manmade factors such as diversion ditches or return flows can also influence riparian vegetation distribution. Rivers can and do move from one side of the floodplain to the other. Flooding occurs at periodic frequencies that recharge aquifers and that deposit and moisten fine floodplain soils which create seedbeds for riparian vegetation germination and growth within these boundaries.

In this proposal, we consider the riparian zone to be the area surrounding the select river segment that is directly influenced by river functions. The present boundaries, for mapping purposes, of the lateral extent or riparian zone (in other words, the surrogate for the delineation of the lateral boundaries of critical habitat within proposed stream segments) were derived by one of two methods. The area was either captured from existing digital data sources (listed below) or created through expert visual interpretation of remotely sensed data (aerial photographs and satellite imagery—also listed below). Geographic Information System technology was utilized throughout the lateral extent determination. ESRI, Inc. ArcInfo 8.3 was used to perform all mapping functions and image interpretation. Pre-existing data sources used to assist in the process of delineating the lateral extent of the riparian zones for this designation included: (1) National Wetlands Inventory (NWI) digital data from the mid 1980s, 2001, and 2002; (2) Federal Emergency Management Agency (FEMA) 1995, Q3 100 year flood data; (3) U.S. Census Bureau Topologically Integrated Geographic Encoding and Referencing (TIGER); and (4) 2000 digital data. The riparian zone is anticipated to occur within the 100-year floodplain.

Where pre-existing data may not have been available to readily define riparian zones, visual interpretation of remotely sensed data was used to define the lateral extent. Data sources used in this included: (1) Terraserver online Digital Orthophoto Quarter Quads (DOQQs), black and white, 1990s era and 2001; (2) USGS DOQQs 1997; (3) USGS aerial photographs, 1 meter, color-balanced, and true color, 2002; (4) Landsat 5 and Landsat 7 Thematic Mapper, bands 4, 2, 3, 1990–2000; (5) Emerge Corp, 1 meter, true color imagery, 2001; (6) Local Agency Partnership, 2 foot, true color, 2000; and (7) National Wetlands Inventory aerial photographs, 2001–2002.

We refined all lateral extents for this proposed designation by creating electronic maps of the lateral extent and attributing them according to the following riparian sub-classifications. Riparian developed areas, as defined below, are not included in our proposed critical habitat designation since these areas do not contain the primary constituent elements (see *Primary Constituent Elements for the Southwestern Willow Flycatcher* section above), are not considered essential to the conservation of the flycatcher and, therefore, do not meet the definition of critical habitat. We separated riparian areas into the following two categories: (1) Riparian Vegetated: This class is used to describe areas still in natural unvegetated wetlands, water bodies, and any undeveloped or unmanaged lands within the approximate riparian zone. (2) Riparian Developed: This class is used to describe all developed areas, such as urban and suburban development, agriculture, utilities, mining, and extraction.

Mapping

When determining proposed critical habitat boundaries, we made efforts to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for the flycatcher. These types of developments are not often found adjacent to rivers within floodplains, and may not be found on recent maps. Also, the scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the removal of such developed lands. Any such developed lands left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the prohibition of adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat. Similarly, where there are long stretches of canyons or other portions of rivers that we know lack the physical or biological features within a river segment, we attempted to remove those areas from our proposed river segments.

Summary

Our initial steps and approach in proposing areas for flycatcher critical habitat were to identify areas: (1) Known to be within the specific geographic area occupied by the flycatcher at the time of listing (from surveys occurring from 1991 to 1994) that contain the essential physical or biological features which may require special management; and (2) that are essential to the conservation of the flycatcher based on the Recovery Plan goals.

Following the evaluation of the two factors above, our goal was to incorporate the conservation strategies described in the Recovery Plan. These strategies describe the importance of flycatcher habitat to support stable and growing breeding populations, to provide migration stopover areas, to protect against simultaneous catastrophic loss, to maintain gene flow, to prevent isolation and extirpation, and to provide colonizers to use new areas. Also, the Recovery Plan describes the importance of habitat that supports large breeding populations of flycatchers and small populations that, when in proximity, equal a large population. To achieve these goals, the Recovery Plan describes a recovery strategy of distributing flycatcher habitat that could hold a specific minimum number of breeding territories across 29 different Management Units in portions of California, Nevada, Utah, Colorado, Arizona, and New Mexico.

We therefore created criteria and methodology to identify areas surrounding large populations and small populations, in proximity, that equaled a large population. We used a 35-km (22-mi) distance as a radius to identify areas around large flycatcher populations (those with at least 10 territories) and small populations in high connectivity that together equal a large population.

We chose to generate critical habitat in ''river segments'' to account for the dynamic aspects of flycatcher riparian habitat, the changing locations of flycatcher habitat due to these dynamic conditions, population growth, and the variety of other life-history needs such

as nest placement, foraging, dispersing, cover, shelter, and migration habitat.

Once these broad areas were established, we identified stream segments with flycatcher habitat that we believe will support the numerical territory and habitat-related recovery goals for the 29 Management Units described in the Recovery Plan.

Some Management Units with recovery goals do not have large populations or small populations that equal a large population in high connectivity. Also, in some Management Units an area may not contain enough habitat to reach the number of territories stated in the Recovery Plan. In these instances, we relied heavily upon the Recovery Plan guidance (recovery strategy, stream identification, and habitat descriptions), flycatcher detections, and local expertise in habitat quality to identify river segments considered essential for the conservation of the species.

The lateral extent of river segments proposed as critical habitat represent the riparian zone, which is an area that is most directly influenced by river functions and is anticipated to occur within the 100-year floodplain. We created these boundaries from existing digital sources and visual interpretation.

Overall, these proposed stream segments represent flycatcher habitat known to be occupied at the time of listing and essential areas that have high value for recovery. The proposed areas support stable and growing breeding populations, provide migration stopover areas, protect against simultaneous catastrophic loss, maintain gene flow, prevent isolation and extirpation, and encourage colonizers to use new areas. All proposed stream segments provide habitat for a wide distribution of breeding flycatchers, including areas for population growth to meet numerical and habitat-related recovery goals. The proposed areas also support other important flycatcher needs such as migration, dispersal, foraging, and shelter to reach the geographic distribution and habitat-related recovery goals established within the Recovery Plan's 29 Management Units with recovery goals.

Summary of Changes Between Flycatcher Critical Habitat Proposals

Our improved knowledge about the flycatcher's distribution and abundance, development of a Recovery Plan (Service 2002), and our approach to determining essential habitat led to differences between the 1997 final flycatcher critical habitat designation (62 FR 39129) and our approach in the 2004 flycatcher critical habitat proposal (69 FR 60706). Our 1997 designation of flycatcher critical habitat was completed without extensive current knowledge about flycatcher distribution and abundance and prior to the finalization of the Recovery Plan (Service 2002). Subsequently, in our 2004 flycatcher critical habitat proposal, we had more information about flycatcher distribution and abundance; population dynamics; year-to-year movements; and defined conservation objectives, strategies, and recovery criteria. In 2004, our approach to determining essential flycatcher habitat was protecting large populations and those smaller populations that, in proximity, equaled a large population.

For this 2011 proposal, we have refined our definition of what areas are considered to be essential for the conservation of the species (see discussion below), and we continued to improve our knowledge about flycatcher habitat, distribution, and abundance. Because we will be re-analyzing potential exclusions, we present below the differences between our 2004 flycatcher proposed critical habitat rule and this 2011 flycatcher proposed critical habitat rule. We are comparing this proposal to the 2004 proposal instead of the final 2005 flycatcher critical habitat designation because that final designation had a number of areas excluded under section 4(b)(2) of the Act. Our approach to conservation of the flycatcher and definition of essential habitat are the primary differences between the two proposals. We summarize the changes below.

(1) For this 2011 proposal, we define the critical habitat that is not occupied at the time of listing, but that is essential for the conservation of the species, as areas needed to support the distribution and abundance of territories and habitat-related recovery goals described in the Recovery Plan (Service 2002, pp. 77–85). In contrast, in 2004, we determined essential habitat was based on only those areas that supported large flycatcher populations (69 FR 60715–60716).

(2) For this 2011 proposal, we are proposing stream segments in all 29 Management Units where there are flycatcher territories and habitat-related recovery goals stated in the Recovery Plan, in contrast to our 2004 proposal where we proposed stream segments in only 21 Management Units.

(3) In this proposed rule we are using 35 km (22 mi) as the radius to guide our critical habitat areas surrounding large populations (equal or greater than 10 territories) and proximity of sites with smaller numbers that could equal a large population. This is the average distance between breeding sites that USGS described (30 to 40 km, 18 to 25 mi) as being highly connected. In our 2004 proposal, we used 30 km (18 mi) as the radius. Because USGS did not describe a value within this 30 to 40 km range (18 to 25 mi) that is more or less beneficial for the flycatcher, we believe using the average accurately reflects the range of distance between highly connected breeding sites.

(4) To assist in generating critical habitat in Management Units where there are recovery goals, but there are no known large flycatcher population or collection of small populations in proximity that equaled a large population, we are using Recovery Plan guidance in this proposed rule to propose stream segments with substantial recovery value (Service 2002, pp. 86–92), known breeding sites (Durst *et al.* 2008; Sogge and Durst 2008), and other literature, reports, and local knowledge about flycatcher population dynamics and habitat. In contrast, in 2004, we did not attempt to propose critical habitat in these areas because our definition of essential habitat was focused on the presence of large populations (69 FR 60715–60716).

(5) In 2004 we identified the following stream segments as essential to the conservation of the flycatcher and proposed them as critical habitat. These segments are not included in this proposal because of further evaluation of habitat quality, additional information about flycatcher territories, and our revised definition of essential habitat.

Coastal California Recovery Unit

- Santa Ana Management Unit, CA: Yucaipa Creek and Wilson Creek.
- San Diego Management Unit, CA: Cuyamaca Reservoir and Agua Hedionda Lagoon.

Lower Colorado Recovery Unit—Nevada, California and Arizona Border, Arizona, New Mexico

- Little Colorado Management Unit, AZ: East and South Forks Little Colorado River.

Gila Recovery Unit—Arizona

- Roosevelt Management Unit, AZ: Pinto Creek.

(6) The following stream segments were not proposed as flycatcher critical habitat in 2004 but are now being proposed as flycatcher critical habitat. These areas are now identified as flycatcher critical habitat primarily due to the change in our criteria and consideration of the recovery goals (see items 1–4 above).

Coastal California Recovery Unit

- Santa Ynez Management Unit: Mono Creek.
- At Vandenberg Air Force Base, a portion of the Santa Ynez River is exempted under section 4(a)(3) of the Act.
- Santa Clara Management Unit: Santa Clara River, Ventura River, Piru Creek, Castaic Creek, Big Tujunga Canyon, Little Tujunga Canyon, and San Gabriel River.
- Santa Ana Management Unit: Bautista Creek.
- San Diego Management Unit: Canada Gobernadora Creek, Fallbrook Creek, Sweetwater River (near Sweetwater Reservoir).
- At Marine Corps Base, Camp Pendleton, portions of Cristianitos, San Mateo, San Onofre, Las Flores, Las Pulgas, and DeLuz Creeks and Santa Margarita River are exempted from critical habitat under section 4(a)(3) of the Act.
- At Naval Weapons Station Seal Beach Detachment Fallbrook, portions of Pilgrim Creek and Santa Margarita River are exempted from critical habitat under section 4(a)(3) of the Act.

Basin and Mohave Recovery Unit—California and Nevada

- Kern Management Unit: Canebrake Creek, CA.
- Mohave Management Unit: West Fork Mohave River, CA.
- Amargosa Management Unit: Willow Creek, CA; Amargosa River CA, NV; and unnamed riparian areas and Carson Slough within Ash Meadows National Wildlife Refuge, NV.

Lower Colorado Recovery Unit—Nevada, California and Arizona Border, Arizona, Utah, and New Mexico

- Little Colorado Management Unit: Rio Nutria and Zuni River, NM.

Upper Colorado Recovery Unit—Arizona, Utah, Colorado, and New Mexico

- San Juan Management Unit: Los Pinos River, CO; San Juan River, NM, UT.
- Powell Management Unit: Paria River, UT.

Gila Recovery Unit—Arizona and New Mexico

- Roosevelt Management Unit: Pinal Creek, AZ.
- Santa Cruz Management Unit: Santa Cruz River and Cienega Creek, AZ.
- San Francisco Management Unit: San Francisco River, AZ, NM.
- Hassayampa and Agua Fria Management Unit: Hassayampa River and Gila River, AZ.

Rio Grande Recovery Unit—New Mexico and Colorado

- Upper Rio Grande Management Unit: Rio Fernando, NM.
- Lower Rio Grande Management Unit: Rio Grande, NM.

(7) We are exempting, under section 4(a)(3) of the Act, areas that meet the definition of flycatcher critical habitat found on three military installations in the Coastal California Recovery Unit: Vandenberg Air Force Base; Naval Weapons Station Seal Beach Detachment Fallbrook; and Marine Corps Base, Camp Pendleton based on these military installations having Service approved Integrated Natural Resources Management Plans (INRMP) which are being implemented to conserve flycatchers and their habitat (see Exemptions).

(8) The end points of similar stream segments we proposed in 2004 have changed in many instances within this 2011 proposal, making some segments longer and others shorter. This is primarily due to: our goal of proposing stream segments that could reach recovery goals; changing the distance used to identify critical habitat and connect more distant populations (increased from 30 km [18 mi] to 35 km [22 mi]); and continuing to improve and document our knowledge about flycatcher distribution, abundance, and habitat. Please see the maps included at the end of this proposal for the specific stream segment end points and also in the supplementary documents associated with this proposed rule found at *http://www.regulations.gov.*

(9) The length and area of some stream segments may be different in this 2011 proposal, even when the same end points occur under both the 2004 and 2011 proposals. When the end points are the same, the newer Geographic Information System (GIS) software used in 2011 was more accurate in calculating the bends and turns of streams resulting in larger calculations of stream length for some critical habitat stream segments. We also used updated information to generate the lateral extent of stream segments.

(10) We are also proposing to correct the information in the historic range column for the flycatcher in the table at 50 CFR 17.11(h). The historic range for the flycatcher should include Nevada.

Proposed Critical Habitat Designation

We are proposing stream segments in 29 Management Units found in six Recovery Units as critical habitat for the flycatcher. These stream segments occur in California, Nevada, Utah, Colorado, Arizona and New Mexico and include a total of approximately 3,364 km (2,090 mi) of streams. Table 1 lists all the streams included in this proposal and whether they are considered occupied at the time of listing and whether they are currently considered occupied. Approximate land ownership in each State where the proposed critical habitat occurs is provided in Table 2. The critical habitat areas described below constitute our best assessment of areas that meet the definition of flycatcher critical habitat. In order to help further understand the location of these proposed stream segments, please see the associated maps found within this proposed rule. Maps in GIS format that include the lateral extent areas being proposed for designation can be found in the supplementary materials associated with this proposed rule at *http://www.regulations.gov.*

Coastal California Recovery Unit in California

(1) Santa Ynez Management Unit—Santa Ynez River and Mono Creek. Portions of Santa Ynez River within Vandenberg Air Force Base are exempted (see Exemptions).

(2) Santa Clara Management Unit—Santa Clara River, Ventura River, Piru Creek, Castaic Creek, Big Tujunga Canyon, Little Tujunga Canyon, and San Gabriel River.

(3) Santa Ana Management Unit—Bear Creek, Mill Creek, Oak Glen Creek, San Timoteo Creek, Santa Ana River, Waterman Creek, and Bautista Creek.

(4) San Diego Management Unit—Canada Gobernadora Creek, Cristianitos Creek, Las Flores Creek, Las Pulgas Creek, San Mateo Creek, San Onofre Creek, Santa Margarita River, Fallbrook Creek, DeLuz Creek, San Luis Rey River, Pilgrim Creek, Agua Hedionda Creek, San Dieguito River, Santa Ysabel Creek, Temescal Creek, Temecula Creek, Sweetwater River, and San Diego River. Entire segments of San Mateo, San Onofre, Cristianitos, Las Flores, Las Pulgas, and Fallbrook Creeks are exempted, and portions of Santa Margarita River and DeLuz and Pilgrim Creeks that occur within Marine Corps Base Camp Pendleton and Naval Weapons Station Seal Beach Detachment Fallbrook are exempted (see Exemptions).

Basin and Mohave Recovery Unit in California and Nevada

(5) Owens Management Unit—Owens River, CA.

(6) Kern Management Unit—South Fork Kern River (including upper Lake Isabella) and Canebrake Creek, CA.

(7) Mohave Management Unit—Deep Creek, Holcomb Creek, Mohave River, and West Fork Mohave River, CA.

(8) Salton Management Unit—San Felipe Creek and Mill Creek, CA.

(9) Amargosa Management Unit—Willow Creek, CA; Amargosa River CA and NV; Carson Slough and unnamed riparian areas within Ash Meadows National Wildlife Refuge, NV.

Lower Colorado Recovery Unit in Nevada, California and Arizona border, Arizona, Utah, and New Mexico

(10) Little Colorado Management Unit—Little Colorado River and West Fork Little Colorado River, AZ; Rio Nutria and Zuni River, NM.

(11) Virgin Management Unit—Virgin River, NV, AZ, and UT.

(12) Middle Colorado Management Unit—Colorado River, AZ.

(13) Pahranagat Management Unit—Pahranagat River and Muddy River, NV.

(14) Bill Williams Management Unit—Big Sandy River, Bill Williams River, Santa Maria River (including upper Alamo Lake), AZ.

(15) Hoover to Parker Dam Management Unit— Bill Williams River, AZ; Colorado River, CA and AZ.

(16) Parker Dam to Southerly International Border Management Unit—Colorado River, CA and AZ.

Upper Colorado Recovery Unit in Arizona, Utah, Colorado, and New Mexico

(17) San Juan Management Unit—Los Pinos River, CO; San Juan River, NM and UT.

(18) Powell Management Unit—Paria River, UT.

Gila Recovery Unit in Arizona and New Mexico

(19) Verde Management Unit—Verde River (including Horseshoe Lake), AZ.

(20) Roosevelt Management Unit—Salt River, Tonto Creek (including Roosevelt Lake), and Pinal Creek, AZ.

(21) Middle Gila and San Pedro Management Unit—Gila River and San Pedro River, AZ.

(22) Upper Gila Management Unit—Gila River in AZ and NM.

(23) Santa Cruz Management Unit—Santa Cruz River and Cienega Creek, AZ.

(24) San Francisco Management Unit—San Francisco River, AZ and NM.

(25) Hassayampa and Agua Fria Management Unit—Hassayampa River and Gila River, AZ.

Rio Grande Recovery Unit in New Mexico and Colorado

(26) San Luis Valley Management Unit—Conejos River and Rio Grande, CO.

(27) Upper Rio Grande Management Unit—Coyote Creek, Rio Grande, Rio Grande del Rancho, and Rio Fernando, NM.

(28) Middle Rio Grande Management Unit—Rio Grande, NM.

(29) Lower Rio Grande Management Unit—Rio Grande, NM.

TABLE 1—STREAMS PROPOSED FOR FLYCATCHER CRITICAL HABITAT (1) OCCUPIED AT TIME OF LISTING BASED UPON OUR CRITERIA (1991–1994) AND (2) TERRITORIES DETECTED (1991–2010)

Recovery unit	Management unit	Stream	Known to be occupied at time of listing (1991–1994)	Territories detected (1991–2010)
Coastal California	Santa Ynez	Mono Creek	No	No.
		Santa Ynez River (portion exempted)	Yes	Yes.
	Santa Clara	Big Tujunga Canyon	No	No.
		Castaic Creek	No	No.
		Little Tujunga Canyon	No	No.
		Piru Creek	No	Yes.
		San Gabriel River	No	Yes.
		Santa Clara River	Yes	Yes.
		Ventura River	No	No.
	Santa Ana	Bear Creek	No	Yes.
		Mill Creek	No	Yes.
		Oak Glen Creek	No	Yes.
		San Timoteo Creek	No	Yes.
		Santa Ana River	No	Yes.
		Waterman Creek	No	Yes.
		Bautista Creek	No	Yes.
	San Diego	Agua Hedionda Creek	No	Yes.
		Canada Gobernadora Creek	No	Yes.
		Cristianitos Creek (exempted)	No	No.
		DeLuz Creek (portion exempted)	No	Yes.
		Fallbrook Creek (exempted)	No	Yes.
		Las Flores Creek (exempted)	No	Yes.
		Las Pulgas Creek (exempted)	No	No.
		Pilgrim Creek (portion exempted)	Yes	Yes.
		San Dieguito River	No	Yes.
		San Diego River	No	Yes.
		San Luis Rey River	Yes	Yes.
		San Mateo Creek (exempted)	No	Yes.
		San Onofre Creek (exempted)	No	No.
		Santa Margarita River (portion exempted).	No	Yes.
		Santa Ysabel Creek	No	Yes.
		Sweetwater River	No	Yes.
		Temecula Creek	No	Yes.
		Temescal Creek	No	No.
Basin and Mohave	Owens	Owens River	Yes	Yes.
	Kern	Canebrake Creek	No	Yes.

TABLE 1—STREAMS PROPOSED FOR FLYCATCHER CRITICAL HABITAT (1) OCCUPIED AT TIME OF LISTING BASED UPON OUR CRITERIA (1991–1994) AND (2) TERRITORIES DETECTED (1991–2010)—Continued

Recovery unit	Management unit	Stream	Known to be occupied at time of listing (1991–1994)	Territories detected (1991–2010)
		South Fork Kern River	Yes	Yes.
	Mohave	Deep Creek	No	No.
		West Fork Mohave River	No	No.
		Holcomb Creek	No	Yes.
		Mohave River	No	Yes.
	Salton	San Felipe Creek	No	Yes.
		Mill Creek	No	Yes.
	Amargosa	Amargosa River	No	Yes.
		Willow Creek	No	No.
		Ash Meadows Riparian Areas	No	Yes.
		Carson Slough	No	Yes.
Lower Colorado	Little Colorado	Little Colorado River	Yes	Yes.
		Rio Nutria	Yes	Yes.
		West Fork Little Colorado River	No	No.
		Zuni River	Yes	Yes.
	Virgin	Virgin River	No	Yes.
	Middle Colorado	Colorado River	Yes	Yes.
	Pahranagat	Muddy River	No	Yes.
		Pahranagat River	No	Yes.
	Bill Williams	Big Sandy River	Yes	Yes.
		Bill Williams River	Yes	Yes.
		Santa Maria River	Yes	Yes.
	Hoover to Parker Dam	Colorado River	Yes	Yes.
		Bill Williams River	Yes	Yes.
	Parker Dam to Southerly International Border.	Colorado River	Yes	Yes.
Upper Colorado	San Juan	San Juan River	No	Yes.
		Los Pinos River	No	Yes.
	Powell	Paria River	No	No.
Gila	Verde	Verde River	Yes	Yes.
	Roosevelt	Tonto Creek	Yes	Yes.
		Salt River	Yes	Yes.
		Pinal Creek	No	Yes.
	Middle Gila and San Pedro.	San Pedro River	Yes	Yes.
		Gila River	Yes	Yes.
	Upper Gila	Gila River	Yes	Yes.
	Santa Cruz	Santa Cruz	No	No.
		Cienega Creek	No	Yes.
	San Francisco	San Francisco River	Yes	Yes.
	Hassayampa and Agua Fria.	Hassayampa River	No	Yes.
		Gila River	Yes	Yes.
Rio Grande	San Luis Valley	Rio Grande	Yes	Yes.
		Conejos River	No	Yes.
	Upper Rio Grande	Coyote Creek	Yes	Yes.
		Rio Fernando	No	Yes.
		Rio Grande	Yes	Yes.
		Rio Grande Del Rancho	Yes	Yes.
	Middle Rio Grande	Rio Grande	Yes	Yes.
	Lower Rio Grande	Rio Grande	Yes	Yes.

Note: Recovery Units and Management Units are from the 2002 Recovery Plan.

TABLE 2—LAND OWNERSHIP, BY STATE, OF PROPOSED CRITICAL HABITAT AREAS FOR SOUTHWESTERN WILLOW FLYCATCHER, LISTED AS APPROXIMATE STREAM LENGTHS IN KM (MI)

State	Federal	State	Tribal	Private	Other/ unclassified
AZ	478 (297)	53 (33)	112 (69)	378 (235)	0 (0)
CA	188 (117)	14 (9)	24 (15)	0 (0)	656 (407)
CA/AZ	190 (118)	19 (12)	110 (68)	45 (28)	12 (7)
CO	29 (18)	0 (0)	26 (16)	210 (131)	9 (6)
NV	120 (75)	14 (8)	0 (0)	22 (13)	0 (0)
NM	127 (79)	64 (40)	122 (76)	330 (205)	0 (0)
UT	68 (42)	0 (0)	52 (32)	42 (26)	0 (0)

TABLE 2—LAND OWNERSHIP, BY STATE, OF PROPOSED CRITICAL HABITAT AREAS FOR SOUTHWESTERN WILLOW FLYCATCHER, LISTED AS APPROXIMATE STREAM LENGTHS IN KM (MI)—Continued

State	Federal	State	Tribal	Private	Other/ unclassified
Total	1199 (745)	164 (102)	445 (277)	1027 (638)	525 (326)

Notes: Totals do not sum because some stream segments have different ownership on each side of the bank resulting in those segments being counted twice. CA/AZ includes the stream segments along the Colorado River where California is on one stream bank and Arizona is on the other. Other/Unclassified includes some local government ownership and unclassified segments (where land ownership was not available).

We present brief descriptions below of all proposed critical habitat units, and reasons why they meet the definition of critical habitat for the flycatcher. The units are organized by Recovery Unit and then Management Unit. For each Recovery Unit we provide a broad overview of the recent distribution and abundance of flycatcher territories. Based upon our criteria, we also specifically list those streams we will propose as critical habitat within that Recovery Unit that were known to be occupied by flycatchers at the time of listing, and possess the physical or biological features that may require special management considerations or protection. Detailed site and territory summary information used for Recovery and Management Units are primarily generated from the USGS Rangewide Database (Sogge and Durst 2008) and Flycatcher Rangewide Report (Durst *et al.* 2008).

Because of the abundance of information presented in each Management Unit description, we are providing a brief overview of the information presented in each description. For each Management Unit, we begin by stating the numerical territory goal described in the Recovery Plan, and in many instances, a brief note about flycatcher territory distribution. We next explain whether the Management Unit supported a large flycatcher nesting population (as defined in the *Criteria Used To Identify Critical Habitat,* Areas with Large Populations section) in order to establish the areas where we initially focused our selection of stream segments to propose as critical habitat. For Management Units where there was a large population, we provide more specific information about the occurrence of flycatcher territories within that large population area. If there was no known large flycatcher nesting population, we provide information about known flycatcher distribution and abundance with that Management Unit. We next present those stream segments we are proposing as critical habitat and appropriate location and length descriptions. Any stream segments we propose that were not known to be occupied at the time of listing, we described as an ''essential'' segment for flycatcher conservation in order to reach the stated recovery goals for this Management Unit. We reiterate the description of those proposed segments that were known to be occupied by flycatchers at the time of listing. Finally, we explain how the proposed designation of stream segments supports the science and conservation goals established in the Recovery Plan, and for those streams not occupied at the time of listing, we offer information supporting why they are considered essential for the conservation of the flycatcher.

For each stream segment being proposed as critical habitat, we identify the State and County where it occurs and list the length rounded up to the nearest tenth of a kilometer or mile. The specific beginning and ending points of each proposed stream segment can be found below in the combination of textual descriptions and associated maps for each proposed critical habitat unit in the Proposed Regulation Promulgation section of this document. In addition, GIS data for all proposed stream segments, which include more specific lateral extent critical habitat information, may be downloaded online at *http://www.fws.gov/southwest/es/arizona/southwes.htm.* We also note in our descriptions which stream segments are being exempted under section 4(a)(3) under the Act or are being considered for possible exclusion from critical habitat under section 4(b)(2) of the Act. For more explanation of why any stream is being exempted or considered for exclusion, see the discussions under the Exemptions and Exclusions sections below.

All of the proposed stream segments provide flycatcher habitat for breeding, feeding, sheltering, and migration, and subsequently provide metapopulation stability, gene flow of the subspecies, protection against catastrophic population losses, and connectivity between neighboring Management Units and Recovery Units (Service 2002, pp. 74, 75, 86–92). They also provide habitat to help meet the numerical and habitat-related goals identified in the Recovery Plan (Service 2002, pp. 77–92). Most of the proposed segments are a subset of those identified in the Recovery Plan as areas that provide substantial recovery value (Service 2002, pp. D–12—D–15). Since completion of the Recovery Plan, additional segments of substantial recovery value have been identified through continued survey, analysis, and habitat evaluation, and are included in this proposal when needed to reach recovery goals. The distribution and abundance of territories and habitat within each proposed segment are expected to shift over time as a result of natural disturbance events such as flooding that reshape floodplains, river channels, and riparian habitat (Service 2002, pp. 18, D–11–D—13, D–15).

Coastal California Recovery Unit

This Recovery Unit stretches along the coast of southern California from just north of Point Conception south to the Mexico border. In 2002, 167 flycatcher territories were estimated to occur in this Recovery Unit (14 percent of the rangewide total) (Sogge *et al.* 2003); however the most recent 2007 rangewide assessment estimated that the number of territories has declined to 120 (9 percent of rangewide total) (Durst *et al.* 2008, p. 12). Since the completion of the Recovery Plan, territories have been distributed along 15 relatively small watersheds, mostly in the southern third of the Recovery Unit (Service 2002, p. 64; Durst and Sogge 2008). Unlike most other Recovery Units, the Coastal California Unit possesses many streams in proximity to one another. However, most breeding sites are small (fewer than five territories); the largest populations occur along the San Luis Rey, Santa Margarita, and Santa Ynez Rivers (Service 2002, p. 64). In 2001, all territories occurred in habitats dominated by native plants, and over 60 percent were on government-managed lands (Federal, State, and local) (Service 2002, p. 64). This Recovery Unit contains the Santa Ynez, Santa Clara, Santa Ana, and San Diego Management Units. The stream segments proposed as

critical habitat are described below under their appropriate Management Units.

Based upon our occupancy criteria (see above), within the Coastal California Recovery Unit, the Santa Ynez (1991), Santa Clara (1994), and San Luis Rey (1993) Rivers, and Pilgrim Creek (1994) are streams that were known to be occupied at the time of listing (1991–1994) (Sogge and Durst 2008) where we are proposing critical habitat segments. Below we identify that each listed item described in our *Special Management Considerations or Protection* section (see above) applies to the streams described in each Management Unit within the Coastal California Recovery Unit.

Santa Ynez Management Unit

The Recovery Plan describes a goal of 75 flycatcher territories in the Santa Ynez Management Unit (Service 2002, p. 84). The Santa Ynez River is the only stream in this Management Unit known to have flycatcher territories (Sogge and Durst 2008).

We identified a large flycatcher nesting population surrounding the lowest portion of the Santa Ynez River in Santa Barbara County, California. Flycatcher territories were detected on the Santa Ynez River in 1991 (Sogge and Durst 2008). A total of four breeding sites are known to occur within our large population area. A high of 26 flycatcher territories was detected on the lower Santa Ynez River in 1996, but the known number of territories has fluctuated greatly from year-to-year (from 1 to 26) (Sogge and Durst 2008). As a result, more critical habitat than just the large population area is being proposed to meet the Recovery Plan goal of 75 territories.

To help reach the Recovery Plan goals, we identified two additional areas of flycatcher habitat on the upper Santa Ynez River that are considered occupied at the time of listing and a short segment of Mono Creek farther upstream outside of our large population area (near Gibraltar Reservoir) that was not occupied at the time of listing. As a result, we are proposing three Santa Ynez River segments and a segment of Mono Creek as flycatcher critical habitat. The lower 27.6-km (17.2-mi) Santa Ynez River segment occurs immediately upstream from Vandenberg AFB. The upper 6.1-km (3.8-mi) and 7.6-km (4.7-mi) segments of the Santa Ynez River occur near Gibraltar Reservoir. We are also proposing the lowest 2.6 km (1.6 mi) of Mono Creek, also in Santa Barbara County.

The stream segments along the Santa Ynez River were occupied by flycatchers at the time of listing and contain the physical or biological features essential to the conservation of the species which may require special management considerations or protection, for the reasons described above. The proposed area of Mono Creek was not occupied at the time of listing, but is an essential area for flycatcher conservation in order to help meet recovery goals (see below).

The Santa Ynez River and unnamed tributaries (including Mono Creek) were described as having substantial recovery value in the Recovery Plan (Service 2002, p. 86). These proposed Santa Ynez River and Mono Creek segments are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Although a 14.7-km (9.1-mi) portion of the lower Santa Ynez River segment was occupied at the time of listing, it occurs within the boundaries of Vandenberg Air Force Base (AFB). We are exempting this portion of the river from designation as critical habitat, under section 4(a)(3) of the Act, based on their INRMP which provides a benefit to the flycatcher (see Exemptions).

Santa Clara Management Unit

The Recovery Plan describes a goal of 25 flycatcher territories in the Santa Clara Management Unit (Service 2002, p. 84). Flycatcher territories have been detected in small numbers and sporadically over a broad area in this Management Unit.

There are no large flycatcher nesting populations in the Santa Clara Management Unit to help guide us toward a critical habitat area. As a result, we sought known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine critical habitat segments that may be known to be occupied at the time of listing and others essential for flycatcher conservation (see below). Flycatcher territories have been detected in small numbers in the Santa Clara Management Unit, ranging from 0 to 7 territories annually between 1995 and 2001 (Sogge and Durst 2008). Three breeding sites have been detected on the Santa Clara River and two breeding sites each on Piru Creek and the San Gabriel River (Sogge and Durst 2008).

We are proposing as critical habitat a segment (79.6 km, 49.4 mi) of the Santa Clara River in Ventura and Los Angeles Counties. This segment was known to be occupied by flycatchers at the time of listing (Sogge and Durst 2008) and has the physical or biological features essential to the conservation of the species which may require special management consideration or protection, for the reasons described above. We are also proposing as flycatcher critical habitat segments of the Ventura River (27.5 km, 17.1 mi) in Ventura County; and segments of Piru Creek (41.8 km, 26.0 mi), Castaic Creek (4.8 km, 3.0 mi), Little Tujunga (2.2 km, 1.4 mi) and Big Tujunga (4.9 km, 3.0 mi) Canyons, and the San Gabriel River (14.2 km, 8.8 mi) in Los Angeles County. These segments were not occupied at the time of listing, but are essential for flycatcher conservation in order to help meet recovery goals, as explained below.

The Santa Clara, Ventura, and San Gabriel Rivers, Piru Creek and Big Tujunga Canyon, were identified in the Recovery Plan as having substantial recovery value in the Santa Clara Management Unit (Service 2002, p. 86). Together with the Little Tujunga Canyon and Castaic Creeks, these seven stream segments are essential to flycatcher conservation because they are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Santa Ana Management Unit

The Recovery Plan describes a goal of 50 flycatcher territories in the Santa Ana Management Unit (Service 2002, p. 84). Flycatcher territories have been detected from the headwaters and tributaries of the Santa Ana River in the San Bernardino Mountains in San Bernardino County, California, down to breeding sites in Riverside County at Prado Basin and other nearby separate streams.

We identified a large flycatcher nesting population that surrounds the Santa Ana River and its tributaries in San Bernardino and Riverside Counties. Because of the wide distribution and close proximity of flycatcher territories,

nearly all the streams within the Santa Ana Management Unit were included in the large population area. Flycatcher territories have been detected along the Santa Ana River drainage at about 20 known breeding sites. Since 1995, flycatcher territories have been detected along the Santa Ana River, and tributaries such as Bear Creek, Mill Creek, Oak Glen Creek, Waterman Creek, San Timoteo Creek, and Bautista Creek (Sogge and Durst 2008). While breeding sites are numerous, the number of territories detected at each site was typically less than five (Sogge and Durst 2008). Throughout the entire Management Unit, a high of 49 territories was detected in 2001 (Sogge and Durst 2008), but limited on-the-ground surveys only detected one territory in 2007 (Sogge and Durst 2008). In 2007, Durst *et al.* (2008, p. 12) estimated that 28 territories occurred in this Management Unit.

We are proposing as critical habitat segments of the Santa Ana River and tributaries and other nearby streams. None of these areas was known to be occupied at the time of listing, but are essential for flycatcher conservation in order to meet recovery goals, as explained below. On the Santa Ana River, we are proposing an upper 42.3-km (26.3-mi) segment and a lower 47.8-km (29.7-mi) segment that occur in San Bernardino and Riverside Counties. Also occurring in both San Bernardino and Riverside Counties, we are proposing a 25.6-km (15.9-mi) segment of San Timoteo Creek. We are also proposing segments of the following Santa Ana River tributaries in San Bernardino County: a 14.8-km (9.2-mi) segment of Bear Creek; a 19.2-km (11.9-mi) segment of Mill Creek; a 4.6-km (2.9-mi) segment of Oak Glen Creek; and a 5.2-km (3.2-mi) segment of Waterman Creek (including small portions of the left and right forks). In Riverside County, we are proposing a 23.0-km (14.3-mi) segment of Bautista Creek.

This diverse and widely distributed group of seven streams (eight stream segments) was identified in the Recovery Plan (although Oak Glen Creek was not specifically named as a tributary to the Santa Ana River) as areas of substantial recovery value (Service 2002, p. 86). Together, these eight stream segments are essential to flycatcher conservation because they are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider excluding portions of the Santa Ana River, San Timoteo Creek, Bautista Creek and Temecula Creek (including Vail Lake) within the planning area boundary for the Western Riverside MSHCP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the Western Riverside MSHCP based on the protections described below (see Exclusions) and per the provisions laid out in the MSHCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act.

Also, a portion of Bautista Creek occurs on Tribal lands managed by the Ramona Band of Cahuilla, California. We will also consider our partnership with this Tribe and evaluate the conservation planning and management that occurs for potential exclusion under section 4(b)(2) of the Act (see Exclusions).

San Diego Management Unit

The Recovery Plan describes a goal of 125 flycatcher territories in the San Diego Management Unit (Service 2002, p. 84). Flycatcher territories have been detected throughout this Management Unit primarily along the rivers and tributaries of the largest river drainages in the area, such as the San Luis Rey, Santa Margarita, and San Diego Rivers.

We identified a large flycatcher nesting population that includes nearly all of the streams within the San Diego Management Unit. Within the San Diego Management Unit, about 24 breeding sites are known to occur (Durst *et al.* 2008, p. 12). A high of 86 flycatcher territories were detected in 2001 (Sogge and Durst 2008), and an estimated 77 territories occurred in 2007 (Durst *et al.* 2008, p. 12).

Within this large population area, we identified flycatcher habitat on 18 different streams within the San Diego Management Unit that occur in San Diego, Riverside, and Orange Counties, California. The streams we identified in San Diego County are: San Mateo Creek, Cristianitos Creek, San Onofre Creek, Las Flores Creek, Las Pulgas Creek, Fallbrook Creek, Santa Margarita River, DeLuz Creek, San Luis Rey River (2 segments), Pilgrim Creek, Agua Hedionda Creek, San Dieguito River, Santa Ysabel Creek, San Diego River (2 segments), Temescal Creek, and Sweetwater River. A segment of Temecula Creek travels across San Diego and Riverside Counties and a Canada Goberandora Creek segment occurs in Orange County.

The San Luis Rey River and Pilgrim Creek were the only streams in this management unit known to be occupied by flycatchers at the time of listing. The remaining proposed critical habitat stream segments will help reach flycatcher recovery goals within the San Diego Management Unit.

Because of the large number of proposed stream segments within this Management Unit, unlike other Management Unit descriptions within this proposed rule, the descriptions of proposed critical habitat segments within the San Diego Management Unit are separated into smaller groups. We will describe the length and general location of each proposed stream segment, the status of flycatcher territories, and whether a portion is exempted under section 4(a)(3) of the Act or identified for possible exclusion under section 4(b)(2) of the Act.

San Luis Rey River

Flycatcher territories were first detected on San Luis Rey River, in San Diego County, California, in 1993. In 2001, a high of 62 territories were detected at the 7 known breeding sites found on this river. A single site on the upper San Luis Rey River typically represents a large proportion of all territories known to occur. For example, total of 53 flycatcher territories were detected at this site in 2001.

We are proposing as critical habitat two river segments of the San Luis Rey River in San Diego County, California. The upper San Luis Rey River segment (28.6 km, 17.8 mi) extends from Lake Henshaw to Wilson Way, while the lower segment (52.3 km, 32.5 mi) extends from near the downstream end of the Pauma Country Club to near Interstate 5. These segments are known to be occupied at the time of listing, and contain the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

The Rincon and La Jolla Bands of Luiseno Indians have developed Management Plans that we will consider for possible exclusion under section 4(b)(2) of the Act (see Exclusions). The Pala Band of Luiseno Mission Indians also have Tribal lands on the San Luis Rey River, therefore we will consider our partnership with this Tribe and evaluate conservation planning and management that occurs for potential exclusion under section 4(b)(2) of the Act (see Exclusions).

Santa Margarita River and Pilgrim, De Luz, Las Flores, Las Pulgas, and Fallbrook Creeks

With the exception of Las Pulgas Creek, single flycatcher breeding sites have been detected on each of these stream segments. Small numbers of flycatcher territories at a single known breeding site have been detected annually on Pilgrim Creek (0–4 territories), Las Flores Creek (0–3 territories), De Luz Creek (0–1 territories), and Fallbrook Creek (0–2 territories) (Sogge and Durst 2008). In contrast, the lone known flycatcher breeding site on the Santa Margarita River had as many as 23 flycatcher territories in 2003 (Sogge and Durst 2008).

We are proposing as critical habitat an 18.5-km (11.5-mi) segment along Pilgrim Creek (including portions of its left and right forks). This segment is known to be occupied at the time of listing, and contains the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

We are also proposing segments of flycatcher habitat along the Santa Margarita River (41.3 km, 25.6 mi), Fallbrook Creek (5.3 km, 3.3 mi), De Luz Creek (11.1 km, 6.9 mi), and a continuous Las Flores Creek-Las Pulgas Creek segment (9.6 km, 6.0 mi) in San Diego County, California. These segments were not known to be occupied at the time of listing, but are essential for flycatcher conservation in order to help meet recovery goals in this Management Unit.

The portions of the Santa Margarita River (31.8 km, 19.8 mi), De Luz Creek (7.8 km, 4.8 mi), Fallbrook Creek (5.3 km, 3.3 mi), Las Flores Creek-Las Pulgas Creek (9.6 km, 6.0 mi), and Pilgrim Creek (including its left and right forks) (13.5 km, 8.4 mi) that fall within the boundaries of Marine Corps Base Camp Pendleton and Naval Weapons Station Seal Beach Detachment Fallbrook will be exempted from this critical habitat designation under section 4(a)(3) of the Act because Camp Pendleton and Fallbrook's INRMPs provide benefits to the flycatcher (see Exemptions).

Because all the flycatcher habitat of Las Flores, Las Pulgas, and Fallbrook Creeks occurs entirely within the boundaries of Marine Corps Base Camp Pendleton and Naval Weapons Station Seal Beach Detachment Fallbrook, no portions of these three streams are proposed as flycatcher critical habitat. However, there are remaining upstream segments of the Santa Margarita River, and DeLuz and Pilgrim Creeks that we are proposing as flycatcher critical habitat. The remaining proposed flycatcher critical habitat includes a 9.4-km (5.8-mi) Santa Margarita River segment, a 3.3-km (2.1-mi) De Luz Creek segment, and a 5.0-km (3.1-mi) Pilgrim Creek segment.

Canada Gobernadora Creek

Canada Gobernadora Creek has had one to two territories detected annually between 1999 and 2003 (Sogge and Durst 2008). We are proposing as flycatcher critical habitat a 5.9-km (3.6-mi) segment of Canada Gobernadora Creek in Orange County, California. This segment was not known to be occupied at the time of listing, but is essential for flycatcher conservation in order to help meet recovery goals.

We will consider excluding a portion of Canada Gobernadora Creek within the planning area boundary for the Orange County Southern Subregion HCP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the Orange County Southern Subregion HCP based on the protections described below (see Exclusions) and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

San Mateo, Cristianitos, and San Onofre Creeks

We identified segments of flycatcher habitat along San Mateo Creek (8.4 km, 5.2 mi), Cristianitos Creek (3.9 km, 2.4 mi), and San Onofre Creek (6.6 km, 4.1 mi) in San Diego County, California. A single breeding site was detected on San Mateo Creek, with a lone territory detected in 1995, 1997, and 2007 (Sogge and Durst 2008). No flycatcher territories have been detected on Cristianitos and San Onofre Creeks.

Because these segments of Cristianitos, San Mateo, and San Onofre Creeks occur entirely within the boundaries of Marine Corps Base Camp Pendleton, these stream segments will be exempted from this critical habitat proposal under section 4(a)(3) of the Act because Camp Pendleton's INRMP provides benefits to the flycatcher (see Exemptions). Therefore, no portions of San Mateo, Cristianitos, or San Onofre Creeks are proposed as flycatcher critical habitat.

Agua Hedionda Creek

A single site and flycatcher territory was detected on Agua Hedionda Creek in 1998 and 1999 (Sogge and Durst 2008). We are proposing two separate segments of Agua Hedionda Creek. The upstream segment of Agua Hedionda Creek includes small portions of the north (1.0 km, 0.6 mi) and south forks (0.4 km, 0.2 mi). The upstream segment extends from La Miranda Drive (south fork) and Sycamore Avenue (north fork) and extends along the mainstem Agua Hedionda Creek for 5.9 km (3.7 mi) downstream to just east of the Rancho Carlsbad Golf Course. The downstream segment of Agua Hedionda Creek extends from Cannon Road for 2.1 km (1.3 mi) to Agua Hedionda Lagoon. These segments were not known to be occupied at the time of listing, but are essential for flycatcher conservation because they will help meet recovery goals in this Management Unit.

We will consider excluding portions of Agua Hedionda Creek within the Carlsbad HMP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the Carlsbad HMP based on the protections described below (see Exclusions) and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

San Diego, San Dieguito, and Sweetwater Rivers and Santa Ysabel and Temescal Creeks

We identified and are proposing as flycatcher critical habitat segments of the San Diego River, San Dieguito River, Santa Ysabel Creek, Temescal Creek, and Sweetwater River that occur within San Diego County, California.

Three flycatcher breeding sites are known on the San Dieguito River and Santa Ysabel and Temescal Creeks within San Diego County, California. Flycatcher territories were first detected there in 1996 (and annually between 1996 and 2003), with a high of 5 territories in 1997 (Sogge and Durst 2008). We are proposing a continuous 10.3 km (6.3 mi) segment of that extends along Santa Ysabel Creek from Ysabel Creek Road downstream (1.1 km, 0.7 mi) to the San Dieguito River and continues downstream (9.2 km, 5.7 mi) until it terminates at Interstate 15 and Lake Hodges in San Diego County, California. At the headwaters of the San Dieguito River, we are proposing connected segments of Santa Ysabel Creek (9.8 km, 6.1 mi) and Temescal Creek (7.6 km, 4.7 mi). These segments were not known to be occupied at the time of listing, but are essential for flycatcher conservation

because they will help meet recovery goals.

A lone breeding site was detected on the San Diego River in 2001, with 2 territories (Sogge and Durst 2008). We are proposing two essential segments of the San Diego River that are separated by El Capitan Reservoir and a long stretch of stream downstream from El Capitan Reservoir in San Diego County, California. The upper 7.0-km (4.3-mi) San Diego River segment extends from just north of the Cedar Creek confluence down to El Capitan Reservoir. The lower 9.5-km (5.9-mi) San Diego River segment begins at Magnolia Avenue and ends at Mission Trails Regional Park. These segments were not known to be occupied at the time of listing, but are essential for the flycatcher conservation because they will help meet recovery goals.

A single site and flycatcher territory were detected on the Sweetwater River (located south of the San Diego River) from 1997 to 1999 (Sogge and Durst 2008). We are proposing as critical habitat a 6.6-km (4.1-mi) segment of the Sweetwater River in San Diego County, California, from the Rancho San Diego Golf Course downstream to Sweetwater Reservoir.

We will consider excluding portions of the San Dieguito, San Diego, and Sweetwater Rivers and Santa Ysabel Creek within the planning area boundary for the San Diego MSCP and HCP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the San Diego MSHCP and HCP based on the protections described below (see Exclusions) and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

Also, a portion of the San Diego River occurs within the land of the Capitan Grande Band of Diegueno Mission Indians of California (jointly managed by the Barona Group of Capitan Grande Band of Mission Indians and the Viejas [Baron Long] Group of Capitan Grande Band of Mission Indians). We will also consider our partnership with this Tribe and evaluate the conservation planning and management that occurs for potential exclusion under section 4(b)(2) of the Act (see Exclusions).

Temecula Creek

A total of two breeding sites, holding one flycatcher territory each in 1997 and 1998, are known from Temecula Creek (Sogge and Durst 2008). We have identified and are proposing as critical habitat a 23.9-km (14.8-mi) segment of Temecula Creek in Riverside and San Diego Counties, California, from Vail Lake (including Vail Lake) to Chihuahua Creek. This segment was not known to be occupied at the time of listing, but is essential for the flycatcher conservation because it will help meet recovery goals.

Where Temecula Creek occurs within the Western Riverside MSHCP, it will be considered for exclusion under section 4(b)(2) of the Act (see Exclusions).

San Diego Management Unit Summary

The Santa Margarita River, DeLuz Creek, San Luis Rey River, Pilgrim Creek, Agua Hedionda Creek, San Dieguito River, San Diego River, Sweetwater River, Temecula Creek, and Canada Gobernadora Creek were identified in the Recovery Plan as having substantial recovery value (Service 2002, p. 87). The Temescal and Santa Ysabel Creeks were also found to have substantial recovery value. Together these segments are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these 12 river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Basin and Mohave Recovery Unit

The Basin and Mohave Recovery Unit is comprised of a broad geographic area including the arid interior lands of southern California and a small portion of extreme southwestern Nevada. In 2002, there were a total of 69 known flycatcher territories estimated to occur (7 percent of the rangewide total), but have declined to an estimated 51 territories in 2007 (Durst *et al.* 2008. p. 12). With the exception of breeding sites on the Owens and Kern Rivers, all known breeding sites have fewer than five territories (Service 2002, p. 64). As of 2002, all flycatcher territories were in riparian habitats dominated by native plants, and approximately 70 percent are on privately owned lands (Service 2002, p. 64). Because there has been little change in the amount of known flycatcher breeding sites since completion of the Recovery Plan and the number of estimated territories has declined, flycatcher habitat use and land ownership are likely similar today. The Recovery Unit contains the Owens, Kern, Mohave, Salton, and Amargosa Management Units. The stream segments proposed as critical habitat are described below in their appropriate Management Units.

Based upon our occupancy criteria (see above), within the Basin and Mohave Recovery Unit, the South Fork Kern (1993) and Owens Rivers (1993) are streams that were known to be occupied at the time of listing (1991–1994) (Sogge and Durst 2008) where we are proposing critical habitat segments. Below we identify that each listed item described in our *Special Management Considerations or Protection* section (see above) applied to the streams described in each Management Unit within the Basin and Mohave Recovery Unit.

Owens Management Unit, CA

The Recovery Plan describes a goal of 50 flycatcher territories in the Owens Management Unit (Service 2002, p. 84). The Owens River is the only stream in the Management Unit known to have flycatcher territories and is the most northern in the Basin and Mohave Recovery Unit.

We identified a large flycatcher nesting population along the Owens River within Mono and Inyo Counties, California. Nesting flycatchers have been detected at four sites within this area, with a high of 29 territories detected in 1999 (Sogge and Durst 2008). Within this large population area, we are proposing as critical habitat a 128.5-km (79.9-mi) continuous segment of the Owens River (from Long Lake Dam to just north of Tinemaha Reservoir) within Inyo and Mono Counties, California.

The segment of the Owens River proposed as critical habitat is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential to the conservation of the species which may require special management considerations or protection, for the reasons described above.

The Owens River is the only stream identified in the Recovery Plan as having substantial recovery value within the Owens Management Unit (Service 2002, p. 88). The Owens River segment we are proposing is anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, this river segment and associated flycatcher habitat is anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

This entire Owens River segment occurs within the boundaries of land owned and managed by the Los Angeles Department of Water and Power that we are considering for exclusion under section 4(b)(2) of the Act (see Exclusions).

Kern Management Unit, CA

The Recovery Plan describes a goal of 75 flycatcher territories in the Kern Management Unit (Service 2002, p. 84). The South Fork Kern River and Canebrake Creek within Kern County, California, are the only streams known to have flycatcher territories within this Management Unit.

We identified a large flycatcher nesting population along the lower portion of the South Fork Kern River. Flycatchers were first detected nesting on the South Fork Kern River in 1993 and have been detected annually through at least 2007 (Sogge and Durst 2008). A high of 38 territories were detected in 1997 within this Management Unit (Sogge and Durst 2008). The South Fork Kern River is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

Because of the need to increase the abundance of flycatcher territories to reach recovery goals in the Kern Management Unit, we also identified a small portion of Canebrake Creek in Kern County within our large population areas as being essential to flycatcher conservation (see below). Canebrake Creek (a tributary to the South Fork Kern River) was not known to be occupied at the time of listing, but territories were detected in 1998 (Sogge and Durst 2008).

We are proposing as critical habitat a 23.8-km (14.8-mi) portion of the South Fork Kern River (including the upper 1.0-km, 0.6-mi, of Lake Isabella) and a 1.7-km (1.0-mi) segment of Canebrake Creek in Kern County, California.

The South Fork Kern River segment was the lone segment identified within this Management Unit as having substantial recovery value in the Recovery Plan (Service 2002, p. 88). This South Fork Kern River segment and the additional Canebrake Creek segment are essential to flycatcher conservation because they are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Because the South Fork Kern River is located within the South Fork Kern River Wildlife Area (which includes the upper portion of Lake Isabella), Haffenfeld Ranch, and Sprague Ranch, this segment will be considered for exclusion under section 4(b)(2) of the Act (see Exclusions).

Mohave Management Unit, CA

The Recovery Plan describes a goal of 25 territories in the Mohave Management Unit (Service 2002, p. 84). The Mohave River and Holcomb Creek are the only streams known to have flycatcher territories within the Mohave Management Unit (Sogge and Durst 2008).

There are no large flycatcher nesting populations in the Mohave Management Unit to help guide us toward a critical habitat area, and no areas were known to be occupied at the time of listing. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on currently known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine areas essential for flycatcher conservation (see below).

Flycatchers were first detected nesting on the Mohave River in 1995 and Holcomb Creek in 1999. A total of five breeding sites occur along the Mohave River and one site at Holcomb Creek (Sogge and Durst 2008). A high of 12 territories were detected at these breeding sites in 2001 (Sogge and Durst 2008). In addition, we found additional areas that would contribute to meeting recovery goals in the West Fork Mohave River and Deep Creek.

We are proposing as critical habitat a 35.7-km (22.2-mi) segment of the Mojave River, an 11.2-km (6.9-mi) segment of the West Fork Mohave River, a 19.6-km (12.2-mi) segment of Holcomb Creek, and a 20.0-km (12.5-mi) segment of Deep Creek (including Mohave River Forks Reservoir) in San Bernardino County, California, near the Town of Victorville. Deep Creek connects Holcomb Creek with the Mohave Forks Reservoir. All of these segments were not known to be occupied at the time of listing, but are essential for flycatcher conservation because they will help meet recovery goals.

Three of these streams (Mohave River, West Fork Mohave River, and Deep Creek) were identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 88). Holcomb Creek was not specifically identified in the Recovery plan, but since flycatcher territories have been detected there we find it also important to meet recovery goals. Together, these four proposed critical habitat segments are essential to flycatcher conservation because they are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Salton Management Unit, CA

The Recovery Plan describes a goal of 25 flycatcher territories in the Salton Management Unit (Service 2002, p. 84). A single known flycatcher breeding site occurs along San Felipe Creek in this Management Unit.

There are no large flycatcher nesting populations solely in the Salton Management Unit, and no areas were known to be occupied at the time of listing. However, portions of the Salton Management Unit were part of a large population area because of the proximity of flycatcher territories in the adjacent San Diego and Santa Ana Management Units. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on currently known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine areas essential for flycatcher conservation (see below). From 1998 to 2002, flycatcher territories were detected in small numbers (2 to 4 territories) at single breeding site on San Felipe Creek within this Management Unit (Sogge and Durst 2008).

We are proposing as critical habitat a 21.2-km (13.2-mi) segment of San Felipe Creek and a short 1.0-km (0.6 mi) segment of Mill Creek in San Diego County, California. This short portion of Mill Creek is connected to the proposed Mill Creek segment within the Santa Ana Management Unit. We find that both of the segments are essential for flycatcher conservation because they will help meet recovery goals.

Although the San Felipe Creek segment proposed as critical habitat was the only river segment identified in the Recovery Plan as having substantial recovery value (Service 2002, p. 88), the additional Mill Creek segment was identified within the Santa Ana Management Unit as having substantial recovery value (Service 2002, p. 88). As a result, the San Felipe and Mill Creek segments, along with the other populations and river segments in proximity within the adjacent San Diego and Santa Ana Management Units are essential to flycatcher conservation because they are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Part of San Felipe Creek occurs within the Iipay Nation of Santa Ysabel, California (formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation), so we will consider our Tribal partnership and evaluate the conservation and management of the area for exclusion under section 4(b)(2) of the Act (see Exclusions).

Amargosa Management Unit, CA and NV

The Recovery Plan describes a goal of 25 flycatcher territories in the Amargosa Management Unit (Service 2002, p. 84). Flycatcher territories have been detected in small numbers within this Management Unit.

There are no large flycatcher nesting populations in the Amargosa Management Unit to help guide us toward a critical habitat area, and no areas were known to be occupied at the time of listing. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on currently known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine areas essential for flycatcher conservation (see below).

Within the Amargosa Management Unit, one breeding site has been detected on the Amargosa River and two breeding sites are known within the Ash Meadows National Wildlife Refuge (Sogge and Durst 2008). From 1998 to 2007, one to seven territories were detected at these breeding sites within this Management Unit (Sogge and Durst 2008). Therefore, we sought additional areas for critical habitat that could contribute to recovery goals in this Management Unit.

We are proposing, as flycatcher critical habitat, segments of the Amargosa River (12.3 km, 7.7 mi) and Willow Creek (3.5 km, 2.2 mi) in Inyo and San Bernardino Counties, California. We are also proposing approximately 5.7 km (3.5 mi) of Carson Slough and 100.1 km (62.2 mi) of associated unnamed riparian areas that occur within the Ash Meadows National Wildlife Refuge in Nye County, Nevada. No known breeding sites have yet to be detected on the Amargosa River and Willow Creek segments in California. None of the proposed segments were known to be occupied at the time of listing.

Carson Slough and the unnamed riparian areas within the Ash Meadows National Wildlife Refuge, and the Amargosa River in California, were described in the Recovery Plan as having substantial recovery value (Service 2002, p. 88). Willow Creek was also determined to be essential in order to reach recovery goals in this Management Unit. Together, these four proposed critical habitat segments are essential to flycatcher conservation because they are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Lower Colorado Recovery Unit

This is a geographically large and ecologically diverse Recovery Unit, encompassing the Colorado River and its major tributaries (such as the Virgin, Pahranagat, Muddy, and Little Colorado Rivers) from the high-elevation streams in White Mountains of East-Central Arizona and Central Western New Mexico to the mainstem Colorado River through the Grand Canyon downstream through the arid lands along the lower Colorado River to the Mexico border (Service 2002, p. 64).

In 2002, despite its size, the Lower Colorado Recovery Unit had only 127 known flycatcher territories (11 percent of the rangewide total), most of which occur away from the mainstem Colorado River (Sogge *et al.* 2003). In 2007, 150 territories were estimated to occur within this Recovery Unit (also 11 percent of the rangewide total) (Durst *et al.* 2008, p. 12). Most sites included fewer than 5 territories; the largest populations (most of which are fewer than 10 territories) are found on the Bill Williams, Virgin, and Pahranagat Rivers (Service 2002, p. 64). Approximately 69 percent of territories are found on government-managed lands and 8 percent are on Tribal lands (Service 2002, p. 64). Habitat characteristics range from purely native (including high-elevation and low-elevation willow) to exotic (primarily tamarisk)-dominated stands (Service 2002, p. 64). Because of the similarity in abundance and distribution of territories since 2002, these land ownership and habitat-use statistics are likely similar today. This Recovery Unit contains the Little Colorado, Middle Colorado, Virgin, Pahranagat, Bill Williams, Hoover to Parker Dam, and Parker Dam to Southerly International Border Management Units.

Based upon our occupancy criteria (see above), within the Lower Colorado Recovery Unit, the Colorado (1993), Little Colorado (1993), Bill Williams (1994), Big Sandy (1994), Santa Maria (1994), and Zuni (1993) Rivers, and Rio Nutria (1993) are streams that were known to be occupied at the time of listing (1991–1994) (Sogge and Durst 2008) where we are proposing critical habitat segments. At the time of listing only specific sites on the Colorado River within the Middle Colorado Management Unit were known to be specifically occupied by nesting birds, but based upon our criteria and the wide-ranging nature of this bird as a neotropical migrant and its use of migration stop-over habitat, we also consider the Colorado River within the Hoover to Parker Dam and Parker Dam to Southerly International Border Management Units occupied at the time of listing. Below we identify that each listed item described in our *Special Management Considerations or Protection* section (see above) applies to the streams described in each Management Unit within the Lower Colorado Recovery Unit.

Little Colorado Management Unit, AZ and NM

The Recovery Plan describes a goal of 50 flycatcher territories in the Little Colorado Management Unit (Service 2002, p. 84). Flycatcher territories have been detected on the Little Colorado and Zuni Rivers and Rio Nutria within this large area along the New Mexico and Arizona border (Sogge and Durst 2008).

We identified a large flycatcher nesting population surrounding the Little Colorado River, near the Town of Greer in Apache County, Arizona. Flycatcher territories have been detected along the Little Colorado River, Zuni River, and Rio Nutria since 1993. A high of 16 territories were detected on these river segments in 1996, but known territories have declined, with only 2 and 6 territories detected in 2005 and 2006, respectively (Sogge and Durst 2008). Because of the need to increase the abundance of flycatcher territories to reach recovery goals, we also identified the Zuni River and Rio Nutria in McKinley County, New Mexico, and the West Fork Little Colorado River, in Apache County, Arizona (see below). No flycatcher territories are known from the West Fork Little Colorado River.

We are proposing as critical habitat a contiguous 8.8-km (5.5-mi) segment of the West Fork Little Colorado River and a 17.6-km (10.9-mi) segment of the Little Colorado River. This West Fork and Little Colorado River segment begins where U.S. Forest Service (Forest Service) Road 113 crosses the West Fork and extends downstream to its confluence with the Little Colorado River, through the Town of Greer, and ends at the Diversion Ditch. The Little Colorado River was known to be occupied at the time of listing, and contains the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above. The West Fork Little Colorado River was not known to be occupied at the time of listing, but is essential to flycatcher conservation of the flycatcher in order to meet recovery goals, as described above.

We are also proposing as critical habitat a contiguous segment of the Rio Nutria (35.8 km, 22.2 mi) and the Zuni River (55.4 km, 34.4 mi) in McKinley County, New Mexico. The Rio Nutria segment begins at the Nutria Diversion Dam, extends to the Zuni River, and continues along the Zuni River to the Arizona and New Mexico State Line. Both of these segments were known to be occupied at the time of listing, and contain the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

The Little Colorado River, Rio Nutria, and Zuni River, and the West Fork Little Colorado River segments were all identified in the Recovery Plan as areas with substantial recovery value (Service 2002, p. 89). These four stream segments that we are proposing as critical habitat within the Little Colorado Management Unit are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider our partnership and evaluate the conservation and management of the Zuni River and Rio Nutria where they occur within the Navajo Nation and the Zuni Pueblo for exclusion under section 4(b)(2) of the Act (see Exclusions).

Virgin Management Unit, UT, AZ, and NV

The Recovery Plan describes a goal of 100 flycatcher territories in the Virgin Management Unit (Service 2002, p. 84). Flycatcher territories have been detected along a broad area of the Virgin River within this Management Unit through the States of Utah, Arizona, and Nevada (Sogge and Durst 2008).

We identified a large flycatcher nesting population along an essential segment of the Virgin River where it occurs through Washington County, Utah; Mohave County, Arizona; and Clark County, Nevada. Flycatchers were first detected nesting on this portion of the Virgin River in 1995. A total of seven breeding sites have been detected within this large population area through 2007 (Durst *et al.* 2008, p. 12). Also, a high of 43 territories were estimated to occur within this Management Unit in 2007 (Durst *et al.* 2008, p. 12), most occurring within the State of Nevada, although territories are also known along the Virgin River in Utah and Arizona.

We are proposing as critical habitat a 152.0-km (94.4-mi) segment (total length) of the Virgin River that begins at Berry Springs in Washington County, Utah, continues 47.5 km (29.5 mi) through the State of Utah, then extends 56.0 km (34.8 mi) through the Town of Littlefield and the State of Arizona, and then 48.4 km (30.0 mi) through the State of Nevada until it ends at Colorado River Mile 280 at the upper end of Lake Mead, Clark County, Nevada. This segment was not known to be occupied at the time of listing, but is being proposed as critical habitat because it is essential for the conservation of the flycatcher in the Virgin River Management Unit in order to meet recovery goals.

The Virgin River was identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 89). This essential segment of the Virgin River we are proposing as critical habitat within the Virgin River Management Unit is anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, this river segment and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Where the Virgin River occurs through the planning area of the Clark County Multiple Species HCP and the Overton State Wildlife Area, we will consider those segments for exclusion under section 4(b)(2) of the Act (see Exclusions).

Middle Colorado Management Unit, AZ

The Recovery Plan describes a goal of 25 flycatcher territories in the Middle Colorado Management Unit (Service 2002, p. 84).

We identified a large flycatcher nesting population along the lower portion of the Colorado River within the Grand Canyon (including upper Lake Mead) in Mohave County, Arizona. Flycatchers were first detected nesting along the Colorado River within the Middle Colorado Management Unit in 1993. A total of 16 breeding sites have been detected in our selected segment through 2007. Also, a high of 16 territories was detected within this Management Unit in 1998 (Sogge and Durst 2008), but has declined to an estimated 4 territories in 2007 (Durst *et al.* 2008, p. 12).

We are proposing as critical habitat a 74.1-km (46.0-mi) segment of the Colorado River that extends from the middle of Lake Mead upstream to Colorado River Mile 243. This entire segment is within the full pool elevation of Lake Mead. The Colorado River in Mohave County, Arizona, is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

This Middle Colorado River segment was identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 89). The portion of the Colorado River we are proposing as critical habitat within the Middle

Colorado Management Unit is anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, this river segment and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Where the Colorado River occurs within the planning area of the Lower Colorado River Multi-Species Conservation Plan (LCR MSCP) (due to the completed HCP) and Hualapai Indian Tribal land (due to their Management Plan), it will be considered for exclusion under section 4(b)(2) of the Act (see Exclusions).

Pahranagat Management Unit, NV

The Recovery Plan describes a goal of 50 flycatcher territories in the Pahranagat Management Unit (Service 2002, p. 84).

We identified a large flycatcher nesting population along the Pahranagat River and the Muddy River. Flycatchers were first detected nesting on these portions of the Pahranagat and Muddy Rivers in 1997. Through 2007, a total of three breeding sites were know to occur within these segments, with a high of 38 territories detected in 2006 (Durst and Sogge 2008).

We are proposing as critical habitat a 6.3-km (3.9-mi) river segment of the Pahranagat River through the Key Pittman Wildlife Area in Lincoln County, Nevada, and a 17.3-km (10.8-mi) segment of the Pahranagat River through the Pahranagat National Wildlife Refuge in Clark County, Nevada. We are also proposing as critical habitat a 3.1-km (1.9 mi) segment of the Muddy River within the Overton Wildlife Area in Clark County, Nevada. These segments were not known to be occupied at the time of listing, but are being proposed as critical habitat because they are essential for flycatcher conservation in order to meet recovery goals in the Pahranagat Management Unit.

The Pahranagat and Muddy River segments were identified as having substantial recovery value in the Recovery Plan (Service 2002, pp. 89–90). These essential river segments we are proposing as critical habitat within the Pahranagat Management Unit are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider excluding the Pahranagat River where it occurs within the Key Pittman State Wildlife Area and the Muddy River within the Overton State Wildlife Area as result of completed Management Plans under section 4(b)(2) of the Act (see Exclusions).

Bill Williams Management Unit, AZ

The Recovery Plan describes a goal of 100 flycatcher territories in the Bill Williams Management Unit (Service 2002, p. 84). Flycatcher territories are distributed across a broad area of this Management Unit.

We identified a large flycatcher nesting population in this Management Unit. It encompasses areas along the Big Sandy River near the Town of Wikieup in Mohave County; the Big Sandy, Santa Maria, and Bill Williams Rivers at the upper end of Alamo Lake in La Paz County; and along the Bill Williams River between Alamo Dam and the Colorado River in La Paz and Mohave Counties. Flycatchers were first detected nesting on the Big Sandy, Santa Maria, and Bill Williams Rivers in 1994 (Sogge and Durst 2008). Through 2007, a total of 9 breeding sites occurred within these segments with a high of 61 territories detected in 2004 (Durst and Sogge 2008). Since 2007, an additional breeding site was discovered on the upper Big Sandy River and an additional two sites discovered along the Bill Williams River.

We are proposing as critical habitat a 35.3-km (21.9-mi) segment of the upper Big Sandy River from the Town of Wikieup to Groom Peak Wash in La Paz County, Arizona. At upper Alamo Lake where the Big Sandy, Santa Maria, and Bill Williams Rivers converge, we are proposing, collectively, a 23.4-km (14.5-mi) portion of these three streams in La Paz County. Between Alamo Dam and the Colorado River, we are proposing as critical habitat a 17.8-km (11.0-mi) segment of the Bill Williams River near Lincoln Ranch in La Paz and Mohave Counties, Arizona. Also below Alamo Dam, we are proposing as critical habitat the last 21.3 km (13.2 mi) of the Bill Williams River before it reaches the Colorado River at Lake Havasu, from Planet Ranch through the Bill Williams National Wildlife Refuge. All of these areas are known to be occupied by flycatchers at the time of listing, and contain the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

The Big Sandy, Santa Maria, and Bill Williams Rivers were all identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 90). These river segments we are proposing within the Bill Williams Management Unit are anticipated to provide habitat for: Metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat is anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider excluding the Bill Williams, Santa Maria, and Big Sandy Rivers at the upper end of Alamo Lake within the Alamo Lake Wildlife Area due to a completed Management Plan and the Bill Williams River where it occurs within the planning area of the Lower Colorado River MSCP under section 4(b)(2) of the Act (see Exclusions).

Hoover to Parker Dam Management Unit, AZ and CA

The Recovery Plan describes a goal of 50 flycatcher territories in the Hoover to Parker Dam Management Unit (Service 2002, p. 84).

We identified a large flycatcher nesting population along the Colorado River within Mohave and La Paz Counties, Arizona, and San Bernardino County, California. Flycatchers were first detected nesting on this portion of the Colorado River in 1995 (Sogge and Durst 2008). Through 2007, a total of 6 breeding sites occurred within this segment (Durst 2008, p. 12) with a high of 34 territories detected in 2004 (Durst and Sogge 2008).

We are proposing as critical habitat a 106.9-km (66.4-mi) river segment of the Colorado River from near Davis Dam downstream through Lake Havasu to Parker Dam. We are also proposing a small 1.7-km, (1.0-mi) portion of the Bill Williams River immediately adjacent to the Colorado River. Both of these segments are known to be occupied by flycatchers at the time of listing, and contain the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

These segments of the Colorado River and Bill Williams River were identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 90). These river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider excluding portions of the Colorado and Bill Williams Rivers in this segment that occur within the planning area of the LCR MSCP and those portions of the Colorado River that occur on Fort Mohave and Chemehuevi Tribal lands as a result of their Management Plans under section 4(b)(2) of the Act (see Exclusions).

Parker Dam to Southerly International Border Management Unit, AZ and CA

The Recovery Plan describes a goal of 150 flycatcher territories in the Parker Dam to Southerly International Border Management Unit (Service 2002, p. 84).

We identified a large flycatcher nesting population along the Colorado River within La Paz and Yuma Counties, Arizona, and San Bernardino, Riverside, and Imperial Counties, California. Flycatcher territories were first detected nesting on this portion of the Colorado River in 1995 (Sogge and Durst 2008). Through 2007, a total of 16 breeding sites occurred within this Management Unit (Durst 2008, p.12), with a high of 15 territories detected in 1996 (Durst and Sogge 2008). In 2007, it was estimated that only one territory occurred within these two river segments (Durst and Sogge 2008).

We are proposing as critical habitat two Colorado River segments: (1) A 65.0-km (40.4-mi) river segment from Parker Dam downstream past Highway 62, (2) a more southern 148.0-km (92.0-mi) segment from near Highway 10 downstream to near the Town of Yuma. The Colorado River is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential to flycatcher conservation which may require special management considerations or protection, as described above.

These segments of the Colorado River were identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 90). These river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider excluding portions of the Colorado River that occur within the planning area of the LCR MSCP and that occur on Colorado Indian and Quechan (Fort Yuma) Tribal lands as result of their Management Plans under section 4(b)(2) of the Act (see Exclusions).

Upper Colorado Recovery Unit

The Upper Colorado Recovery Unit is comprised of a broad geographic area covering much of the Four Corners area of southeastern Utah and southwestern Colorado, with smaller portions of northwestern Arizona and northeastern New Mexico. Ecologically, this area may be an intergradation area between the southwestern willow flycatcher subspecies and the Great Basin willow flycatcher subspecies (Service 2002, p. 64). Flycatchers are only known to breed at five breeding sites across this broad Recovery Unit, representing an estimated high of 10 territories occurring in 2007 (Durst *et al.* 2008, p. 13). However, this low number of breeding sites and territories (less than 1 percent of the rangewide total) is probably a function of relatively low survey effort rather than an accurate reflection of the bird's actual numbers and distribution (Service 2002, p. 64). Much willow riparian habitat occurs along drainages within this Recovery Unit and remains to be surveyed (Service 2002, p. 64). The Upper Colorado Recovery Unit contains the Powell and San Juan Management Units. The stream segments proposed as critical habitat are described below in their appropriate Management Units.

Based upon our occupancy criteria (see above), within the Upper Colorado Recovery Unit, no streams were known to be occupied at the time of listing (1991–1994) (Sogge and Durst 2008). Below we identify that each listed item described in our *Special Management Considerations or Protection* section (see above) applies to the streams described in each Management Unit within the Upper Colorado Recovery Unit.

San Juan Management Unit, CO, NM, AZ, and UT

The Recovery Plan describes a goal of 25 flycatcher territories in the San Juan Management Unit (Service 2002, p. 84). Flycatcher territories have been detected in small numbers over a broad area of the southwestern Colorado and northwestern New Mexico within the Management Unit.

There were no large flycatcher nesting populations in the San Juan Management Unit to help guide us toward a critical habitat area, and no areas were known to be occupied at the time of listing. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine critical habitat segments that may be essential for flycatcher conservation (see below). In 2007, 10 territories were estimated to occur (within a total of 3 breeding sites) along the Los Pinos River in southwestern Colorado in La Plata County, Colorado, and along the San Juan River in San Juan County, New Mexico (Durst *et al.* 2008, p. 13). Through 2007, no known breeding sites have yet to be detected in the Utah portion of this Management Unit (Sogge and Durst 2008).

We are proposing as critical habitat a segment of the Los Pinos River in La Plata County, Colorado (46.0 km, 28.6 mi); a segment of the San Juan River in San Juan County, New Mexico (3.5 km, 2.2 mi); and a segment of the San Juan River in San Juan County, Utah (51.7 km, 32.1 mi). The Los Pinos River segment begins near County Road 501 and occurs through the Town of Bayfield and ends near the Colorado and New Mexico State Line. The San Juan River segment in New Mexico occurs in northwestern New Mexico, just upstream and downstream of Malpais Arroyo near the Town of Shiprock. The San Juan River, Utah, segment occurs from upstream of the State Route 262 Bridge downstream to Chinle Creek. These segments were not known to be occupied at the time of listing, but are essential for flycatcher conservation in order to help meet recovery goals in this Management Unit.

These segments of the San Juan and Los Pinos Rivers were identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 88). These essential river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the

flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider our partnership and evaluate the conservation and management of the Los Pinos River in Colorado, where it occurs within the Southern Ute Tribal Land, and the San Juan River where it occurs on the Navajo Nation for exclusion under section 4(b)(2) of the Act (see Exclusions).

Powell Management Unit, UT and AZ

The Recovery Plan describes a goal of 25 flycatcher territories in the Powell Management Unit (Service 2002, p. 84). No flycatcher territories have been detected in this Management Unit (Sogge and Durst 2008).

There were no large flycatcher nesting populations in the Powell Management Unit to help guide us toward a critical habitat area, and no areas were known to be occupied at the time of listing. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on guidance from the Recovery Plan and available information about stream habitats to determine critical habitat segments that may be essential for flycatcher conservation (see below).

We are proposing as critical habitat a segment of the Paria River in Kane County, Utah (19.0 km, 11.8 mi). This Paria River segment occurs from its confluence with Cottonwood Wash and ends at Highway 89. This segment was not known to be occupied by flycatchers at the time of listing. This river segment may be able develop and sustain flycatcher habitat and territories and therefore is essential to flycatcher conservation in order to help meet recovery goals in this Management Unit. As noted earlier in this proposed rule (see Public Comments), we are specifically seeking information about this proposed Paria River segment, as well as information about other flycatcher habitat, management, and detections in the Powell Management Unit.

This segment of the Paria River was identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 88). This essential river segment is anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, this river segment and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Gila Recovery Unit

The Gila Recovery Unit includes the Gila River watershed, from its headwaters in southwestern New Mexico downstream across the State of Arizona toward the confluence with the Colorado River, in southwest Arizona (Service 2002, p. 65). In 2002, 588 flycatcher territories (51 percent of the estimated rangewide total) were estimated to occur, distributed primarily on the Gila and lower San Pedro Rivers (Sogge *et al.* 2003, pp. 10–11). From the latest rangewide estimate, the number of known territories grew to 659 within this Recovery Unit (50 percent of the estimated rangewide total) (Durst *et al.* 2008, p. 12).

Many breeding sites have small numbers of territories within the Gila Recovery Unit, but along sections of the upper and middle Gila River, lower San Pedro River, lower Tonto Creek, and the Tonto Creek and Salt River confluence within the water conservation space of Roosevelt Lake, abundant breeding sites occur over a relatively broad geographic range that together comprise many flycatcher territories. The Upper Gila, Middle Gila and San Pedro, and Roosevelt Management Units had, following the 2007 rangewide estimate (Durst *et al.* 2008, p. 12), surpassed numerical recovery goals. Within the Gila Recovery Unit, there are concentrations of flycatcher territories in the Cliff-Gila Valley, New Mexico, and at Roosevelt Lake, Arizona, that can be some of the largest across its range.

Flycatcher territories in the Gila Recovery Unit occurred primarily on lands managed by private and Federal land managers and in a variety of habitat types dominated by both native and exotic plants. In 2001, private lands hosted 50 percent of the territories (mostly on the San Pedro River and Gila River), including one of the largest known flycatcher populations, in the Cliff-Gila Valley, New Mexico (Service 2002, p. 65). Almost the remaining 50 percent of the territories were on government-managed lands (Service 2002, p. 65). While in 2001 (Service 2002, p. 65), 58 percent of territories were in habitats dominated by native plants, flycatchers in this Recovery Unit also make extensive use of exotic (77 territories) or exotic-dominated (108 territories) vegetation (primarily tamarisk). Because the current distribution of breeding sites in this Recovery Unit is similar, we believe these statistics are mostly accurate today. This Recovery Unit contains the Verde, Hassayampa and Agua Fria, Roosevelt, San Francisco, Upper Gila, Middle Gila and San Pedro, and Santa Cruz Management Units.

Based upon our occupancy criteria (see above), within the Gila Recovery Unit, the Gila (1993), San Pedro (1993), San Francisco (1993), Verde (1993), and Salt (1993) Rivers, and Tonto Creek (1993) are streams that were known to be occupied at the time of listing (1991–1994) (Sogge and Durst 2008) where we are proposing critical habitat segments. At the time of listing, only specific sites on the Gila River within the Middle Gila and San Pedro and Upper Gila Management Units were known to be specifically occupied by nesting birds, but based upon our criteria and the wide-ranging nature of this neotropical migrant, the Gila River within the Hassayampa and Agua Fria Management Unit is also considered occupied at the time of listing. Below we identify that each listed item described in our *Special Management Considerations or Protection* section (see above) applies to the streams described in each Management Unit within the Gila Recovery Unit.

Verde Management Unit, AZ

The Recovery Plan describes a goal of 50 flycatcher territories in the Verde Management Unit (Service 2002, p. 85).

We identified a large flycatcher nesting population along the Verde River within Yavapai, Gila, and Maricopa Counties, Arizona. Flycatchers were first detected nesting on the Verde River in 1993; a total of six breeding sites are known and are spread out from the Verde Valley near the towns of Clarkdale and Camp Verde and downstream near Horseshoe Lake (Sogge and Durst 2008). A high of 23 territories were detected within this Management Unit in 2005 (Sogge and Durst 2008).

We are proposing as critical habitat two segments of the Verde River. We are proposing an upper 74.0-km (46.0-mi) segment of the Verde River that occurs in the Verde Valley in Yavapai County from above Tuzigoot National Monument near the Town of Clarkdale, downstream through the towns of Cottonwood and Camp Verde to Beasley Flat. We are also proposing a 62.7-km (38.9-mi) segment in the middle Verde River that extends from the East Verde River confluence down through

Horseshoe Lake and a short distance along the river below Horseshoe Dam to the USGS gauging station and cable crossing. These segments of the Verde River are known to be occupied by flycatchers at the time of listing, and contain the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

The Verde River was the lone river identified within this Management Unit as having substantial recovery value in the Recovery Plan (Service 2002, p. 91). These river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider excluding the water conservation space of the Verde River within Horseshoe Lake due to the conservation included in the Horseshoe and Bartlett Dam HCP and those portions of the Verde River that occur on Yavapai Apache Tribal land as result of their Management Plan under section 4(b)(2) of the Act (see Exclusions).

Roosevelt Management Unit, AZ

The Recovery Plan describes a goal of 50 flycatcher territories in the Roosevelt Management Unit (Service 2002, p. 85).

We identified a large flycatcher nesting population surrounding the Roosevelt Lake area in Gila and Pinal Counties, Arizona. Flycatchers were first detected nesting on Tonto Creek and the Salt River within the conservation space of Roosevelt Lake in 1993 (Sogge and Durst 2008).

Because of the anticipated water level fluctuations at Roosevelt Lake, which inundates many flycatcher territories and limits the number of territories that can be sustained over time, this is the only Management Unit within the flycatcher's range where the recovery goal was smaller than the known number of territories at the time of the Recovery Plan completion. As a result, river segments and the lakebed together provide habitat that allow flycatcher territories to persist over time due to dynamic river and lake flooding events. For example, a high of 196 flycatcher territories occurred in 2004 (mostly within the conservation space of Roosevelt Lake), but in the following years after the lake level was raised, the known number of territories declined to 75 in 2007 (Sogge and Durst 2008). Since the raising of the water level in Roosevelt Lake, flycatchers have expanded their known distribution throughout adjacent areas along Tonto Creek, Salt River, and Pinal Creek (Sogge and Durst 2008).

We are proposing as critical habitat segments of Tonto Creek, the Salt River, the confluence of these two streams that comprise Roosevelt Lake, and Pinal Creek. The proposed lower 49.1-km (30.5-mi) segment of Tonto Creek extends from near the Town of Gisela downstream to the western high-water-mark side of the conservation space of Roosevelt Lake. On the eastern side of Roosevelt Lake, we are proposing a 39.0-km (24.2-mi) portion of the Salt River from the confluence with Cherry Creek to the high water mark of the conservation space of Roosevelt Lake. Joining these Tonto Creek and Salt River segments, we are proposing as critical habitat the 29.1-km (18.1-mi) lakebed at Roosevelt Lake (comprised of the Tonto Creek and Salt River confluence). These three areas were known to be occupied by flycatchers at the time of listing, and contain the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

Additionally, we are proposing a separate 5.7-km (3.5-mi) essential segment of Pinal Creek that occurs downstream of the water treatment plant north of the Town of Globe. This segment was not known to be occupied at the time of listing, but it currently supports nesting flycatchers and was determined to be essential for flycatcher conservation in order to help meet recovery goals in this Management Unit.

The segments of Tonto Creek, the Salt River, and their confluence that makes up Roosevelt Lake were identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 91). Together, these segments, along with the essential Pinal Creek segment, are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

The conservation space of Roosevelt Lake, due to the Roosevelt HCP, will be considered for exclusion under section 4(b)(2) of the Act (see Exclusions).

Middle Gila and San Pedro Management Unit, AZ

The Recovery Plan describes a goal of 150 flycatcher territories in the Middle Gila and San Pedro Management Unit (Service 2002, p. 85).

We identified a large flycatcher nesting population surrounding the Gila and San Pedro River confluence area within Cochise, Pima, Pinal, and Gila Counties, Arizona. Flycatchers were first detected nesting in this Management Unit in 1993, with abundant breeding sites occurring throughout this Management Unit. A high of 195 territories was detected in 2005 (Sogge and Durst 2008).

We are proposing as critical habitat the lowest 127.2-km (79.0-mi) segment of the middle and lower San Pedro River across portions of Cochise, Pima, and Pinal Counties, Arizona, and a 80.6-km (50.1-mi) Gila River segment that extends from near Dripping Springs Wash downstream past the San Pedro and Gila River confluence to the Ashehurst Hayden Diversion Dam in Gila and Pinal Counties, Arizona. The Gila and San Pedro Rivers are known to be occupied by flycatchers at the time of listing, and contain the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

The San Pedro and Gila Rivers were the only two rivers identified within this Management Unit as having substantial recovery value in the Recovery Plan (Service 2002, p. 91). These river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Upper Gila Management Unit, AZ and NM

The Recovery Plan describes a goal of 325 flycatcher territories in the Upper Gila Management Unit (Service 2002, p. 85). Flycatcher territories are known throughout the Gila River in New Mexico and Arizona within this Management Unit.

Based upon our methodology, we identified a large flycatcher nesting population across a broad area of the upper Gila River occurring within Gila, Pinal, Graham, and Greenlee Counties, Arizona, and Grant and Hildalgo Counties, New Mexico. Flycatchers were first detected nesting in this Management Unit in 1993 (Sogge and Durst 2008). Flycatcher territories at 22 breeding sites occur throughout three separate river segments of the Gila River, with a high of 329 territories estimated following the 2007 breeding season (Durst *et al.* 2008, p. 12). A single breeding site along the most upstream segment in the Cliff-Gila Valley in Grant County, New Mexico, has held over 200 flycatcher territories in a single season (Sogge and Durst 2008).

We are proposing as proposed critical habitat three segments of the Gila River that occur between the Turkey Creek confluence on the Gila National Forest, New Mexico, and Coolidge Dam (creating San Carlos Lake) on San Carlos Apache Tribal land. The most upstream 49.3-km (30.6-mi) Gila River segment extends from Turkey Creek through the Cliff-Gila Valley to the upstream entrance of the middle Gila Box Canyon on the Gila National Forest. The second 62.2-km (38.7-mi) Gila River segment occurs from the downstream end of the Middle Gila Box Canyon near the Town of Red Rock and extends downstream across the Arizona State line through the Town of Duncan, Arizona (this segment spans Grant and Hidalgo Counties, New Mexico, and Greenlee County, Arizona). The third 134.5-km (83.5-mi) Gila River segment occurs from the upper end of Earven Flat, near the Bonita Creek confluence, above the Town of Safford, Arizona, and extends through the Town of Safford and San Carlos Apache Land until it ends at Coolidge Dam. The Gila River is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

The Gila River segments were identified in the Recovery Plan as areas with substantial recovery value (Service 2002, p. 91). These three Gila River segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider the Gila River (including the lakebed of San Carlos Lake), where it occurs within San Carlos Apache Tribal land in Arizona, and the U–Bar Ranch in the Cliff-Gila Valley, New Mexico, for exclusion due to Management Plans under section 4(b)(2) of the Act (see Exclusions).

Santa Cruz Management Unit, AZ

The Recovery Plan describes a goal of 25 flycatcher territories in the Santa Cruz Management Unit (Service 2002, p. 84).

There were no large flycatcher nesting populations in the Santa Cruz Management Unit to help guide us toward a critical habitat area, and no areas were known to be occupied at the time of listing. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine critical habitat segments that may be essential for flycatcher conservation (see below). A single flycatcher territory was detected on Cienega Creek in 2001 (Sogge and Durst 2008). No flycatcher territories have been detected on the Santa Cruz River.

We are proposing as critical habitat a 7.0-km (4.4-mi) segment of Cienega Creek (including part of Las Cienegas National Conservation Area) in Pima County, Arizona, and a 26.7-km (16.6-mi) segment of the Santa Cruz River (Nogales Waste Water Treatment Plant to Chavez Siding Road) in Santa Cruz County, Arizona. These segments were not known to be occupied at the time of listing; however, they are essential to flycatcher conservation because they may be able to develop and sustain flycatcher habitat and territories to help meet recovery goals in this Management Unit. As noted earlier in this proposed rule (see Public Comments), we are specifically seeking information about these proposed Santa Cruz and Cienega Creek segments, as well as information about other flycatcher habitat, management, and detections in the Santa Cruz Management Unit.

The Santa Cruz River and Cienega Creek segments were identified in the Recovery Plan as areas with substantial recovery value (Service 2002, p. 91). These two segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

San Francisco Management Unit, AZ and NM

The Recovery Plan describes a goal of 25 flycatcher territories in the San Francisco Management Unit (Service 2002, p. 84). Small numbers of flycatcher territories are known to occur along the San Francisco River in this Management Unit in both Arizona and New Mexico.

There were no known large flycatcher nesting populations in the San Francisco Management Unit to help guide us toward a critical habitat area. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine critical habitat segments for flycatcher conservation (see below). Four flycatcher breeding sites have been detected on these river segments, with the first territories found in 1993 (Sogge and Durst 2008). The number of territories detected has fluctuated annually between one and seven from 1993 to 2007 (Sogge and Durst 2008).

We are proposing as critical habitat three segments of the San Francisco River in Arizona and New Mexico. We are proposing a 42.6-km (26.5-mi) segment on the San Francisco River that extends from near the Town of Alpine, Arizona, to Centerfire Creek in Catron County, New Mexico; a second 36.4-km (22.6-mi) segment that extends from the Deep Creek confluence to San Francisco Hot Springs, in Catron County, New Mexico; and a third 36.9-km (22.9-mi) segment from the Arizona and New Mexico border to the western boundary of the Apache-Sitgreaves National Forest, in Apache County, Arizona. The San Francisco River is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

These three San Francisco River segments were identified in the Recovery Plan as having substantial recovery value (Service 2002, pp. 90–91). These three San Francisco River

segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Hassayampa and Agua Fria Management Unit, AZ

The Recovery Plan describes a goal of 25 flycatcher territories in the Hassayampa and Agua Fria Management Unit (Service 2002, p. 84).

There were no large flycatcher nesting populations in the Hassayampa and Agua Fria Management Unit to help guide us toward a critical habitat area. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine critical habitat segments that may be essential for flycatcher conservation (see below). A single breeding site has been detected on the Gila River and Hassayampa River in this Management Unit, with the first territories found in 1997 (Sogge and Durst 2008). The number of territories detected has ranged from one and three from 1997 to 2007 (Sogge and Durst 2008).

We are proposing as critical habitat an 8.7-km (5.4-mi) segment of the Gila River, downstream from its confluence with the Salt River from 107th Avenue to Bullard Avenue in Maricopa County, Arizona. The Gila River is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

We are also proposing as critical habitat a 7.4-km (4.6 mi) segment of the Hassayampa River that occurs south of the Town of Wickenburg and Highway 60 Bridge in Maricopa County, Arizona. This segment was not known to be occupied at the time of listing; however, it is essential for flycatcher conservation because it will help meet recovery goals in this Management Unit.

These segments of the Gila River and Hassayampa Rivers were both identified in the Recovery Plan as having substantial recovery value (Service 2002, p. 91). These two river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

The Gila River segment within the Tres Rios Safe Harbor Agreement Area will be considered for exclusion under section 4(b)(2) of the Act (see Exclusions).

Rio Grande Recovery Unit

This Recovery Unit primarily includes the Rio Grande watershed from its headwaters in southern Colorado downstream to the Pecos River confluence in Texas. Other areas and drainages that occur within this Recovery Unit include the Rio Grande in Texas and Pecos watershed in New Mexico and Texas. No recovery goals were established for Management Units in those areas, so no critical habitat is being proposed in those areas.

There have been large increases in the number of estimated and known territories within the Rio Grande Recovery Unit, primarily due to increasing population numbers within the Middle Rio Grande Management Unit. In 2002, a total of 197 territories (17 percent of the rangewide total) were estimated to occur within the Recovery Unit, primarily occurring along the mainstem Rio Grande (Sogge *et al.* 2003). At the end of the 2007 breeding season, the Recovery Unit had increased to an estimated 230 territories (17 percent of the rangewide total), primarily due to territory increases in the Middle Rio Grande (Durst *et al.* 2008, p.13). In the subsequent years, the number of known territories has continued to increase within the Middle Rio Grande Management Unit with approximately 350 territories detected in 2009, with most territories detected within the San Marcial reach near Elephant Butte Reservoir (Moore and Ahlers 2010, p. 1).

Both the San Luis Valley Management Unit in southern Colorado and Middle Rio Grande Management Unit in New Mexico have surpassed their numerical territory goals. A total of 50 territories are needed in the San Luis Valley Management Unit and 56 territories were estimated to occur in 2007 (Durst *et al.* 2008, p. 13). In the Middle Rio Grande Management Unit, the numerical goal of 100 territories has been surpassed with about 350 territories detected in 2009 (Moore and Ahlers 2010, p.1).

Most sites are in habitats dominated by native plants, while habitat dominated by exotic plants include primarily tamarisk or Russian olive (Service 2002, p. 65). In 2001, 43 of the 56 nests (77 percent) that were described in the middle and lower Rio Grande in New Mexico, used tamarisk as the nest substrate (Service 2002, p. 65). In 2001, government-managed lands accounted for 63 percent of the territories in this unit; Tribal lands supported an additional 23 percent (Service 2002). While the number of territories has increased, the known distribution of sites is similar. As a result, we expect a larger proportion of territories to occur on government-managed lands in the Middle Rio Grande Management Unit.

This Recovery Unit contains the San Luis Valley, Upper Rio Grande, Middle Rio Grande, and Lower Rio Grande Management Units.

Based upon our occupancy criteria (see above), within the Rio Grande Recovery Unit, the Rio Grande (1993), Rio Grande del Rancho (1993), and Coyote Creek (1993) are streams that were known to be occupied at the time of listing (1991–1994) (Sogge and Durst 2008) where we are proposing critical habitat segments. These streams have the physical or biological features of critical habitat that may require special management considerations or protection.

At the time of listing, only specific sites on the Rio Grande within the Upper, Middle, and Lower Rio Grande Management Units were known to be specifically occupied by nesting birds, but based upon our criteria and the wide-ranging nature of this neotropical migrant, the Rio Grande within the San Luis Valley Management Unit is also considered occupied at the time of listing. Below we identify that each listed item described in our *Special Management Considerations or Protection* section (see above) applies to the streams described in each Management Unit within the Rio Grande Recovery Unit.

San Luis Valley Management Unit, CO

The Recovery Plan describes a goal of 50 flycatcher territories in the San Luis Valley Management Unit (Service 2002, p. 85).

We identified a large flycatcher nesting population in the San Luis Valley in Costilla, Conejos, Alamosa, and Rio Grande Counties, Colorado. Flycatchers were first detected nesting

in this Management Unit in 1997, and a high of 71 territories were detected along the Rio Grande and Conejos River in 2003 (Sogge and Durst 2008).

We are proposing as critical habitat a segment of the Rio Grande and a segment of the Conejos River within the San Luis Valley. The 159.4-km (99.0-mi) upper Rio Grande segment extends from the Hanna Lane County Road 17 Bridge downstream through the Alamosa National Wildlife Refuge to the County Road G Bridge. The Rio Grande is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

We are also proposing as critical habitat a 69.8-km (43.4-mi) segment of the Conejos River from near where the D5 Road crosses the Conejos River (just downstream from Fox Creek) and extends down to its confluence with the Rio Grande. This segment was not known to be occupied at the time of listing; however, it is essential for flycatcher conservation because it will help meet recovery goals in this Management Unit.

The Rio Grande and the Conejos River segments were identified within this Management Unit as having substantial recovery value in the Recovery Plan (Service 2002, p. 92). These two river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Both the Rio Grande and Conejos River occur within the conservation planning area established by the San Luis Valley Partnership and within their developing HCP; as a result, we will consider the Conejos River and Rio Grande within this conservation and planning area for exclusion under section 4(b)(2) of the Act (see Exclusions).

Upper Rio Grande Management Unit, NM

The Recovery Plan describes a goal of 75 flycatcher territories in the Upper Rio Grande Management Unit (Service 2002, p. 85).

We identified a large flycatcher nesting population on the upper Rio Grande in Taos, Santa Fe, and Mora Counties, New Mexico. Flycatchers were first detected nesting in this Management Unit in 1993, and a high of 39 territories were detected in 2000 along the Rio Grande, Rio Grande Del Rancho, and Coyote Creek (Sogge and Durst 2008). Flycatcher territories were recently detected on the Rio Fernando, which occurs within our large population area.

We are proposing as critical habitat a 75.1-km (46.7-mi) segment of the Rio Grande that extends from the Taos Junction Bridge (State Route 520) downstream to the Otowi Bridge (State Route 502). We are proposing as critical habitat an 11.9-km (7.4-mi) segment of the Rio Grande del Rancho from Sarco Canyon downstream to the Arroyo Miranda confluence. We are also proposing as critical habitat a 10.7-km (6.6-mi) segment of Coyote Creek from above Coyote Creek State Park downstream to the second bridge on State Route 518, upstream from Los Cocas. These segments are known to be occupied by flycatchers at the time of listing, and contain the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

We are also proposing as critical habitat a 0.4-km (0.2-mi) segment of the Rio Fernando that is about 3.2 km (2.0 mi) upstream from the Rio Lucero confluence. This segment was not known to be occupied at the time of listing; however, it is essential for flycatcher conservation because it will help meet recovery goals in this Management Unit.

Rio Grande, Rio Grande del Rancho, and Coyote Creek were identified within this Management Unit as having substantial recovery value in the Recovery Plan (Service 2002, p. 92). These three segments, along with the essential Rio Fernando segment, are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Due to the our partnership with the Santa Clara, San Juan, and San Ildefonso Pueblos and their conservation and planning efforts on the Rio Grande, we will consider these Pueblos for exclusion under section 4(b)(2) of the Act (see Exclusions).

Middle Rio Grande Management Unit, NM

The Recovery Plan describes a goal of 100 flycatcher territories in the Middle Rio Grande Management Unit (Service 2002, p. 85).

We identified a large flycatcher nesting population on the middle Rio Grande in Valencia, Soccorro, and Sierra Counties, New Mexico. Flycatcher territories were first detected in this Management Unit in 1993. In 2007, a high of 230 territories were detected (Sogge and Durst 2008), and since then the population has grown to about 350 territories (Moore and Ahlers 2010, p. 1).

We are proposing as critical habitat a 211.8-km (131.6 mi) segment of the Rio Grande that extends from below the Bernalillo and Valencia County line downstream past Bosque del Apache and Sevilleta National Wildlife Refuges and through Elephant Butte Reservoir in Valencia, Soccorro, and Sierra Counties, New Mexico. The Rio Grande is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

This Rio Grande segment was identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 92). This segment of the Rio Grande is anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, this river segment and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals. The population of flycatchers in this segment is currently the largest population of flycatchers in their range, with a total of 221 pairs and 291 nests documented within the Elephant Butte Reservoir conservation pool, according to a 2009 study (Moore and Ahlers 2010, p. 43).

Based on an initial evaluation of potential impacts on water operations of the Elephant Butte Dam and Reservoir, we will consider excluding the portion of this segment that occurs within the reservoir pool of Elephant Butte Reservoir from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act (see Exclusions).

Lower Rio Grande Management Unit, NM

The Recovery Plan describes a goal of 25 flycatcher territories in the Lower Rio Grande Management Unit (Service 2002, p. 84).

There were no large flycatcher nesting populations in the lower Rio Grande Management Unit to help guide us toward a critical habitat area. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine critical habitat segments that may be essential for flycatcher conservation (see below). Three breeding sites have been detected along the Rio Grande, with the first territories found in 1993 (Sogge and Durst 2008). The number of flycatcher territories detected annually has fluctuated between zero and eight from 1993 to 2007 (Sogge and Durst 2008).

We are proposing as critical habitat a 74.2-km (46.1-mi) segment of the Rio Grande in Sierra and Dona Ana Counties, New Mexico, from Caballo Dam to Leasburg Dam. The Rio Grande is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

This Rio Grande segment was identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 92). This Rio Grande segment is anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, this river segment and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

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 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 or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the flycatcher. 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 may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the flycatcher. These activities include, but are not limited to:

(1) Actions that would remove, thin, or destroy riparian flycatcher habitat, without implementation of an effective riparian restoration plan resulting in the development of riparian vegetation of equal or better flycatcher quality in abundance and extent. Such activities could include, but are not limited to removing, thinning, or destroying riparian vegetation by mechanical, chemical (herbicides or burning), or biological (grazing, biocontrol agents) means. These activities could reduce the amount or extent of riparian habitat needed by flycatchers for sheltering, feeding, breeding, and migrating.

(2) Actions that would appreciably diminish habitat value or quality through direct or indirect effects. Such activities could include, but are not limited to, degradation of watershed and soil characteristics; diminishing river surface and subsurface flow; negatively altering river flow regimes; introduction of exotic plants, animals, or insects; or habitat fragmentation from recreation activities. These activities could reduce or fragment the amount or extent of riparian habitat needed by flycatchers for sheltering, feeding, breeding, and migrating.

(3) Actions that would negatively alter the surface or subsurface river flow. Such activities could include, but are not limited to, water diversion or impoundment, groundwater pumping, dam construction and operation, or any other activity which negatively changes the frequency, magnitude, duration, timing, or abundance of surface flow (and also subsurface groundwater elevation). These activities could permanently eliminate available riparian habitat and food availability or degrade the general suitability, quality, structure, abundance, longevity, and vigor of riparian vegetation and microhabitat components necessary for nesting, migrating, food, cover, and shelter.

(4) Actions that permanently destroy or alter flycatcher habitat. Such activities could include, but are not limited to, discharge of fill material, draining, ditching, tiling, pond construction, and stream channelization (due to roads, construction of bridges, impoundments, discharge pipes, stormwater detention basins, dikes, levees, and others). These activities could permanently eliminate available riparian habitat and food availability or degrade the general suitability, quality, structure, abundance, longevity, and vigor of riparian vegetation and microhabitat components necessary for nesting, migrating, food, cover, and shelter.

(5) Actions that result in alteration of flycatcher habitat from improper livestock or ungulate management. Such activities could include, but are not limited to, unrestricted ungulate access and use of riparian vegetation; excessive ungulate use of riparian vegetation during the non-growing season (*i.e.,* leaf drop to bud break); overuse of riparian habitat and upland vegetation due to insufficient herbaceous vegetation available to ungulates; and improper herding, water development, or other livestock management actions. These activities can reduce the volume and composition of riparian vegetation, prevent regeneration of riparian plant species, physically disturb nests, alter floodplain dynamics, facilitate brood parasitism by brown-headed cowbirds, alter watershed and soil characteristics, alter stream morphology, and facilitate the growth of flammable exotic plant species.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP. 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.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for the flycatcher to determine if they are exempt under section 4(a)(3) of the Act. The following areas in southern California (Table 3) are Department of Defense lands with completed, Service-approved INRMPs within the proposed critical habitat designation.

TABLE 3—AREAS EXEMPTED FROM CRITICAL HABITAT UNDER SECTION 4(B)(3) OF THE ACT BY CRITICAL HABITAT UNIT

Management unit	Specific area	Areas meeting the definition of critical habitat in km (mi)	Areas exempted in km (mi)
Santa Ynez	Vandenberg AFB INRMP	14.7 km (9.1 mi)	14.7 km (9.1 mi).
San Diego	Camp Pendleton INRMP	76.1 km (47.3 mi)	76.1 km (47.3 mi).
San Diego	Camp Pendleton INRMP/Fallbrook Naval Base INRMP shared boundary.	7.5 km (4.7 mi)	7.5 km (4.7 mi).
San Diego	Fallbrook Naval Base INRMP	3.2 km (2.0 mi)	3.2 km (2.0 mi).

Approved INRMPs

Vandenberg Air Force Base (VAFB)—Santa Ynez Management Unit, CA

Vandenberg Air Force Base has an approved INRMP. The U.S. Air Force is committed to working closely with the Service and California Department of Fish and Game to continually refine the existing INRMP as part of the Sikes Act's INRMP review process. Based on our review of the INRMP for this military installation, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the portion of the Santa Ynez River within this installation, identified as meeting the definition of critical habitat, is subject to the INRMP, and that conservation efforts identified in this INRMP will provide a benefit to the flycatcher. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3)(B) of the Act. We are not including approximately 14.7 km (9.1 mi) of riparian habitat on VAFB in this proposed revised critical habitat designation because of this exemption.

VAFB completed an INRMP in 2011, which includes benefits for flycatchers through: (1) Avoidance of flycatchers and their habitat, whenever possible, in project planning; (2) scheduling of activities that may affect flycatchers outside of the peak breeding period; (3) measures for protection of riparian zones (see Wetlands and Riparian Habitats Management Plan Section in INRMP); (4) removal of exotic plant species; and (5) implementation of brown-headed cowbird management. Further, VAFB's environmental staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including flycatchers and their habitat. In addition, VAFB's INRMP provides protection to riparian habitats for flycatchers by excluding cattle from wetlands and riparian areas through the installation and maintenance of fencing. VAFB's INRMP specifies periodic monitoring of the distribution and abundance of flycatcher populations on the base.

Habitat features essential to the conservation of the flycatcher exist on VAFB; however, designating critical habitat on this military installation may impact its mission of launching and tracking of satellites and testing and evaluating missile systems, and therefore affect the nation's military readiness. Activities occurring on VAFB are currently being conducted in a manner that minimizes impacts to flycatchers. This military installation has an approved INRMP that provides a benefit to the flycatcher, and VAFB has committed to work closely with the Service and the State wildlife agency to continually refine their existing INRMP as part of the Sikes Act's INRMP review process.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2011 INRMP for VAFB provide a benefit to the flycatcher and its habitat. Therefore, lands subject to the INRMP for VAFB, which includes the lands leased from the Department of Defense by other parties, are exempt from critical habitat designation under section 4(a)(3) of the Act, and we are not including approximately 14.7 km (9.1 mi) of the Santa Ynez River in this proposed revised critical habitat designation because of this exemption.

Marine Corps Base Camp Pendleton (MCB Camp Pendleton)—San Diego Management Unit, CA

The primary mission of Marine Corps Base Camp Pendleton (MCB Camp Pendleton) is military training. It is the Marine Corps' premier amphibious training installation and its only west coast amphibious assault training center. The installation has been conducting air, sea, and ground assault training since World War II. MCB Camp Pendleton occupies over 50,586 ha (125,000 ac) of coastal southern California in the northwest corner of San Diego County. Aside from nearly 4,047 ha (10,000 ac) that is developed, most of the installation is largely undeveloped land that is used for training. MCB Camp Pendleton is situated between two major metropolitan areas: Los Angeles, 132 km (82 mi) to the north; and San Diego, 61 km (38 mi) to the south. Nearby urban areas include the City of Oceanside to the south, the unincorporated community of Fallbrook to the east, and the City of San Clemente to the northwest. Aside from a portion of the MCB Camp Pendleton's border that is shared with the San Mateo Canyon Wilderness Area on the Cleveland National Forest and the Naval Weapons Station Seal Beach—Detachment Fallbrook (Fallbrook Naval Weapons Station), surrounding land use is urban development, rural residential development, and agricultural farming and ranching. In addition to military training and associated activities and infrastructure to support training, portions of MCB Camp Pendleton are leased to private and public entities and agencies. The largest single leaseholder on the installation is California State Parks, which includes a 50-year real estate lease granted on September 1, 1971, for 809 ha (2,000 ac) that encompasses San Onofre State Beach. Requirements to the lessees are to manage natural resources on leased lands in support of objectives and consistent with the philosophies of MCB Camp Pendleton's INRMP (USMC 2007, pp. 2–29).

The MCB Camp Pendleton INRMP was prepared to assist installation staff and users in their efforts to rehabilitate and conserve natural resources while maintaining consistency with the use of MCB Camp Pendleton to train Marines, and sets the agenda for managing natural resources on MCB Camp Pendleton (USMC 2007, p. ES–1). The INRMP also provides ecosystem-based management to preserve, improve, and enhance ecosystem integrity on the installation (USMC 2007, pp. 1–13). MCB Camp Pendleton completed its INRMP in 2001, followed by a revised and updated version in 2007 (USMC 2007), to address conservation and management recommendations within the scope of the installation's military mission, including conservation measures for flycatchers (USMC 2007, Appendix F, Section F.1, pp. F1–F5). Additionally, Marine Corps Air Station Camp Pendleton (MCAS Camp Pendleton) is fully encompassed within MCB Camp Pendleton and recognizes itself as a separate installation with its own INRMP that also provides a benefit to the flycatcher and its habitat. MCAS Camp Pendleton and its INRMP is assumed part of this discussion within the remainder of this exemption discussion for flycatcher due to its overlapping and close association with MCB Camp Pendleton and its INRMP, and both reference and inclusion of conservation described in MCB Camp Pendleton's riparian biological opinion (1–6–95–F–02; see USMC 2006, pp. 2–4 and discussion below).

The MCB Camp Pendleton INRMP incorporates measures outlined in a riparian biological opinion (Biological Opinion for Programmatic Activities and Conservation Plans in Riparian, Estuarine, and Beach Ecosystems on Marine Corps Base, Camp Pendleton (also known as ''Riparian BO''; (1–6–95–F–02)), which includes addressing the installation's Riparian Ecosystem Conservation Plan (USMC 2007, Appendix C). The Riparian Ecosystem Conservation Plan was designed to maintain and enhance the biological diversity of the riparian ecosystem on MCB Camp Pendleton, including habitat areas used by flycatchers. The conceptual approach behind this conservation plan is to sustain and

restore riparian ecosystem dynamics so that natural plant and animal communities on MCB Camp Pendleton are sufficiently resilient to coexist with current and future military training activities (Service 1995, Appendix 1, p. 44). Under the reasonable and prudent measures of the Riparian BO, implementation of the Riparian Ecosystem Conservation Plan by the Marine Corps is nondiscretionary (Service 1995, p. 31; USMC 2007, Appendix L; USMC 2006, Appendix E, pp. 63–64). Areas or habitat containing features essential to the conservation of flycatchers addressed by the conservation plan, the Riparian BO, or MCB Camp Pendleton's INRMP include the Santa Margarita River and portions of the following creeks: Cristianitos, San Mateo, San Onofre, Los Flores, Las Pulgas, Fallbrook, Pilgrim, and DeLuz (70 FR 60920; October 19, 2005).

As described in Appendix F of the MCB Camp Pendleton INRMP (USMC 2007, pp. F–58—F–67), the following management practices and conservation measures provide an indirect or direct benefit for the flycatcher:

(1) Annual monitoring of population levels and distributions of the flycatcher;

(2) Incorporating survey data into the GIS species distribution database to update the Environmental Operations Maps and utilize in conservation awareness and education programs;

(3) Exotic vegetation control including *Arundo donax* and *Tamarix* spp. removal and control;

(4) Exotic animal control (annual cowbird control activities);

(5) Programmatic instructions that limit impacts to flycatcher and its habitat; and

(6) Monitoring groundwater levels and basin withdrawals managed to avoid degradation and loss of habitat quality.

These measures are established or ongoing aspects of existing programs, Base directives (such as the Riparian Ecosystem Conservation Plan), or measures that are being implemented as a result of previous consultations. MCB Camp Pendleton implements installation directives to avoid and minimize adverse effects to the flycatcher, such as:

(1) Assuring that aircraft operations shall not be conducted lower than an altitude of 300 ft (91 m) over occupied riparian areas, to the maximum extent practical;

(2) Limiting vehicle operations to existing roads in riparian areas;

(3) Requiring helicopters to operate in excess of 200 ft (61 m) above ground level over riparian areas except during take-off or landing, from March 15 to August 31;

(4) Restricting ground troops movement in riparian areas to existing crossings, trails, and roads; and

(5) Prohibiting bivouacking in riparian areas.

Current environmental regulations and restrictions apply to all endangered and threatened species on the installation (including flycatcher) and are provided to all users of ranges and training areas to guide activities and protect the species and its habitat. First, specific conservation measures are applied to flycatcher and its habitat (as outlined above). Second, MCB Camp Pendleton's environmental security staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including the flycatcher and its habitat. Third, MCB Camp Pendleton provides training to personnel on environmental awareness for sensitive resources on the base, including the flycatcher and its habitat. As a result of these regulations and restrictions, activities occurring on MCB Camp Pendleton are currently conducted in a manner that minimizes impacts to flycatcher habitat.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2007 INRMP for MCB Camp Pendleton (and MCAS Camp Pendleton INRMP as outlined above) will provide a benefit to the flycatcher and riparian habitat on MCB Camp Pendleton. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 76.1 km (47.3 mi) of habitat on MCB Camp Pendleton and an additional 7.5 km (4.7 mi) area shared with the adjacent Naval Weapons Station Seal Beach—Detachment Fallbrook (Fallbrook Naval Weapons Station) in this proposed revised critical habitat designation because of this exemption.

Naval Weapons Station Seal Beach—Detachment Fallbrook (Fallbrook Naval Weapons Station)—San Diego Management Unit, CA

Fallbrook Naval Weapons is the primary west coast supply point of ordnance for the U.S. Marine Corps and the large deck amphibious assault ships of the Pacific Fleet. Fallbrook Naval Weapons Station also has the only west coast maintenance facility for air-launched missiles for the Pacific Fleet. The installation encompasses approximately 3,582 ha (8,852 ac) and is located within the southern foothills of the Santa Ana Mountains of northern San Diego County, adjacent to the unincorporated community of Fallbrook, California. It is bounded to the north, west, and much of the south by MCB Camp Pendleton, with the Santa Margarita River forming the common border on the north between the two properties. Other than training lands on MCB Camp Pendleton, surrounding land use includes semi-rural agricultural lands that include plant nurseries, avocado and citrus groves, vineyards, and limited urban development.

In the previous final critical habitat designation for flycatcher, we exempted Fallbrook Naval Weapons Station from the designation under section 4(a)(3)(B) of the Act because it was subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a) that we determined to provide a benefit to the flycatcher (70 FR 60927; October 19, 2005). The INRMP was prepared to assist installation staff and users in their efforts to support mission operations and accommodate increased military mission requirements for national security and emergency homeland security, while meeting all environmental compliance responsibilities. The INRMP also provides ecosystem-based management to preserve, protect, and enhance natural resources on the installation, and provides the organizational support and communication links necessary for effective planning, implementation, and administration of the installation's natural resources. The Fallbrook Naval Weapons Station completed its INRMP in 2006 (which was updated from an INRMP developed by the Naval Ordnance Center Pacific Division in 1996) to address conservation and management of its natural resources, including conservation measures for the flycatcher (Navy 2006, Chapter 3, pp. 110–112). Areas or habitat containing features essential to the conservation of flycatchers within the boundaries of Fallbrook Naval Weapons Station occur along portions of Pilgrim Creek and the Santa Margarita River.

The flycatcher primarily receives protection from activities at Fallbrook Naval Weapons Station because no training occurs on the installation. The INRMP's management and conservation measures for the flycatcher consist of avoidance and minimization measures, applied to infrastructure development and maintenance to protect the flycatcher, that are part of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) approval process (Navy 2006, Chapter 3, pp. 110–112). The

flycatcher also receives indirect protection through management and conservation measures for the least Bell's vireo such as: (1) Protection of flycatcher habitat through protection of a subset of least Bell's vireo priority management areas; (2) fencing that protects priority areas from cattle grazing; (3) a Fire Management Plan that provides a higher priority protection for riparian habitat, due to the limited amount of riparian habitat on Fallbrook Naval Weapons Station, such as core areas of least Bell's vireo and flycatcher habitat; (4) consideration of prescribed burns and livestock grazing as tools for the establishment of a buffer area between riparian habitat and shrublands; (5) timing and location protections associated with prescribed burns; (6) assessment and mapping of riparian habitat to determine suitability for least Bell's vireo occupation; and (7) implementation of nonnative vegetation control measures, including removal of *Arundo donax* (giant reed) (Navy 2006, pp. 3–118).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2006 INRMP for Fallbrook Naval Weapons Station provide a benefit to the flycatcher and riparian habitat on the installation. Therefore, lands subject to the INRMP for the Fallbrook Naval Weapons Station are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 3.2 km (2.0 mi) of habitat on Pilgrim Creek and portions of the Santa Margarita River that lie within the boundaries of the Fallbrook Naval Weapons Station in this proposed revised critical habitat designation because of this exemption.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping critical habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the flycatcher, the benefits of critical habitat include public awareness of flycatcher presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for the flycatcher due to the protection from adverse modification or destruction of critical habitat. In practice, a Federal nexus exists primarily on Federal lands or for projects undertaken by Federal agencies. Since the flycatcher was listed in 1995, we have had some projects on privately owned lands that had a Federal nexus to trigger consultation under section 7 of the Act. On Federal lands, we have been consulting with Federal agencies on their effects to the flycatcher since the subspecies was listed. These consultations have, in some instances, resulted in comprehensive conservation planning for specific areas across its range (*i.e.,* Sprague Ranch in Kern Management Unit). These plans can provide sufficient flycatcher habitat protection for recovery of the species.

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 identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether certain lands in the proposed critical habitat designation (Table 4) are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. The mapped location of these lands we are considering for exclusion can be viewed in the supplementary documents associated with this proposed rule found at *http://www.regulations.gov.* If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

TABLE 4—PLAN TYPE, STREAM SEGMENTS, AND APPROXIMATE STREAM LENGTH BEING CONSIDERED FOR EXCLUSION FROM FLYCATCHER CRITICAL HABITAT UNDER SECTION 4(B)(2) OF THE ACT BY MANAGEMENT UNIT

Basis for possible exclusion	Streams segments considered for exclusion	Approximate stream length considered for exclusion in km (mi)
Santa Ana Management Unit		
Western Riverside County Multiple Species HCP.	Santa Ana River	34.1 km (21.2 mi).
	San Timoteo Creek	21.4 km (13.3 mi).
	Bautista Creek	22.6 km (14.0 mi).
	Temecula Creek (see San Diego Management Unit).	
Ramona Band of Cahuilla	Bautista Creek	0.44 km (0.27 mi).
San Diego Management Unit		
San Diego County Multiple Species HCP.	San Dieguito River	9.2 km (5.7 mi).
	San Diego River	9.5 km (5.9 mi).
	Santa Ysabel Creek (upper)	2.4 km (1.5 mi).
	Santa Ysabel Creek (lower)	1.0 km (0.6 mi).
	Sweetwater River	6.6 km (4.1 mi).
Western Riverside County Multiple Species HCP.	Temecula Creek (including Vail Lake)	18.7 km (11.6 mi).
Orange County Southern Subregional HCP.	Canada Gobernadora Creek	5.9 km (3.7 mi).
City of Carlsbad Habitat Management Plan.	Agua Hedionda Creek (upper)	3.4 km (2.1 mi).
	Agua Hedionda Creek (lower)	2.1 km (1.3 mi).
La Jolla Band of Luiseno Indians Management Plan.	San Luis Rey River	11.5 km (7.2 mi).
Rincon Band of Luiseno Mission Indians Management Plan.	San Luis Rey River	2.4 km (1.5 mi).
Pala Band of Luiseno Mission Indians	San Luis Rey River	3.7 km (2.3 mi).
The Barona and Viejas Groups of Capitan Grande Band of Diegueno Mission Indians.	San Diego River	4.7 km (2.9 mi).
Owens Management Unit		
Los Angeles Department of Water and Power Management Plan.	Owens River	128.5 km (79.9 mi).
Kern Management Unit		
Sprague Ranch Management Plan	South Fork Kern River (north side)	4.0 km (2.5 mi).
Haffenfeld Ranch Management Plan	South Fork Kern River (south side)	0.80 km (0.50 mi).
South Fork Kern River Wildlife Area Management Plan.	South Fork Kern River	2.5 km (1.5 mi).
	South Fork Kern River (Lake Isabella)	0.29 km (0.18 mi).
Salton Management Unit		
Iipay Nation of Santa Ysabel	San Felipe Creek	1.6 km (0.98 mi).
Little Colorado Management Unit		
Zuni Pueblo	Rio Nutria	35.8 km (22.2 mi).
	Zuni River	39.9 km (24.8 mi).
Navajo Nation	Zuni River	15.5 km (9.6 mi).
Virgin River Management Unit		
Clark County MSHCP	Virgin River	42.0 km (26.1 mi).
Overton State Wildlife Area Management Plan.	Virgin River	6.5 km (4.0 mi).
Middle Colorado Management Unit		
Lower Colorado River MSCP	Colorado River (Lake Mead)	24.1 km (15.0 mi).
Hualapai Tribe Management Plan	Colorado River	50.0 km (31.0 mi).

TABLE 4—PLAN TYPE, STREAM SEGMENTS, AND APPROXIMATE STREAM LENGTH BEING CONSIDERED FOR EXCLUSION FROM FLYCATCHER CRITICAL HABITAT UNDER SECTION 4(B)(2) OF THE ACT BY MANAGEMENT UNIT—Continued

Basis for possible exclusion	Streams segments considered for exclusion	Approximate stream length considered for exclusion in km (mi)
Pahranagat Management Unit		
Key Pittman State Wildlife Area Management Plan.	Pahranagat River	4.0 km (2.5 mi).
Overton State Wildlife Area Management Plan.	Muddy River	3.1 km (1.9 mi).
Bill Williams Management Unit		
Alamo Lake State Wildlife Area Management Plan.	Bill Williams River (Alamo Lake)	5.4 km (3.3 mi).
	Santa Maria River (Alamo Lake)	8.4 km (5.2 mi).
	Big Sandy River (Alamo Lake)	9.6 km (6.0 mi).
Lower Colorado River MSCP	Bill Williams River	0.7 km (0.5 mi).
Hoover to Parker Dam Management Unit		
Lower Colorado River MSCP	Colorado River (two segments)	24.7 km (15.3 mi).
Fort Mohave Tribe Management Plan	Colorado River	17.0 km (10.6 mi).
Chemehuevi Tribe Management Plan	Colorado River	21.9 km (13.6 mi).
Lower Colorado River MSCP	Bill Williams River	1.7 km (1.0 mi).
Parker Dam to Southerly International Border Management Unit		
Lower Colorado River MSCP	Colorado River (two segments)	70.5 km (43.8 mi).
Colorado River Indian Tribes Management Plan.	Colorado River	47.7 km (29.7 mi).
Quechan (Fort Yuma) Indian Tribe Management Plan.	Colorado River	23.0 km (14.3 mi).
San Juan Management Unit		
Navajo Nation	San Juan River (New Mexico)	3.5 km (2.2 mi).
	San Juan River (Utah)	51.7 km (32.1 mi).
Southern Ute Tribe	Los Pinos River	25.9 km (16.1 mi).
Verde Management Unit		
Salt River Project Horseshoe and Bartlett Dams HCP.	Verde River (Horseshoe Lake)	9.6 km (6.0 mi).
Yavapai Apache Tribal Management Plan.	Verde River	2.7 km (1.7 mi).
Roosevelt Management Unit		
Salt River Project Roosevelt Lake HCP	Tonto Creek (Roosevelt Lake)	12.8 km (7.9 mi).
	Salt River (Roosevelt Lake)	16.3 km (10.1 mi).
Upper Gila Management Unit		
U–Bar Ranch Management Plan	Gila River	14.0 km (8.7 mi).
San Carlos Apache Tribal Management Plan.	Gila River	31.3 km (19.5 mi).
	Gila River (San Carlos Lake)	26.8 km (16.6 mi).
Hassayampa and Agua Fria Management Unit		
Tres Rios Safe Harbor Agreement	Gila River	8.7 km (5.4 mi).
San Luis Valley Management Unit		
San Luis Valley Partnership	Rio Grande	159.4 km (99.0 mi).
	Conejos River	69.8 km (43.4 mi).
Upper Rio Grande Management Unit		
San Ildefonso Pueblo Partnership	Rio Grande	7.7 km (4.8 mi).
Santa Clara Pueblo Partnership	Rio Grande	10.3 km (6.4 mi).
San Juan Pueblo (Ohkay Owingue) Partnership.	Rio Grande	9.3 km (5.8 mi).

TABLE 4—PLAN TYPE, STREAM SEGMENTS, AND APPROXIMATE STREAM LENGTH BEING CONSIDERED FOR EXCLUSION FROM FLYCATCHER CRITICAL HABITAT UNDER SECTION 4(B)(2) OF THE ACT BY MANAGEMENT UNIT—Continued

Basis for possible exclusion	Streams segments considered for exclusion	Approximate stream length considered for exclusion in km (mi)
Middle Rio Grande Management Unit		
Elephant Butte Reservoir	Rio Grande	45.7 km (28.4 mi).
Total		1,254.3 km (779.4 mi).

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Arizona Ecological Services Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have exempted from the designation of critical habitat those Department of Defense lands with completed INRMPs determined to provide a benefit to the southwestern willow flycatcher. We have also determined that the remaining lands within the proposed designation of critical habitat for the species are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exert his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any 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 Tribal management in recognition of their capability to appropriately manage their own resources, 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 land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

(1) The plan is 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 implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We believe that the following HCPs, Plans, Partnerships, and Agreements may fulfill the above criteria, and will consider the exclusion of these Federal and non-Federal lands covered by these plans that provide for the conservation of the flycatcher.

We are requesting comments on the benefit to flycatcher from these following HCPs, Plans, Partnerships, and Agreements; however, at this time, we are not proposing the exclusion of any areas in this proposed revised critical habitat designation for the flycatcher. However, we specifically solicit comments on the inclusion or exclusion of such areas.

In the paragraphs below, organized by Recovery Unit and Management Unit, we identify lands we are considering for exclusion under section 4(b)(2) of the Act.

Coastal California Recovery Unit

Santa Ana Management Unit

Habitat Conservation Plans

Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)

The Western Riverside County MSHCP is a regional, multi-jurisdictional HCP encompassing approximately 1.26 million ac (510,000 ha) of land in western Riverside County. The Western Riverside County MSHCP addresses 146 listed and unlisted ''covered species,'' including the southwestern willow flycatcher. The Western Riverside County MSHCP is a multispecies conservation program designed to minimize and mitigate the expected loss of habitat and associated incidental take of covered species resulting from covered development activities in the Plan area. On June 22, 2004, the Service issued a single incidental take permit under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP to be in effect for a period of 75 years (Service 2004). The Service anticipates the proposed actions will affect the southwestern willow flycatcher, including the loss of up to 23 percent of the modeled habitat for this species in the plan area (Service 2004, p. 227). Within the Plan, and through implementation of the Riparian/Riverine Areas and Vernal Pools policy, we anticipate no loss of occupied southwest willow flycatcher habitats or areas otherwise determined to have long-term conservation value for the species (Service 2004, p. 227). We concluded in our biological opinion

(Service 2004b, p. 227) that implementation of the Plan, as proposed, was not likely to jeopardize the continued existence of the southwestern willow flycatcher. Our determination was based on our conclusion that based on the low level of impact anticipated to individuals of this species and because the impacts associated with loss of the southwestern willow flycatcher's modeled habitat, when viewed in conjunction with the protection and management of the MSHCP Conservation Area, are not anticipated to result in an appreciable reduction in the numbers, reproduction, or distribution of this subspecies throughout its range (Service 2004, p. 227).

Species-specific conservation objectives are included in the Western Riverside County MSHCP for southwestern willow flycatcher. The MSHCP Conservation Area will include at least 4,282 ha (10,580 ac) of flycatcher habitat (breeding and migration habitat) including six core areas of high-quality habitat and interconnecting linkages, including essential segments of the Santa Ana River, San Timoteo Creek, and Temecula Creek (including Vail Lake). The plan aims to conserve 100 percent of breeding habitat for the flycatcher, including buffer areas 100 m (328 ft) adjacent to breeding areas. In addition, the Western Riverside County MSHCP requires compliance with a Riparian and Riverine Areas and Vernal Pool policy that contains provisions requiring 100 percent avoidance and long-term management and protection of breeding habitat not included in the conservation areas, unless a Biologically Equivalent or Superior Preservation Determination can demonstrate that a proposed alternative will provide equal or greater conservation benefits than avoidance.

We completed an internal consultation on the effects of the plan on the flycatcher and its habitat that is found within the plan boundaries, and determined that implementation of the plan provides for the conservation of the species because it provides for the conservation of breeding and migration flycatcher habitat, the conservation of dispersal habitat and adjacent upland areas, surveys for undiscovered populations, and the maintenance and potential restoration of suitable habitat areas within the conservation area.

We will consider excluding portions of the Santa Ana River, San Timoteo Creek, Bautista Creek, and Temecula Creek (including Vail Lake) within the planning area boundary for the Western Riverside County MSHCP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the Western Riverside County MSHCP based on the protections outlined above and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

Tribal Management Plans and Partnerships

Ramona Band of Cahuilla, California

The Ramona Band of Cahuilla, California, occurs within the Santa Ana Management Unit, California. A proposed essential segment of Bautista Creek occurs on lands managed by the Ramona Band of Cahuilla. We will coordinate with the Ramona Band of Cahuilla and examine what flycatcher conservation actions, management plans, and commitments and assurances occur on these lands for potential exclusion from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

San Diego Management Unit

Habitat Conservation Plans

San Diego County MSCP

In southwestern San Diego County, the San Diego MSCP and HCP encompasses more than 236,000 ha (582,000 ac) and involves the participation of the County of San Diego and 11 cities, including the City of San Diego. This regional HCP is also a regional subarea plan under the NCCP program and has been developed in cooperation with California Department of Fish and Game. The MSCP provides for the establishment of approximately 69,573 ha (171,000 ac) of preserve areas to provide conservation benefits for 85 Federally listed and sensitive species, including the flycatcher, over the life of the permit (50 years).

Portions of lands within the boundaries of the San Diego MSCP and HCP contain essential areas for the conservation of the flycatcher, including stream segments along the San Dieguito, San Diego, and Sweetwater Rivers. These particular areas lie within the boundaries of the approved subarea plans.

Conservation measures specific to the flycatcher within the San Diego MSCP and HCP include the preservation and management of 3,845 ha (9,500 ac) (81 percent) of the riparian habitat within the planning area, as well as eight of the nine known breeding locations at the time of the plan's development. Surveys are required for projects potentially affecting this species, and breeding habitat will be identified and avoided. Specific management directives include measures to provide appropriate flycatcher habitat, upland buffers for all known flycatcher populations, cowbird control, specific measures to protect against detrimental edge effects, and monitoring.

We will consider excluding portions of the San Dieguito, San Diego, Santa Ysabel, and Sweetwater Rivers within the San Diego MSCP and HCP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the San Diego MSCP and HCP based on the protections outlined above and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

Orange County Southern Subregional HCP

The Orange County Southern Subregional HCP was issued permits based on the plan by the Service on January 10, 2007, that covers a 75-year period. The Orange County Southern Subregion HCP encompasses approximately 34,811 ha (86,021 ac) in southern Orange County. The Southern Subregional HCP was developed in support of applications for incidental take permits for 32 covered species, including the flycatcher, by the Orange County, Rancho Mission Viejo, and the Santa Margarita Water District in connection with proposed residential development and related actions in southern Orange County.

The Orange County Southern Subregional HCP provides for the conservation of covered species, including southwestern willow flycatcher, through the establishment of an approximately 12,313 ha (30,426 ac) habitat reserve and 1,803 ha (4,456 ac) of supplemental open space areas (Service 2007, pp 10, 19). The Southern Subregional HCP is expected to conserve the flycatcher through implementing the following conservation measures: (1) Conservation of 57 percent of nesting and foraging habitat within the Habitat Reserve and adaptively managed on Rancho Mission Viejo lands; (2) inclusion in the Habitat Reserve of 100 percent of flycatcher locations in the Lower Canada Gobernadora ''important'' population in a ''key'' location; (3) creation of 2 ha (6 ac) of willow riparian habitat within a Supplemental Open Space area on the Prima Deshecha Landfill; (4) management of nonnative invasive plant

species (*Tamarisk ramosissima* (tamarisk), *Arundo donax* (arundo), and *Ricinus communis* (castor bean)); (5) assessment of effects from and trapping of nonnative animal species (cowbird); (6) and managing livestock grazing (Service 2007, pp. 120–123).

We will consider excluding a portion of Canada Gobernadora Creek within the Orange County Southern Subregional HCP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the Orange County Southern Subregional HCP based on the protections outlined above and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

City of Carlsbad Habitat Management Plan (HMP)

The City of Carlsbad's HMP was approved October 15, 2004. This plan is one of seven subarea plans being developed under the umbrella of the North County Multiple Habitat Conservation Plan (MHCP) in northern San Diego County. Participants in this regional conservation planning effort include the cities of Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, and Vista. The subarea plans in development are also proposed as subregional plans under the State's Natural Community Conservation Planning program and are being developed in cooperation with the California Department of Fish and Game (CDFG). We have determined that portions of lands within the boundaries of the HMP contain lands with features essential to the conservation of the flycatcher, including portions of Agua Hedionda Creek.

Approximately 9,943 ha (24,570 ac) of land are within the Carlsbad HMP planning area, with about 3,561 ha (8,800 ac) remaining as natural habitat for species covered under the plan. Of this remaining habitat, the Carlsbad HMP proposes to establish a preserve system for approximately 2,746 ha (6,786 ac). Conservation measures specific to the flycatcher within the Carlsbad HMP include the conservation of 200 ha (494 ac) (86 percent) of the riparian vegetation in the city and 10 ha (25 ac) (86 percent) of oak woodland. Preserved lands include the four highest quality habitat areas for flycatchers identified within the plan area, including lands along Agua Hedionda Creek. For proposed projects in or adjacent to suitable habitat outside of preserve areas, mandatory surveys will be conducted, with impacts to breeding flycatchers completely avoided or reduced, as described in the paragraph below. Flycatcher habitat will be managed to restrict activities that cause degradation, including livestock grazing, human disturbance clearing or alteration of riparian vegetation, brown-headed cowbird parasitism, and insufficient water levels leading to loss of riparian habitat and surface water.

Area-specific management directives shall include measures to provide appropriate flycatcher habitat, cowbird control, specific measures to protect against detrimental edge effects, and removal of invasive, exotic species (*Arundo donax*). Human access to flycatcher-occupied breeding habitat will be restricted during the breeding season (May 1 to September 15), except for qualified researchers or land managers performing essential preserve management, monitoring, or research functions. Projects that cannot be conducted without placing equipment or personnel in or adjacent to sensitive habitats shall be timed to ensure that exotic vegetation habitat (*Arundo donax*) is removed prior to the initiation of the breeding season.

Projects having direct or indirect impacts to the flycatcher shall adhere to the following measures to avoid or reduce impacts: (1) The removal of native vegetation and habitat shall be avoided and minimized to the maximum extent practicable; (2) For temporary impacts, the work site shall be returned to pre-existing contours and revegetated with appropriate native species; (3) Revegetation specifications shall ensure creation and restoration of riparian woodland vegetation to a quality that eventually is expected to support nesting flycatchers, recognizing that it may take many years (depending on type of activity and timing of flood events, *etc.*) to achieve this state; (4) Construction noise levels at the riparian canopy edge shall be kept below 60 dBA Leq (measured as Equivalent Sound Level) from 5 a.m. to 11 a.m. during the peak nesting period of March 15 to July 15. For the balance of the day or season, the noise levels shall not exceed 60 decibels, averaged over a 1-hour period on an A-weighted decibel (dBA) (*i.e.,* 1 hour Leq/dBA); (5) Brown-headed cowbirds and other exotic species that impact the flycatcher shall be removed from the site; (6) For new developments adjacent to preserve areas that create conditions attractive to brown-headed cowbirds, jurisdictions shall require monitoring and control of cowbirds; (7) Biological buffers of at least 30 m (100 ft) shall be maintained adjacent to breeding flycatcher habitat, measured from the outer edge of riparian vegetation. Within this 30-m (100-ft) buffer, no new development shall be allowed, and the area shall be managed for natural biological values as part of the preserve system; (8) Suitable unoccupied breeding habitat preserved within the protected areas shall be managed to maintain or mimic effects of natural stream or river processes (*e.g.,* periodic substrate scouring and depositions); and (9) Natural riparian connections with upstream riparian habitat shall be maintained to ensure linkage to suitable occupied and unoccupied breeding habitat.

We will consider excluding portions of Agua Hedionda Creek within the Carlsbad HMP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the Carlsbad HMP based on the protections outlined above and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

Tribal Management Plans and Partnerships

La Jolla Band of Luiseno Indians

The La Jolla Band of Luiseno Indians have a segment of proposed flycatcher critical habitat along the San Luis Rey River within the San Diego Management Unit, in northern San Diego County, California. The La Jolla Tribe has developed a Southwestern Willow Flycatcher Management Plan (SWFMP).

The La Jolla Band of Luiseno Indian's SWFMP described a collection of measures, protections, and efforts they are and will be undertaking to protect flycatchers and their riparian habitat. To address environmental issues, the La Jolla Band of Luiseno Indians maintains permanent staff, which includes a professional biologist. The Tribe will work to maintain open space along the river, with a particular emphasis on the western 2-km (3.5-mi) stretch of the San Luis Rey River. The La Jolla Band of Luiseno Indians are working to establish this piece of river as a reserve for environmental and cultural purposes. Management of native riparian vegetation and removal of exotic vegetation is occurring that could improve the quality and abundance of native plants, and decrease the risk of wildfire. They will actively reduce the impact of recreation in riparian areas by continuing to educate Tribal Members through outreach programs and

newsletters. Additionally, they are working to discourage use of off-road vehicles in riparian areas through education, movement of roads, closures, and development of ordinances. The La Jolla Band of Luiseno Indians will explore future opportunities for research to determine how to best manage for flycatchers.

We will consider excluding The La Jolla Band of Luiseno Indian's land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Rincon Band of Luiseno Mission Indians of the Rincon Reservation

The Rincon Band of Luiseno Mission Indians land contains a proposed segment of flycatcher critical habitat along the San Luis Rey River within the San Diego Management Unit, in northern San Diego County, California. The Rincon Band of Luiseno Mission Indians have developed a SWFMP.

The Rincon Band of Luiseno Mission Indian's SWFMP addresses implementation of a variety of protective flycatcher habitat measures. The Rincon Band of Luiseno Mission Indians will monitor and remove introduced exotic plants that could reduce the quality and abundance of native species, and increase the risk of wildfire. They will exclude activities in the floodplain that could remove or reduce riparian habitat quality such as mining and livestock grazing. The Rincon Band of Luiseno Mission Indians will exclude unauthorized recreational uses and off-road vehicle use. Signs, boundaries, and other measures will be taken to educate the public and prevent unauthorized recreational use. The Rincon Band of Luiseno Mission Indians will dedicate funding to this effort, report progress, and coordinate with the Service on SWMP updates.

We will consider excluding The Rincon Band of Luiseno Mission Indian's land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Pala Band of Luiseno Mission Indians and the Capitan Grande Band of Diegueno Mission Indians of California

The Pala Band of Luiseno Mission Indians and the Capitan Grande Band of Diegueno Mission Indians of California occur within the San Diego Management Unit, San Diego County, California. The Pala Band of Luiseno Mission Indian's Tribal Land occurs along a segment of proposed flycatcher critical habitat on the San Luis Rey River. A proposed essential segment of the San Diego River occurs on the land of the Capitan Grande Band of Diegueno Mission Indians of California (jointly managed by the Barona Group of Capitan Grande Band of Mission Indians and the Viejas [Baron Long] Group of Capitan Grande Band of Mission Indians).

We will coordinate with these Tribes and examine what flycatcher conservation actions, management plans, and commitments and assurances occur on these lands for potential exclusion from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Basin and Mohave Recovery Unit, CA and NV

Owens Management Unit

Partnerships, Conservation Plans, or Conservation Easements on Private Lands

Los Angeles Department of Water and Power (LADWP) Conservation Strategy

The LADWP owns and manages a proposed segment of flycatcher critical habitat along the Owens River within the Owens Management Unit, in Inyo County, California. It is believed that LADWP owns and manages the entire extent of flycatcher habitat within this Management Unit needed to reach recovery goals.

The Service and the LADWP signed a memorandum of understanding in 2005 to implement a flycatcher conservation strategy designed to proactively manage flycatchers in the Owens Management Unit. The conservation strategy addresses three elements, livestock grazing, recreational activities, and wildfires that have the potential to adversely affect flycatcher habitat. The conservation strategy provides specific measures that: (1) Are designed to create suitable breeding habitat for the flycatcher; and (2) avoid and minimize potential adverse effects, such as the degradation or loss of habitat that may be associated with grazing activities, recreational activities, and wild land fires. The document also states the LADWP will implement the aforementioned measures with the goal of promoting the establishment of 50 flycatcher territories, which is the number of territories needed to reach recovery goals identified in the Recovery Plan.

We will consider excluding LADWP lands from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Kern Management Unit

Partnerships, Conservation Plans, or Conservation Easements on Private Lands

Haffenfeld Ranch Conservation Easement

The Haffenfeld Ranch owns and manages a segment of proposed flycatcher critical habitat along the South Fork Kern River within the Kern River Management Unit, in Kern County, California.

The Haffenfeld Ranch has developed a Conservation Easement and Plan with the Natural Resources Conservation Service that provides management and protections for flycatcher habitat. The Haffenfeld Parcel completes a continuous corridor of willow-cottonwood riparian habitat along the South Fork of the Kern River that connects the east and west segments of the Audubon Society's Kern River Preserve. The Conservation Easement and Plan establishes that these lands are managed for the benefit of the flycatcher by restoring, improving, and protecting its habitat. Management activities include: (1) Limiting public access to the site, (2) winter-only grazing practices (outside of the flycatcher nesting season), (3) protection of the site from development or encroachment, (4) maintenance of the site as permanent open space that has been left predominantly in its natural vegetative state, and (5) the spreading of flood waters to promote the moisture regime and wetland and riparian vegetation for the conservation of the flycatcher. Other prohibitions of the easement that would benefit the conservation of the flycatcher include: (1) Haying, mowing, or seed harvesting; (2) altering the grassland, woodland, wildlife habitat, or other natural features; (3) dumping refuse, wastes, sewage, or other debris; (4) harvesting wood products; (5) draining, dredging, channeling, filling, leveling, pumping, diking, or impounding water features or altering the existing surface water drainage or flows naturally occurring within the easement area; and (6) building or placing structures on the easement.

We will consider excluding Haffenfeld Ranch lands from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Federal Wildlife Conservation Areas

Sprague Ranch

The Sprague Ranch is an approximately 1,003-ha (2,479-ac) parcel, which includes approximately 395 ha (975 ac) of flycatcher floodplain habitat located along the South Fork of

the Kern River in Kern County, California. The Sprague Ranch was purchased by the U.S. Army Corps of Engineers (Corps) as a result of biological opinions for the long-term operation of Lake Isabella Dam and Reservoir (Service File Nos. 1–1–96–F–27; 1–1–99–F–216; and 1–1–05–F–0067) specifically to provide habitat and conservation for the flycatcher. During the periods of time flycatcher habitat is not available as a result of short-term inundation from Isabella Dam operations, the Sprague Ranch is expected to provide habitat for the flycatcher.

As a result of the expertise of the National Audubon Society (Audubon) and the California Department of Fish and Game (CDFG) in management of flycatcher habitat on adjacent and nearby properties along the Kern River, management of the Sprague Ranch is a joint venture between these two parties and the Corps. The Sprague Ranch is important flycatcher habitat and is located immediately north and adjacent to the Kern River Preserve (KRP), which is owned and operated by Audubon, and shares a common border with the KRP of over 4.8 km (3 mi). The Sprague Ranch contains existing riparian forest that can support and maintain nesting territories and migrating and dispersing flycatchers. But other portions of the Ranch are believed to require restoration and management in order become nesting flycatcher habitat. Activities such as cowbird trapping, exotic vegetation control, and native tree plantings are other management activities expected to occur. Sprague Ranch is currently being managed in accordance with the terms and conditions of the biological opinions specifically for the flycatcher.

We will consider excluding the South Fork Kern River on the Sprague Ranch from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

South Fork Kern River Wildlife Area (SFWA)

The SFWA is an approximately 514-ha (1,270-ac) parcel of mature willow-cottonwood, riparian flycatcher habitat located along the South Fork of the Kern River, Kern County, California, west of historic Patterson Lane, including a portion of upper Lake Isabella. The SFWA is jointly managed by the Corps and the Forest Service. Isabella Dam and flycatcher habitat in the SFWA is managed as a result of long-term biological opinions for Corps operation of Lake Isabella Dam and Reservoir (Service File Nos. 1–1–96–F–27; 1–1–96–F–150; 1–1–99–F–216; and 1–1–05–F–0067) and on-the-ground management by the Forest Service. These opinions resulted in the long-term management of Lake Isabella Dam that maintains the dynamic processes to establish flycatcher habitat over the long term and resulted in the acquisition of the Sprague Ranch (immediately upstream of the SFWA) to compensate for short-term losses in habitat, and management of SFWA for flycatchers.

Lake Isabella Dam operations that periodically inundate and create conditions for flycatcher habitat establishment are managed by the Corps in accordance with the terms and conditions of the biological opinions. These terms and conditions require conservation actions for flycatchers, including long-term studies of flycatcher habitat and demographics; implementation and monitoring of a cowbird trapping program; a nest-moving protocol to prevent inundation of nests during high water events; measures to control watercraft in coordination with the Forest Service; and the acquisition of 465 ha (1,150 ac) of land to compensate for incidental take resulting from the periodic inundation of the SFWA. Funding for the implementation of these measures is provided by the Corps in accordance with terms and conditions of the biological opinions.

The SFWA is managed by the Forest Service within Lake Isabella (after the water recedes) and along the Kern River immediately upstream. Through consultation with the Forest Service, measures for the conservation of flycatchers have been implemented, including: restricting the speed of watercraft to 8 km per hour (5 mi per hour) within 30.5 m (100 ft) of the SFWA; and prohibition of overnight camping, motorized vehicles, and campfires in the South Fork Wildlife Area. The SFWA is fenced, and the fencing is maintained to enforce the exclusion of unauthorized uses, including cattle grazing.

We will consider excluding the South Fork Kern River and upper end of Lake Isabella within the SFWA from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Salton Management Unit

Tribal Management Plans and Partnerships

Iipay Nation of Santa Ysabel

The Iipay Nation of Santa Ysabel, California (formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation), occurs along an essential segment of proposed flycatcher critical habitat on San Felipe Creek in the Salton Management Unit, San Diego County, California.

We will coordinate with The Iipay Nation and examine what flycatcher conservation actions, management plans, and commitments and assurances occur on these lands for potential exclusion from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Lower Colorado Recovery Unit, NV, AZ, CA, UT, and NM

Little Colorado River Management Unit

Tribal Management Plans and Partnerships

Navajo Nation and Zuni Pueblo

The Navajo Nation and Zuni Pueblo contain segments of the Rio Nutria and Zuni River proposed as flycatcher critical habitat in McKinley County, New Mexico. Both river segments occur within the Little Colorado River Management Unit.

We will coordinate with these Tribes and examine what flycatcher conservation actions, management plans, and commitments and assurances occur on these lands for potential exclusion from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Virgin Management Unit

Habitat Conservation Plans

Clark County Multiple Species Habitat Conservation Plan

The Clark County Multiple Species Habitat Conservation Plan (MSHCP) was completed in November 2000, and the incidental take permit was issued on January 9, 2001. The flycatcher, as well as five additional riparian obligate species, was included in the MSHCP and permit application. The permit issued for the MSHCP covered the County, the Cities of Clark County, and Nevada Department of Transportation (permittees) for take of the covered species on all non-Federal Land with the County, up to a maximum loss of 58,681 ha (145,000 ac) of habitat within a 30-year period.

Due to the relatively large percentage of riparian habitat that occurs on non-Federal lands, the permit obligated the County to fulfill certain conditions prior to authorization of take of the avian riparian obligate species. These conditions include: (1) The development of conservation management plans that identify the management and monitoring actions needed for desert riparian habitats along the Muddy River, Virgin River, and Meadow Valley Wash; and (2) the acquisition of private lands in desert

riparian habitats along the Muddy River, Virgin River, and Meadow Valley Wash, with the total number and location of hectares (acres) within each watershed to be identified in the conservation management plans.

In 2005, these two conditions were not yet fulfilled during our previous designation of flycatcher critical habitat; therefore, the permittees were not authorized for incidental take of the flycatcher, and were subsequently short of meeting the criteria for exclusion under section 4(b)(2) of the Act. Clark County is currently in the process of amending their MSHCP, but the plan is under development and decisions regarding the conservation strategy for riparian birds will not be made until the amendment to the plan and the permit are approved. Habitat conservation planning has been initiated for the Virgin River as part of the development of the Virgin River Habitat Conservation and Recovery Program, but, similar to the Clark County MSHCP amendment, the Program has not yet been approved and permitted. We will re-evaluate flycatcher conservation planning and implementation progress along the Virgin River within these two planning efforts during this critical habitat designation process.

State Wildlife Areas

Overton State Wildlife Area

The Overton State Wildlife Area contains segments of both the Virgin River (Virgin Management Unit) and Muddy River (Pahranagat Management Unit). Please see our description of this area in the Pahranagat Management Unit.

Middle Colorado Management Unit

Tribal Management Plans and Partnerships

Hualapai Tribe

Hualapai Tribal land contains a proposed flycatcher critical habitat segment of the Colorado River on the south side of the channel in the Middle Colorado Management Unit above Lake Mead in Mohave County, Arizona. The Hualapai Tribe has finalized a SWFMP that was adopted by the Hualapai Tribal Council.

The Hualapai Tribe's SWFMP's objectives are to manage riparian vegetation to maximize continued presence of native plant species suitable for use by flycatchers, ensure that existing land uses (which presently include recreational activities) will not result in net loss or reduction in quality of flycatcher habitat, and continue their Department of Natural Resources partnership in the management of the lower Colorado River, including those associated with the LCR MSCP (see Hoover to Parker Dam Management Unit section describing potential *Habitat Conservation Plan* exclusions).

We will consider excluding the Colorado River alongside Hualapai Tribal land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Pahranagat Management Unit

State Wildlife Areas

Key Pittman State Wildlife Area

The Key Pittman State Wildlife Area is located in Lincoln County, Nevada, and contains a wide diversity of habitats within its 539 ha (1,332 ac). Essential flycatcher habitat occurs along the Pahranagat River as it travels through a portion of the Key Pittman State Wildlife Area, including Nesbitt Lake, an impounded area along the river. The State of Nevada's Department of Wildlife owns and manages this property. The Nevada Fish and Game Commission purchased portions of the area in 1962 and 1966, primarily for waterfowl hunting, and as a secondary goal, habitat for other wetland species. A draft management plan was completed in November 2003, and provided the framework for the next 10 years. The plan went through stakeholder meetings and public review.

The State of Nevada fences the known flycatcher habitat in order to protect it from livestock grazing, manages water to maintain habitat, monitors the status of flycatchers, and is actively planting riparian plants to improve the distribution of riparian habitat. The area has been under management for wildlife since the 1960s, with conservation efforts targeted toward waterfowl, wetland species, and specifically the flycatcher.

Within the Key Pittman Wildlife Area, we will consider excluding the Pahranagat River from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Overton State Wildlife Area

The Overton State Wildlife Area is located in Clark County, Nevada, and contains a wide diversity of habitats within its 7,146 ha (17,657 ac). The Muddy River and Virgin River (in the Virgin Management Unit) travel through a small portion of the State Wildlife Management Area near Lake Mead. The State of Nevada's Department of Wildlife owns and manages this property. A management plan was completed in December 2000, and provides the framework for the next 10 years. The plan went through stakeholder meetings and public review.

We determined that essential segments of the Muddy and Virgin Rivers (located within both the Pahranagat and Virgin Management Units) for the conservation of the flycatcher occur through the boundaries of the Overton State Wildlife Area. A minimum of a quarter-acre willow patch and varying amount of cottonwood, mesquite, and hackberry will be planted annually in locations able to support native riparian trees, and water is being managed to improve and maintain riparian habitat. Riparian habitat is protected from livestock grazing, because no grazing occurs in the Wildlife Area. This Wildlife Area was developed primarily for wetland habitat and waterfowl activities (including hunting).

Within the Overton Wildlife Area, we will consider excluding the Virgin and Muddy Rivers from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Bill Williams Management Unit

State Wildlife Areas

Alamo Lake State Wildlife Area (AWA)

The Alamo Lake State Wildlife Area (AWA) in La Paz and Mohave Counties, Arizona, was created under provisions of the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), Public Land Order 492 (PLO 492), and the General Plan agreement between the Secretary of the Army, Secretary of the Interior, and Director of Arizona Game and Fish, signed January 19, 1968 (Arizona Game and Fish Department—Arizona State Parks 1997). A lease agreement between the Arizona Game and Fish Department Commission and the U.S. Army Corps of Engineers was signed in 1970, establishing the AWA for fish and wildlife conservation and management purposes (Arizona Game and Fish Department—Arizona State Parks 1997). The present lease area encompasses approximately 9,140 ha (22,586 ac). Public input was solicited and addressed in development of the AWA Management Plan through scoping and the NEPA (Arizona Game and Fish Department—Arizona State Parks 1997). Proposed flycatcher critical habitat occurs along the Big Sandy, Santa Maria, and Bill Williams Rivers, which make up the upper portion of Alamo Lake.

The AWA Management Plan describes the unique riparian, wetland, and aquatic aspects of the area for a variety of species, specifically identifying the flycatcher. As a result, two of the specific resources that management

emphasizes are directed toward the habitat needs of the flycatcher: (1) Maintain and enhance aquatic and riparian habitats to benefit wildlife; and (2) restore, manage, and enhance habitats for wildlife of special concern. In order to accomplish this goal, no cattle grazing is allowed in the riparian areas on the upper end of Alamo Lake and the lower portions of the Santa Maria and Big Sandy Rivers. Also, management of recreation (*i.e.,* off-road vehicles) is identified as an important management objective.

We will consider excluding the Bill Williams, Santa Maria, and Big Sandy Rivers within the Alamo Lake State Wildlife Area from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Habitat Conservation Plans

Lower Colorado River MSCP

A portion of the Bill Williams River at the Colorado River confluence occur within the planning area of the Lower Colorado River MSCP. Please see the Hoover to Parker Dam Management Unit below for a description of the LCR MSCP.

Hoover to Parker Dam Management Unit

Habitat Conservation Plans

Lower Colorado River MSCP

The LCR MSCP was developed for areas along the lower Colorado River along the borders of Arizona, California, and Nevada from the conservation space of Lake Mead to Mexico, in the Counties of La Paz, Mohave, and Yuma in Arizona; Imperial, Riverside, and San Bernardino Counties in California; and Clark County in Nevada. The LCR MSCP primarily covers activities associated with water storage, delivery, diversion, and hydroelectric production. The Record of Decision was signed by the Secretary of the Interior on April 2, 2005. Discussions began on the development of this HCP in 1994, but an important catalyst was a 1997 jeopardy biological opinion for the flycatcher issued to the Bureau of Reclamation for lower Colorado River operations.

The Federal agencies involved in the LCR MSCP include the Bureau of Reclamation, Bureau of Indian Affairs, National Park Service, Bureau of Land Management, Western Area Power Administration, and U.S. Fish and Wildlife Service. The permittees covered in Arizona are: The Arizona Department of Water Resources; Arizona Electric Power Cooperative, Inc.; Arizona Game and Fish Department; Arizona Power Authority; Central Arizona Water Conservation District; Cibola Valley Irrigation and Drainage District; City of Bullhead City; City of Lake Havasu City; City of Mesa; City of Somerton; City of Yuma; Electrical District No. 3, Pinal County, Arizona; Golden Shores Water Conservation District; Mohave County Water Authority; Mohave Valley Irrigation and Drainage District; Mohave Water Conservation District, North Gila Valley Irrigation and Drainage District; Salt River Project Agricultural Improvement and Power District; Town of Fredonia; Town of Thatcher; Town of Wickenburg; Unit ''B'' Irrigation and Drainage District; Wellton-Mohawk Irrigation and Drainage District; Yuma County Water Users' Association; Yuma Irrigation District; and Yuma Mesa Irrigation and Drainage District. The permittees covered in California are: The City of Needles, the Coachella Valley Water District, the Colorado River Board of California, the Imperial Irrigation District, the Los Angeles Department of Water and Power, the Palo Verde Irrigation District, the San Diego County Water Authority, the Southern California Edison Company, the Southern California Public Power Authority, Bard Water District, and The Metropolitan Water District of Southern California. The permittees covered in Nevada are: The Colorado River Commission of Nevada, the Nevada Department of Wildlife, Basic Water Company, and the Southern Nevada Water Authority.

The LCR MSCP primarily surrounds proposed flycatcher critical habitat along the Colorado River within the Hoover to Parker Dam and Parker Dam to Southerly International Border Management Units. Streams in the Middle Colorado (Colorado River and Lake Mead), Virgin (Virgin River), and Pahranagat (Muddy River) Management Units in Arizona, Utah, and Nevada, are briefly represented where they surround Lake Mead (including the conservation space of Lake Mead which extends up the Colorado River to Separation Canyon). Also, a portion of the Bill Williams River at the Colorado River confluence at Lake Havasu (Bill Williams Management Unit) occurs within the LCR MSCP planning area.

The flycatcher is a key species in the LCR MSCP, where the permittees will create and maintain 1,639 ha (4,050 ac) of flycatcher habitat over the 50-year life of the permit (2005 to 2055). Additional research, management, monitoring, and protection of flycatchers and flycatcher habitat from fire, nest predators, and brood parasites will occur. The development of flycatcher habitat will occur specifically throughout the Hoover to Parker Dam and Parker Dam to Southerly International Border Management Units, and is expected to meet conservation goals of the flycatcher identified in the Recovery Plan by increasing numbers of territories in appropriate Management Units. Portions of tributaries to the Colorado River, such as the Virgin and Muddy Rivers, may occur within the LCR MSCP planning area. Management and tasks associated with the HCP will result in improving and maintaining important migration stopover habitat, improving metapopulation stability, and reducing the risk of catastrophic losses due to fire. In addition to creation and subsequent management of flycatcher habitats, provision is made in the LCR MSCP to provide funds to ensure the maintenance of existing flycatcher habitats within the Management Units. Flycatcher management associated with the LCR MSCP works in conjunction with management occurring on the National Wildlife Refuges (Bill Williams, Havasu, Cibola, and Imperial) and Tribal lands (Hualapai, Fort Mohave, Chemehuevi, Colorado River, and Quechan Tribes) along the LCR.

We will consider excluding portions of the Colorado River from the uppermost storage space of Lake Mead (in the Middle Colorado River Management Unit) downstream through the Hoover to Parker Dam Management Unit to the Southerly International Border and portions of tributaries (Virgin, Muddy, and Bill Williams Rivers) to the Colorado River that may occur within the LCR MSCP planning area that are located in other Management Units (Virgin, Pahranagat, and Bill Williams) from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Tribal Management Plans and Partnerships

Fort Mojave Tribe

Fort Mojave Tribal land contains a proposed Colorado River segment of flycatcher critical habitat in the Hoover to Parker Dam Management Unit above Lake Havasu in Mohave County, Arizona. The Fort Mojave Tribe has finalized a SWFMP.

The Fort Mojave Tribe's SWFMP describes that within the Tribe's budgetary constraints, they commit management to sustain the current value of saltcedar, willow, and cottonwood vegetation that meets moist soil conditions necessary to maintain flycatcher habitat; to carry out monitoring to determine flycatcher presence and vegetation status in cooperation with the Service; and to

continue to provide wildfire response and law enforcement to protect flycatcher habitats. In addition, flycatcher management on Tribal Land may work in conjunction with additional flycatcher management associated with the LCR MSCP (see the Hoover to Parker Dam Management Unit above for a description).

We will consider excluding the Colorado River within Fort Mojave Tribal land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Chemehuevi Tribe

Chemehuevi Tribal land contains a proposed Colorado River segment of flycatcher critical habitat along the on the west side of the channel in the Hoover to Parker Dam Management Unit adjacent to the Colorado River and Lake Havasu in Mohave County, Arizona. The Chemehuevi Tribe has finalized a SWFMP.

The Chemehuevi Tribe's SWFMP describes that within funding limits, they will commit to conduct a variety of flycatcher and flycatcher habitat management actions. The management actions include wildfire control, improvement of native riparian plants through vegetation improvement projects, minimization of impacts associated with recreational or other use along the river and lake shorelines, and collaboration with the Service to improve conditions for the flycatcher by discussing and implementing projects to reduce burro damage. The SWFMP identifies the management of riparian saltcedar and native willow, cottonwood, and mesquite to maximize native plant presence. Management will be done in cooperative work effort with the Service to identify restoration sites and provide early control response to wildfires that would result in no net loss or permanent modification detrimental to the flycatcher or its habitat as specified by the Recovery Plan. Any river or lakeshore land use changes, such as recreational or other developments, will take flycatcher habitat needs into account and will be done in mutual consultation with the Service to minimize detrimental impacts to flycatcher habitat. The SWFMP identifies continued cooperation between the Tribe and Service to ensure continued management of or improvement to flycatcher habitat. In addition, flycatcher management on Tribal Land may work in conjunction with additional flycatcher management associated with the LCR MSCP (see the Hoover to Parker Dam Management Unit above for a description).

We will consider excluding the Colorado River within Chemehuevi Tribal land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Parker Dam to Southerly International Border Management Unit

Tribal Management Plans and Partnerships

Colorado River Indian Tribes (CRIT)

The CRIT contains a proposed Colorado River segment of flycatcher habitat in the Parker Dam to Southerly International Border Management Unit in La Paz County, Arizona. The Colorado River Indian Tribes have finalized a SWFMP.

The CRIT's SWFMP describes a commitment to conduct a variety of flycatcher and flycatcher habitat management actions. The SWFMP identifies schedules for breeding habitat surveys and monitoring flycatcher nesting activity. The SWFMP also identifies the assessment, identification, and protection of flycatcher migration habitat. The SWFMP identifies protecting breeding habitat with the Ahakhav Tribal Preserve and in any areas established for flycatchers with the LCR MSCP. Seasonal closures of occupied flycatcher habitat during the breeding season may be necessary and established by the CRIT. Protection of flycatcher habitat from fire is established in the SWFMP, as well as protections from other possible stressors such as overgrazing, recreation, and development. In addition, flycatcher management on Tribal Land may work in conjunction with additional flycatcher management associated with the LCR MSCP (see the Hoover to Parker Dam Management Unit above for a description).

We will consider excluding the Colorado River within CRIT land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Quechan (Fort Yuma) Indian Tribe

Quechan Tribal land contains a proposed Colorado River segment of flycatcher critical habitat in the Parker Dam to Southerly International Border Management Unit near the City of Yuma in Yuma County, Arizona. The Quechan Tribe has completed a SWFMP.

The Quechan Tribe's SWFMP describes a commitment to conduct a variety of flycatcher and flycatcher habitat management actions. The Tribe will manage riparian saltcedar that is intermixed with cottonwood, willow, mesquite, and arrowweed to maximize potential value for nesting flycatchers. Any permanent land use changes for recreation or other reasons will consider and support flycatcher needs, as long as consistent with Tribal cultural and economic needs. The Tribe will consult with the Service to develop and design plans that minimize impacts to flycatcher habitat. The Tribe will establish collaborative relationships with the Service to benefit the flycatcher, including monitoring for flycatcher presence and habitat condition, all within the constraints of available funds to the Tribe. In addition, flycatcher management on Tribal Land may work in conjunction with additional flycatcher management associated with the LCR MSCP (see the Hoover to Parker Dam Management Unit above for a description).

We will consider excluding the Colorado River within Quechan Tribal land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Upper Colorado Recovery Unit, AZ, UT, CO, and NM

San Juan Management Unit

Tribal Management Plans and Partnerships

Navajo Nation and Southern Ute Tribe

The Navajo Nation contains two different essential segments of the San Juan River in San Juan County, Utah, and San Juan County, New Mexico. Additionally, the Southern Ute Tribe contains an essential segment of the Los Pinos River in La Plata County, Colorado. All three of these river segments occur within the San Juan Management Unit.

We will coordinate with these Tribes and examine what flycatcher conservation actions, management plans, and commitments and assurances occur on these lands for potential exclusion from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Gila Recovery Unit, AZ and NM

Verde Management Unit

Habitat Conservation Plans

Horseshoe and Bartlett Dam HCP

Salt River Project (SRP) developed the 50-year Horseshoe and Bartlett Dam HCP to provide habitat conservation for Federally listed, candidate, and other species of concern that inhabit Horseshoe and Bartlett lakes and the Verde River above and below the two dams in Gila and Maricopa Counties, while allowing the continued operation of the two reservoirs. The Record of Decision was signed by the Service's

Region 2 Director on June 13, 2008. SRP provides water from Horseshoe and Bartlett directly to various beneficiaries of these storage facilities for irrigation and other uses. Water from Horseshoe, Bartlett, and SRP's other reservoirs is provided directly by SRP to shareholder lands for irrigation and other uses, and is delivered to the cities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale, Tempe, and Tolleson for municipal use on shareholder lands. Water deliveries are also made under specific water rights in Horseshoe and Bartlett held by the City of Phoenix, Salt River Pima Maricopa Indian Community, and Fort McDowell Yavapai Nation. In addition, water is delivered from the SRP reservoir system to the cities, Gila River Indian Community, Buckeye Irrigation Company, RWCD, and others in satisfaction of their independent water rights. Finally, exchange agreements between a number of entities and SRP pursuant to State and Federal law are facilitated by stored water from Horseshoe and Bartlett.

The Verde Management Unit, and specifically the water storage space within Horseshoe Reservoir, is the primary area where impacts to the flycatcher are anticipated to occur through periodic inundation and drying of flycatcher habitat. Water storage and periodic inundation of an annual average of up to 200 acres of flycatcher habitat would likely result in delayed or lost breeding attempts, decreased productivity and survivorship of dispersing adults in search of suitable breeding habitat, and decreased productivity of adults that attempt to breed at Horseshoe Lake.

The conservation goals of the HCP for the flycatcher would be accomplished by a number of minimization and mitigation measures, including maintaining and managing riparian habitat within Horseshoe Lake, minimizing water storage impacts, and mitigating water storage impacts by acquiring and managing flycatcher habitat along the Verde River, Gila River, or elsewhere in central Arizona to provide a diversity of geographic locations. Impacts within the lake's water storage space will be minimized by modifying reservoir operations to make riparian habitat available earlier in the nesting season and also to maintain riparian vegetation at higher elevations in the reservoir, which are farther away from inundation impacts.

We will consider excluding the water storage area of Horseshoe Lake from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Tribal Management Plans and Partnerships

Yavapai Apache Nation

The Yavapai Apache Nation contains Verde River segments of proposed flycatcher critical habitat in the Verde Management Unit in Yavapai County, Arizona. The Yavapai Apache Nation has completed a SWFMP.

The Yavapai Apache Nation's SWFMP addresses and presents assurances for flycatcher habitat conservation. The Nation will, through zoning, Tribal ordinances and code requirements, and measures identified in the Recovery Plan, take all practicable steps to protect known flycatcher habitat located along the Verde River. The Nation will take all reasonable measures to assure that no net habitat loss or permanent modification of flycatcher habitat will result from recreational and road construction activities, or habitat restoration activities, and will take all reasonable steps to coordinate with the Service so that flycatcher habitat is protected. Within funding limitations and under confidentiality guidelines established by the Tribe, the Tribe will cooperate with the Service to monitor and survey habitat for breeding and migrating flycatchers, conduct research, and perform habitat restoration, cowbird trapping, or other beneficial flycatcher management activities.

We will consider excluding the Verde River segments within Yavapai Apache Nation from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Roosevelt Management Unit

Habitat Conservation Plans

Roosevelt Lake HCP

An HCP for Salt River Project (SRP) was completed for the operation of Roosevelt Dam in Gila and Maricopa Counties, Arizona, which included as the action area the perimeter of Roosevelt Lake's high water mark (ERO 2002). The Record of Decision for the HCP was dated February 27, 2003. The land within the Roosevelt Lake perimeter is Federal land withdrawn by the U.S. Bureau of Reclamation and managed by the Forest Service.

The flycatcher population at Roosevelt Lake, depending on the year, can be the largest population of nesting flycatchers across the subspecies' range (approximately 150 territories, plus an unknown number of unmated, nonbreeding flycatchers and fledglings). The confluence of Tonto Creek and the Salt River, which comprise the Roosevelt Lake water storage area, is proposed as flycatcher critical habitat. Operation of Roosevelt Dam during low water years can yield as much as 506 ha (1,250 ac) of occupied flycatcher habitat within the perimeter of the high water mark. Annually, the total available habitat varies as reservoir levels fluctuate depending on annual precipitation with dry years yielding proportionally more habitat.

Flycatcher habitat at Roosevelt Lake varies depending on how and when the lake recedes as a result of water in-flow and subsequent storage capacity and delivery needs. As the lake recedes, flat gradient, fine moist soils are exposed which provide seed beds for riparian vegetation. However, even in the expected high-water years, we determined that some flycatcher habitat would persist at Roosevelt Lake.

The HCP covers Roosevelt Dam operations for 50 years and involves the conservation of a minimum of 607 ha (1,500 ac) of flycatcher habitat off-site, outside of the Roosevelt Management Unit, on the San Pedro, Verde, and Gila Rivers, and possibly other streams in Arizona, and implementation of conservation measures to protect up to an additional 304 ha (750 ac) of flycatcher habitat. Measures in the HCP to protect habitat at Roosevelt Lake include having the Forest Service hire a Forest Service employee to patrol and improve protection of flycatcher habitat in the Roosevelt lakebed from adverse activities such as fire ignition from human neglect, improper vehicle use, *etc.,* and to develop habitat at the off-site Rock House Farm Site.

We will consider excluding the water storage area of Roosevelt Lake from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Upper Gila Management Unit

Partnerships, Conservation Plans, or Conservation Easements on Private Lands

U-Bar Ranch

Pacific Western Land Company (PWLC), a Freeport McMorran (formerly Phelps Dodge) subsidiary, owns and manages the U-Bar Ranch (Ranch) near Cliff, in Grant County, New Mexico, where a proposed segment of flycatcher critical habitat occurs along the Gila River within the Upper Gila Management Area.

The U-Bar Ranch has developed a plan that provides measures to conserve, protect, and manage one of the largest known nesting flycatcher populations. Many of the flycatcher territories on the Ranch are found outside of the flood-prone area, off-channel in a unique situation, where

flycatchers nest in the canopy of mature box elder trees along irrigation ditches. Through the efforts of PWLC and its long-time lessee, Mr. David Ogilvie, Freeport McMorran has demonstrated a commitment to management practices on the Ranch that have conserved and benefited flycatcher populations in that area for over a decade. In addition, privately funded scientific research at and in the vicinity of the Ranch has developed data that have contributed to the understanding of flycatcher habitat selection, distribution, prey base, and threats. Some specific management practices, varying in different grazing pastures, which relate to the flycatcher and its habitat are: (1) Grazing is limited to November through April to avoid negative impacts during migration and nesting season; (2) animal units are adjusted to protect and maintain the riparian vegetation needed by the flycatcher; (3) the irrigation ditches are maintained, along with the vegetation, to benefit flycatcher habitat; (4) restoration efforts follow flood events that destroy habitat; and (5) herbicide and pesticides are only used in rare circumstances and are not used near occupied territories during breeding season.

We will consider excluding U-Bar Ranch lands from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Tribal Management Plans and Partnerships

San Carlos Apache Tribe

San Carlos Apache Tribe land contain proposed flycatcher critical habitat within the conservation space of San Carlos Lake and the Gila River upstream from San Carlos Lake, all within the Upper Gila Management Unit in Gila County, Arizona. The San Carlos Apache Tribe has finalized a Southwestern Willow Flycatcher Management Plan (SWFMP).

Implementation of the San Carlos Apache Tribe's SWFMP will protect all known flycatcher habitat on San Carlos Tribal Land and assure no net habitat loss or permanent modification will result. All habitat restoration activities (whether to rehabilitate or restore native plants) will be conducted under reasonable coordination with the Service. All reasonable measures will be taken to ensure that recreational activities do not result in a net habitat loss or permanent modification. All reasonable measures will be taken to conduct livestock grazing activities under the guidelines established in the Recovery Plan. Within funding limitations and under confidentiality guidelines established by the Tribe, the Tribe will cooperate with the Service to monitor and survey habitat for breeding and migrating flycatchers, conduct research, and perform habitat restoration, cowbird trapping, or other beneficial flycatcher management activities.

We will consider excluding San Carlos Apache Tribal land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Hassayampa and Agua Fria Management Unit

Partnerships, Conservation Plans, or Conservation Easements on Private Lands

Tres Rios Safe Harbor Agreement

The City of Phoenix is in the process of developing a programmatic Safe Harbor Agreement with the Service for a continuous section (about 11 km, 7 mi) of the Gila River immediately downstream from its confluence with the Salt River (Tres Rios). This area would encompass a segment of proposed flycatcher critical habitat along the Gila River in the Hassayampa and Agua Fria Management Unit in Maricopa County, Arizona.

The draft Tres Rios Safe Harbor Agreement currently describes that the City of Phoenix will enhance or maintain (or both) approximately 927 acres of City of Phoenix-owned land, and seek to enroll another 150 acres owned by the State of Arizona through a certificate of inclusion for a period of 50 years. The Permittee would agree to enhance and maintain Sonoran Desert and riparian biotic communities, which would include, but are not necessarily limited to, planting and maintaining native riparian vegetation. The flycatcher would be one of the primary targets of this agreement.

The enrolled lands are owned by the Permittee and are being managed for the purposes of riparian habitat recovery, flood protection, and passive recreation. Improvements include installing several types of wetland and riparian biotic communities, including mesquite bosque, cottonwood and willow forest, freshwater marsh, floodplain terrace, open water, and aquatic strand. Prior to the Permittee's conservation efforts, most areas of the enrolled lands were agricultural or contained mostly nonnative species with minimal wildlife habitat value. After the conservation measures are implemented, the lands will be managed with the primary goal of habitat conservation.

We will consider excluding Tres Rios lands along the Gila River from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Rio Grande Recovery Unit, CO and NM

San Luis Valley Management Unit

Partnerships, Conservation Plans, and Conservation Easements on Private Lands

San Luis Valley Partnership

The San Luis Valley in south-central Colorado surrounds all proposed flycatcher critical habitat along the Rio Grande and Conejos Rivers within the San Luis Valley Management Unit.

A partnership within the San Luis Valley has been formed between a collection of south-central Colorado cities, counties, communities, and the State of Colorado toward conservation. This partnership is developing an HCP in the San Luis Valley. The State of Colorado received a $384,000 HCP Section 6 Planning Grant on behalf of the Rio Grande Water Conservation District in 2004 to develop the HCP for five counties, two cities, the State of Colorado, and 14 other smaller communities. In September 2005 and April 2009, the State received Section 6 grants of $120,000 each to draft NEPA documents and finalize the HCP. Preliminary drafts of the San Luis Valley Regional HCP have been developed and submitted to the Service for review. The HCP as proposed would cover nearly 809,000 ha (2 million ac) and 241 km (150 mi) of habitat for the flycatcher and yellow-billed cuckoo. The acreage covered by the HCP encompasses the entire Colorado portion of the San Luis Valley Management Unit, as described in the Recovery Plan, and extends well beyond the two stream segments along the Rio Grande and Conejos Rivers that we have proposed as flycatcher critical habitat.

We will consider excluding San Luis Valley lands from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Upper Rio Grande Management Unit

Tribal Management Plans and Partnerships

San Ildefonso Pueblo

The San Ildefonso Pueblo contains proposed flycatcher habitat along the Rio Grande within the Upper Rio Grande Management Unit in Santa Fe County, New Mexico.

The San Ildefonso Pueblo has conducted a variety of voluntary measures, restoration projects, and management actions to conserve the flycatcher and its habitat on their lands. Multiple-use practices of the river and riparian habitat resources are an

important component of Tribal activities and culture, and as a result, the Pueblo has taken steps to manage all the components of the riparian habitat. The Pueblo has implemented vegetation management actions to reduce flammable exotic vegetation within the floodplain and replace it with native riparian trees and shrubs. The Pueblo's long-term management objectives include efforts to reestablish and maintain sustainable native plant communities in the Rio Grande floodplain and improve habitat, including wetland restoration, for culturally important plant and wildlife species, including the flycatcher.

We will consider excluding San Ildefonso Pueblo land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Santa Clara Pueblo

The Santa Clara Pueblo contains proposed flycatcher critical habitat along the Rio Grande within the Upper Rio Grande Management Unit in Rio Arriba County, New Mexico.

The Santa Clara Pueblo has conducted a variety of voluntary measures, restoration projects, and management actions to conserve the flycatcher and its habitat on their lands. Santa Clara Pueblo made a commitment to develop an integrated resources management plan to address multi-use, enhancement, and management of their natural resources. The Pueblo has implemented fuel reduction of flammable exotic riparian vegetation and native tree restoration projects in the riparian area since 2001, carefully progressing in incremental stages to reduce the overall effects to wildlife.

We will consider excluding Santa Clara Pueblo lands from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

San Juan Pueblo (Ohkay Owingue)

The San Juan Pueblo contains proposed flycatcher critical habitat along the Rio Grande within the Upper Rio Grande Management Unit in Rio Arriba County, New Mexico.

The San Juan Pueblo has conducted a variety of voluntary measures, restoration projects, and management actions to conserve the flycatcher and its habitat on their lands. The Pueblo has engaged in riparian vegetation and wetland improvement projects, while managing to reduce the occurrence of wildfire due to the abundance of exotic flammable riparian vegetation. Project implementation included conservation, monitoring, and management for the flycatcher. The long-term goal of the Pueblo's riparian management is to increase habitat for breeding flycatchers, as well as implement innovative restoration techniques, decrease fire hazards by restoring native vegetation, share information with other restoration practitioners, utilize restoration projects in the education of the Tribal community and surrounding community, and provide a working and training environment for the people of the Pueblo.

We will consider excluding San Juan Pueblo (Ohkay Owingue) lands from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Middle Rio Grande Management Unit

Federal Land Management

Elephant Butte Reservoir

The Middle Rio Grande Management Unit includes Elephant Butte Reservoir, a reservoir on the Rio Grande in New Mexico, 5 miles (8.0 km) north of Truth or Consequences. It is impounded by Elephant Butte Dam, owned and operated by the U.S. Bureau of Reclamation, and is the largest reservoir in New Mexico. The reservoir is part of the Rio Grande Project, a project to provide power and water for irrigation to south-central New Mexico and west Texas. It can hold 2,065,010 acre-feet (2,547,152,330 m^3) of water from a drainage of 28,900 square miles (74,850 km^2), and provides irrigation to 178,000 acres (720 km^2) of land.

The gradual recession of Elephant Butte Reservoir during the late 1990s exposed an additional 32 km of lake bottom in this unit. Riparian habitat developed alongside the Rio Grande within the exposed conservation space. Since 1999, this riparian vegetation has developed into flycatcher nesting habitat and the number of flycatcher territories dramatically increased. The area within the conservation space of Elephant Butte Reservoir is currently the largest known flycatcher population in their range; in 2009, a total of 221 pairs and 291 nests were documented (Moore and Ahlers 2010, p. 43). The Bureau of Reclamation develops plans for the operation of the reservoir, the most recent being *Elephant Butte Reservoir Five-Year Operational Plan: Biological Assessment* (Reclamation 2009), which includes an assessment of the recent flycatcher population numbers within Elephant Butte Reservoir and the near reach of the Rio Grande.

Based on an initial evaluation of potential impacts on water operations of the Elephant Butte Dam and Reservoir, we will consider excluding the water storage area of Elephant Butte Reservoir from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (Regulatory Planning and Review). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a

substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the revised draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. We previously conducted an economic analysis in 2005 for the 2004 proposed critical habitat for flycatchers, which included an analysis of the effects on small entities. We will revise the draft economic analysis for this proposed rule to provide the required factual basis for the RFA finding for this revised critical habitat proposal. Upon completion of the revised draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate revised critical habitat for the flycatcher is not expected to significantly affect energy supplies, distribution, or use because there are no pipelines, distribution facilities, power grid stations, *etc.,* within the boundaries of proposed revised critical habitat. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would 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) Based in part on an analysis conducted for the previous designation of flycatcher critical habitat (70 FR 60886, October 19, 2005) and extrapolated to this designation, we do not expect this rule to significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate these issues as we conduct our economic analysis, and review and revise this assessment as warranted.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Due to current public knowledge of the species protections and the prohibition against take of the species both within and outside of the proposed areas, we do not anticipate that property values would be affected by this revised critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the revised economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Arizona,

Utah, Nevada, California, New Mexico, and Colorado. The designation of critical habitat in areas currently occupied by the flycatcher may impose nominal additional regulatory 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 because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what Federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the flycatcher 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 flycatcher, 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 will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

There are Tribal lands in California, Utah, Arizona, Colorado, and New Mexico included in this proposed designation of critical habitat. At the end of the 2007 flycatcher breeding season, 5 percent of all known breeding sites were administered by Native American Tribes (Durst *et al.* 2007, p. 17). Using the criteria found in the *Criteria Used To Identify Critical Habitat* section, we have determined that all of the areas proposed for designation on Tribal lands are essential to the conservation of the species. We will seek government-to-government consultation with these Tribes throughout the proposal and development of the final designation of flycatcher critical habitat. We will consider these areas for exclusion from final critical habitat designation to the extent consistent with the requirements of 4(b)(2) of the Act. We recently informed Tribes of how we are evaluating section 4(b)(2) of the Act and of our interest in consulting with them on a government-to-government basis.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package 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.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''Flycatcher, southwestern willow'' under ''BIRDS'' 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						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Flycatcher, southwestern willow.	*Empidonax traillii extimus.*	U.S.A. (AZ, CA, CO, NM, NV, TX, UT), Mexico.	Entire	E	577	17.95(b)	NA
*	*	*	*	*	*		*

3. In § 17.95, amend paragraph (b) by revising the entry for ''Southwestern Willow Flycatcher (*Empidonax traillii extimus*),'' 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.

* * * * *

(b) *Birds.*

* * * * *

Southwestern Willow Flycatcher (*Empidonax traillii extimus*)

(1) Critical habitat units are depicted for Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, and Ventura Counties in California; Clark, Lincoln, and Nye Counties in Nevada; Kane, San Juan, and Washington Counties in Utah; Alamosa, Conejos, Costilla, La Plata, and Rio Grande Counties in Colorado; Apache, Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai, and Yuma Counties in Arizona; and Catron, Cibola, Dona Ana, Grant, Hidalgo, McKinley, Mora, Rio Arriba, Santa Fe, San Juan, Sierra, Soccoro, Taos, and Valencia Counties in New Mexico on the maps and as described below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of the southwestern willow flycatcher consist of two components:

(i) Primary Constituent Element 1—*Riparian vegetation.* Riparian habitat in a dynamic river or lakeside, natural or manmade successional environment (for nesting, foraging, migration, dispersal, and shelter) that is comprised of trees and shrubs (that can include Gooddings willow, coyote willow, Geyers willow, arroyo willow, red willow, yewleaf willow, pacific willow, boxelder, tamarisk, Russian olive, buttonbush, cottonwood, stinging nettle, alder, velvet ash, poison hemlock, blackberry, seep willow, oak, rose, sycamore, false indigo, Pacific poison ivy, grape, Virginia creeper, Siberian elm, and walnut) and some combination of:

(A) Dense riparian vegetation with thickets of trees and shrubs that can range in height from about 2 m to 30 m (about 6 to 98 ft). Lower-stature thickets (2 to 4 m or 6 to 13 ft tall) are found at higher elevation riparian forests and tall-stature thickets are found at middle- and lower-elevation riparian forests; and/or

(B) Areas of dense riparian foliage at least from the ground level up to approximately 4 m (13 ft) above ground or dense foliage only at the shrub or tree level as a low, dense canopy; and/or

(C) Sites for nesting that contain a dense (about 50 percent to 100 percent) tree or shrub (or both) canopy (the amount of cover provided by tree and shrub branches measured from the ground); and/or

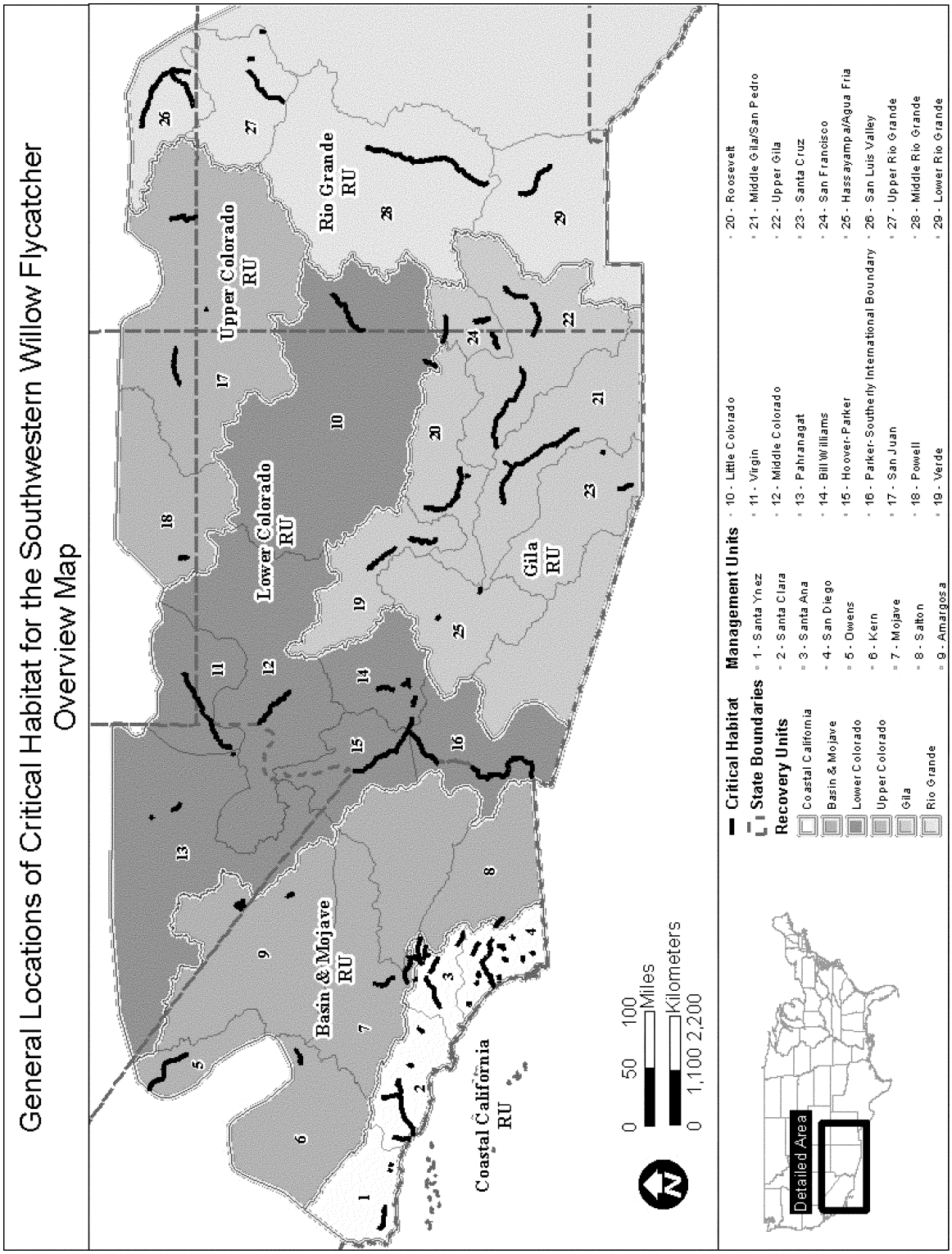
(D) Dense patches of riparian forests that are interspersed with small openings of open water or marsh or areas with shorter and sparser vegetation that creates a variety of habitat that is not uniformly dense. Patch size may be as small as 0.1 ha (0.25 ac) or as large as 70 ha (175 ac); and

(ii) Primary Constituent Element 2—*Insect prey populations.* A variety of insect prey populations found within or adjacent to riparian floodplains or moist environments, which can include: flying ants, wasps, and bees (Hymenoptera); dragonflies (Odonata); flies (Diptera); true bugs (Hemiptera); beetles (Coleoptera); butterflies, moths, and caterpillars (Lepidoptera); and spittlebugs (Homoptera).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created in two steps. First, the linear segments were mapped from the National Hydrologic Dataset using USA Contiguous Equidistant Conic (North American Datum 1983) coordinates. Next, the lateral extents were digitized over the most recent available aerial photography using Albers Equal Area Conic (North American Datum 1983) coordinates. The textual description for each critical habitat unit below includes the Universal Transverse Mercator (UTM) zone and UTM easting (E) and northing (N) coordinate pairs for the starting and ending points.

Note: (5) Index map of southwestern willow flycatcher critical habitat units follows:



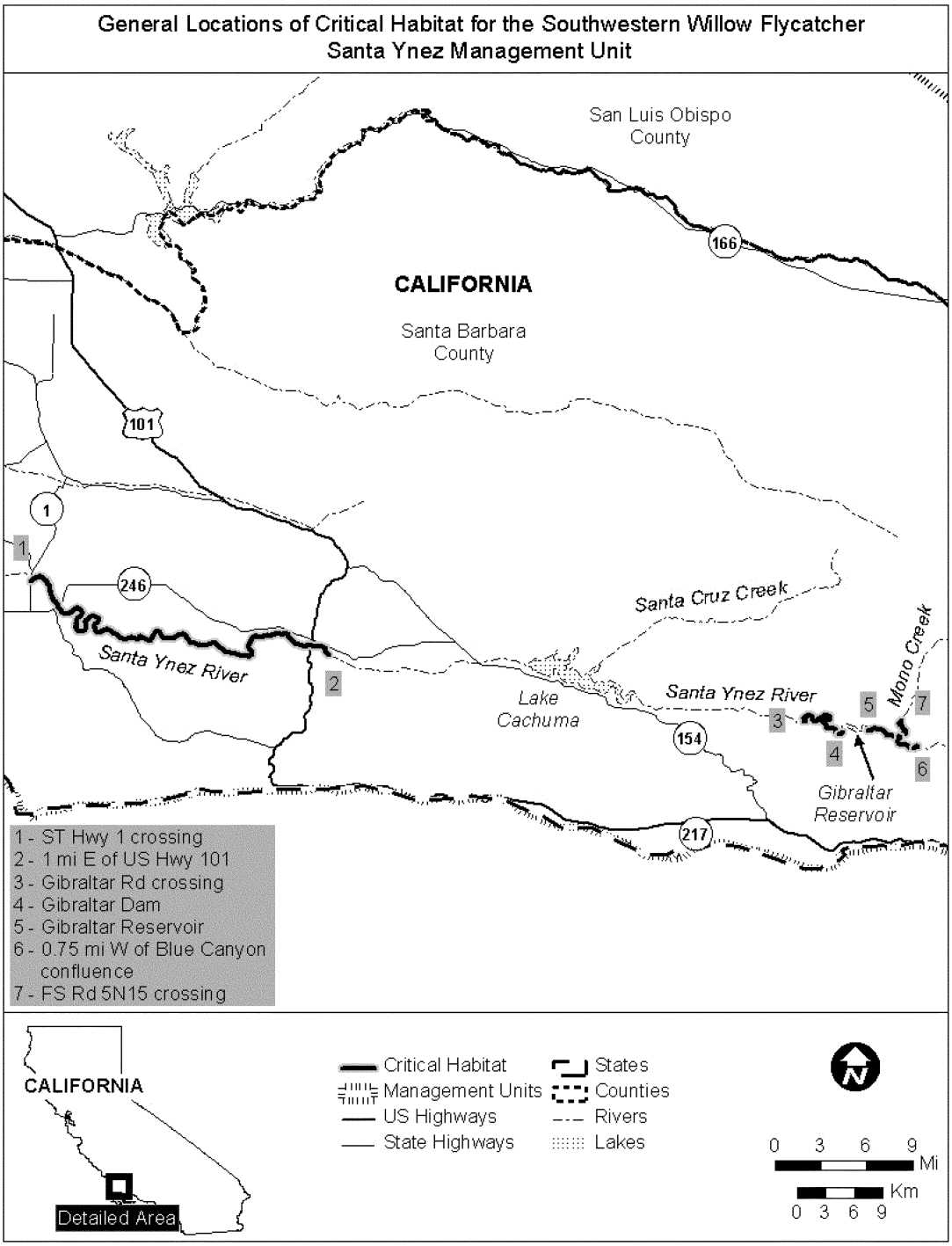
(6) Santa Ynez Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Santa Ynez River (upper)	11, 259890, 3821926	11, 255550, 3823716
Santa Ynez River (middle)	11, 253343, 3823606	11, 249967, 3824847
Santa Ynez River (lower)	10, 759116, 3832075	10, 732972, 3839168

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Mono Creek	11, 258529, 3824766	11, 258310, 3822974

(ii) **Note:** Map of Santa Ynez Management Unit follows:

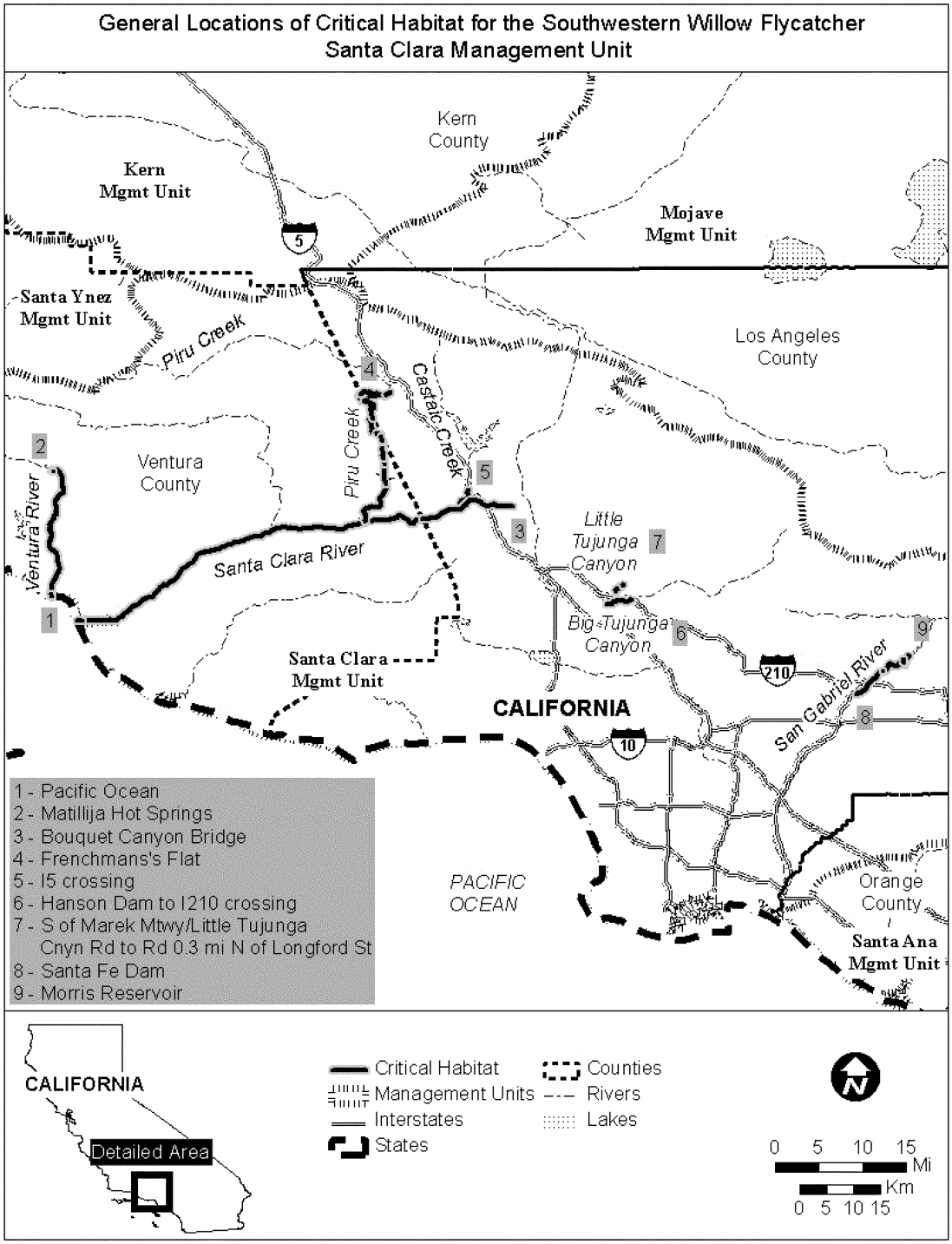


(7) Santa Clara Management Unit.
(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Ventura River	11, 287996, 3818329	11, 287559, 3794961
Santa Clara River	11, 358481, 3810219	11, 291354, 3790556

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Piru Creek	11, 339998, 3831805	11, 335776, 3807951
Castaic Creek	11, 351629, 3813373	11, 350055, 3809756
Big Tujunga Canyon Creek	11, 376326, 3792941	11, 372432, 3792049
Little Tujunga Canyon Creek	11, 375223, 3795681	11, 373846, 3794336
San Gabriel River	11, 418737, 3781999	11, 410558, 3775011

(ii) **Note:** Map of Santa Clara Management Unit follows:

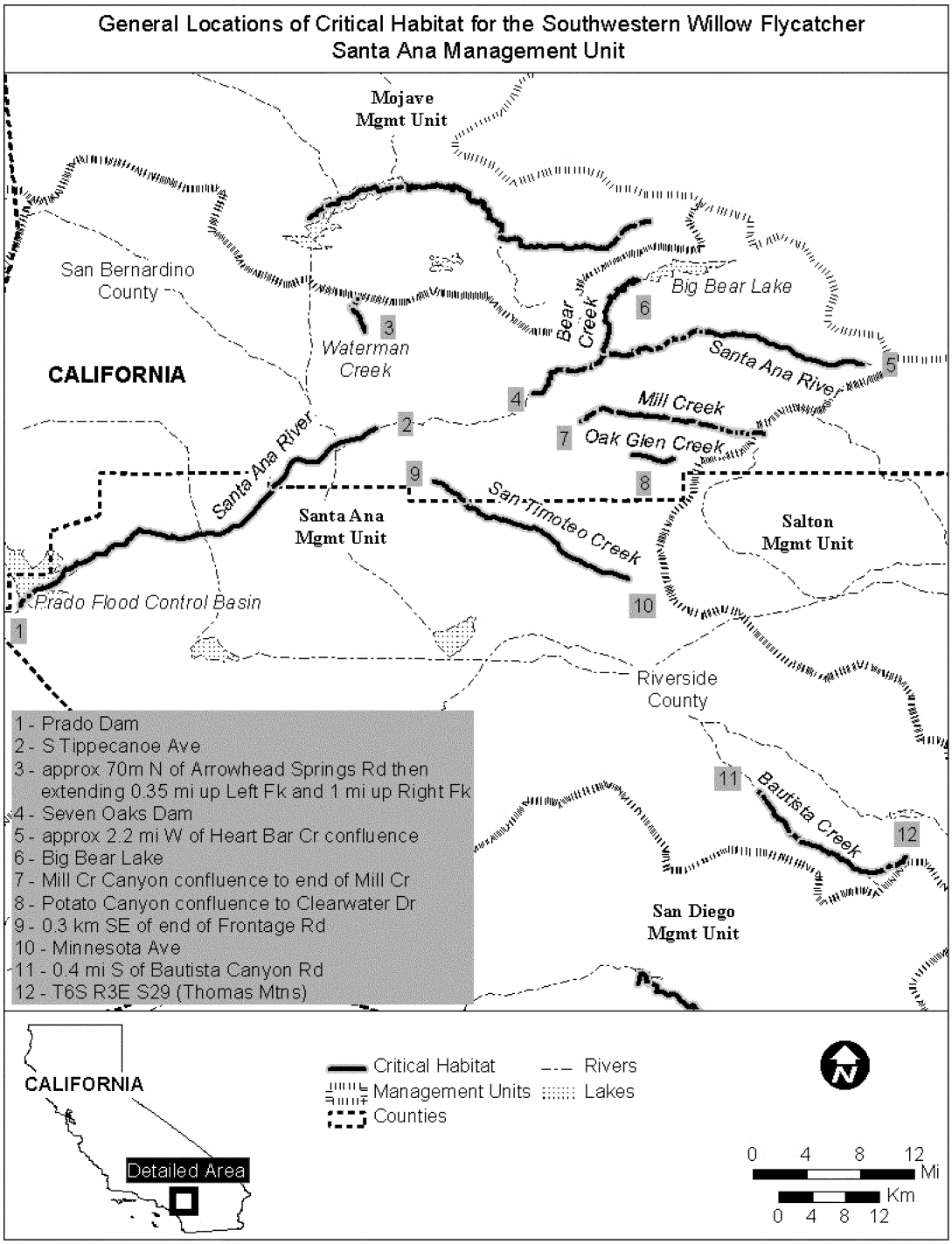


(8) Santa Ana Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Santa Ana River (upper)	11, 524293, 3778965	11, 491603, 3775416
Santa Ana River (lower)	11, 476054, 3771257	11, 440482, 3750310
Waterman Creek	11, 474905, 3782822	11, 473755, 3785448
Waterman Creek (left fork)	11, 473453, 3785826	11, 473755, 3785448
Waterman Creek (right fork)	11, 474240, 3786803	11, 473755, 3785448
Bear Creek	11, 502121, 3788996	11, 498606, 3779948
Mill Creek	11, 514496, 3770619	11, 496356, 3772092
Oak Glen Creek	11, 505534, 3767595	11, 501351, 3768018
San Timoteo Creek	11, 501075, 3753255	11, 481625, 3764986
Bautista Creek	11, 528791, 3720143	11, 514049, 3727872

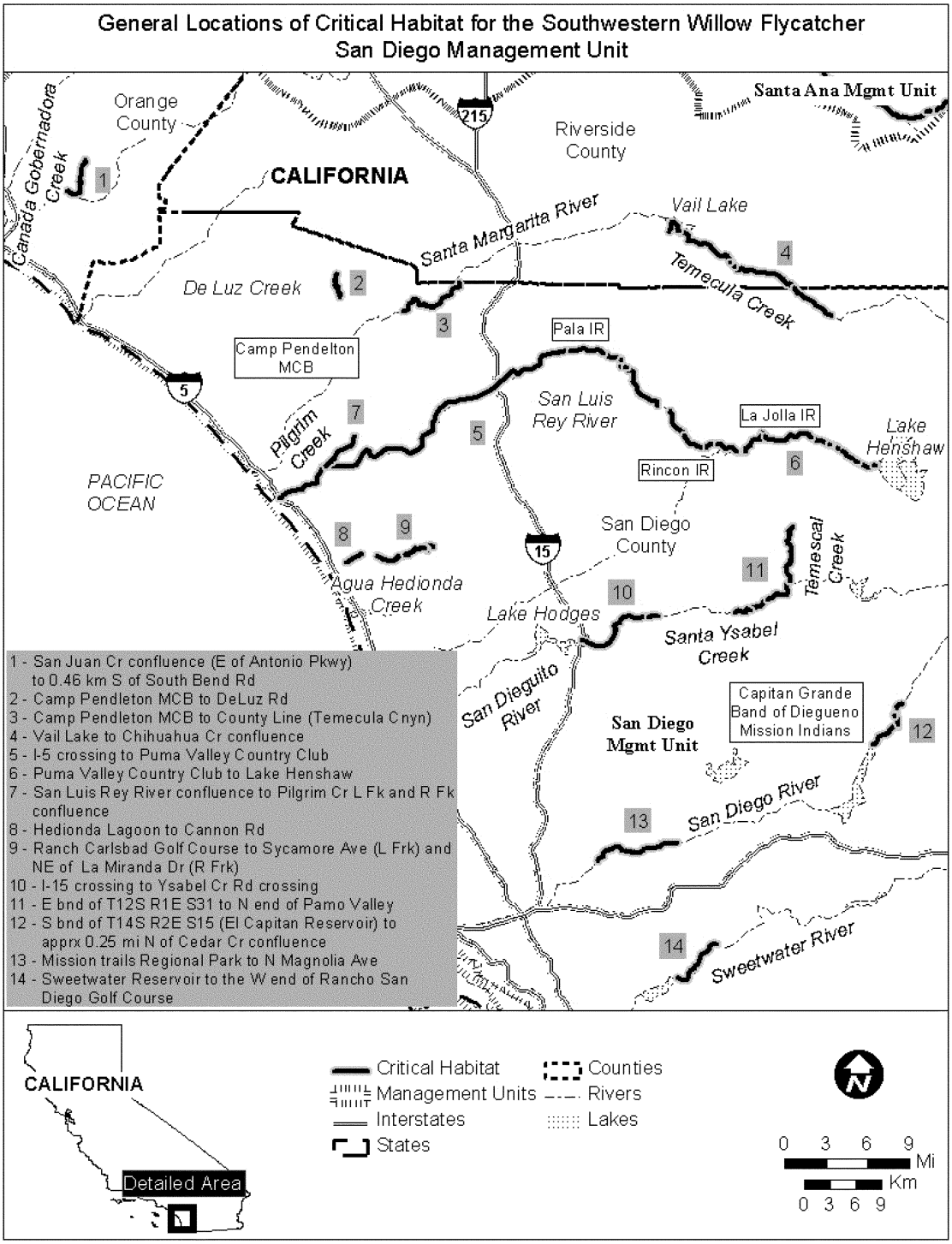
(ii) **Note:** Map of Santa Ana Management Unit follows:



(9) San Diego Management Unit.
(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Canada Gobernadora Creek	11, 443758, 3709886	11, 445478, 3713561
DeLuz Creek	11, 469888, 3700258	11, 470085, 3697512
Santa Margarita River	11, 481662, 3699235	11, 476206, 3695949
Temecula Creek	11, 517749, 3695379	11, 502050, 3704986
Pilgrim Creek	11, 471495, 3681452	11, 468703, 3677979
San Luis Rey (upper)	11, 522199, 3678133	11, 502102, 3684334
San Luis Rey (lower)	11, 500948, 3684975	11, 464169, 3674286
Agua Hedionda Creek (upper)	11, 473644, 3667656	11, 478368, 3668540
Agua Hedionda Creek (lower)	11, 470613, 3666848	11, 472211, 3667859
Agua Hedionda Creek (right fork)	11, 478544, 3668255	11, 478368, 3668540
Agua Hedionda Creek (left fork)	11, 479102, 3668675	11, 478368, 3668540
Temescal Creek	11, 514095, 3671020	11, 513763, 3664632
Santa Ysabel River (upper)	11, 508395, 3661105	11, 513763, 3664632
San Dieguito River/Santa Ysabel River (lower)	11, 500998, 3660643	11, 493522, 3657877
San Diego River (upper)	11, 524742, 3650609	11, 521804, 3645772
San Diego River (lower)	11, 495073, 3632262	11, 502847, 3634390
Sweetwater River	11, 506745, 3622685	11, 502808, 3618825

(ii) **Note:** Map of San Diego Management Unit follows:

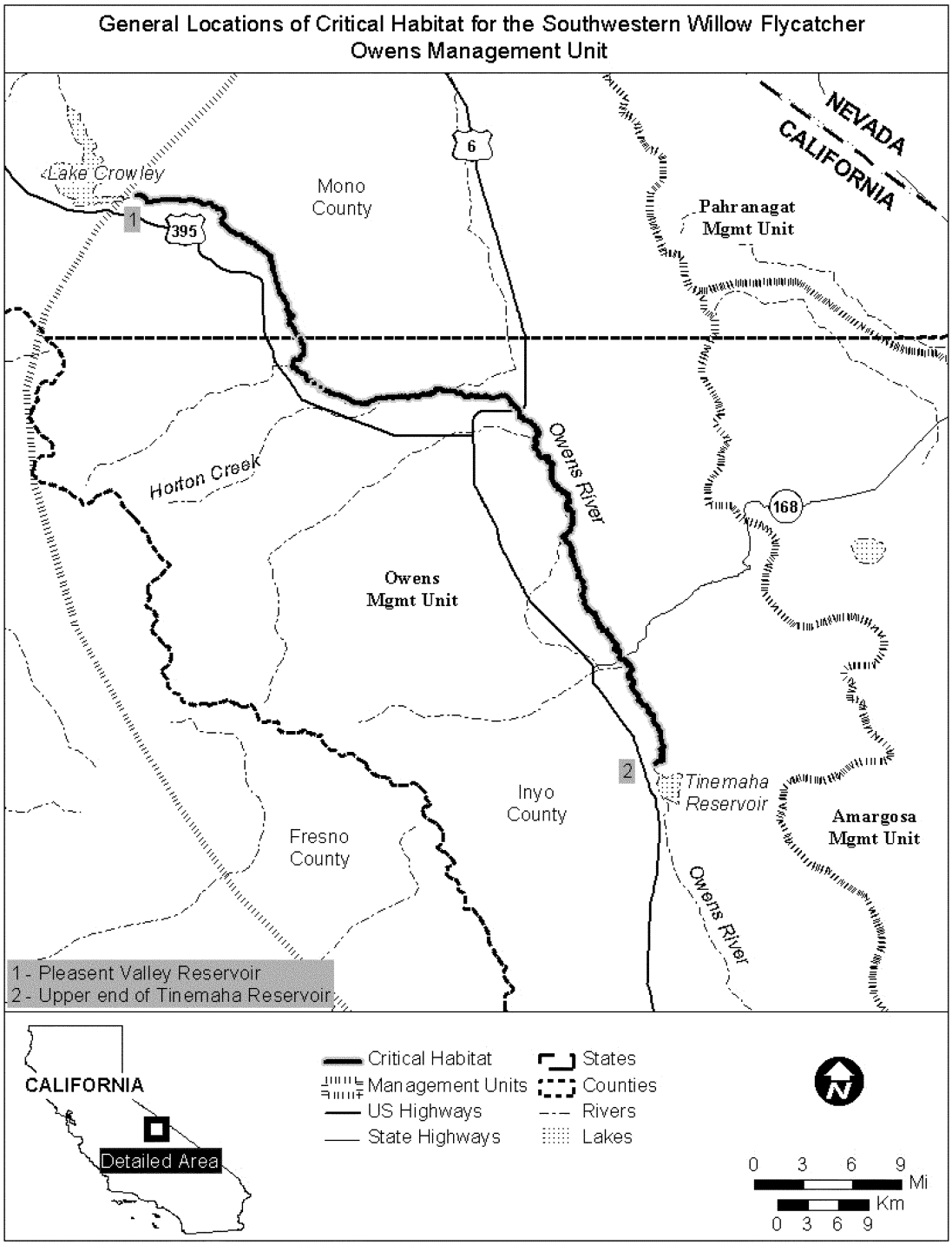


(10) Owens Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Owens River	11, 350379, 4161519	11, 765571, 4009492

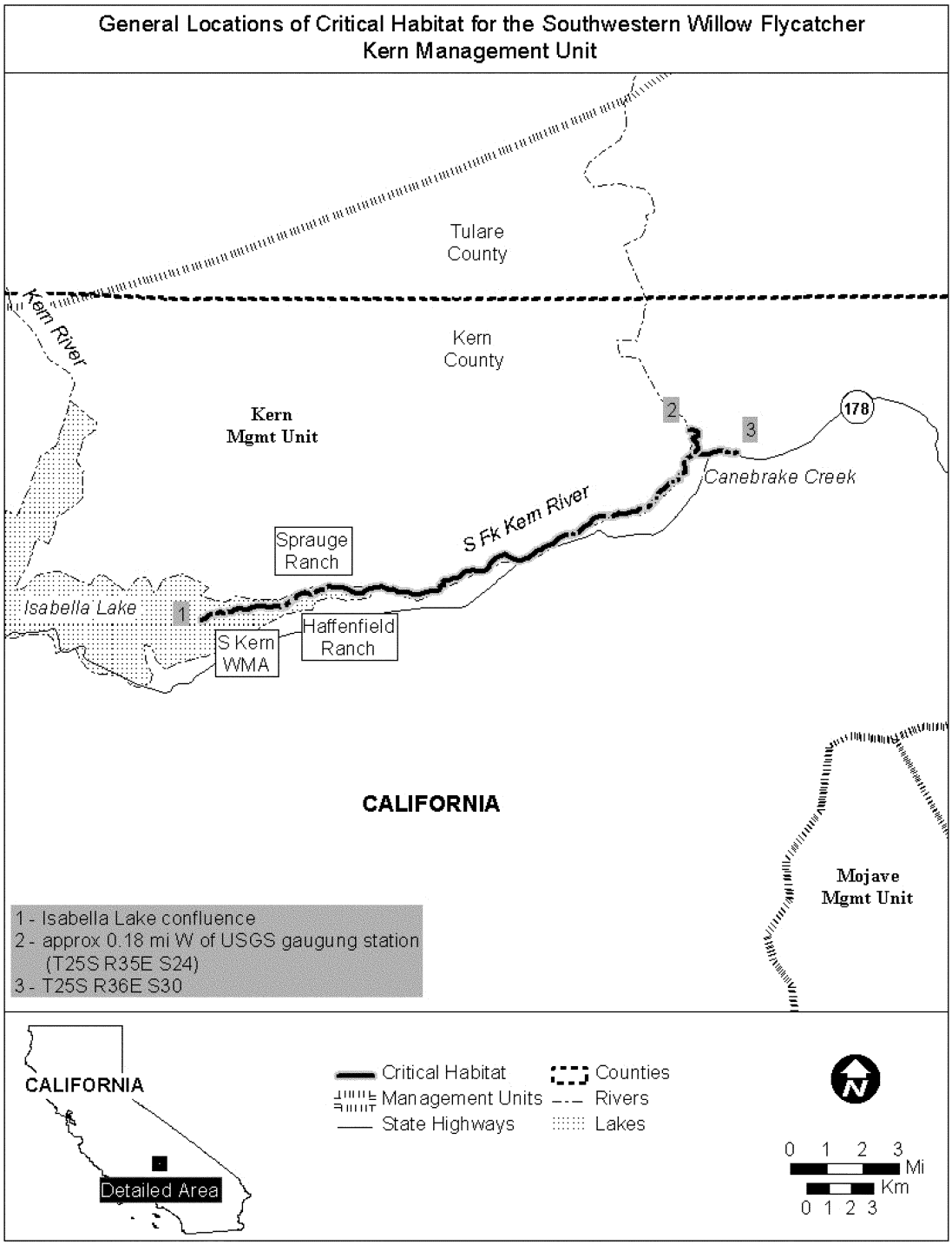
(ii) **Note:** Map of Owens Management Unit follows:



(11) Kern Management Unit.
(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
South Fork Kern River	11, 393579, 3955510	11, 375779, 3947268
Canebrake Creek	11, 395263, 3954472	11, 393671, 3954409

(ii) **Note:** Map of Kern Management Unit follows:

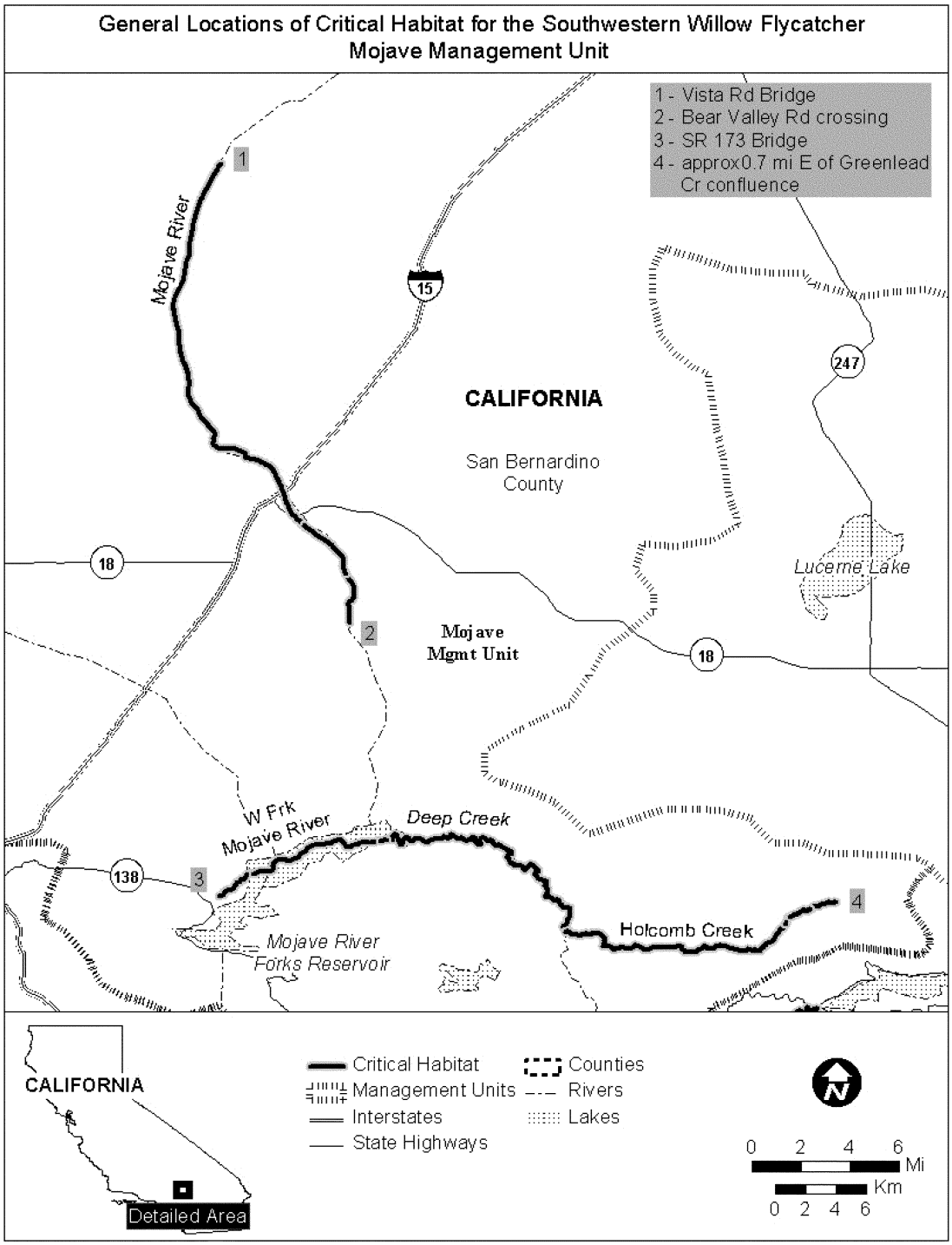


(12) Mojave Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Mojave River	11, 469646, 3844680	11, 476583, 3814381
West Fork Mojave River	11, 469339, 3796375	11, 478190, 3800025
Deep Creek	11, 478190, 3800025	11, 488326, 3794046
Holcomb Creek	11, 503127, 3796007	11, 488326, 3794046

(ii) **Note:** Map of Mojave Management Unit follows:

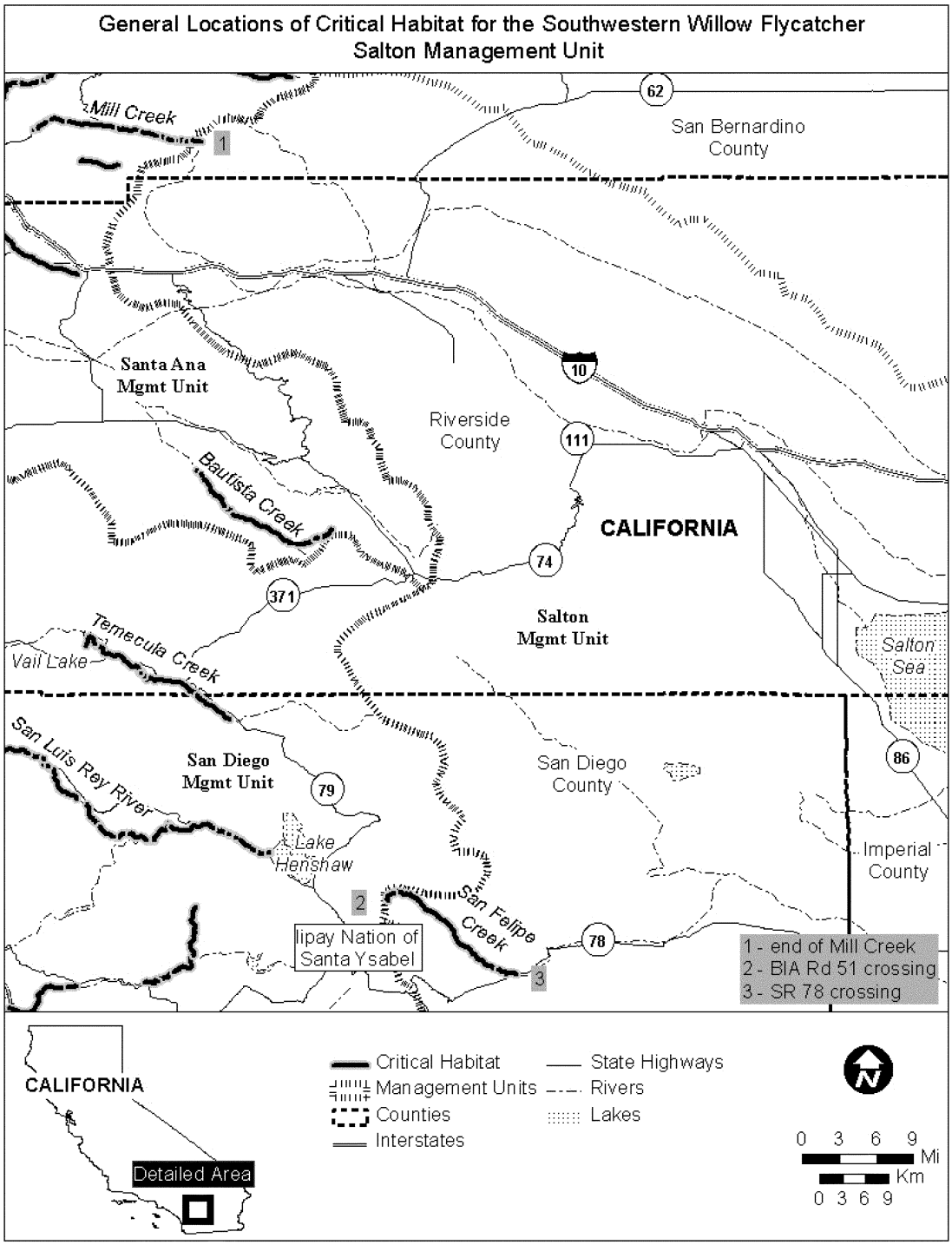


(13) Salton Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
San Felipe Creek	11, 535067, 3671838	11, 549258, 3662280
Mill Creek	11, 514496, 3770619	11, 496356, 3772092

(ii) **Note:** Map of Salton Management Unit follows:



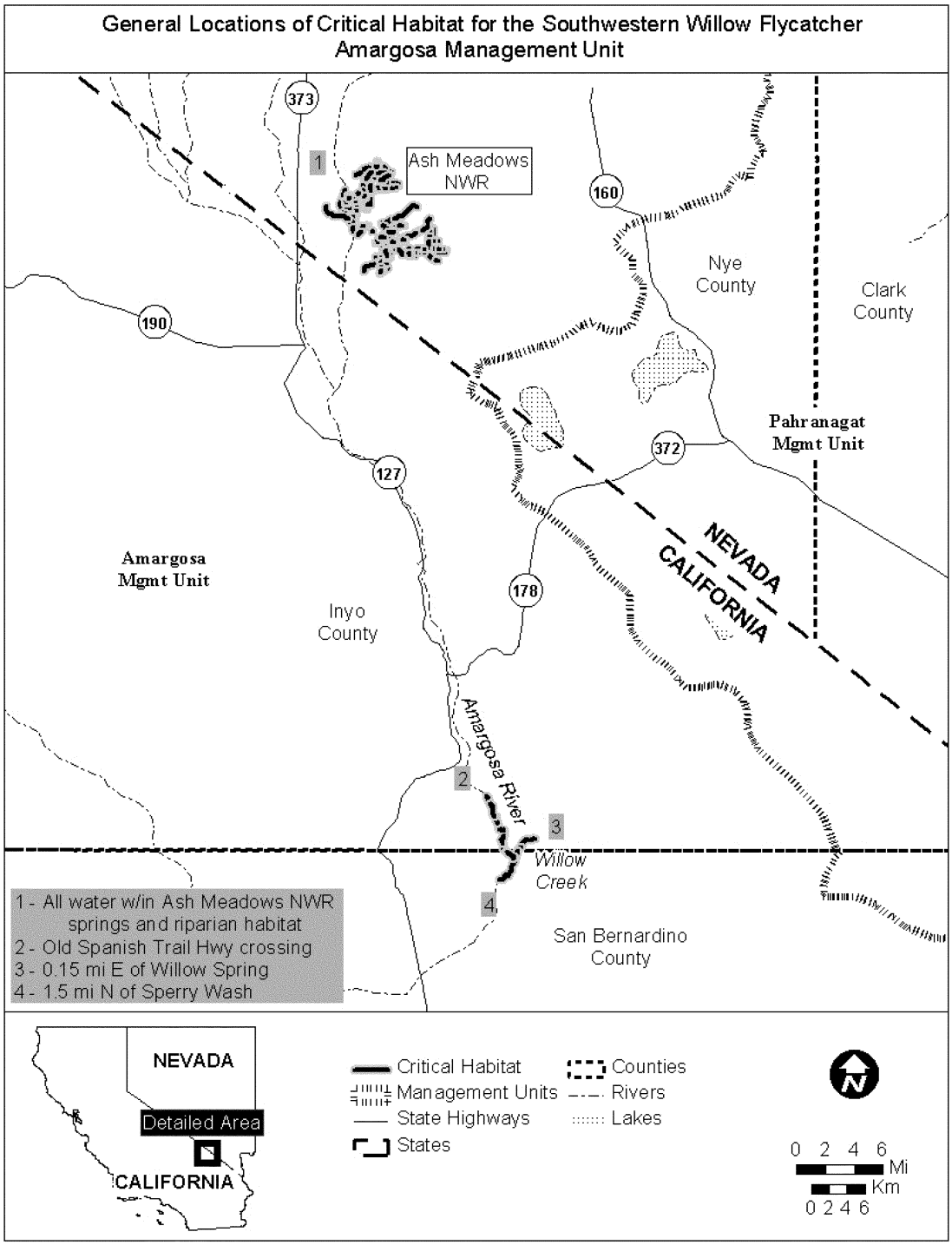
(14) Amargosa Management Unit.
(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Amargosa River	11, 569473, 3967513	11, 570730, 3958035
Willow Creek	11, 574000, 3962736	11, 572077, 3960419

(ii) Ash Meadows Riparian Areas and Carson Slough (UTM zone 11, E, N): 559058.51, 4038462.72; 559169.18, 4038088.61; 559257.50, 4037821.45; 559388.34, 4037661.69; 559778.65, 4037503.73; 560038.12, 4037505.53;

559928.15, 4037772.53; 560533.55, 4037776.76; 560493.50, 4037321.28; 560571.70, 4035420.70; 560182.40, 4035417.98; 559813.81, 4035549.30; 559773.33, 4035147.38; 558519.07, 4035112.01; 558573.22, 4033505.81; 559395.43, 4033484.65; 559465.49, 4032735.40; 560244.32, 032740.79; 560271.74, 4031910.92; 560986.12, 4031862.37; 561078.15, 4031086.51; 561424.94, 4031008.64; 561397.41, 4031838.51; 561873.41, 4031841.90; 561890.65, 4029432.17; 562691.62, 4029411.15; 562704.34, 4030642.95; 564305.88, 4030627.93; 564333.69, 4029798.07; 564658.52, 4029773.72; 564738.26, 4027792.87; 561469.58, 4027769.05; 561442.43, 4028545.36; 561052.25, 4028622.93; 560229.19, 4028697.49; 560263.14, 4026930.51; 559895.10, 4026927.96; 559857.36, 4026124.42; 559055.73, 4026199.25; 558941.05, 4030321.96; 558616.44, 4030319.75; 558621.57, 4032756.41; 558232.15, 4032753.78; 558180.93, 4030718.45; 557791.43, 4030715.84; 557767.10, 4031117.32; 556641.56, 4031163.43; 556566.66, 4032689.17; 555701.11, 4032710.32; 555755.65, 4034317.23; 556166.45, 4034346.67; 556120.93, 4034694.46; 556964.48, 4034699.98; 556891.48, 4035931.20; 557323.83, 4035960.84; 557319.38, 4036630.21; 557687.18, 4036605.88; 557638.92, 4037355.30; 558417.16, 4037387.30; 558393.18, 4037735.23; 558760.75, 4037737.73; 558755.83, 4038460.66; 559058.51, 4038462.72.

(iii) **Note:** Map of Amargosa Management Unit follows:

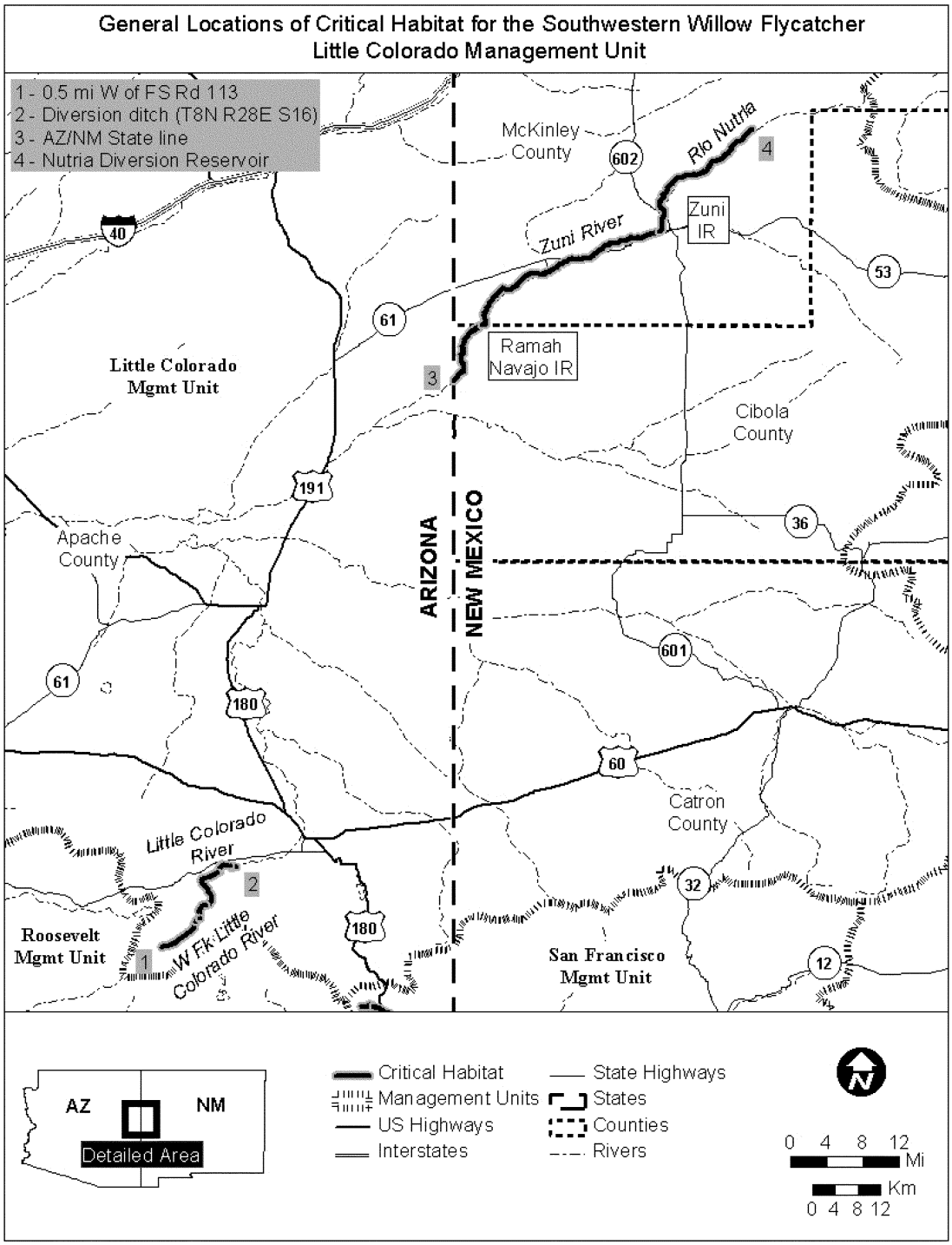


(15) Little Colorado Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Little Colorado River	12, 647842, 3773009	12, 642537, 3763668
West Fork Little Colorado River	12, 636971, 3758442	12, 642537, 3763668
Zuni River	12, 678602, 3860436	12, 708162, 3887682
Rio Nutria	12, 721505, 3906369	12, 708162, 3887682

(ii) **Note:** Map of Little Colorado Management Unit follows:

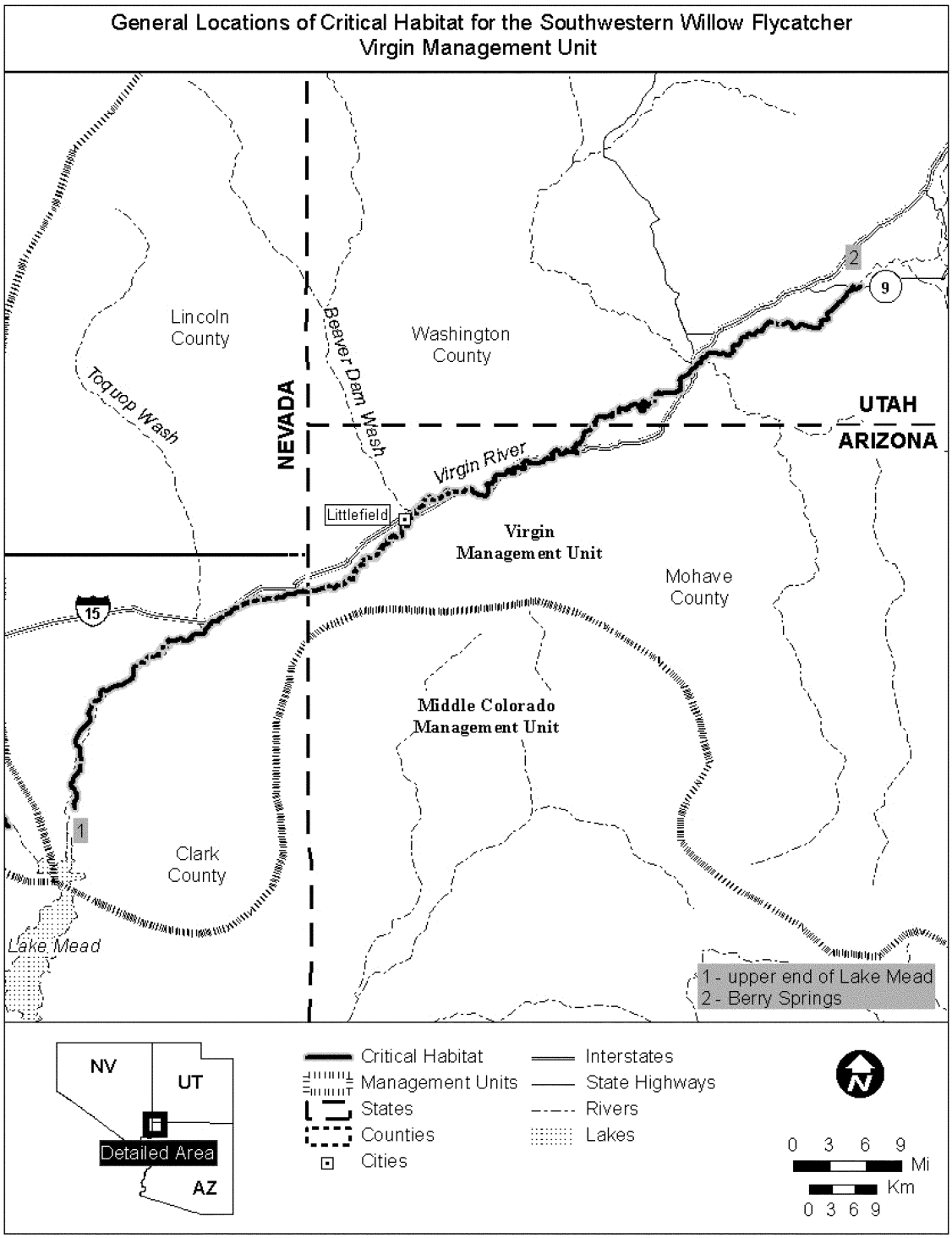


(16) Virgin Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Virgin River	12, 288341, 4116050	11, 738928, 4046898

(ii) **Note:** Map of Virgin Management Unit follows:

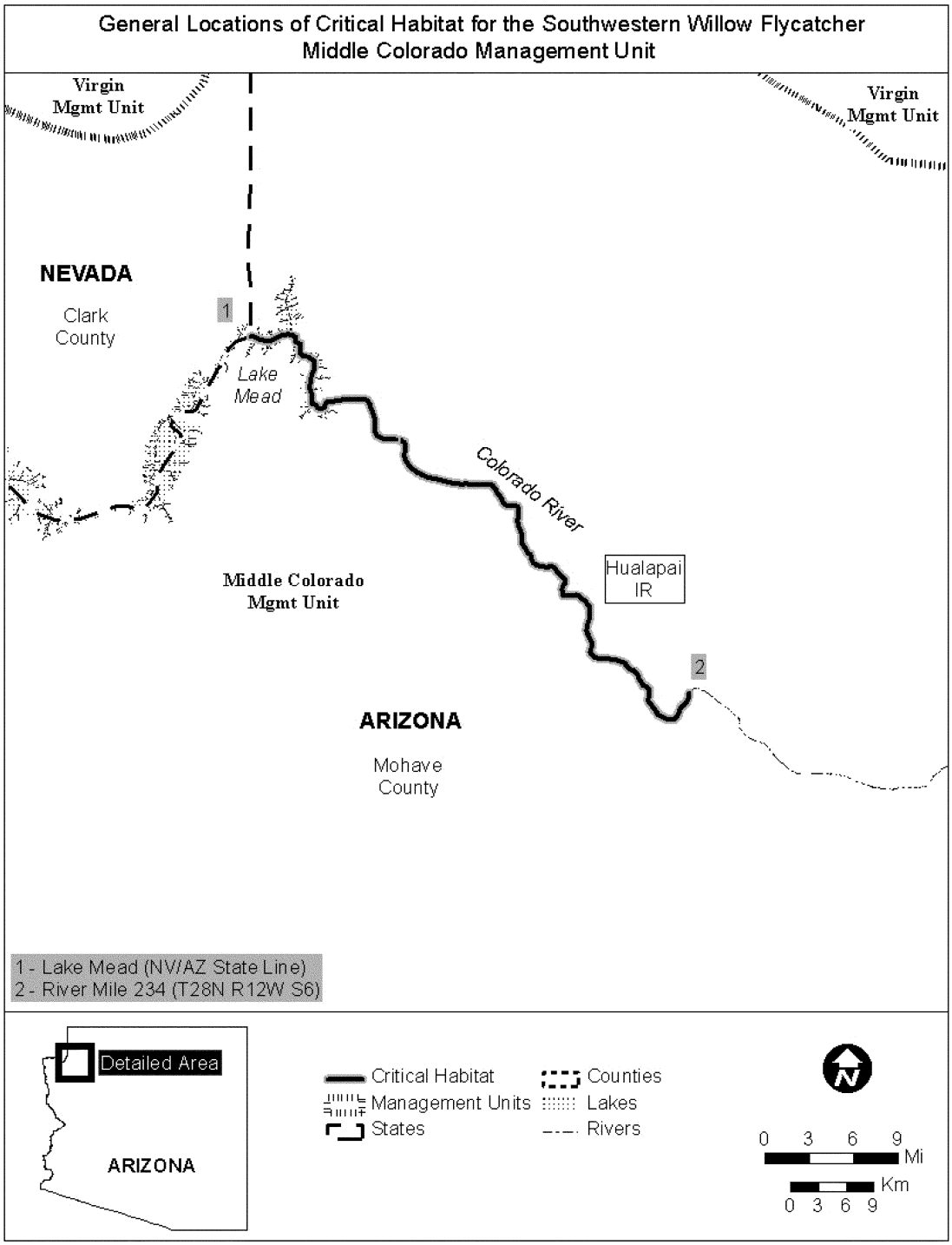


(17) Middle Colorado Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Colorado River	12, 263719, 3969968	11, 765571, 4009492

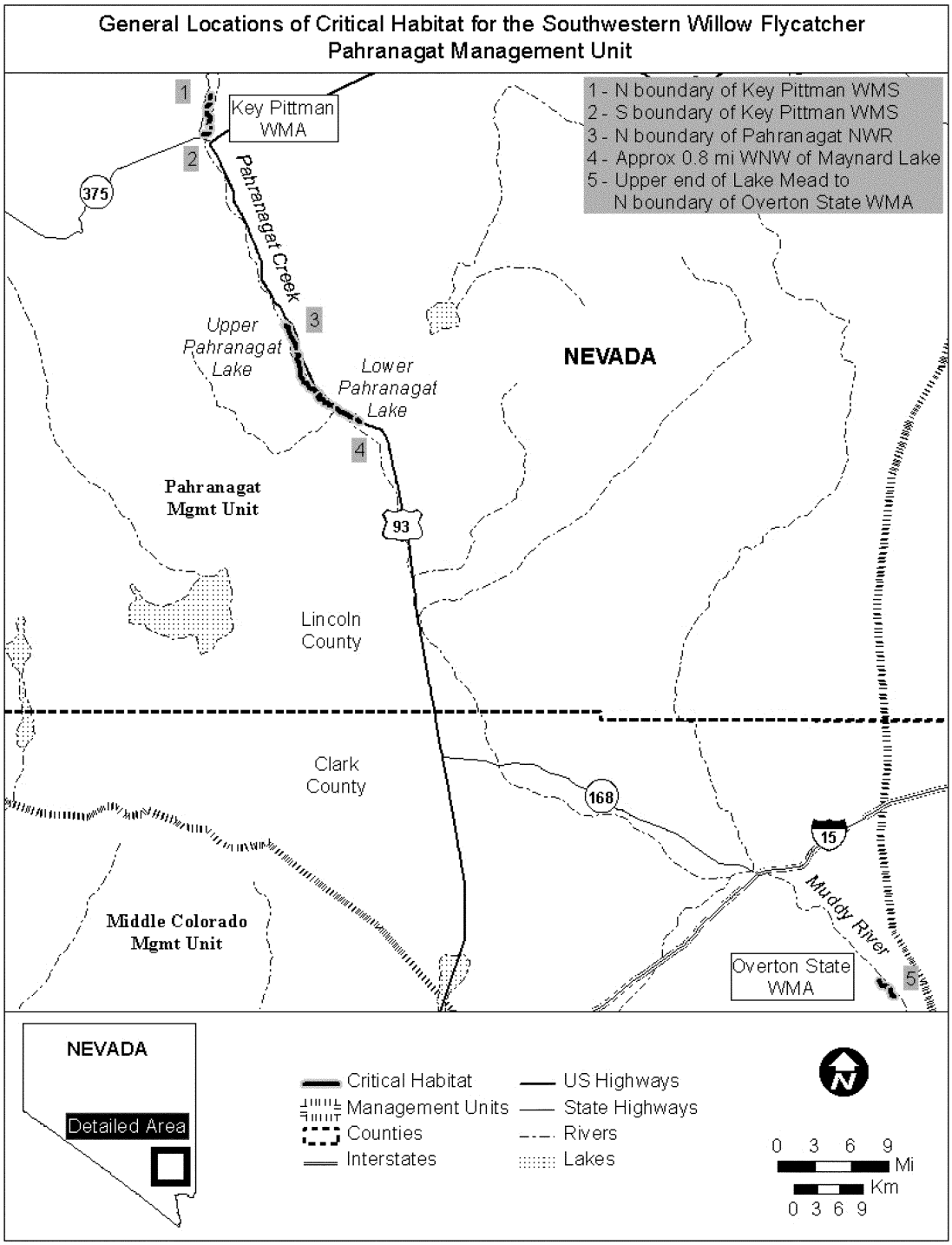
(ii) **Note:** Map of Middle Colorado Management Unit follows:



(18) Pahranagat Management Unit.
(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Pahranagat River (upper)	11, 657017, 4161188	11, 656269, 4155884
Pahranagat River (lower)	11, 673597, 4118506	11, 665370, 4131144
Muddy River	11, 730143, 4046415	11, 731860, 4044267

(ii) **Note:** Map of Pahranagat Management Unit follows:

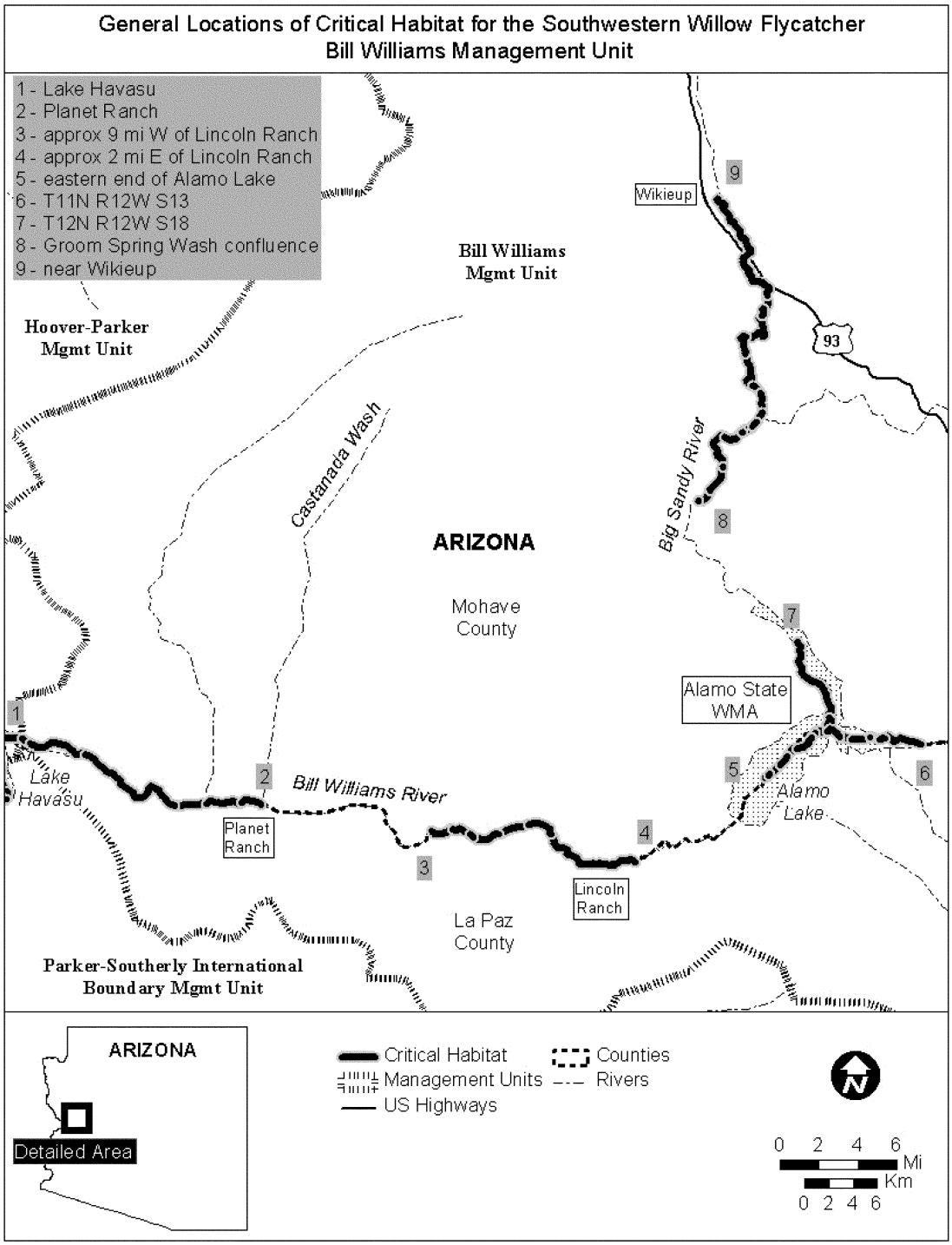


(19) Bill Williams Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Big Sandy River	12, 261621, 3843406	12, 259631, 3818574
Big Sandy River (Alamo Lake)	12, 266124, 3806764	12, 267166, 3799203
Santa Maria River (Alamo Lake)	12, 274410, 3798130	12, 267166, 3799203
Bill Williams River (Alamo Lake)	12, 263610, 3795533	12, 267166, 3799203
Bill Williams River (middle)	12, 254565, 3788878	12, 240599, 3791815
Bill Williams River (lower)	12, 229050, 3794316	11, 769317, 3798440

(ii) **Note:** Map of Bill Williams Management Unit follows:

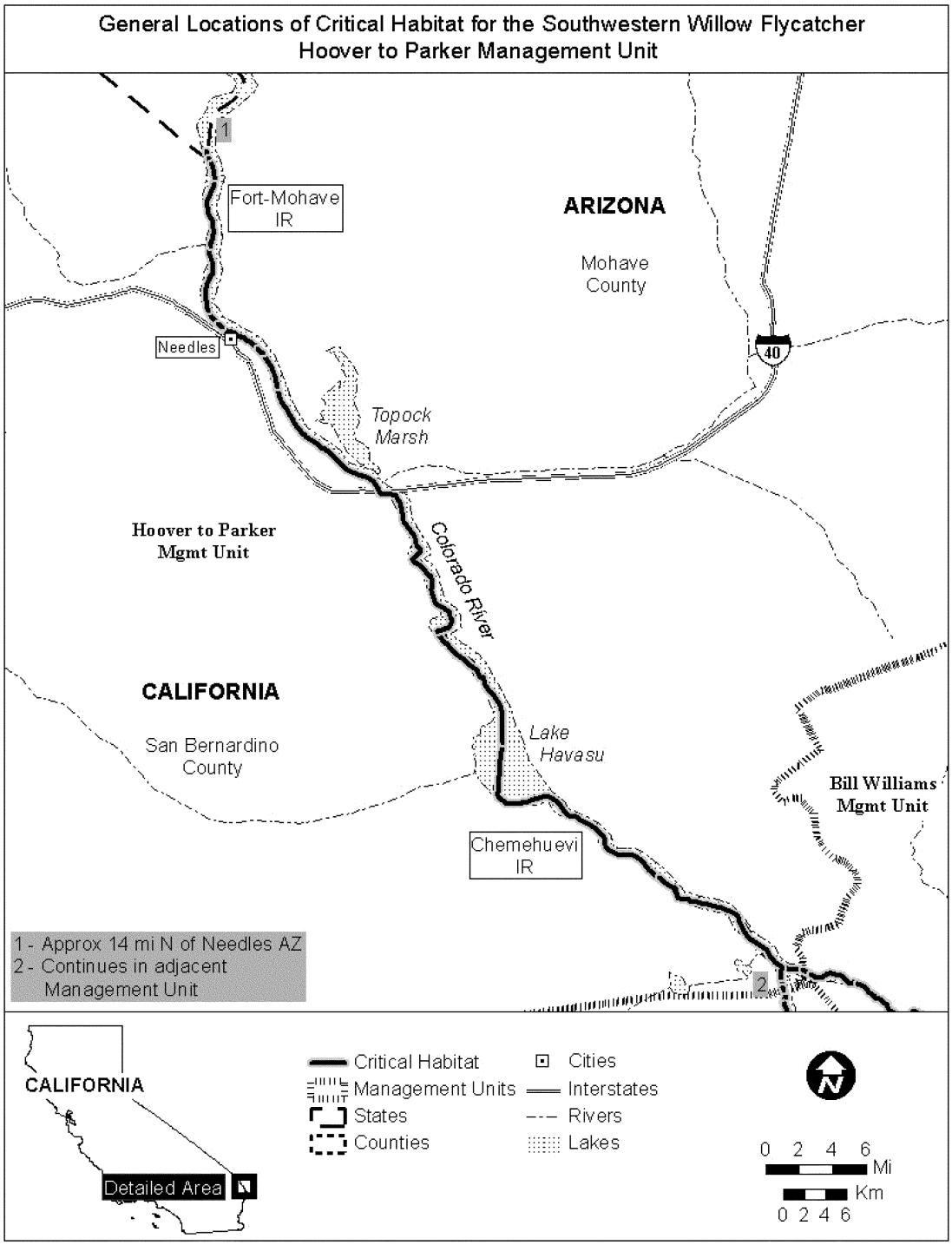


(20) Hoover to Parker Dam Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Colorado River	11, 715649, 3876762	11, 727771, 3757030
Bill Williams River	11, 769317, 3798440	11, 769317, 3798440

(ii) **Note:** Map of Hoover to Parker Dam Management Unit, follows:

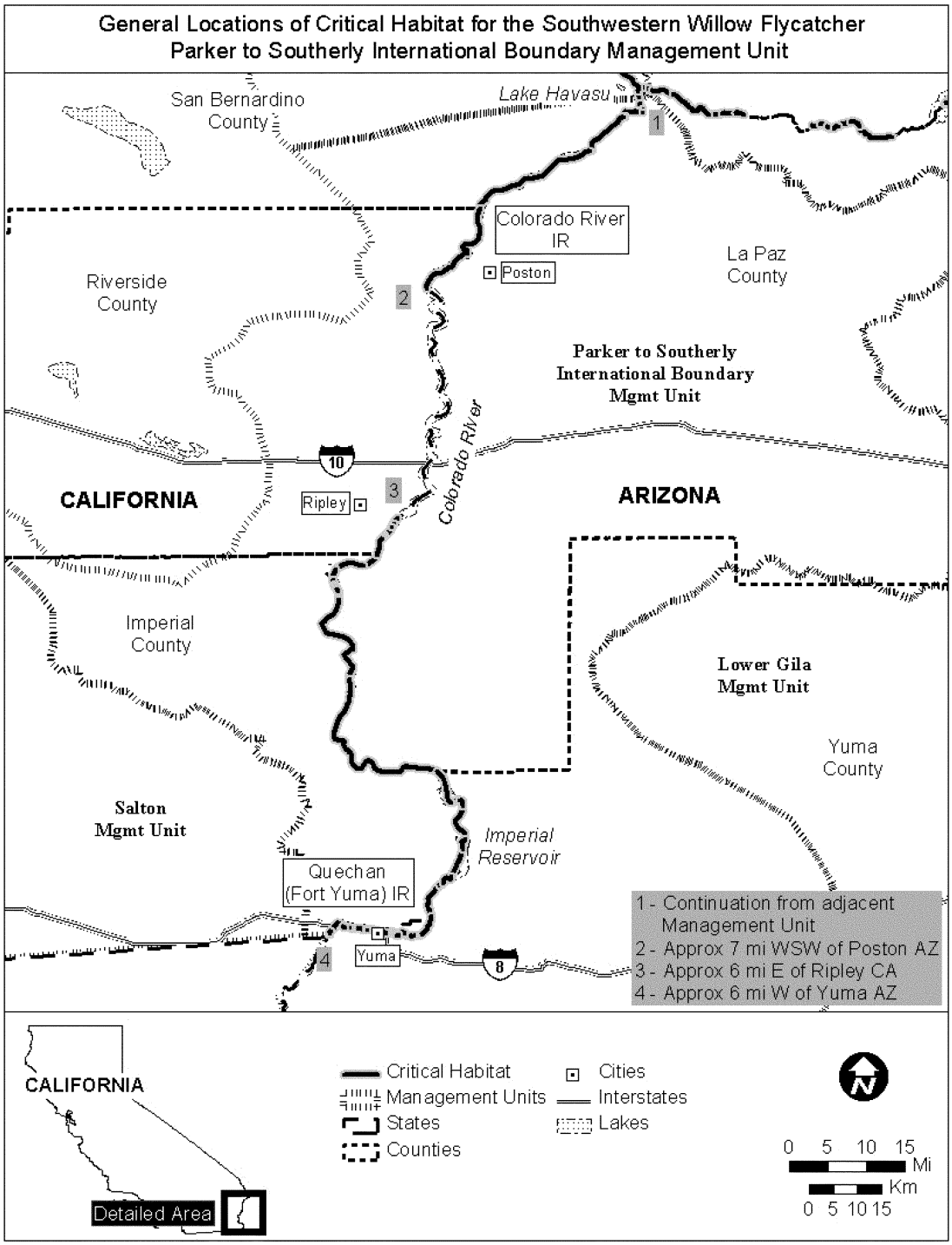


(21) Parker Dam to Southerly International Border Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Colorado River (upper)	11, 727771, 3757030	11, 724019, 3709582
Colorado River (lower)	11, 724019, 3709582	11, 713921, 3622846

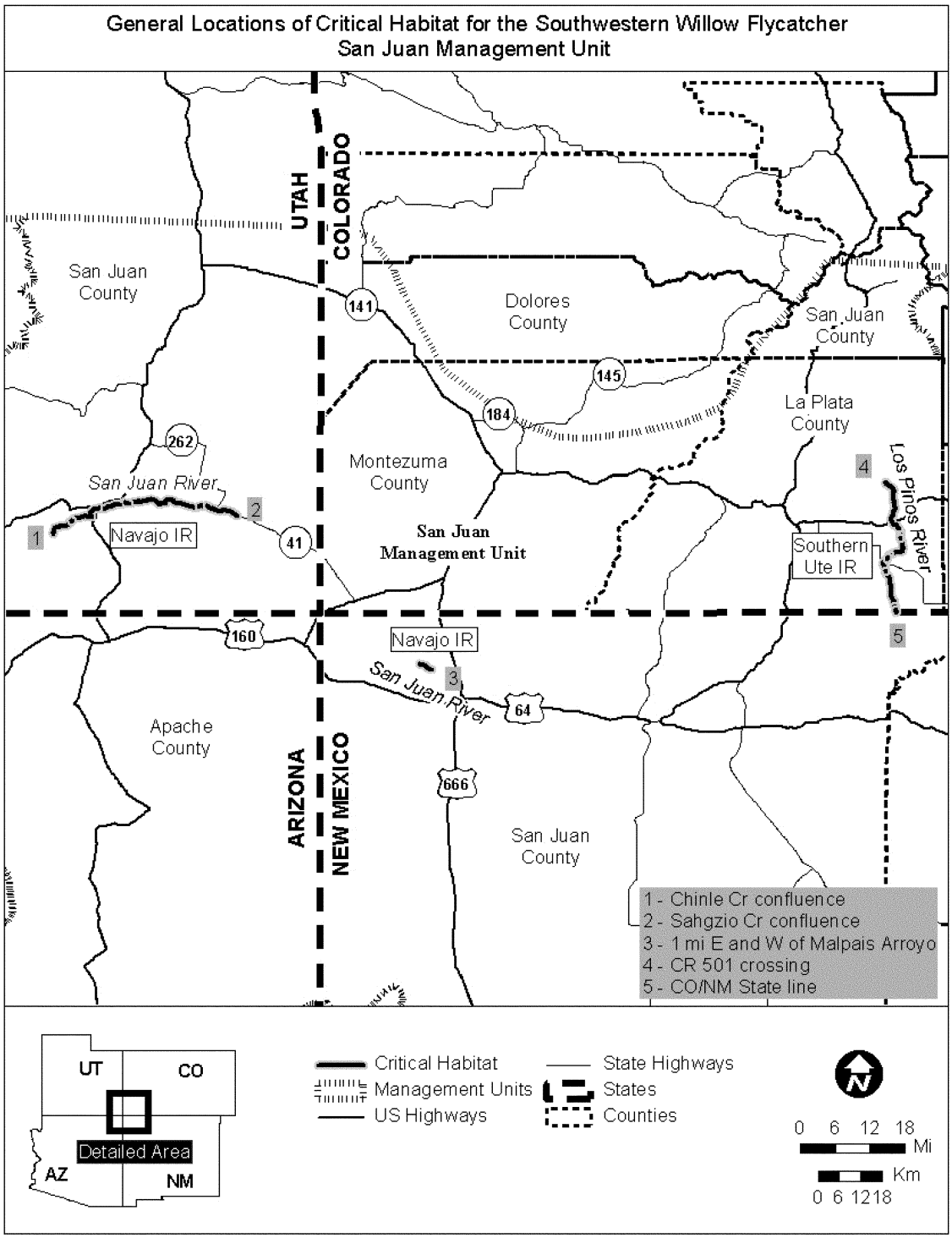
(ii) **Note:** Map of Parker Dam to Southerly International Border Management Unit follows:



(22) San Juan Management Unit.
(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Los Pinos River	13, 267242, 4134582	13, 268541, 4098153
San Juan River (New Mexico)	12, 699204, 4081392	12, 696480, 4082859
San Juan River (Utah)	12, 654810, 4123395	12, 613885, 4117721

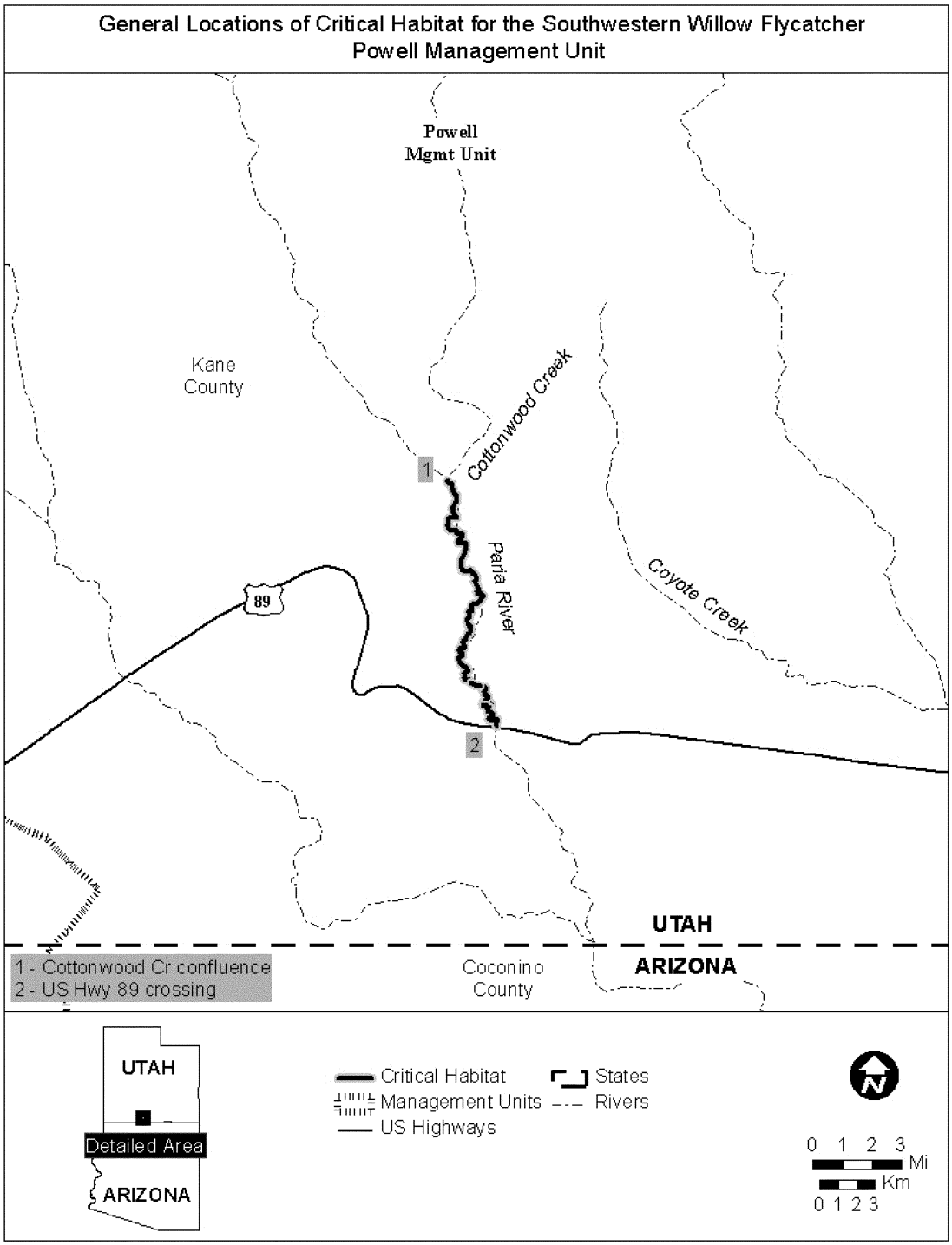
(ii) **Note:** Map of San Juan Management Unit follows:



(23) Powell Management Unit.
(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Paria River	12, 417429, 4120619	12, 419459, 4107235

(ii) **Note:** Map of Powell Management Unit follows:

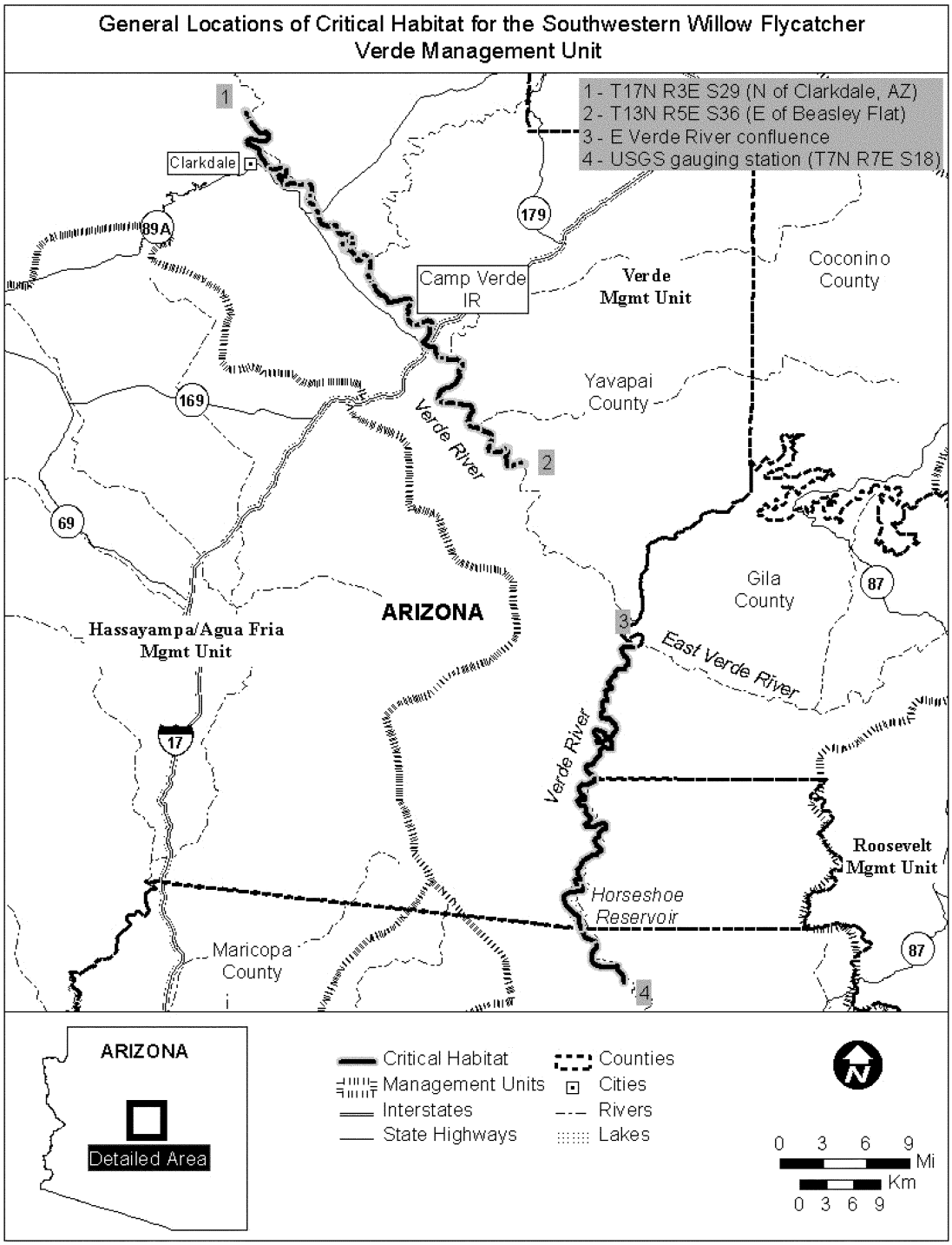


(24) Verde Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Verde River (upper)	12, 402583, 3854022	12, 428120, 3814335
Verde River (lower)	12, 438102, 3793821	12, 436961, 3756352

(ii) **Note:** Map of Verde Management Unit follows:

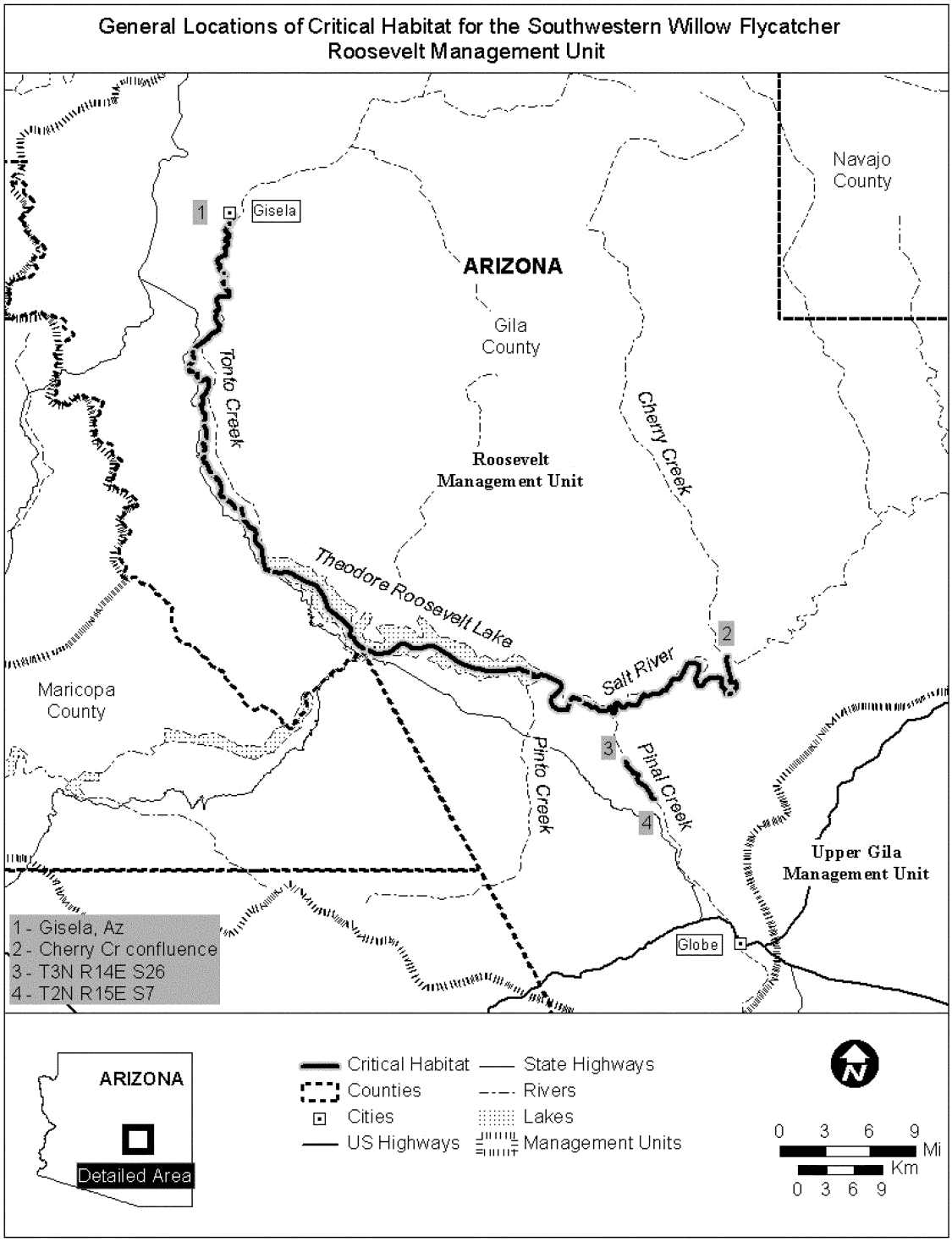


(25) Roosevelt Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Tonto Creek	12, 474349, 3773074	12, 477856, 3734906
Roosevelt Lake	12, 477856, 3734906	12, 500594, 3724174
Salt River	12, 518565, 3725825	12, 500594, 3724174
Pinal Creek	12, 511992, 3710574	12, 509313, 3714692

(ii) **Note:** Map of Roosevelt Management Unit follows:

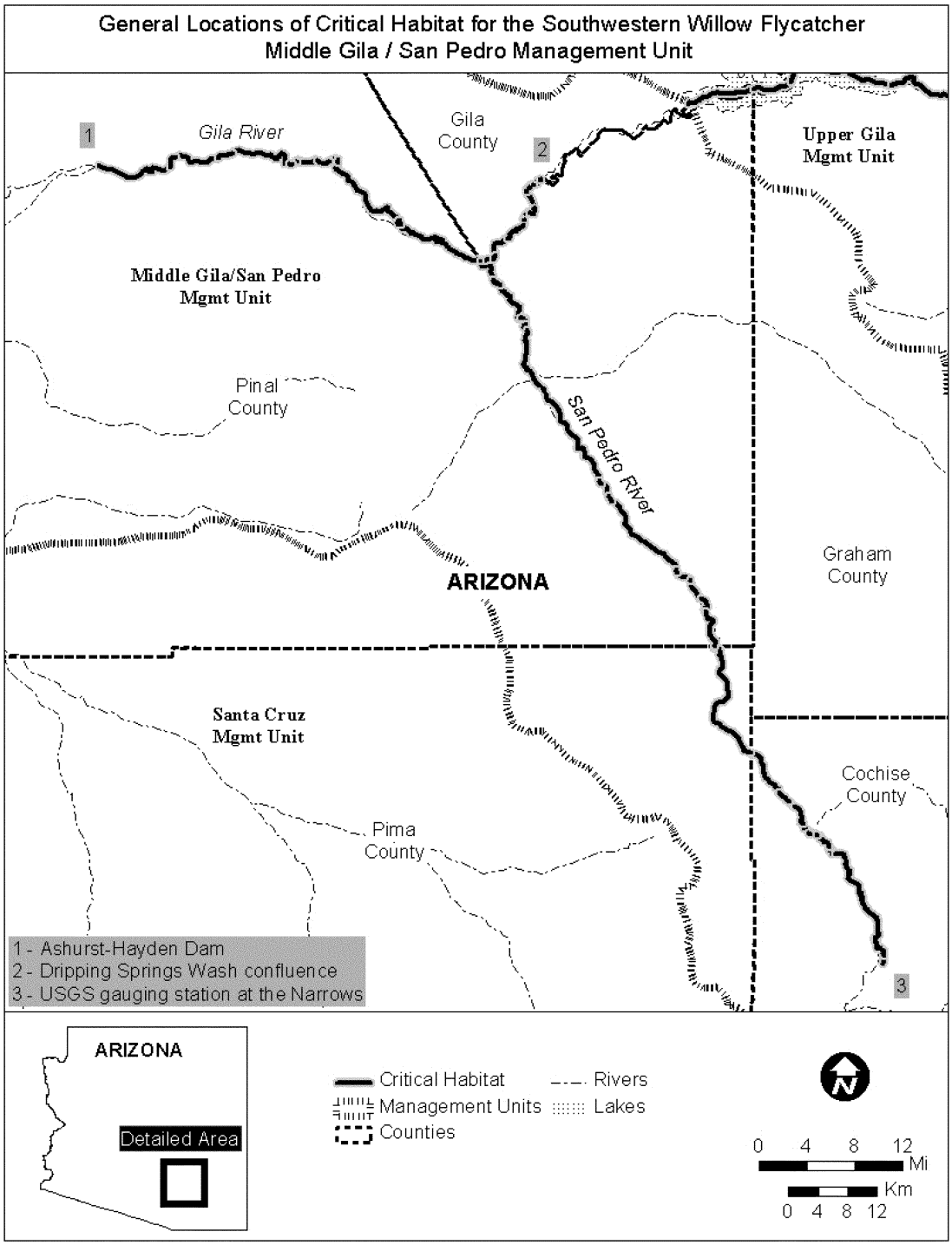


(26) Middle Gila and San Pedro Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Gila River	12, 527193, 3660545	12, 476979, 3662407
San Pedro River	12, 566945, 3554766	12, 520287, 3649594

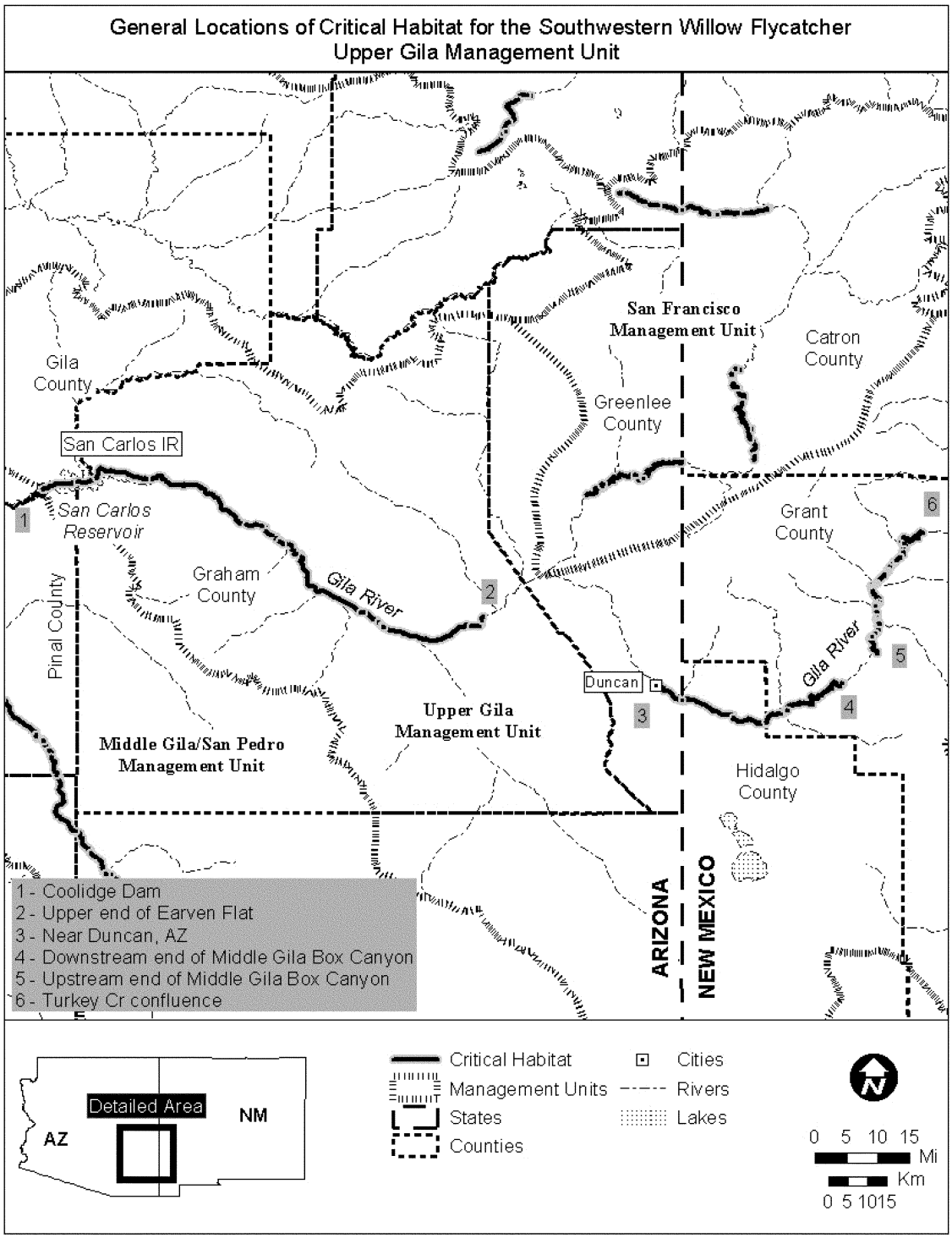
(ii) **Note:** Map of Middle Gila San Pedro Management Unit follows:



(27) Upper Gila Management Unit.
(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Gila River (upper)	12, 734274, 3662473	12, 724979, 3631107
Gila River (middle)	12, 639563, 3639230	12, 544025, 3670779
Gila River (lower)	12, 717951, 3623479	12, 677635, 3622749

(ii) **Note:** Map of Upper Gila Management Unit follows:

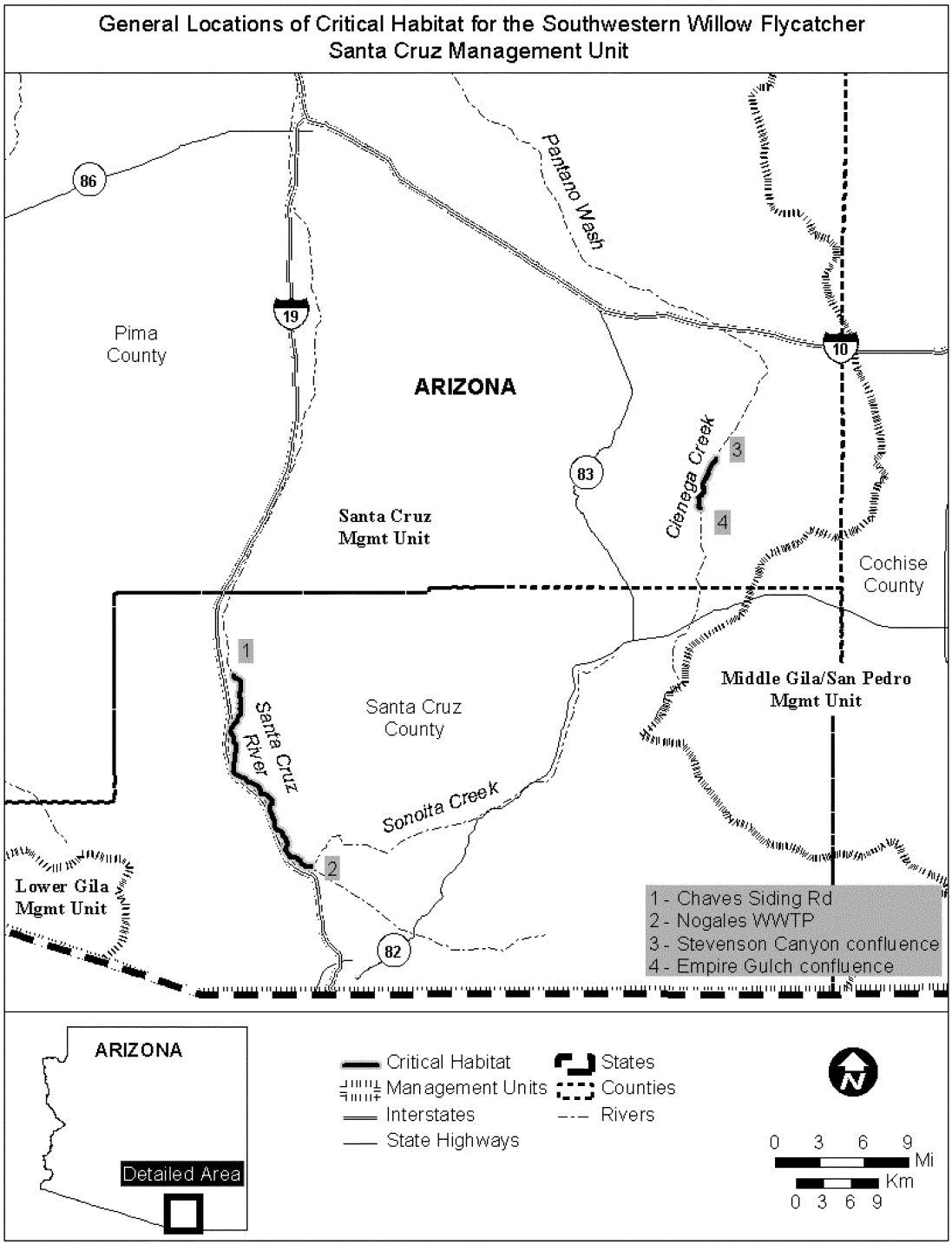


(28) Santa Cruz Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Santa Cruz River	12, 502742, 3480432	12, 502742, 3480432
Cienega Creek	12, 538826, 3519337	12, 540238, 3524746

(ii) **Note:** Map of Santa Cruz Management Unit follows:

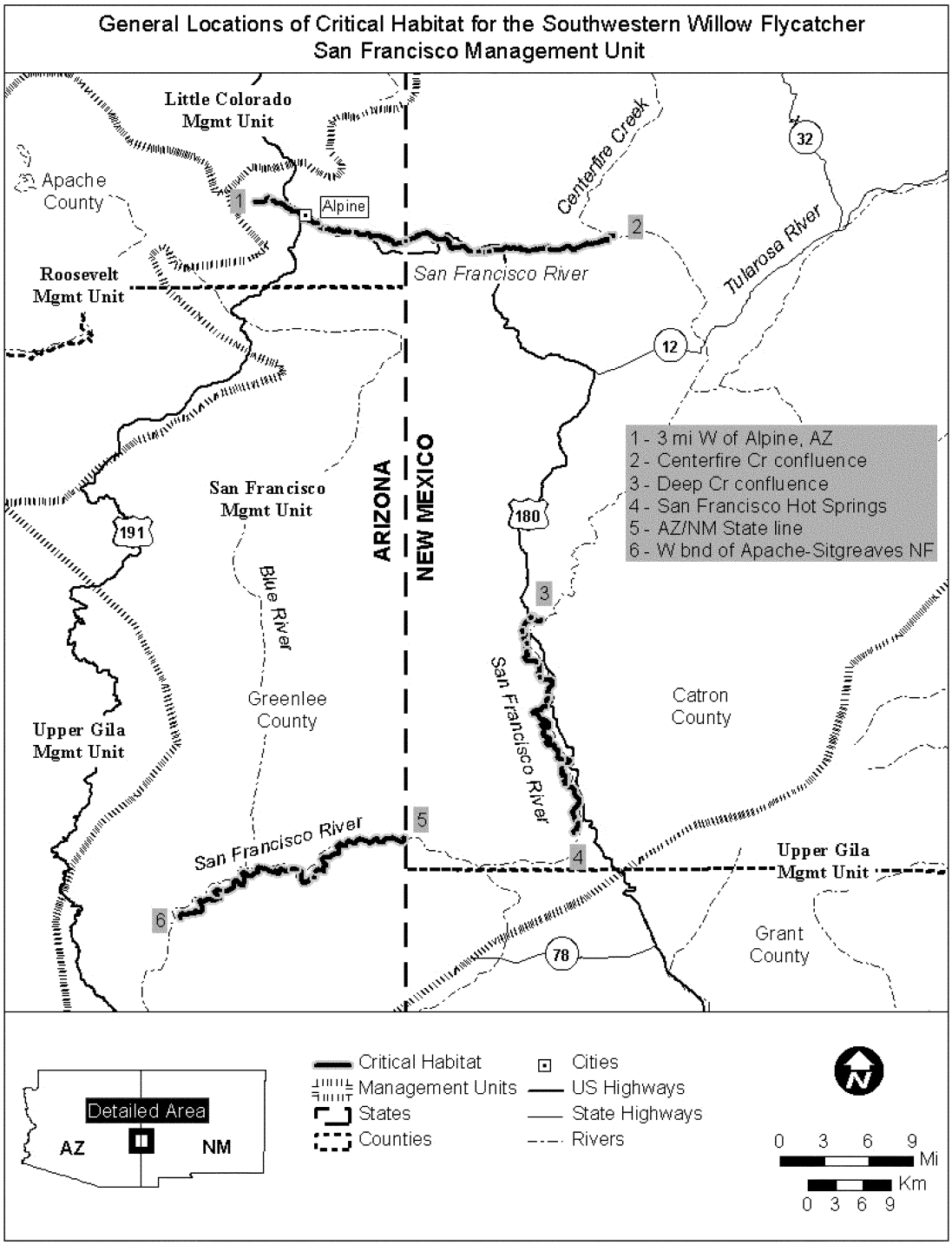


(29) San Francisco Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM Zone, E, N
San Francisco River (upper)	12, 681827, 3679571	12, 661571, 3670502
San Francisco River (middle)	12, 693857, 3703486	12, 697331, 3680357
San Francisco River (lower)	12, 666982, 3748335	12, 699562, 3745269

(ii) **Note:** Map of San Francisco Management Unit follows:

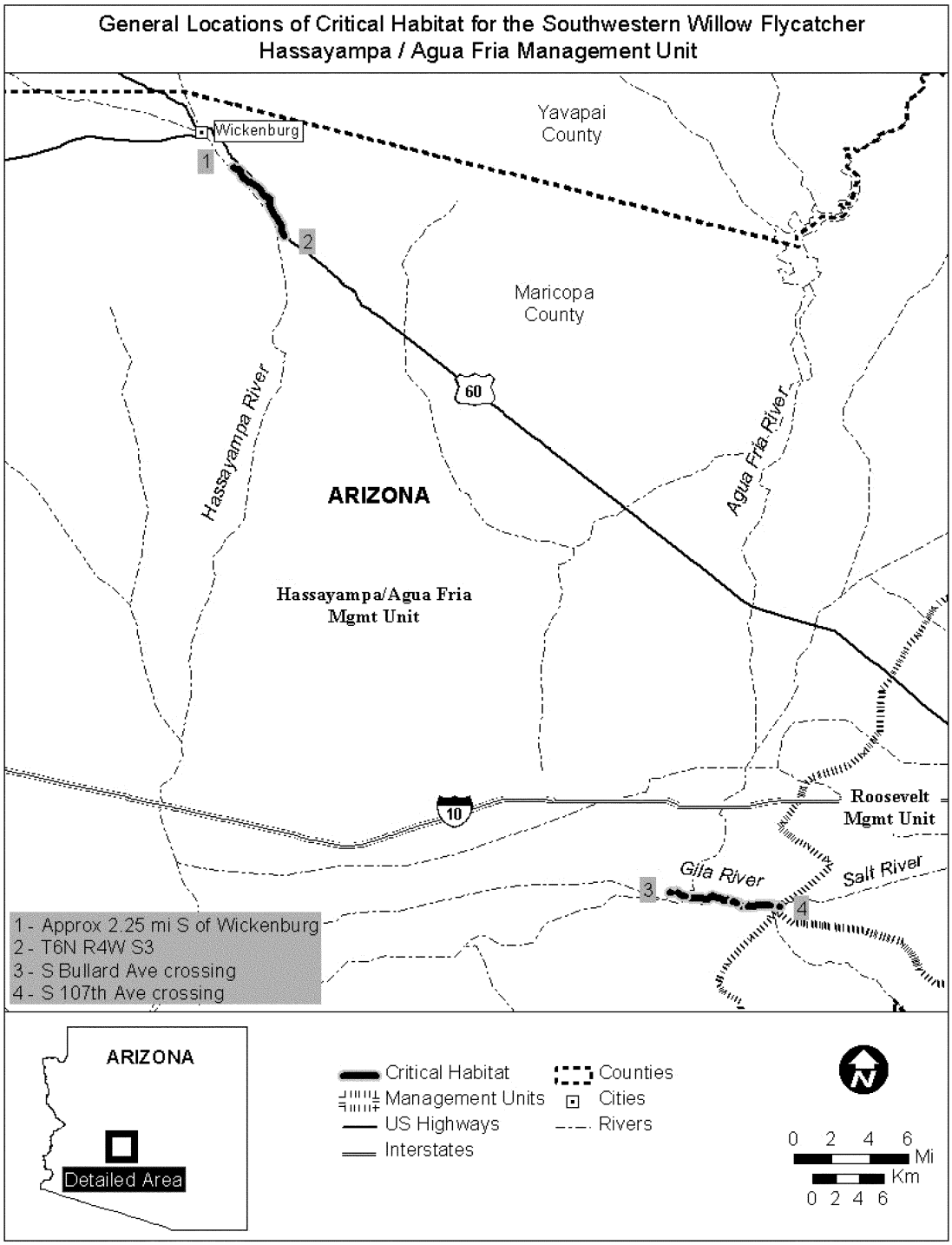


(30) Hassayamapa and Agua Fria Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Hassayampa River	12, 342308, 3757092	12, 345848, 3751261
Gila River	12, 379985, 3694255	12, 372194, 3695509

(ii) **Note:** Map of Hassayamapa and Agua Fria Management Unit follows:

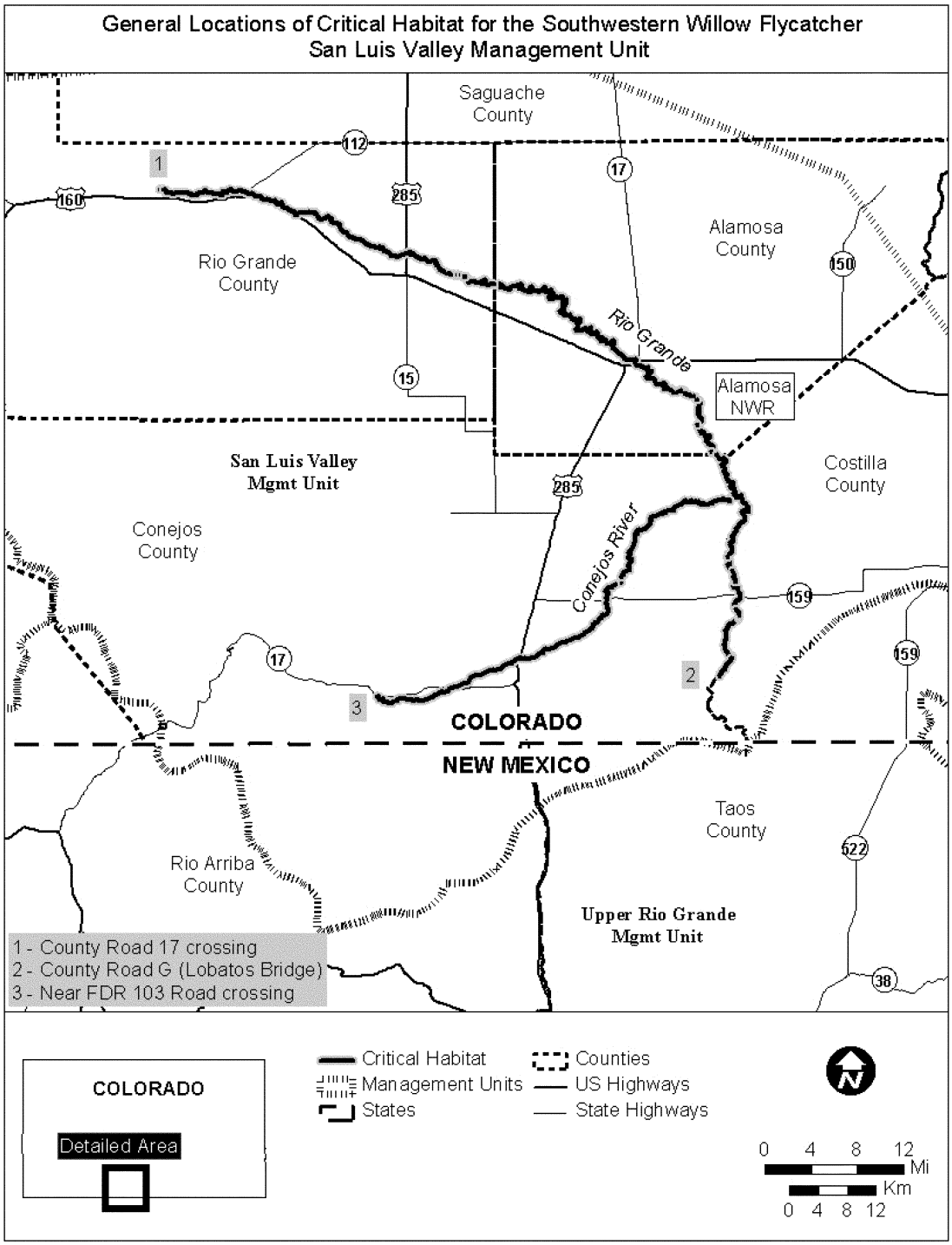


(31) San Luis Valley Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Conejos River	13, 394419, 4101506	13, 434790, 4128834
Rio Grande	13, 371291, 4172297	13, 432747, 4103848

(ii) **Note:** Map of San Luis Valley Management Unit follows:

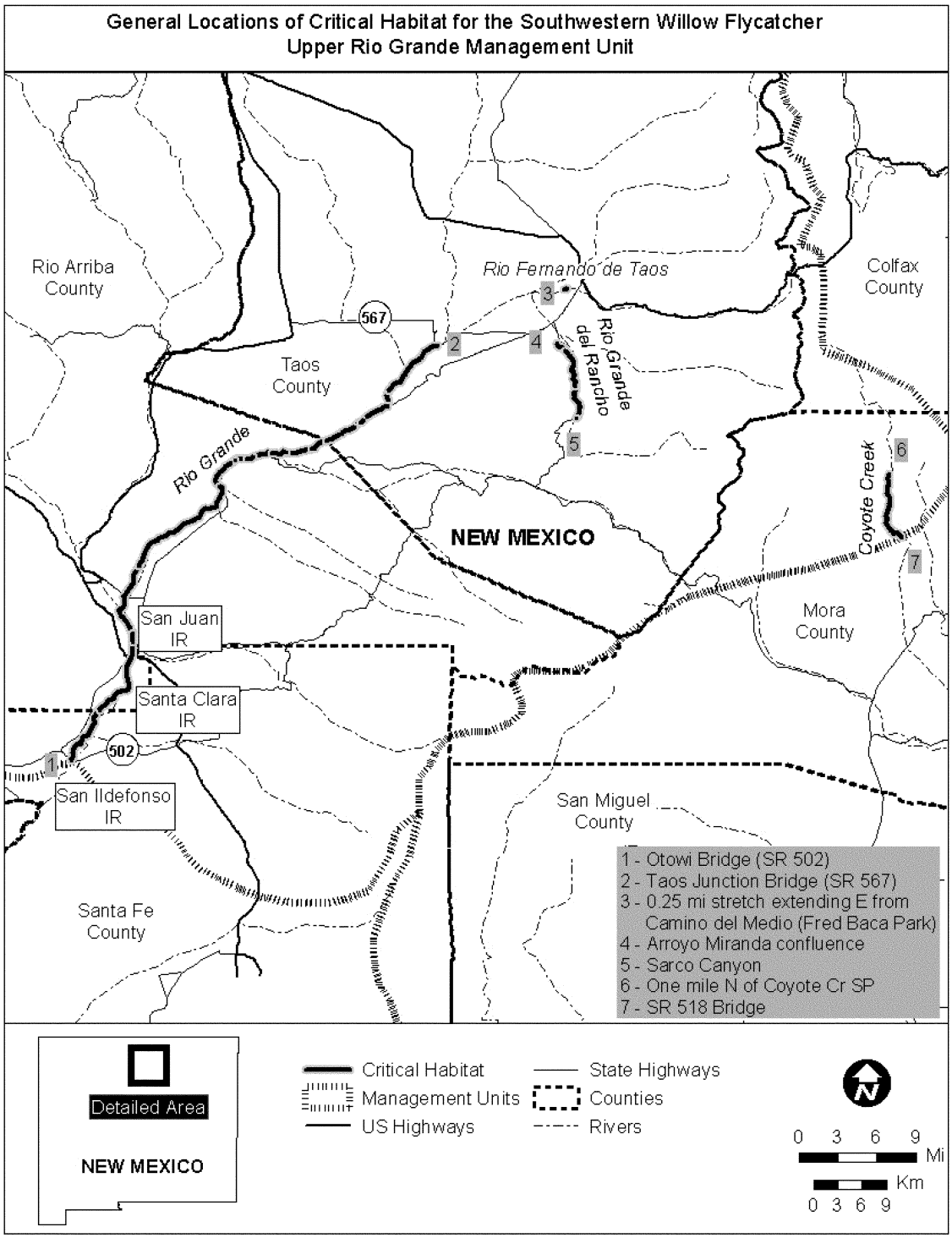


(32) Upper Rio Grande Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Rio Grande	13, 434154, 4021496	13, 396993, 3970707
Coyote Creek	13, 479246, 4005468	13, 480419, 3997620
Rio Grande del Rancho	13, 447971, 4012369	13, 446044, 4021640
Rio Fernando	13, 447152, 4028423	13, 446856, 4028320

(ii) **Note:** Map of Upper Rio Grande Management Unit follows:

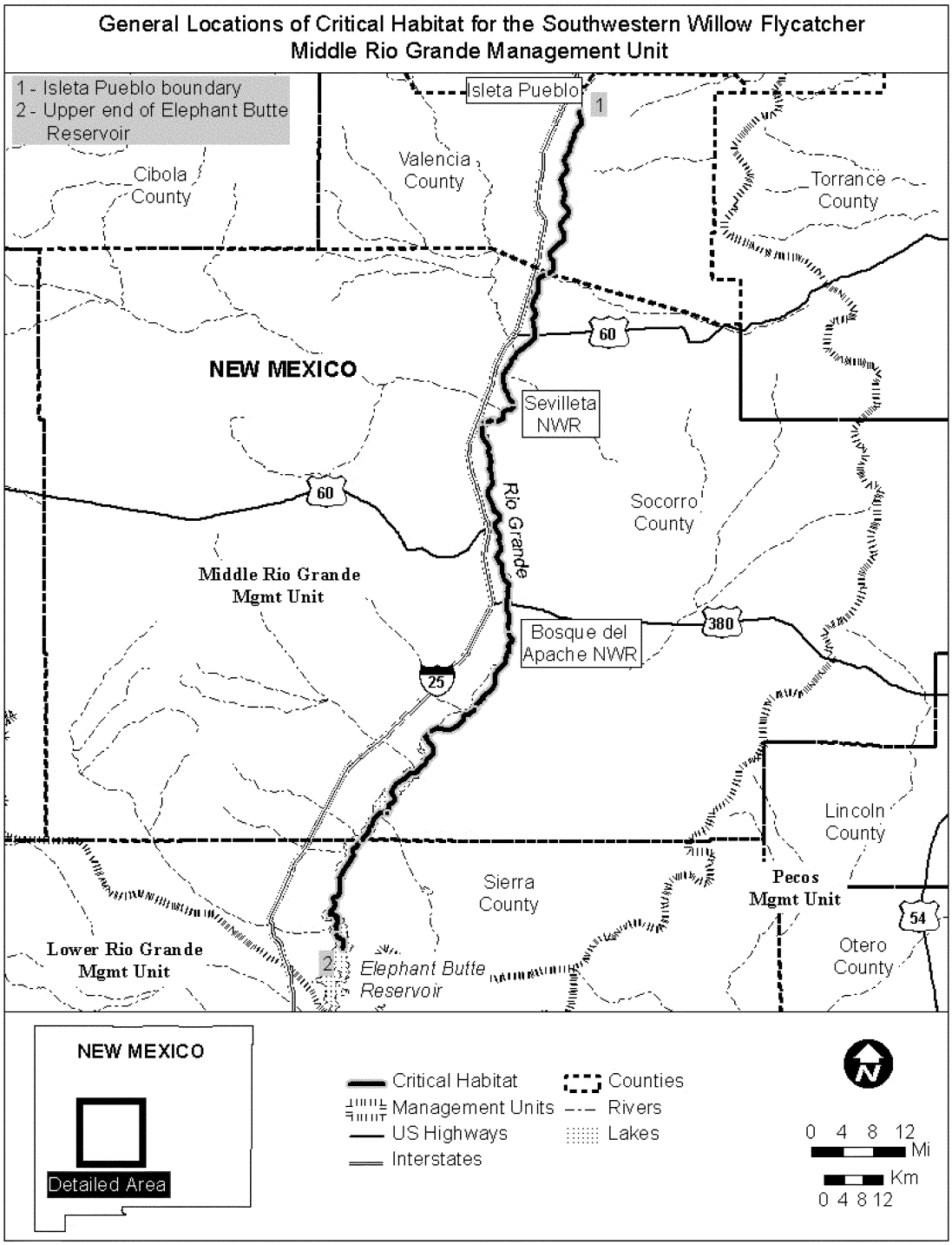


(33) Middle Rio Grande Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Rio Grande	13, 343067, 3856213	13, 298922, 3683834

(ii) **Note:** Map of Middle Rio Grande Management Unit follows:

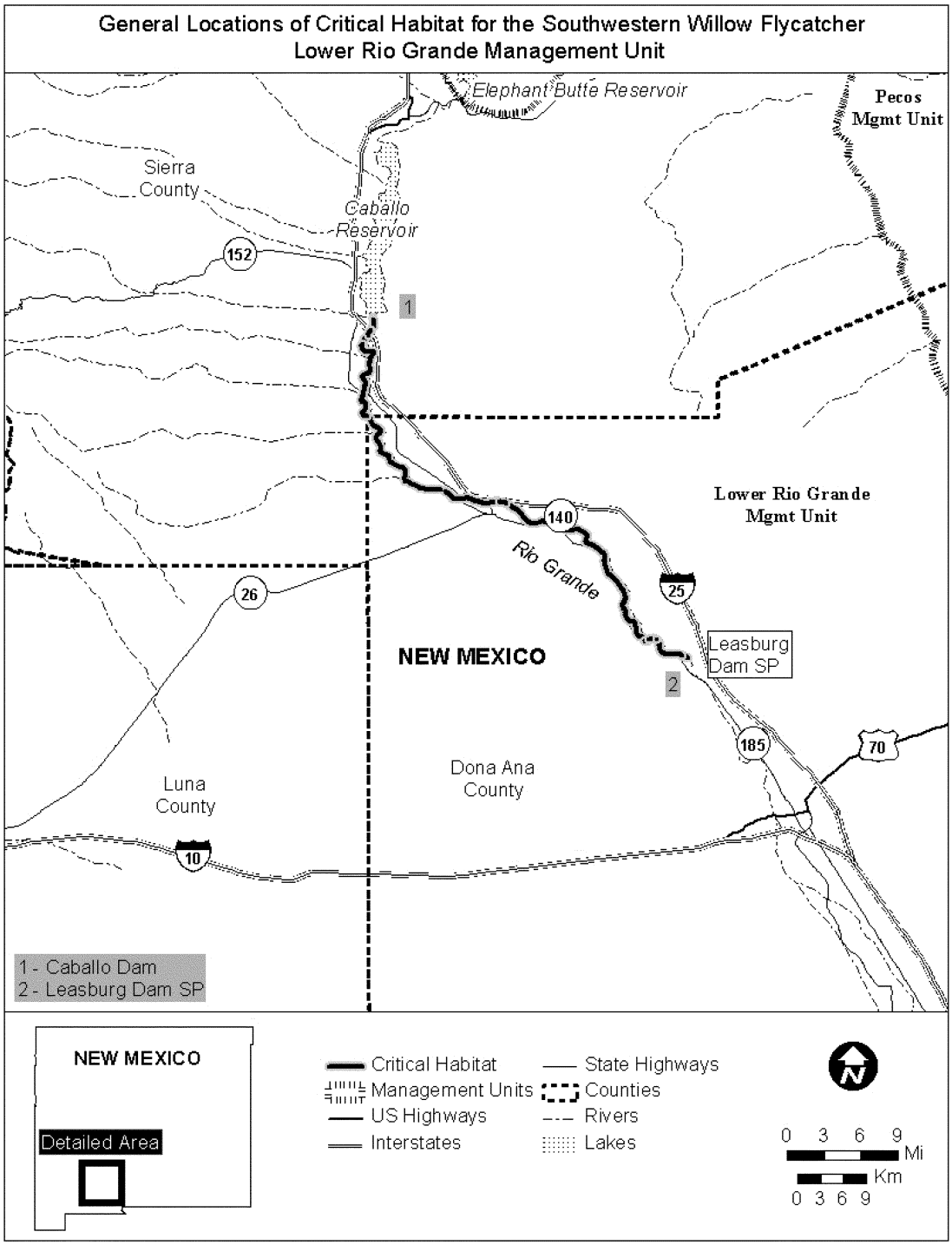


(34) Lower Rio Grande Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Rio Grande	13, 285590, 3642144	13, 319325, 3597154

(ii) **Note:** Map of Lower Rio Grande Management Unit follows:



* * * * *

Dated: July 22, 2011.

Rachel Jacobsen,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–19713 Filed 8–12–11; 8:45 am]

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Part III

Labor Department

Employee Benefits Security Administration

Grant of Individual Exemption Involving BlackRock, Inc. and its Investment Advisory, Investment Management and Broker-Dealer Affiliates and their Successors (Applicants); Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2011–17; Exemption Application No. D–11588]

Grant of Individual Exemption Involving BlackRock, Inc. and Its Investment Advisory, Investment Management and Broker-Dealer Affiliates and Their Successors (Applicants) Located in New York, NY

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA), the Federal Employees' Retirement System Act of 1986, as amended (FERSA), and the Internal Revenue Code of 1986, as amended (the Code). The transactions involve BlackRock, Inc. and its investment advisory, investment management and broker-dealer affiliates and their successors. The individual exemption affects plans for which BlackRock, Inc. and its investment advisory, investment management and broker-dealer affiliates and their successors serve as fiduciaries, and the participants and beneficiaries of such plans.

DATES: *Effective Date:* This exemption is effective as of December 1, 2009.

SUPPLEMENTARY INFORMATION: On March 18, 2011, the Department published a notice of proposed individual exemption from the restrictions of ERISA sections 406(a)(1) and 406(b), FERSA sections 8477(c)(1) and (c)(2) and the sanctions resulting from the application of Code section 4975, by reason of Code section 4975(c)(1) (the Proposed Exemption).[1] The Proposed Exemption was requested by BlackRock, Inc. and its investment advisory, investment management and broker-dealer affiliates and their successors pursuant to ERISA section 408(a), Code section 4975(c)(2) and FERSA section 8477(c)(3), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final individual exemption is being issued solely by the Department.

Background [2]

BlackRock, Inc. (BlackRock), based in New York, NY, is the largest publicly-traded investment management firm in the United States. BlackRock, through its investment advisory and investment management subsidiaries, currently manages assets for institutional and individual investors worldwide through a variety of equity, fixed income, cash management and alternative investment products. As of September 30, 2010, BlackRock, through its advisor subsidiaries, had approximately $3.446 trillion in assets under management, including assets managed by BlackRock Institutional Trust Company, N.A. (BTC) (formerly known as Barclays Global Investors, N.A. (BGI)) and its affiliates.

BTC is a national banking association headquartered in San Francisco, California. Prior to its acquisition by BlackRock on December 1, 2009 (the Acquisition), BTC (then BGI) was the largest asset manager in the U.S. A significant amount of BTC's assets under management in the U.S. consist of assets of employee benefit plans subject to ERISA, FERSA and/or the Code. BTC is a market leader in index and model-driven investment products. Until its sale to BlackRock, BGI was an indirect subsidiary of Barclays PLC. BTC, as of the date of the Acquisition, is now a wholly-owned subsidiary of BlackRock.

Immediately following the Acquisition, (1) Barclays PLC (Barclays), (2) Bank of America Corporation (BOA), and (3) The PNC Financial Services Group, Inc. (PNC) (each of these, a Minority Passive Shareholder, or MPS) controlled the following interests in BlackRock:

(a) *BOA.* BOA owned approximately 3.7% of BlackRock voting common stock and approximately 34.2% of BlackRock equity by value.

(b) *PNC.* PNC owned approximately 35.2% of BlackRock voting common stock and approximately 24.5% of BlackRock equity by value.

(c) *Barclays.* Barclays owned approximately 4.8% of BlackRock voting common stock and approximately 19.8% of BlackRock equity by value.

Post-Acquisition, a secondary offering of BlackRock common stock was completed on November 15, 2010 (the Secondary Offering). BlackRock's ownership structure following the Secondary Offering was as follows: (a) BOA controlled 0% of BlackRock's voting common stock and approximately 7.1% of BlackRock's equity by value; (b) PNC controlled approximately 25.3% of BlackRock's voting common stock and approximately 20.3% of BlackRock's equity by value; and (c) Barclays controlled approximately 2.3% of BlackRock's voting common stock and approximately 19.6% of BlackRock's equity by value.

All BlackRock stock beneficially owned by each MPS (other than stock held in certain fiduciary capacities and customer or market making accounts) is subject to a stockholders agreement entered into by and between that MPS and BlackRock (collectively, the Stockholders Agreements). Pursuant to each Stockholders Agreement, each MPS has or had the right to identify to BlackRock two (2) prospective directors, and, if such nominees are reasonably acceptable to the BlackRock Board of Directors (the Board), BlackRock and each respective MPS agrees to use best efforts to cause the election of such nominees to the Board. As a result of the Secondary Offering, BOA fell below a ten percent (10%) equity interest, and, assuming that it remains below this level, it lost the right to identify to BlackRock one representative director on or about February 13, 2011.

At least ten (10) of the current eighteen (18) BlackRock directors must be ''independent'' (within the meaning of New York Stock Exchange rules) of the MPSs and BlackRock management and each MPS must vote its BlackRock voting common stock in accordance with the recommendations of the Board. In addition, the Audit Committee, the Management Development and Compensation Committee, and the Nominating and Governance Committee of the Board consist entirely of independent directors, and a majority of each other Board committee (if any), with the exception of the Executive Committee,[3] must consist of independent directors. As of the date hereof, none of the directors representing an MPS serve on any Board committee, except that one director representing PNC serves on the Executive Committee. Further, no MPS representative directors sit on any of the Board of Directors of BlackRock Managers. While each MPS monitors its investment in BlackRock through its

[1] 76 FR 15058 (March 18, 2011).

[2] Capitalized terms used but not defined in the Background Section have the meaning set forth in Section VI of the exemption.

[3] While the Executive Committee may exercise the powers of the Board during intervals between Board meetings or at times when the Board is unable to convene, the Executive Committee has not met for over five (5) years.

Board representatives and each MPS has certain limited governance rights, no MPS has or will have any involvement in the day-to-day management of BlackRock, any BlackRock Manager or any other BlackRock Entity. In addition, the respective Stockholder Agreements impose standstill agreements, transfer restrictions and arm's length transaction restrictions on the ability of an MPS to control BlackRock or any BlackRock Manager.

A BlackRock Manager is a fiduciary with investment discretion with respect to the applicable Client Plan.[4] As a result, the BlackRock Manager decides whether to enter into a Covered Transaction [5] with or involving an MPS. The ownership interest of the MPS in BlackRock could affect the BlackRock Manager's best judgment as a fiduciary, raising issues under ERISA Section 406(b). Therefore, the Applicants sought relief from the prohibitions of ERISA section 406(b).

Further, if BlackRock and one or more MPS are deemed affiliates, each MPS and its affiliates will very likely be parties in interest within the meaning of ERISA section 3(14) with respect to many Client Plans. Therefore, the Applicants also sought relief from the prohibitions of ERISA section 406(a).

Such ERISA section 406(a) and section 406(b) relief was sought solely with respect to certain enumerated types of Covered Transactions entered into after the Acquisition and, in certain cases, before the Acquisition and that have continued after the Acquisition.

The structure of the requested relief is founded upon compliance with five sets of general conditions. The five sets of general conditions are: (a) Modified conditions derived from Prohibited Transaction Exemption 84–14, as amended (sometimes referred to as the QPAM Exemption) [6]; (b) restrictions on the compensation of BlackRock Managers and their employees; (c) the establishment and implementation of certain policies and procedures; (d) the appointment by BlackRock of an Exemption Compliance Officer; and (e) the retention by BlackRock of an Independent Monitor. The purpose of these general conditions is, when coupled with the restrictions of the Stockholders Agreements and the BlackRock ownership structure, to foster independence of action by BlackRock notwithstanding the equity interests in BlackRock held by the MPSs. This unique overarching structure includes a comprehensive compliance function and an independent monitor, each of which work together for the benefit of Client Plans and their participants and beneficiaries by allowing Covered Transactions with or involving an MPS only if the Covered Transaction is, as best as can be determined, as favorable to the Client Plans as arm's length transactions with third parties.

In addition to the general conditions, each Covered Transaction has its own set of specific conditions deemed suitable for it in light of the nature of the transaction. Many of the conditions for individual Covered Transactions are derived from statutory exemptions, administrative class exemptions or administrative individual exemptions frequently relied upon by fiduciaries and parties in interest (sometimes affiliated and sometimes not) to exempt similar transactions. The general and transaction-specific conditions for relief attempt to strike a balance that takes into account both the MPSs' unique equity interests in BlackRock and the ability of BlackRock acting on behalf of Client Plans to engage in arm's length Covered Transactions with or involving institutions as significant in their markets as are the MPSs.

Compliance with the exemption requires that all Violations must be completely corrected. No non-exempt prohibited transaction will be deemed to occur, however, if the Violation is completely corrected (within the meaning of the exemption) no later than fourteen (14) business days following the date on which the Exemption Compliance Officer submits the quarterly report to the Independent Monitor for the quarter in which the Covered Transaction first became a non-exempt prohibited transaction.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption on or before May 2, 2011. During the comment period, the Department received one (1) Comment letter on the proposed exemption. The sole comment letter was filed by BlackRock. The Department received no hearing requests during the comment period. The following is a discussion of BlackRock's comments and the Department's responses.

Section III.D. of the Proposed Exemption. Section III.D. of the Proposed Exemption applies to certain transactions in the secondary market by BlackRock Managers of Fixed Income Obligations, including Fixed Income Obligations issued by or traded with an MPS. Specifically, BlackRock comments on the language in Section III.D.2(a) of the Proposed Exemption that states that ''[t]he purchase of the Fixed Income Obligation issued by an MPS is not made from the issuing MPS[.]'' BlackRock believes that so long as the purchase of an MPS Fixed Income Obligation is the result of the Three Quote Process, as required by the Proposed Exemption, there is no reason why the purchase from the issuing MPS should not be permitted.

BlackRock points out that, for ERISA purposes, the purchase of a Fixed Income Obligation issued by an MPS represents two separate transactions: (1) The purchase of a debt security and (2) an extension of credit, an ongoing relationship with an MPS, which could present the potential for an ERISA conflict of interest. The Proposed Exemption requires that all purchases (or sales) in the secondary market of Fixed Income Obligations issued by or traded with an MPS be conducted through the Three Quote Process in order to ensure that the purchase is executed on the best available economic terms. BlackRock believes that whether or not an MPS Fixed Income Obligation is purchased from the issuing MPS or some other dealer is irrelevant, and the potential for later conflict is unrelated to a purchase pursuant to the Three Quote Process. BlackRock further notes that other safeguards contained in the proposed exemption, particularly the existence of and involvement of the Exemption Compliance Officer and the Independent Monitor, serve to adequately mitigate the risk that an unaddressed conflict will arise during the holding of an MPS Fixed Income Obligation, whether acquired from the issuing MPS or another dealer. In order to address this issue, BlackRock requests that Section III.D.2(a) of the Proposed Exemption be deleted in its entirety.

The Department agrees with the comment, and it has deleted Section III.D.2(a) from the exemption's operative language.

Section III.F. of the Proposed Exemption. Section III.F. of the Proposed Exemption applies to the purchase in an underwriting and holding by BlackRock Managers of Asset-Backed Securities, when an MPS

[4] ''Client Plan'' means any plan subject to section 406 of the Act, Code section 4975 or FERSA section 8477(c) for which a BlackRock Manager is a fiduciary as described in section 3(21) of ERISA, including, but not limited to, any Pooled Fund, MPS Plan, Index Account or Fund, Model-Driven Account or Fund, Other Account or Fund, or In-House Plan, except where specified to the contrary.

[5] ''Covered Transaction'' means each transaction set forth in Section III of the exemption by a BlackRock Manager for a Client Plan with or involving, directly or indirectly, an MPS and/or a BlackRock Entity.

[6] 49 FR 9494 (Mar. 13, 1984), as amended, 70 FR 49305 (Aug. 23, 2005), and as amended, 75 FR 38837 (July 6, 2010).

is an underwriter, in the capacity as either a manager or a member of the selling syndicate, trustee, or, in the case of Asset-Backed Securities which are CMBS, servicer. BlackRock states that the language of Section III.F. of the Proposed Exemption would not provide relief in circumstances where an MPS was acting as both an underwriter and a servicer of a CMBS Asset-Backed Security. BlackRock believes such a result was not intended by the Department.[7] BlackRock comments that both the Affiliated Underwriting provisions of the Proposed Exemption (Section IV.A.) and the Affiliated Servicing provisions of the Proposed Exemption (Section IV.B.) should apply to the transaction. Specifically, in order to address this issue, BlackRock believes that: (1) In the first paragraph of Section III.F. of the Proposed Exemption, clause (iii) should be deleted in its entirety and the following should be substituted ''(iii) solely in the case of Asset-Backed Securities which are CMBS, serves as servicer of a trust that issued such CMBS, provided that:'', and (2) in Section III.F.(1), ''and'' before ''(b)'' should be replaced with a comma, and the following should be inserted before the semi-colon: ''and (c) if an MPS is an underwriter and an MPS is a servicer as described in clause (b), the conditions of both Section IV.A., as modified by Section III.F.1(a), and Section IV.B. must be satisfied.''

The Department agrees with the comment, and it has modified Section III.F. of the exemption's operative language accordingly.

Section III.M. of the Proposed Exemption. Section III.M.1. of the Proposed Exemption applies to securities lending transactions involving Client Plan assets by BlackRock Managers to an MPS which is a U.S. Broker-Dealer, a U.S. Bank, a Foreign Broker-Dealer or a Foreign Bank. Conditions applicable to these transactions are set forth in Sections III.M.2. and III.M.3. of the Proposed Exemption. BlackRock points out that Sections III.M.2(d), III.M.3(b) and III.M.3(c) of the Proposed Exemption provide an alternative means of compliance with certain collateral requirements if the lending agent is a U.S. Broker-Dealer or U.S. Bank and agrees to provide an indemnity. BlackRock does not believe, however, that there are any significant policy issues presented with respect to these conditions in circumstances where a BlackRock Manager is acting as a lending agent through one of its U.S. registered investment advisor affiliates and not through a U.S. Bank or U.S. Broker-Dealer. BlackRock argues that, as the largest publicly-traded investment management firm in the world, there should be no concern that an indemnity delivered by a BlackRock Manager would not be honored.[8]

In order to address these issues, BlackRock believes that Section III.M. of the Proposed Exemption should be revised to include the phrase '', an investment advisor registered under the Investment Advisors Act of 1940, as amended'' after the words ''U.S. Bank'' in the first sentence of Sections III.M.2(d), III.M.3(b)(ii) and III.M.3(c) of the Proposed Exemption.

The Department agrees that under the unique factual scenario presented by this exemption, adding U.S. registered investment advisors does not present any significant policy concerns, provided that the registered investment advisor is required to meet additional requirements regarding assets under management and shareholders' or partners' equity. Such additional requirements will ensure that the applicable BlackRock Manager can meet the terms of an indemnity agreement. As a result, the Department has modified Section III.M. of the exemption's operative language to include the term ''Registered Investment Advisor'' after the words ''U.S. Bank'' in the first sentence of Sections III.M.2(d), III.M.3(b)(ii) and III.M.3(c) of the Proposed Exemption. Further, the Department has inserted a definition in Section VI.GGG. of the exemption that reads as follows:

> ''Registered Investment Advisor'' means an investment advisor registered under the Investment Advisors Act of 1940, as amended, that has total client assets under its management or control in excess of $5 billion as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million, as shown in the most recent balance sheet prepared within the two years immediately preceding a Covered Transaction, in accordance with generally accepted accounting principles.''

Section III.P. of the Proposed Exemption. Section III.P. of the Proposed Exemption applies to agency execution of equity and fixed income securities trades and related clearing as described in Prohibited Transaction Exemption 86–128, as amended[9] (PTE 86–128), including agency cross trades, where the broker is an MPS. Section III.P.2. of the Proposed Exemption requires that Covered Transactions described in Section III.P. of the Proposed Exemption must satisfy the conditions of Section III(e), Section III(f), Section III(g)(2) and Section III(h) of PTE 86–128, which Sections require, among other things, the delivery of certain information to a Client Plan's ''authorizing fiduciary.'' BlackRock is concerned that this provision is inconsistent with Section III.P.3. of the Proposed Exemption which requires that the ECO Function receive the information required to be provided to the ''authorizing fiduciary'' under those sections of PTE 86–128. Applicants believe that it was the Department's intention that the conditions of Section III of PTE 86–128 that relate to actions required of, or information to be provided to, the Client Plan's authorizing fiduciary, may be satisfied if required of, or provided to, the ECO Function, including the authority to terminate the MPS broker-dealer.[10]

In order to address this ambiguity, BlackRock proposes that Section III.P.3. of the Proposed Exemption be deleted and Section III.P.2. of the Proposed Exemption be amended to read as follows:

> ''2. The conditions of PTE 86–128 set forth in the following sections of that exemption must be complied with: Section III(e); Section III(f); Section III(g)(2); and Section III(h); provided, however, that for purposes of Section III(e), Section III(f) and Section III(g)(2) of PTE 86–128, the ECO Function is the ''authorizing fiduciary'' referred to therein; and the ECO has the authority to terminate the use of the MPS as broker-dealer without penalty to Client Plans at any time; and provided further that the first sentence of Section III(h) of PTE 86–128 is amended for purposes of this Section III.P.2. to provide as follows: * * *''

The Department agrees that its intent was to permit the ECO Function to satisfy certain provisions that otherwise might be applicable to a Client Plan's ''authorizing fiduciary'' under PTE 86–128. While the Department does not believe that the language of the Proposed Exemption is unclear, in order to ensure clarity, it has modified Section III.P. of the exemption's operative language as requested by BlackRock.

Section III.U. of the Proposed Exemption. Section III.U. of the Proposed Exemption applies to purchases, sales and holdings by BlackRock Managers for Client Plans of commercial paper issued by ABCP

[7] See Preamble to the Proposed Exemption (76 FR at 15067).

[8] BlackRock also points out that certain cross-references were inadvertently omitted in Section III.M.3. of the Proposed Exemption. The Department agrees, and the language has been modified to apply the proper cross references to Sections VI.KK. and VI.JJ. of the exemption.

[9] 51 FR 41686 (Nov. 18, 1986), as amended, 67 FR 64137 (Oct. 17, *2002*).

[10] The Applicants believe such intent is set forth in the Summary of Facts and Representations published with the Proposed Exemption, 76 FR at 15073.

Conduits, when an MPS has one or more roles. BlackRock points out that Section III.U. of the Proposed Exemption does not specifically apply to circumstances under which commercial paper issued by an ABCP Conduit in which an MPS is a placement agent and/or has one or more continuing roles is purchased from or sold to an MPS by a BlackRock Manager. BlackRock believes that this omission was unintentional and is inconsistent with the intent and subsequent provisions of Section III.U. of the Proposed Exemption. In order to address this issue, BlackRock requests that the first paragraph of Section III.U. of the Proposed Exemption should be revised to read:

''Relief under Section I of this exemption is available for the purchase or sale, including purchases from or sales to an MPS, and the holding by BlackRock Managers acting on behalf of Client Plans of commercial paper issued by an ABCP Conduit with respect to which an MPS acts as seller, placement agent, and/or in some continuing capacity such as program administrator, provider of liquidity or provider of credit support, provided that: * * *''

Further, Section III.U.4. of the Proposed Exemption requires that purchases and sales of ABCP Conduit commercial paper must be conducted pursuant to the Three Quote Process even in situations where such purchase or sale is with a third party in the secondary market and the MPS' sole involvement relates to its performance in a continuing role with respect such ABCP Conduit. BlackRock believes that if the sole involvement of an MPS is acting in a continuing role, then the Three Quote Process should not be required for purchases from or sales to third parties because there will be no additional compensation payable to and/or other benefits conferrable on such MPS in the secondary market by reason of such purchase or sale whether or not the Three Quote Process is followed. In order to address this issue, BlackRock believes that Section III.U.4. of the Proposed Exemption should be revised to delete the words ''and/or an MPS performs a continuing role with respect to the Securities.''

The Department agrees with the comments, and it has modified Section III.U. of the exemption's operative language accordingly.

Structured Securities, Including Guaranteed Governmental Mortgage Pool Certificates. BlackRock has determined that there is a common type of transaction which is superficially similar to the ''guaranteed governmental mortgage pool certificate'' TBA transactions covered by Section III.N. of the Proposed Exemption, but which in substance is more similar to a straightforward secondary market purchase of a ''guaranteed governmental mortgage pool certificate'' as defined in the Department's regulations at 29 CFR 2510.3–101(i). An example, BlackRock states, of such a transaction would be a ''specified pool'' trade, wherein a BlackRock Manager identifies an existing specific mortgage pool listed on the FHLMC Web site, and asks a dealer (or dealers) for a quote on the delivery of a FHLMC pass-through certificate based on such specified pool in a few days time. BlackRock believes that this sort of purchase from an MPS was intended to be covered by the Proposed Exemption, subject to the credit quality determination set forth in Section III.N.2 of the Proposed Exemption and the Three Quote Process. Accordingly, BlackRock requests that the definition of ''Fixed Income Obligation'' be amended to explicitly include Securities which are guaranteed governmental mortgage pool certificates.

BlackRock additionally believes purchases of Fixed Income Securities, including guaranteed governmental mortgage pool certificates, should be explicitly permitted where an MPS has either an ongoing function or can potentially incur liability. It notes that, pursuant to 29 CFR 2510.3–101(i)(1), when a plan invests in a guaranteed governmental mortgage pool, its assets include its investment in the certificate, but do not, solely by reason of such investment, include any of the underlying mortgages. However, private sector entities, such as an MPS, may perform services with respect to the underlying mortgages.[11] BlackRock believes investments in guaranteed governmental pool certificates are analogous to investments in high quality asset-backed debt Securities.

BlackRock observes that Sections III.B., III.C. and III.D. of the Proposed Exemption would permit BlackRock Managers to acquire Fixed Income Obligations issued by an MPS, subject to applicable conditions. On such grounds, BlackRock believes that BlackRock Managers should, therefore, be able to purchase Fixed Income Obligations, whether they are debt under 29 CFR 2510.3–101, or they are guaranteed governmental mortgage pool certificates, if an MPS performs an ongoing function with respect to such Fixed Income Obligations, such as trustee or servicer of collateral of a private sector collateralized structured obligation constituting debt under the plan asset regulation, or such as a trustee or mortgage servicer under a FNMA certificate.

The conditions of Sections III.D. and III.E. of the Proposed Exemption reflect the ability of a BlackRock Manager to purchase and hold third party Fixed Income Obligations under which an MPS has an ongoing function ''such as debt trustee [or] servicer of collateral for asset-backed debt. * * *'' BlackRock notes that the heading for Section III.E. mentions only one such role, that of ''[d]ebt [t]rustee'', and the heading of Section III.D. does not mention any continuing roles. BlackRock believes that the exemption should clearly reflect the ability of BlackRock Managers to acquire and hold Fixed Income Obligations despite an MPS or MPSs performing one or more of a multiplicity of possible roles with respect to such Securities. BlackRock argues that, in the primary markets, the affiliated underwriting restrictions minimize the chance that a purchase may be intended to benefit an MPS.

Accordingly, BlackRock believes that the following changes should be made to the exemption:

1. Section VI.HH. should be amended to read as follows: ''Fixed Income Obligations'' means:

(1) Fixed income obligations including structured debt or other instruments characterized as debt pursuant to 29 CFR 2510.3–101, including, but not limited to, debt convertible into equity, certificates of deposit and loans (other than loans with respect to which an MPS is the entity which acts as lead lender); and

(2) guaranteed governmental mortgage pool certificates within the meaning of 29 CFR 2510.3–101(i).

(3) Asset-Backed Securities are not Fixed Income Obligations for purposes of this exemption.

2. The title of Section III.D. and the opening paragraphs thereof should be revised to read as follows:

''*D. Certain Transactions in the Secondary Market by BlackRock Managers of Fixed Income Obligations Including Fixed Income Obligations Issued by or Traded With an MPS, and/or Under Which an MPS has Either an Ongoing Function or Can Potentially Incur Liability.* Relief under Section I of this exemption is available for a purchase or sale in the secondary market or the holding by BlackRock Managers on behalf of Client Plans of (i) Fixed Income Obligations issued by an MPS, (ii) Fixed Income Obligations issued by a third party but purchased from or sold to an MPS, and/or (iii) Fixed Income Obligations under which

[11] See, *e.g.,* Advisory Opinion 99–05A, regarding the Federal Agricultural Mortgage Corporation.

an MPS has either an ongoing function or can potentially incur liability, provided that:

(1) If the Fixed Income Obligations are purchased from or sold to an MPS, it is as a result of the Three Quote Process.

(2) * * *''

3. The title of Section III.E. and the opening paragraph thereof should be revised to ''*Purchase in an Underwriting and Holding by BlackRock Managers of Fixed Income Obligations Issued by a Third Party when an MPS is Underwriter, in Either a Manager or Member Capacity, and/or Under Which an MPS has Either an Ongoing Function or Can Potentially Incur Liability.* Relief under Section I of this exemption is available for the purchase and holding by BlackRock Managers of Fixed Income Obligations issued by third parties in an underwriting when an MPS is an Underwriter, in either a manager or a member capacity, and/or Fixed Income Obligations under which an MPS has either an ongoing function or can potentially incur liability, provided that: * * *''

4. A new subsection should be added to each of Sections III.D. and III.E. of the exemption, the text of which would be:[12].

''( ) With respect to any Fixed Income Obligation acquired under this Section III which is a guaranteed governmental mortgage pool certificate within the meaning of 29 CFR 2510.3–101(i) which is accompanied by an implicit U.S. Government guarantee as opposed to an explicit U.S. Government guarantee (i) The BlackRock Manager initiating a purchase of such Securities makes a determination that such Securities are of substantially similar credit quality as guaranteed governmental mortgage pool certificates accompanied by an explicit U.S. Government guarantee, (ii) the ECO (in regular consultation with and under the supervision of the IM) monitors the credit spread between such implicitly and explicitly guaranteed certificates, and (iii) each of the ECO and the IM (independently) has the authority and responsibility to determine whether purchases of implicitly guaranteed certificates should not be permitted due to such credit spread, and such authority and responsibility is reflected in the EPPs.''

The Department agrees with the comments, and it has modified the exemption's operative language.

Model or Quantitative Conformity. Sections III.B.1., III.D.2(c), III.R.1. and III.X.1. of the Proposed Exemption apply to Covered Transactions that involve Model-Driven Accounts or Funds and Index Accounts or Funds. The Applicants have noted that the provisions in Sections III.B.1., III.D.2(c), III.R.1. and III.X.1. of the Proposed Exemption that state that purchases must not ''exceed the purchase amount necessary for such Model or quantitative conformity'' present a practical issue for the Applicants due to the fact that in the ordinary course of trading in Securities under the specified Covered Transactions, the amount of the Securities purchased could inadvertently exceed the amount necessary for Model or quantitative conformity despite the responsible BlackRock Manager's intention and reasonable attempt to comply with the condition.

The Applicants have suggested that the language be revised as follows: ''And such purchase is reasonably calculated not to exceed the purchase amount necessary for such Model or quantitative conformity by more than a de minimis amount.''

The Department agrees with the comment, and it has modified Sections III.B.1., III.D.2(c), III.R.1. and III.X.1. of the exemption's operative language accordingly.

Effective Dates. Section I of the Proposed Exemption states that the exemption will be effective from December 1, 2009, through the earlier of (1) The effective date of an individual exemption granting permanent relief for the Covered Transaction or (2) May 31, 2011. BlackRock believes that it is unlikely that an individual exemption granting permanent relief for the Covered Transactions will be granted until late in 2011 or early 2012. As a result, BlackRock requests that the date May 31, 2011, set forth in Section I of the Proposed Exemption, should be revised to March 31, 2012.

The Department agrees with the comment, and it has modified Section I of the final exemption accordingly.

Following the Secondary Offering, BOA's interest in BlackRock decreased significantly. As a result, the exemption ceased to be available with respect to Bank of America Corporation and any entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Bank of America Corporation (collectively, the BOA Group) on the day after the number of representatives of the BOA Group on the BlackRock Board of Directors was reduced to one (1).

Technical Corrections. BlackRock also sought a number of technical corrections to the Proposed Exemption. Where the Department agrees with such technical corrections, the technical corrections have been made.

After giving full consideration to the entire record, including BlackRock's written comment, the Department has decided to grant the exemption, as modified herein. For further information regarding BlackRock's comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11588) that the Department maintains with respect to this case. The complete application file, as well as supplemental submissions received by the Department, is made available for public inspection in the Public Documents room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 18, 2011, at 76 FR 15058.

FOR FURTHER INFORMATION CONTACT: Brian Shiker, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8552.

Exemption

Section I: Covered Transactions Generally

For the period from December 1, 2009, through the earlier of (i) The effective date of an individual exemption granting permanent relief for the following transactions, or (ii) March 31, 2012,[13] the restrictions of ERISA sections 406(a)(1) and 406(b), FERSA sections 8477(c)(1) and (2), and the sanctions resulting from the application of Code section 4975, by reason of Code section 4975(c)(1),[14] shall not apply to the Covered Transactions set forth in Section III and entered into on behalf of or with the assets of a Client Plan; provided, that (x) the generally

[12] An ''explicit U.S. Government guarantee'' refers to the U.S. Government's statutory guarantee of certain guaranteed governmental mortgage pool certificates. An ''implicit U.S. Government guarantee'' refers to guaranteed governmental mortgage pool certificates that are not statutorily guaranteed by the U.S. Government but are still issued by corporations chartered by the U.S. Government.

[13] The exemption ceased to be available with respect to Bank of America Corporation and any entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Bank of America Corporation (collectively, the BOA Group) on the day after the number of representatives of the BOA Group on the BlackRock Board of Directors was reduced to one (1).

[14] For purposes of this exemption, references to ERISA section 406 should be read to refer as well to the corresponding provisions of Code section 4975 and FERSA section 8477(c).

applicable conditions of Section II of this exemption are satisfied, and, as applicable, the transaction-specific conditions set forth below in Sections III and IV of this exemption are satisfied, or (y) the Special Correction Procedure set forth in Section V of this exemption is satisfied.

Section II: Generally Applicable Conditions

A. *Compliance with the QPAM Exemption.* The following conditions of Part I of Prohibited Transaction Exemption 84–14, as amended (PTE 84–14 or the QPAM Exemption),[15] must be satisfied with respect to each Covered Transaction:

1. The BlackRock Manager engaging in the Covered Transaction is a Qualified Professional Asset Manager;

2. Except as set forth in Section III of this exemption, at the time of the Covered Transaction (as determined under Section VI(i) of the QPAM Exemption) with or involving an MPS, such MPS, or its affiliate (within the meaning of Section VI(c) of the QPAM Exemption),[16] does not have the authority to:

(a) Appoint or terminate the BlackRock Manager as a manager of the Client Plan assets involved in the Covered Transaction, or

(b) negotiate on behalf of the Client Plan the terms of the management agreement with the BlackRock Manager (including renewals or modifications thereof) with respect to the Client Plan assets involved in the Covered Transaction;

3. (a) Notwithstanding the foregoing, in the case of an investment fund (as defined in Section VI(b) of the QPAM Exemption) in which two or more unrelated Client Plans have an interest, a Covered Transaction with an MPS will be deemed to satisfy the requirements of Section II.A.2. of this exemption if the assets of a Client Plan on behalf of which the MPS or its affiliate possesses the authority set forth in Subsections 2(a) and/or (b) above, and which are managed by the BlackRock Manager in the investment fund, when combined with the assets of other Client Plans established or maintained by the same employer (or an affiliate thereof described in section VI(c)(1) of the QPAM Exemption) or by the same employee organization, on behalf of which the same MPS possesses such authority and which are managed in the same investment fund, represent less than ten percent (10%) of the assets of the investment fund;

(b) For purposes of Section II.A.3.(a) of this exemption, and for purposes of Sections III.I.6, L.3(b), M.2.(b) and U.1. of this exemption, with respect to the assets of an MPS Plan invested in a Pooled Fund as of the date of the Acquisition, which Pooled Fund is a bank-maintained common or collective trust, such assets when aggregated with the assets of all other MPS Plans of the same MPS Group and invested in such Pooled Fund shall be deemed to constitute less than ten percent (10%) of the assets of such Pooled Fund from the date of the Acquisition through July 1, 2010 (the Unwind Period); provided, that:[17]

(i) The fees paid by such MPS Plans to BlackRock Managers during the Unwind Period are not more than reasonable compensation and are substantially the same as fees paid to the same BlackRock Managers by other, comparable Client Plans which are not MPS Plans, invested in such Pooled Fund as of the date of the Acquisition;

(ii) such MPS Plans do not pay to the same BlackRock Managers during the Unwind Period any type of fee or other compensation that was not charged to or otherwise borne by Client Plan investors, which are not MPS Plans, in the Pooled Fund as of the date of the Acquisition;

(iii) during the Unwind Period, the IM reviews the investment by the MPS Plans in the Pooled Fund; all fees paid by the MPS Plans to BlackRock Managers are disclosed to the IM; the IM reviews the offering documents for the Pooled Funds and any advisory or management agreements with BlackRock Managers; and any material change in the terms and conditions of the investment by the MPS Plans in the Pooled Fund, including but not limited to fees paid to BlackRock Managers and the terms of the advisory or management agreements with BlackRock Managers, are promptly disclosed to the IM and are subject to the IM's approval; and

(iv) during the Unwind Period, each MPS Plan may terminate its investment in the Pooled Fund upon no more than thirty (30) days notice and without incurring a redemption fee paid to a BlackRock Manager;

4. The terms of the Covered Transaction are negotiated on behalf of the investment fund by, or under the authority and general direction of, the BlackRock Manager and either the BlackRock Manager or (so long as the BlackRock Manager retains full fiduciary responsibility with respect to the Covered Transaction) a property manager acting in accordance with written guidelines established and administered by the BlackRock Manager, makes the decision on behalf of the investment fund to enter into the Covered Transaction, provided that the Covered Transaction is not part of an agreement, arrangement or understanding designed to benefit the MPS;

5. The Covered Transaction is not entered into with an MPS which is a party in interest or disqualified person with respect to any Client Plan whose assets managed by the BlackRock Manager, when combined with the assets of other Client Plans established or maintained by the same employer (or affiliate thereof described in Section VI(c)(1) of the QPAM Exemption) or by the same employee organization, and managed by the BlackRock Manager, represent more than twenty percent (20%) of the total client assets managed by the BlackRock Manager at the time of the Covered Transaction;

6. At the time the Covered Transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the BlackRock Manager, the terms of the Covered Transaction are at least as favorable to the investment fund as the terms generally available in arm's length transactions between unrelated parties; and

7. Neither the BlackRock Manager nor any affiliate thereof (as defined in Section VI(d) of the QPAM Exemption),[18] nor any owner, direct or indirect, of a five percent (5%) or more interest in the BlackRock Manager[19] is a person who within the ten years immediately preceding the Covered Transaction has been either convicted or released from imprisonment, whichever is later, as a result of: any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance

[15] 49 FR 9494 (Mar. 13, 1984), as amended, 70 FR 49305 (Aug. 23, 2005), and as amended, 75 FR 38837 (July 6, 2010).

[16] Solely for purposes of this Section II.A.2., no BlackRock Entity will be deemed to be an affiliate of an MPS. The Department is not making herein a determination as to whether any BlackRock Entity is an affiliate of an MPS under ERISA.

[17] For purposes of this Section II.A.3.(b), the MPS Plans of each of the MPS Groups (the PNC MPSs, the BOA MPSs, and the Barclays MPSs) are separately aggregated (*e.g.,* all MPS Plans of BOA MPSs are aggregated together but are not aggregated with MPS Plans of Barclays MPSs or PNC MPSs).

[18] For the avoidance of doubt, all MPSs are excluded from the term ''affiliate'' for these purposes.

[19] For the avoidance of doubt, all MPSs are excluded from the term ''owner'' for these purposes.

company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in ERISA section 411. For purposes of this section, a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

B. *Compensation.* None of the employees of a BlackRock Manager receive any compensation that is based on any Covered Transaction having taken place between Client Plans and any of the MPSs (as opposed to with another institution that is not an MPS). The fact that a specific Covered Transaction occurred with an MPS as opposed to a non-MPS counterparty is ignored by BlackRock and BlackRock Managers for compensation purposes. None of the employees of BlackRock or a BlackRock Manager receive any compensation from BlackRock or a BlackRock Manager which consists of equity Securities issued by an MPS, which fluctuates in value based on changes in the value of equity Securities issued by an MPS, or which is otherwise based on the financial performance of an MPS independent of BlackRock's performance, provided that this condition shall not fail to be met because the compensation of an employee of a BlackRock Manager fluctuates with the value of a broadly-based index which includes equity Securities issued by an MPS.

C. *Exemption Policies and Procedures.* BlackRock adopts and implements Exemption Policies and Procedures (EPPs) which address each of the types of Covered Transactions and which are designed to achieve the goals of: (1) Compliance with the terms of the exemption, (2) ensuring BlackRock's decision-making with respect to the Covered Transactions on behalf of Client Plans with MPSs or BlackRock Entities is done in the interests of the Client Plans and their participants and beneficiaries, and (3) to the extent possible, verifying that the terms of such Covered Transactions are at least as favorable to the Client Plans as the terms generally available in arm's length transactions with unrelated parties. The EPPs are developed with the cooperation of both the Exemption Compliance Officer (ECO) and the Independent Monitor (IM), and such EPPs are subject to the approval of the IM. The EPPs need not address transactions which are not within the definition of the term Covered Transactions.

Transgressions of the EPPs which do not result in Violations require correction only if the amount involved in the transgression and the extent of deviation from the EPPs is material, taking into account the amount of Client Plan assets affected by such transgressions (EPP Corrections). The ECO will make a written determination as to whether such transgressions require EPP Correction, and, if the ECO determines an EPP Correction is required, the ECO will provide written notice to the IM of the EPP Correction. The ECO will provide summaries for the IM of any such EPP Corrections as part of the quarterly report referenced in Section II.D.11.

D. Exemption Compliance Officer. BlackRock appoints an Exemption Compliance Officer (ECO) with respect to the Covered Transactions. If the ECO resigns or is removed, BlackRock shall appoint a successor ECO within a reasonable period of time, not to exceed thirty (30) days, which successor shall be subject to the affirmative written approval of the IM. With respect to the ECO, the following conditions shall be met:

1. The ECO is a legal professional with at least ten years of experience and extensive knowledge of the regulation of financial services and products, including under ERISA and FERSA;

2. A committee made up exclusively of members of the Board who are independent of BlackRock and the MPSs determines the ECO's compensation package, with input from the general counsel of BlackRock; the ECO's compensation is not set by BlackRock business unit heads, and there is no direct or indirect input regarding the identity or compensation of the ECO from any MPS;

3. The ECO's compensation is not based on performance of any BlackRock Entity or MPS, although a portion of the ECO's compensation may be provided in the form of BlackRock stock or stock equivalents;

4. The ECO can be terminated by BlackRock only with the approval of the IM;

5. The EPPs prohibit any officer, director or employee of BlackRock or any MPS or any person acting under such person's direction from directly or indirectly taking any action to coerce, manipulate, mislead, or fraudulently influence the ECO in the performance of his or her duties;

6. The ECO is responsible for monitoring Covered Transactions and shall determine whether Violations have occurred, and the appropriate correction thereof, consistent with the requirements of Section V of this exemption;

7. If the ECO determines a Violation has occurred, the ECO must determine why it occurred and what steps should be taken to avoid such a Violation in the future (*e.g.,* additional training, additional procedures, additional monitoring, or additional and/or changed processes or systems);

8. The ECO is responsible for monitoring and overseeing the implementation of the EPPs. The ECO may delegate such responsibilities to the ECO Function, but the ECO will remain responsible for monitoring and overseeing the ECO Function's implementation of the EPPs. When appropriate, the ECO will recommend changes to the EPPs to BlackRock and the IM. The ECO will consult with the IM regarding the need for, timing, and form of EPP Corrections;

9. The ECO carries out the responsibilities required of the ECO described in: (a) The definition of ''Index'' in this exemption and (b) with respect to loans of Securities to an MPS in Section III.M. of this exemption, and carries out such other responsibilities stipulated or described in Section III of this exemption including supervision of the ECO Function;

10. The ECO, with the assistance of the ECO Function, monitors Covered Transactions and situations resulting from Covered Transactions with or involving an MPS with respect to which, because of the investment of the MPS in BlackRock, an action or inaction on the part of a BlackRock Manager might be thought to be motivated by an interest which may affect the exercise of such BlackRock Manager's best judgment as a fiduciary. If a situation is identified by the ECO which poses the potential for a conflict, as specified in Section III, the ECO shall consult with the IM, or refer decision-making to the discretion of the IM;

11. The ECO provides a quarterly report [20] to the IM summarizing the material activities of the ECO for the preceding quarter and setting forth any Violations discovered during the quarter and actions taken to correct such Violations. With respect to Violations, the ECO report details changes to process put in place to guard against a substantially similar Violation occurring again, and recommendations for additional training, additional procedures, additional monitoring, or

[20] The first quarterly report covered a 4-month period ending March 31, 2010.

additional and/or changed processes or systems or training changes and BlackRock management's actions on such recommendations. In connection with providing the quarterly report for the second quarter and fourth quarter of each year, upon the request of the IM, the ECO and the IM shall meet in person to review the content of the report. Other members of the ECO Function may attend such meetings at the request of either the ECO or the IM;

12. In each quarterly report, the ECO certifies in writing to his or her knowledge that (a) The quarterly report is accurate; (b) BlackRock's compliance program is working in a manner which is reasonably designed to prevent Violations; (c) any Violations discovered during the quarter and the related corrections taken to date have been identified in the report; and (d) BlackRock has complied with the EPPs in all material respects;

13. No less frequently than annually, the ECO certifies to the IM as to whether BlackRock has provided the ECO with adequate resources, including, but not limited to, adequate staffing of the ECO Function, and, in connection with the quarterly report for the fourth quarter of each year, the ECO shall identify to the IM those BlackRock Managers that relied upon this exemption during the prior year and those that he reasonably anticipates relying on this exemption during the current year; and

14. The ECO provides any further information regarding Covered Transactions reasonably requested by the IM.

E. *Independent Monitor.* BlackRock retains an Independent Monitor (IM) with respect to the Covered Transactions. If the IM resigns or is removed, BlackRock shall appoint a successor IM within a reasonable period of time, not to exceed thirty (30) days. The IM:

1. Agrees in writing to serve as IM, and he or she is independent within meaning of Section VI(OO);

2. Approves the ECO selected by BlackRock, and as part of the approval process and annually thereafter approves in general terms the reasonableness of the ECO's compensation, taking into account such information as the IM may request of BlackRock and which BlackRock must supply, and approves any termination of the ECO by BlackRock;

3. Assists in the development of, and the granting of written approval of, the EPPs and any material alterations of the EPPs by determining that they are reasonably designed to achieve the goals of (a) compliance with the terms of the exemption, (b) ensuring BlackRock's decision-making with respect to Covered Transactions on behalf of Client Plans with MPSs or BlackRock Entities is done in the interests of the Client Plans and their respective participants and beneficiaries and, (c) requiring, to the extent possible, verification that the terms of such Covered Transactions are at least as favorable to the Client Plans as the terms generally available in comparable arm's length transactions with unrelated parties;

4. Consults with the ECO regarding the need for, timing and form of any EPP Corrections. The IM has the responsibilities with respect to corrections of Violations, as set forth in Section V of this Exemption. In response to EPP Corrections or Violations, the IM considers whether, and must have the authority, to require further sampling, testing or corrective action if necessary;

5. Exercises discretion for Client Plans in situations specified in Section III of this exemption where BlackRock Managers may be thought to have conflicts;

6. Performs certain monitoring functions described in Section III, and carries out the responsibilities required of the IM, as set forth in the definition of ''Index'' in this exemption, and with respect to loans of Securities to an MPS as set forth in Section III.M. of this exemption, and carries out such other responsibilities stipulated in Section III of this exemption;

7. Reviews the quarterly reports of the ECO, obtains and reviews representative samples of the data underlying the quarterly reports of the ECO, and, if the IM deems it appropriate, obtains additional factual information on either an ad hoc basis or on a systematic basis;

8. Reviews the certifications of the ECO as to whether (a) The quarterly report is accurate; (b) BlackRock's compliance program is working in a manner which is reasonably designed to prevent Violations; (c) any Violations discovered during the quarter and the related corrections taken to date have been identified in the report; (d) BlackRock has complied with the EPPs in all material respects; and (e) BlackRock has provided the ECO with adequate resources, including, but not limited to, adequate staffing of the ECO Function;

9. Determines, on the basis of the information supplied to the IM by BlackRock and the ECO, whether there has occurred a pattern or practice of insufficient diligence in adhering to the EPPs and/or the conditions of the exemption, and if such a determination is made, reports the same to the Department, and informs BlackRock and the ECO of any such report;

10. Determines whether the purchases of equity Securities issued by an MPS on behalf of Client Plans that are Other Accounts or Funds by a BlackRock Manager has had a positive material impact on the market price for such Securities, notwithstanding any volume limitations imposed by Section III.S. of the exemption and/or imposed by the IM with respect to such equity Securities. The IM makes this determination based upon its review of the relevant monthly reports required by the exemption with respect to such Covered Transactions provided by the ECO and publicly available information materially related to the trading of the Securities of an MPS on its primary listing exchange (or market);

11. Issues an annual compliance report,[21] to be timely delivered to (i) the Chairman of the Board of Directors of BlackRock, (ii) the Chief Executive Officer of BlackRock and (iii) the General Counsel of BlackRock. The annual compliance report shall be based on a review of the EPPs, the quarterly reports provided by the ECO, any transactions reviewed by the IM as well as any additional information the IM requests from BlackRock, and certifying to each of the following (or describing any exceptions thereto) that:

(a) The EPPs are reasonably designed to achieve the goals of (i) compliance with the terms of the exemption, (ii) ensuring BlackRock's decision-making with respect to Covered Transactions on behalf of Client Plans with MPSs or BlackRock Entities is done in the interests of the Client Plans and the respective participants and beneficiaries, and (iii) requiring to the extent possible, verification that the terms of any Covered Transaction are at least as favorable to Client Plans as the terms generally available in comparable arm's length transactions with unrelated parties;

(b) the EPPs and the other terms of the exemption were complied with, with any material exceptions duly noted;

(c) the IM has made the determination referred to in Section II.E.9. and the results of that determination;

(d) BlackRock has provided the ECO with adequate resources, including but not limited to adequate staffing of the ECO Function; and

(e) the compensation package for the ECO for the prior year is reasonable;

12. The annual compliance report of the IM, as described in Section II.E.11., shall contain a summary of Violations,

[21] The first annual compliance report covered the 13-month period ending December 31, 2010.

any corrections of Violations required by the IM and/or the ECO at any time during the prior year. In addition, the IM further certifies that BlackRock correctly implemented the prescribed corrections, based in part on certification from the ECO; and

13. The annual compliance report of the IM shall also be timely delivered by the IM to the chief executive officer, the general counsel and the members of the boards of directors of each of the BlackRock Managers identified to the IM by the ECO as having relied upon this exemption during the prior year and those that the ECO reasonably anticipates will be relying on this exemption during the current year. The copies of the compliance report described in this Section II.E.13. shall be accompanied by a cover letter from the IM calling the attention of the recipients to any violations, material exceptions to compliance with the EPPs, or other shortfalls in compliance with the exemption to assist such officers and directors in carrying out their respective responsibilities.

F. *Special Notice Provisions.* A Special Notice containing (i) A notice of all of the conditions for relief under Sections III.C., E., F., G., Q., R., S. and V. and (ii) a copy of the Notice to Interested Parties must be provided to affected Client Plans in writing (which may be provided by U.S. mail or electronically, including by e-mail or use of a centralized electronic mailbox, so long as such electronic communication is reasonably calculated to result in the applicable Client Plan's receipt) as soon as practical, but no later than fifteen (15) days, following the date that the Notice to Interested Persons is provided to Client Plans generally, through publication in the **Federal Register**. As soon as practical following the Special Notice, a Client Plan fiduciary independent of any BlackRock Entity must be provided any additional material information regarding Covered Transactions described in Sections III.C., E., F., G., Q., R., S. and V. by the applicable BlackRock Manager on reasonable request; provided, that, solely for purposes of this subsection, the fiduciary of an In-House Plan is not required to be independent of any BlackRock Entity.

Section III: Covered Transactions

A. *Continuing Transactions.* Relief under Section I of this exemption is available for Type B Covered Transactions and Type C Covered Transactions and the unwind, settlement or other termination thereof provided that:

1. A list of all Type B Covered Transactions and all Type C Covered Transactions (the B and C List) as of the date of the Acquisition is prepared by BlackRock and provided to the ECO.

2. Any discretionary act by a BlackRock Manager with respect to a transaction on the B and C List is approved in advance in writing by the ECO. Such approval is required for, but not limited to, sales and other transfers to a third party, redemptions, the exercise of options, and the declaration of default or other credit impairment-driven decisions. The ECO must determine that the terms of such discretionary act are in the interests of the affected Client Plans.

3. The ECO Function periodically monitors outstanding transactions on the B and C List to inquire if an affirmative discretionary act, such as a credit driven action, would be appropriate. If the ECO makes such a determination, the ECO must direct the action be taken and must approve the terms thereof as being in the interests of the affected Client Plans.

4. The ECO Function sends to the IM an updated copy of the B and C List as of the end of each fiscal quarter summarizing the Type B Covered Transactions and Type C Covered Transactions remaining at the end of the quarter and any discretionary actions taken during the quarter by BlackRock Managers with respect to such transactions.

5. Upon the determination by the IM that an action taken with respect to a Type B Covered Transaction or Type C Covered Transaction was inappropriate or that the compensation the Client Plans received was inadequate, or that an action should have been taken but was not, the Client Plans are made whole by BlackRock.

B. *Purchases and Holdings by BlackRock Managers of Fixed Income Obligations Issued by an MPS in an Underwriting on Behalf of Client Plans Invested in an Index Account or Fund, or in a Model-Driven Account or Fund.* Relief under Section I of this exemption is available for a purchase and holding by BlackRock Managers of Fixed Income Obligations issued by an MPS in an underwriting on behalf of Client Plans for an Index Account or Fund, or a Model-Driven Account or Fund, provided that:

1. Such purchase is for the sole purpose of maintaining quantitative conformity with the weight of such Securities prescribed by the relevant Index, for Index Accounts or Funds, or the weight of such Securities prescribed by the relevant Model, for Model-Driven Accounts or Funds; and such purchase is reasonably calculated not to exceed the purchase amount necessary for such Model or quantitative conformity by more than a de minimis amount;

2. Such purchase is not made from any MPS;

3. No BlackRock Entity is in the selling syndicate;

4. After purchase, the responsible BlackRock Manager notifies the ECO if circumstances arise in which an action or inaction on the part of the BlackRock Manager regarding an MPS Fixed Income Obligation so acquired might be thought to be motivated by an interest which may affect the exercise of such BlackRock Manager's best judgment as a fiduciary, and complies with decisions of the ECO regarding the taking, or the refraining from taking, of actions in such circumstances; and

5. After purchase, any decision regarding conversion of an MPS Fixed Income Obligation into equity in the MPS is made by the IM.

C. *Purchase and Holding by BlackRock Managers of Fixed Income Obligations Issued by an MPS in an Underwriting on Behalf of Client Plans Invested in an Other Account or Fund.* Relief under Section I of this exemption is available for a purchase and holding by BlackRock Managers of Fixed Income Obligations issued by an MPS in an underwriting on behalf of Client Plans invested in an Other Account or Fund provided that:

1. The conditions of Section IV.A. of this exemption are satisfied, except that for purposes of Section IV.A.4.(a) and Section IV.A.5.(c), the MPS-issued Fixed Income Obligations at the time of purchase must be rated in one of the three highest rating categories by a Rating Organization and none of the Rating Organizations may rate the Fixed Income Obligations lower than in the third highest rating category;

2. Such purchase is not made from an MPS;

3. No BlackRock Entity is in the selling syndicate;

4. After purchase, the responsible BlackRock Manager notifies the ECO if circumstances arise in which an action or inaction on the part of the BlackRock Manager regarding an MPS Fixed Income Obligation so acquired might be thought to be motivated by an interest which may affect the exercise of such BlackRock Manager's best judgment as a fiduciary, and complies with decisions of the ECO regarding the taking, or the refraining from taking, of actions in such circumstances;

5. After purchase, any decision regarding conversion of an MPS Fixed Income Obligation into equity in the MPS is made by the IM; and

6. Special Notice of all of the foregoing conditions for relief under this Section III.C. must be provided in accordance with the terms of Section II.F.

D. *Certain Transactions in the Secondary Market by BlackRock Managers of Fixed Income Obligations Including Fixed Income Obligations Issued by or Traded With an MPS, and/or Under Which an MPS has Either an Ongoing Function or Can Potentially Incur Liability.* Relief under Section I of this exemption is available for a purchase or sale in the secondary market or the holding by BlackRock Managers on behalf of Client Plans of (i) Fixed Income Obligations issued by an MPS, (ii) Fixed Income Obligations issued by a third party but purchased from or sold to an MPS, and/or (iii) Fixed Income Obligations under which an MPS has either an ongoing function or can potentially incur liability, provided that:

1. If the Fixed Income Obligations are purchased from or sold to an MPS, it is as a result of the Three Quote Process.

2. With respect to Fixed Income Obligations that are issued by an MPS and are purchased and held by a BlackRock Manager for a Client Plan—

(a) After purchase, the responsible BlackRock Manager notifies the ECO if circumstances arise in which an action or inaction on the part of the BlackRock Manager regarding an MPS Fixed Income Obligation so acquired might be thought to be motivated by an interest which may affect the exercise of such BlackRock Manager's best judgment as a fiduciary, and complies with the decisions of the ECO regarding the taking, or the refraining from taking, of actions in such circumstances;

(b) After purchase, any decision regarding conversion of an MPS Fixed Income Obligation into equity in the MPS is made by the IM; and

(c) If purchased for an Index Account or Fund, or a Model-Driven Account or Fund, such purchase is for the sole purpose of maintaining quantitative conformity with the weight of such Securities prescribed by the relevant Index, for Index Accounts or Funds, or the weight of such Securities prescribed by the relevant Model, for Model-Driven Accounts or Funds and such purchase is reasonably calculated not to exceed the purchase amount necessary for such Model or quantitative conformity by more than a de minimis amount.

3. With respect to Fixed Income Obligations (whether or not issued by an MPS) held by a BlackRock Manager for a Client Plan under which an MPS has an ongoing function, such as servicing of collateral for asset-backed debt, or the potential for liability, such as under representations or warranties made by an MPS with respect to collateral for such asset-backed debt which the MPS originated, the taking of or refraining from taking any action by the responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the ECO.

4. With respect to any Fixed Income Obligation acquired under this Section III.D. which is a guaranteed governmental mortgage pool certificate within the meaning of 29 CFR 2510.3–101(i) which is accompanied by an implicit U.S. Government guarantee as opposed to an explicit U.S. Government guarantee, (a) The BlackRock Manager initiating a purchase of such Securities makes a determination that such Securities are of substantially similar credit quality as guaranteed governmental mortgage pool certificates accompanied by an explicit U.S. Government guarantee, (b) the ECO (in regular consultation with and under the supervision of the IM) monitors the credit spread between such implicitly and explicitly guaranteed certificates, and (c) each of the ECO and the IM (independently) has the authority and responsibility to determine whether purchases of implicitly guaranteed certificates should not be permitted due to such credit spread, and such authority and responsibility is reflected in the EPPs.

5. For purposes of this Section III.D., Asset-Backed Securities are not Fixed Income Obligations.

E. *Purchase in an Underwriting and Holding by BlackRock Managers of Fixed Income Obligations Issued by a Third Party when an MPS is Underwriter, in Either a Manager or Member Capacity, and/or Under Which an MPS has Either an Ongoing Function or Can Potentially Incur Liability.* Relief under Section I of this exemption is available for the purchase and holding by BlackRock Managers of Fixed Income Obligations issued by third parties in an underwriting when an MPS is an Underwriter, in either a manager or a member capacity, and/or Fixed Income Obligations under which an MPS has either an ongoing function or can potentially incur liability, provided that:

1. The conditions of Section IV.A. are satisfied.

2. Such purchase is not made from an MPS.

3. No BlackRock Entity is in the selling syndicate.

4. With respect to Fixed Income Obligations under which an MPS has either an ongoing function, such as debt trustee, servicer of collateral for asset-backed debt, or the potential for liability, such as under representations or warranties made by an MPS with respect to collateral for such asset-backed debt which the MPS originated, the taking of or refraining from taking any action by the responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the ECO.

5. With respect to any Fixed Income Obligation acquired under this Section III.E. which is a guaranteed governmental mortgage pool certificate within the meaning of 29 CFR 2510.3–101(i) which is accompanied by an implicit U.S. Government guarantee as opposed to an explicit U.S. Government guarantee, (a) The BlackRock Manager initiating a purchase of such Securities makes a determination that such Securities are of substantially similar credit quality as guaranteed governmental mortgage pool certificates accompanied by an explicit U.S. Government guarantee, (b) the ECO (in regular consultation with and under the supervision of the IM) monitors the credit spread between such implicitly and explicitly guaranteed certificates, and (c) each of the ECO and the IM (independently) has the authority and responsibility to determine whether purchases of implicitly guaranteed certificates should not be permitted due to such credit spread, and such authority and responsibility is reflected in the EPPs.

6. For purposes of this Section III.E., Asset-Backed Securities are not Fixed Income Obligations.

7. Special Notice of all of the foregoing conditions for relief under this Section III.E. must be provided in accordance with the terms of Section II.F.

F. *Purchase in an Underwriting and Holding by BlackRock Managers of Asset-Backed Securities, when an MPS is an Underwriter, in the capacity as either a Manager or a Member of the Selling Syndicate, Trustee, or, in the case of Asset-Backed Securities Which Are CMBS, Servicer.* Relief under Section I of this exemption is available for the purchase and holding by BlackRock Managers of Asset-Backed Securities issued in an underwriting where an MPS is (i) An underwriter, in the capacity as either a manager or a member of the selling syndicate, (ii) trustee, or (iii) solely in the case of Asset-Backed Securities which are CMBS, serves as servicer of a trust that issued such CMBS, provided that:

1. The conditions of Section IV.A. are satisfied, except that (a) For purposes of Section IV.A.4.(a), the Asset-Backed Securities at the time of purchase must

be rated in one of the three highest rating categories by a Rating Organization and none of the Rating Organizations may rate the Asset-Backed Securities lower than the third highest rating category, (b) in the case of Asset-Backed Securities which are CMBS and for which the MPS is servicer, the conditions of Section IV.B. are satisfied instead of the conditions of Section IV.A., and (c) if an MPS is an underwriter and an MPS is a servicer as described in clause (b), the conditions of both Section IV.A., as modified by Section III.F.1(a), and Section IV.B. must be satisfied;

2. Such purchase is not made from an MPS;

3. No BlackRock Entity is in the selling syndicate;

4. In the case of Asset-Backed Securities with respect to which an MPS has either an ongoing function, such as trustee, servicer of collateral for CMBS, or the potential for liability, such as under representations or warranties made by an MPS with respect to collateral for CMBS which collateral the MPS originated, the taking of or refraining from taking of any action by a responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the ECO;

5. The purchase meets the conditions of an applicable Underwriter Exemption; and

6. Special Notice of all of the foregoing conditions for relief under this Section III.F. must be provided in accordance with the terms of Section II.F.

G. *Purchase and Holding by BlackRock Managers of Equity Securities Issued by an Entity which is not an MPS and is Not a BlackRock Entity, in an Underwriting when an MPS is an Underwriter, in either a Manager or a Member Capacity.* Relief under Section I of this exemption is available for the purchase and holding by BlackRock Managers of Equity Securities issued by an entity which is not an MPS and which is not a BlackRock Entity in an underwriting when an MPS is an underwriter, in either a manager or a member capacity, provided that:

1. The conditions of Section IV.A. are satisfied;

2. Such purchase is not made from an MPS;

3. No BlackRock Entity is in the selling syndicate;

4. The Securities are not Asset-Backed Securities; and

5. Special Notice of all of the foregoing conditions for relief under this Section III.G. must be provided in accordance with the terms of Section II.F.

H. *Purchase and Sale by BlackRock Managers of Asset-Backed Securities in the Secondary Market, from or to an MPS, and/or when an MPS is Sponsor, Servicer, Originator, Swap Counterparty, Liquidity Provider, Trustee or Insurer, and the Holding Thereof.* Relief under Section I of this exemption is available for a sale of Asset-Backed Securities by a BlackRock Manager to an MPS, or the purchase of Asset-Backed Securities by BlackRock Managers from an MPS and the holding thereof, and/or any such purchase or sale in the secondary market or holding when an MPS is a sponsor, a servicer, an originator, a swap counterparty, a liquidity provider, a trustee or an insurer, provided that:

1. If the Asset-Backed Securities are purchased from or sold to an MPS, the purchase or sale is as a result of the Three Quote Process.

2. Regardless of from whom the BlackRock Manager purchases the Asset-Backed Securities, the purchase and holding of the Asset-Backed Security otherwise meets the conditions of an applicable Underwriter Exemption.

3. Regardless of from whom the BlackRock Manager purchased the Asset-Backed Securities, if an MPS is, with respect to such Asset-Backed Securities, a sponsor, servicer, originator, swap counterparty, liquidity provider, insurer or trustee, as those terms are utilized or defined in the Underwriter Exemptions, and circumstances arise in which the taking of or refraining from taking of any action by the responsible BlackRock Manager could have a material positive or negative effect upon the MPS, the taking of or refraining from taking of any such action is decided upon by the ECO.

I. *Repurchase Agreements when MPS is the Seller.* Section I of this exemption applies to an investment by a BlackRock Manager of Client Plan assets which involves the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of a Client Plan of a repurchase agreement (or Securities or other instruments under cover of a repurchase agreement) in which the seller of the underlying Securities or other instruments is an MPS which is a bank supervised by the United States or a State, a broker-dealer registered under the 1934 Act, or a dealer who makes primary markets in Securities of the United States government or any agency thereof, or in banker's acceptances, and reports daily to the Federal Reserve Bank of New York its positions with respect to these obligations, provided that each of the following conditions are satisfied:

1. The repurchase agreement is embodied in, or is entered into pursuant to a written agreement. Such written agreement must be a standardized industry form; provided, that with the approval of the ECO on or about the date of the Acquisition, written agreements with an MPS that were in effect as of the date of the Acquisition may continue to be used until there is a material modification of the same, at which time standardized industry forms must be adopted;

2. The repurchase agreement has a term of one year or less;

3. The Client Plan receives interest no less than that which it would receive in a comparable arm's length transaction with an unrelated party;

4. The Client Plan receives Securities, banker's acceptances, commercial paper or certificates of deposit having a market value equal to not less than one hundred percent (100%) of the purchase price paid by the Client Plan;

5. Upon expiration of the repurchase agreement and return of the Securities or other instruments to the seller, the seller transfers to the Client Plan an amount equal to the purchase price plus the appropriate interest;

6. Neither the MPS seller nor any MPS which is a member of the same MPS Group has discretionary authority or control with respect to the investment of the Client Plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets. This Section III.I.6. shall be deemed satisfied notwithstanding the investment of assets of an MPS Plan of the MPS which is the seller under such repurchase agreement in a Pooled Fund as of the date of the Acquisition, which Pooled Fund is a bank-maintained common or collective trust, provided that such assets, when aggregated with the assets of all other MPS Plans of the same MPS Group as that of the MPS seller and invested in such Pooled Fund, at all times since the date of the Acquisition, constitute or are deemed pursuant to Section II.A.3.(b) to constitute less than ten percent (10%) of the assets of such Pooled Fund.

7. The Securities, banker's acceptances, commercial paper or certificates of deposit received by the Client Plan:

(a) could be acquired directly by the Client Plan in a transaction not covered by this Section III.I. without violating ERISA sections 406(a)(1)(E), 406(a)(2) or 407(a); and,

(b) if the Securities are subject to the provisions of the 1933 Act, they are

obligations that are not ''restricted securities'' within the meaning of Rule 144 under the 1933 Act; provided that such restricted securities are permitted until July 31, 2010.

8. If the market value of the underlying Securities or other instruments falls below the purchase price at any time during the term of the agreement, the Client Plan may, under the written agreement required by Section III.I.1., require the MPS seller to deliver, by the close of business on the following business day (as such term is defined for purposes of the relevant written agreement), additional Securities or other instruments the market value of which, together with the market value of Securities or other instruments previously delivered or sold to the Client Plan under the repurchase agreement, equals at least one hundred percent (100%) of the purchase price paid by the Client Plan.

9. If the MPS seller does not deliver additional Securities or other instruments as required above, the Client Plan may terminate the agreement, and, if upon termination or expiration of the agreement, the amount owing is not paid to the Client Plan, the Client Plan may sell the Securities or other instruments and apply the proceeds against the obligations of the MPS seller under the agreement, and against any expenses associated with the sale.

10. The MPS seller agrees to furnish the Client Plan with the most recent available audited statement of its financial condition as well as its most recent available unaudited statement, agrees to furnish additional audited and unaudited statements of its financial condition as they are issued and either: (a) Agrees that each repurchase agreement transaction pursuant to the agreement shall constitute a representation by the MPS seller that there has been no material adverse change in its financial condition since the date of the last statement furnished that has not been disclosed to the Client Plan with whom such written agreement is made; or (b) prior to each repurchase agreement transaction, the MPS seller represents that, as of the time the transaction is negotiated, there has been no material adverse change in its financial condition since the date of the last statement furnished that has not been disclosed to the Client Plan with whom such written agreement is made.

11. In the event of termination and sale as described in Section III.I.9., the MPS seller pays to the Client Plan the amount of any remaining obligations and expenses not covered by the sale of the Securities or other instruments, plus interest at a reasonable rate.

12. If an MPS seller involved in a repurchase agreement covered by this exemption fails to comply with any condition of this exemption in the course of engaging in the repurchase agreement, the BlackRock Manager who caused the plan to engage in such repurchase agreement shall not be deemed to have caused the plan to engage in a transaction prohibited by ERISA sections 406(a)(1)(A) through (D) or ERISA section 406(b), Code section 4975, or FERSA section 8477(c) solely by reason of the MPS seller's failure to comply with the conditions of the exemption.

13. In the event of any dispute between a BlackRock Manager and an MPS seller involving a Covered Transaction under this Section III.I., the IM has the responsibility to decide whether, and if so how, BlackRock is to pursue relief on behalf of the Client Plan(s) against the MPS Seller.

14. At time of entry into or renewal of each Covered Transaction under this Section III.I., including both term repurchase transactions and daily renewals for ''open'' or ''overnight'' transactions, either (a) each Covered Transaction under this Section III.I., is as a result of the Three Quote Process, or, (b) the BlackRock Manager determines that the yield on the proposed transaction, or the renewal thereof, is at least as favorable to the Client Plans as the yield of the Client Plan on two (2) other available transactions which are comparable in terms of size, collateral type, credit quality of the counterparty, term and rate. The methodology employed for purposes of the comparison in (b) above must (c) be approved in advance by the ECO Function and (d), to the extent possible, refer to objective external data points, such as the Eurodollar overnight time deposit bid rate, the rate for repurchase agreements with U.S. government Securities, or rates for commercial paper issuances or agency discount note issuances sourced from Bloomberg, or another third party pricing service or market data provider (which providers may use different terminology to refer to these same external data points). The applicable BlackRock Manager must record a description of the comparable transactions, if reliance is placed upon same, and such data must be periodically reviewed by the ECO Function. The procedures described in this Section III.I.14. must be designed to ensure that BlackRock Managers determine to only enter into Covered Transactions with MPS sellers which are in the interests of Plan Clients, and such procedures must be reviewed and may be commented on by the IM.

J. *Responding to Tender Offers and Exchange Offers Solicited by an MPS.* Relief under Section I of this exemption is available for participation by BlackRock Managers on behalf of Client Plans in tender offers or exchange offers or similar transactions where an MPS acts as agent for the entity (which entity may not be an MPS) making the offer, provided that:

1. The Client Plan pays no fees to the MPS in connection with this Covered Transaction;

2. The BlackRock Manager submits to the ECO in advance of participation a written explanation of the reasons for such participation; and

3. The ECO Function determines that the reasons for participation by the BlackRock Manager in the Covered Transaction are appropriate from the vantage point of the Client Plans. Effective as of October 1, 2010, the ECO Function must affirmatively make this determination in writing prior to the BlackRock Manager participating in the Covered Transactions under this Section III.J.

K. *Purchase in Underwritings of Securities Issued by an Entity which is not an MPS when the Proceeds are Used to Repay a Debt to an MPS.* Relief under Section I of this exemption is available for the purchase by BlackRock Managers of Securities in underwritings issued by an entity which is not an MPS, but where the proceeds of the offering are used to repay a debt owed to an MPS, and the payment of such proceeds to the MPS, provided that the BlackRock Manager does not know that the proceeds will be applied to the repayment of debt owed to an MPS. If the BlackRock Manager does know that proceeds of the offering will be applied to the repayment of debt owed to an MPS, the purchase of the Securities and the payment of the proceeds to the MPS are exempt under Section I of this exemption provided that no more than twenty percent (20%) of the offering is purchased by BlackRock Managers for Client Plans, and no more than fifty percent (50%) of the offering in the aggregate is purchased by BlackRock, BlackRock Managers and other BlackRock Entities for Client Plans, other clients of BlackRock Managers, or as proprietary investments.

L. *Bank Deposits and Commercial Paper.* Relief under Section I of this exemption is available for an investment by a BlackRock Manager of Client Plan assets which involves the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf

of a Client Plan of certificates of deposit, time deposits or other bank deposits at an MPS, or in commercial paper issued by an MPS, provided that:

1. With respect to bank deposits, either:

(a)(i) The bank is supervised by the United States or a State, and at the outset of the Covered Transaction or renewal thereof of, such bank has a credit rating in one of the top two (2) categories by at least one of the Rating Organizations; (ii) neither the bank nor an affiliate of the bank has discretionary authority or control with respect to the investment of Client Plan assets involved in the Covered Transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets; and (iii) such deposit bears a reasonable interest rate, or—

(b) the BlackRock Manager and the MPS comply with ERISA section 408(b)(4).

2. With respect to commercial paper:

(a) the Client Plan is not an MPS Plan of the MPS issuing the commercial paper;

(b) the commercial paper has a stated maturity date of nine (9) months or less from the date of issue, exclusive of days of grace, or is a renewal of an issue of commercial paper the maturity of which is likewise limited;

(c) neither the MPS issuer of the commercial paper, any MPS guarantor of the commercial paper, nor any member of the same MPS Group as such MPS issuer or guarantor has discretionary authority or control with respect to the investment of the Client Plan assets involved in the Covered Transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets; and

(d) at the time it is acquired, the commercial paper is ranked in one of the two (2) highest rating categories by at least one of the Rating Organizations.

3. For purposes of the Covered Transactions set forth in this Section III.L.:

(a) No BlackRock Entity shall be regarded as an affiliate of an MPS bank at which a deposit is made of Client Plan assets, nor of an MPS issuer of commercial paper in which a BlackRock Manager invests Client Plan assets, and

(b) Section III.L.1.(a)(ii) and Sections III.L.2.(a) and (c) shall be deemed satisfied notwithstanding the investment of assets of an MPS Plan of the MPS which is the depository bank or issuer of commercial paper in a Pooled Fund as of the date of the Acquisition, which Pooled Fund is a bank-maintained common or collective trust, provided that such assets when aggregated with the assets of all other MPS Plans of the same MPS Group as the issuer of such asset and invested in such Pooled Fund, at all times since the date of the Acquisition, constitute or are deemed pursuant to Section II.A.3.(b) to constitute less than ten percent (10%) of such Pooled Fund.

M. *Securities Lending to an MPS.*

1. Relief under Section I of this exemption is available for:

(a) the lending of Securities by a BlackRock Manager that are assets of a Client Plan to an MPS which is a U.S. Broker-Dealer or a U.S. Bank provided that the conditions set forth in Section III.M.2. are met;

(b) the lending of Securities by a BlackRock Manager that are assets of a Client Plan to an MPS which is a Foreign Broker-Dealer or Foreign Bank; provided that, the conditions set forth in Section III.M.2. and Section III.M.3. below are met; and

(c) the payment to a BlackRock Manager of compensation for services rendered in connection with loans of Client Plan assets that are Securities to an MPS; provided that, the conditions set forth in Section III.M.4. below are met.

2. General Conditions for Transactions Described in Sections III.M.1.(a) and (b).

(a) The length of a Securities loan to an MPS does not exceed one year in term.

(b) Neither the MPS borrower nor any MPS which is a member of the same MPS Group as the MPS borrower has or exercises discretionary authority or control with respect to the investment of the Client Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. This Section III.M.2.(b) shall be deemed satisfied notwithstanding the investment of the assets of an MPS Plan of the MPS which is the borrower under such Securities lending transaction in a Pooled Fund as of the date of the Acquisition, which Pooled Fund is a bank-maintained common or collective trust, provided that such assets when aggregated with the assets of all other MPS Plans of the same MPS Group as that of the MPS borrower and invested in such Pooled Fund, at all times since the date of the Acquisition, constitute or are deemed pursuant to Section II.A.3.(b) to constitute less than ten percent (10%) of the assets of such Pooled Fund.

(c) The Client Plan receives from the MPS borrower by the close of the BlackRock Manager's business on the day in which the Securities lent are delivered to the MPS,

(i) U.S. Collateral having, as of the close of business on the preceding business day, a market value, or, in the case of bank letters of credit, a stated amount, equal to not less than one hundred percent (100%) of the then market value of the Securities lent; or

(ii) Foreign Collateral having as of the close of business on the preceding business day, a market value, or, in the case of bank letters of credit, a stated amount, equal to not less than:

(x) one hundred two percent (102%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the Securities are primarily traded if the collateral posted is denominated in the same currency as the Securities lent, or

(y) one hundred five percent (105%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the Securities are primarily traded if the collateral posted is denominated in a different currency than the Securities lent.

(d) Notwithstanding the foregoing, if the BlackRock Manager is a U.S. Bank, a Registered Investment Advisor, or U.S. Broker-Dealer, and such BlackRock Manager indemnifies the Client Plan with respect to the difference, if any, between the replacement cost of the borrowed Securities and the market value of the collateral on the date of a borrower default, the Client Plan receives from the MPS borrower by the close of the BlackRock Manager's business on the day in which the Securities lent are delivered to the borrower, Foreign Collateral having as of the close of business on the preceding business day, a market value, or, in the case of bank letters of credit, a stated amount, equal to not less than:

(i) One hundred percent (100%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the Securities are primarily traded if the collateral posted is denominated in the same currency as the Securities lent; or

(ii) one hundred one percent (101%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the Securities are primarily traded if the collateral posted is denominated in a different currency than the Securities lent and such currency is denominated in Euros, British pounds, Japanese yen, Swiss francs or Canadian dollars; or

(iii) one hundred five percent (105%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System if the collateral posted is denominated in a different currency than the Securities lent and such currency is other than those specified above.

(e)(i) If the MPS borrower is a U.S. Bank or U.S. Broker-Dealer, the Client Plan receives such U.S. Collateral or Foreign Collateral from the MPS borrower by the close of the BlackRock Manager's business on the day in which the Securities are delivered to the MPS borrower. Such collateral is received by the Client Plan either by physical delivery, wire transfer or by book entry in a Securities depository located in the United States, or,

(ii) If the MPS borrower is a Foreign Bank or Foreign Broker-Dealer, the Client Plan receives U.S. Collateral or Foreign Collateral from the MPS borrower by the close of the BlackRock Manager's business on the day in which the Securities are delivered to the borrower. Such collateral is received by the Client Plan either by physical delivery, wire transfer or by book entry in a Securities depository located in the United States or held on behalf of the Client Plan at an Eligible Securities Depository. The indicia of ownership of such collateral shall be maintained in accordance with section 404(b) of ERISA and 29 CFR 2550.404b–1.

(f) Prior to making of any such loan, the MPS borrower shall have furnished the BlackRock Manager with:

(i) The most recent available audited statement of the MPS borrower's financial condition, as audited by a United States certified public accounting firm or in the case of an MPS borrower that is a Foreign Broker-Dealer or Foreign Bank, a firm which is eligible or authorized to issue audited financial statements in conformity with accounting principles generally accepted in the primary jurisdiction that governs the borrowing MPS Foreign Broker-Dealer or Foreign Bank;

(ii) the most recent available unaudited statement of its financial condition (if the unaudited statement is more recent than such audited financial statement); and

(iii) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statement furnished to the BlackRock Manager that has not been disclosed to the BlackRock Manager. Such representations may be made by the MPS borrower's agreement that each loan shall constitute a representation by the MPS borrower that there has been no such material adverse change.

(g) The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the Client Plan as an arm's-length transaction with an unrelated party would be. Such loan agreement states that the Client Plan has a continuing security interest in, title to, or the rights of secured creditor with respect to the collateral. Such agreement may be in the form of a master agreement covering a series of Securities lending transactions.

(h) The written loan agreement must be a standardized industry form; provided, that, with the approval of the ECO on or about the date of the Acquisition, written loan agreements with an MPS borrower that were in effect as of the date of the Acquisition may continue to be used until there is a material modification of the same, at which time standardized industry forms must be adopted.

(i) In return for lending Securities, the Client Plan:

(i) receives a reasonable fee (in connection with the Securities lending transaction), and/or

(ii) has the opportunity to derive compensation through the investment of the currency collateral. Where the Client Plan has that opportunity, the Client Plan may pay a loan rebate or similar fee to the MPS borrower, if such fee is not greater than the Client Plan would pay in a comparable transaction with an unrelated party.

(j) All fees and other consideration received by the Client Plan in connection with the loan of Securities are reasonable. The identity of the currency in which the payment of fees and rebates will be made is set forth either in the written loan agreement or the loan confirmation as agreed to by the MPS borrower and the BlackRock Manager prior to the making of the loan.

(i) Pricing of a loan to an MPS borrower is based on (i) rates for comparable loans of the same Security to non-MPS borrowers and (ii) third-party market data:

(x) For loans of liquid Securities (sometimes referred to as general collateral loans), an automatic system may be used to price loans so long as the resulting rate the Client Plan receives from the MPS borrower is at least as favorable to the Client Plan as the rate the BlackRock Managers are receiving for Client Plans or other clients from non-MPS borrowers of the same Security;

(y) For purposes of pricing loans of less liquid Securities (sometimes referred to as ''special loans''), and for purposes of determining whether to terminate or continue a loan which does not have a set term, pricing may also be based on a BlackRock trader determination that continuing the loan is in the interest of the Client Plan based on all relevant factors, including price (provided that price is within the range of prices of other loans of the same Security to comparable non-MPS borrowers by BlackRock Managers for Client Plans or other clients) and potential adverse consequences to the Client Plan of terminating the loan, provided that the pricing data used in making these decisions is retained and made available for possible review by the ECO.

(ii) Automatic pricing mechanisms and pricing decisions by traders are subject to ongoing periodic review by the ECO Function, and the results of such review are included in reports by the ECO to the IM. Specifically, the quarterly reports by the ECO to the IM must address the lending patterns of:

(x) illiquid Securities to the MPS borrowers from all Client Plans, including the percentage that loans of such Securities to the MPSs represent of all loans of such Securities from all Client Plans; and

(y) illiquid Securities to the MPS borrowers from all Other Accounts or Funds, including the percentage that loans of such Securities to the MPSs represent of all loans of such Securities from all Other Accounts or Funds.

(k) The Client Plan receives the equivalent of all distributions made to holders of the borrowed Securities during the term of the loan including, but not limited to, dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional Securities;

(l) If the market value of the collateral at the close of trading on a business day is less than the applicable percentage of the market value of the borrowed Securities at the close of trading on that day (as described in this Section III.M.2.(c) of this exemption), then the MPS borrower shall deliver, by the close of business on the following business day, an additional amount of U.S. Collateral or Foreign Collateral the market value of which, together with the market value of all previously delivered collateral, equals at least the applicable percentage of the market value of all the borrowed Securities as of such preceding day.

Notwithstanding the foregoing, part of the U.S. Collateral or Foreign Collateral may be returned to the MPS borrower if the market value of the collateral exceeds the applicable percentage (described in this Section III.M.2.(c) of

this exemption) of the market value of the borrowed Securities, as long as the market value of the remaining U.S. Collateral or Foreign Collateral equals at least the applicable percentage of the market value of the borrowed Securities.

(m) The loan may be terminated by the Client Plan at any time, whereupon the MPS borrower shall deliver certificates for Securities identical to the borrowed Securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed Securities) to the Client Plan within the lesser of:

(i) The customary delivery period for such Securities,

(ii) five business days, or

(iii) the time negotiated for such delivery by the BlackRock Manager for the Client Plan, and the borrower.

(n) In the event that the loan is terminated, and the MPS borrower fails to return the borrowed Securities or the equivalent thereof within the applicable time described in Section III.M.2(m), the BlackRock Manager for the Client Plan may, under the terms of the loan agreement:

(i) Purchase Securities identical to the borrowed Securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the borrower under the agreement, and any expenses associated with the sale and/or purchase, and

(ii) the MPS borrower is obligated, under the terms of the loan agreement, to pay, and does pay to the Client Plan the amount of any remaining obligations and expenses not covered by the collateral, including reasonable attorney's fees incurred by the Client Plan for legal action arising out of default on the loans, plus interest at a reasonable rate.

Notwithstanding the foregoing, the MPS borrower may, in the event the MPS borrower fails to return borrowed Securities as described above, replace collateral, other than U.S. currency, with an amount of U.S. currency that is not less than the then current market value of the collateral, provided such replacement is approved by the BlackRock Manager.

(o) If the MPS borrower fails to comply with any provision of a loan agreement which requires compliance with this exemption, the BlackRock Manager who caused the Client Plan to engage in such transaction shall not be deemed to have caused the Client Plan to engage in a transaction prohibited by ERISA sections 406(a)(1)(A) through (D) or ERISA section 406(b) or FERSA section 8477(c) solely by reason of the borrower's failure to comply with the conditions of the exemption.

(p) If the Securities being loaned to an MPS borrower are managed in an Index Account or Fund, or a Model-Driven Account or Fund where the Index or the Model are created or maintained by the MPS borrower, the ECO Function periodically performs a review, no less than quarterly, of the use of such MPS-sponsored Index or Model, and the Securities loaned from such an account or fund to the MPS, which review is designed to enable a reasonable judgment as to whether the use of such Index or Model, or any changes thereto, were for the purpose of benefitting BlackRock or the MPS through the Securities lending activity described in this Section III.M. If the ECO forms a reasonable judgment that the use of such Index or Model, or any changes thereto, were for the purpose of benefitting BlackRock or the MPS, the ECO shall promptly inform the IM.

(q) In the event of any dispute between the BlackRock Manager on behalf of a Client Plan and an MPS borrower involving a Covered Transaction under this Section III.M., the IM shall decide whether, and if so, how the BlackRock Manager is to pursue relief on behalf of the Client Plan(s) against the MPS borrower.

(r) If the Securities being loaned to an MPS borrower are managed in an Other Account or Fund, the employees of the BlackRock Manager who exercise discretionary authority or control over the Other Account or Fund shall not have access to the information regarding whether the particular Securities are on loan to an MPS, with such access limitations imposed on or about September 30, 2010, and implemented through the EPPs on or about September 30, 2010.

3. Specific Conditions for Transactions Described in Section III.M.1.(b).

(a) The BlackRock Manager maintains the written documentation for the loan agreement at a site within the jurisdiction of the courts of the United States.

(b) Prior to entering into a transaction involving an MPS Foreign Broker-Dealer that is described in Section VI.KK.(1) or (2) or an MPS Foreign Bank that is described in Section VI.JJ.(1) either:

(i) The MPS Foreign Broker-Dealer or Foreign Bank agrees to submit to the jurisdiction of the United States; agrees to appoint an agent for service of process in the United States, which may be an affiliate; consents to service of process on such agent; and agrees that any enforcement by a Client Plan of its rights under the Securities lending agreement will, as the option of the Client Plan, occur exclusively in the United States courts; or

(ii) the BlackRock Manager, if a U.S. Bank, a Registered Investment Advisor, or U.S. Broker-Dealer, agrees to indemnify the Client Plan with respect to the difference, if any, between the replacement cost of the borrowed Securities and the market value of the collateral on the date of an MPS borrower default plus interest and any transaction costs incurred (including attorney's fees of such Client Plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the Client Plan may incur or suffer directly arising out of a borrower default by the MPS Foreign Broker-Dealer or Foreign Bank.

(c) In the case of a Securities lending transaction involving an MPS Foreign Broker-Dealer that is described in Section VI.KK.(3) or an MPS Foreign Bank that is described in Section VI.JJ.(2), the BlackRock Manager must be a U.S. Bank, a Registered Investment Advisor, or U.S. Broker-Dealer, and prior to entering into the loan transaction, such BlackRock Manager must agree to indemnify the Client Plan with respect to the difference, if any, between the replacement cost of the borrowed Securities and the market value of the collateral on the date of an MPS borrower default plus interest and any transaction costs incurred (including attorney's fees of such plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the Client Plan may incur or suffer directly arising out of a borrower default by the MPS Foreign Broker-Dealer or Foreign Bank.

4. Specific Conditions for Transactions Described in Section III.M.1.(c):

(a) The loan of Securities is not prohibited by section 406(a) of ERISA or otherwise satisfies the conditions of this exemption.

(b) The BlackRock Manager is authorized to engage in Securities lending transactions on behalf of the Client Plan.

(c) The compensation, the terms of which are at least as favorable to the Client Plan as an arm's length transaction with an unrelated party, is reasonable and is paid in accordance with the terms of a written instrument, which may be in the form of a master agreement covering a series of Securities lending transactions.

(d) Except as otherwise provided in Section III.M.4.(f), the arrangement under which the compensation is paid:

(i) Is subject to the prior written authorization of a fiduciary of a Client

Plan (the authorizing fiduciary), who is (other than in the case of an In-House Plan) independent of the BlackRock Manager, provided that for purposes of this Section III.M.4.(d) a fiduciary of an MPS Plan acting as the authorizing fiduciary shall be deemed independent of the BlackRock Manager so long as such fiduciary, as of the date of the authorization, is not a BlackRock Entity, and

(ii) may be terminated by the authorizing fiduciary within:

(x) the time negotiated for such notice of termination by the Client Plan and the BlackRock Manager, or

(y) five business days, whichever is less, in either case without penalty to the Client Plan.

(e) No such authorization is made or renewed unless the BlackRock Manager shall have furnished the authorizing fiduciary with any reasonably available information which the BlackRock Manager reasonably believes to be necessary to determine whether such authorization should be made or renewed, and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request.

(f) Special Rule for Commingled Investment Funds. In the case of a pooled separate account maintained by an insurance company qualified to do business in a State or a common or collective trust fund maintained by a bank or trust company supervised by a State or Federal agency, the requirements of Section III.M.4.(d) of this exemption shall not apply, provided that:

(i) The information described in Section III.M.4.(e) (including information with respect to any material change in the arrangement) shall be furnished by the BlackRock Manager to the authorizing fiduciary described in Section III.M.4.(d) with respect to each Client Plan whose assets are invested in the account or fund, not less than 30 days prior to implementation of the arrangement or material change thereto, and, where requested, upon the reasonable request of the authorizing fiduciary;

(ii) in the event any such authorizing fiduciary submits a notice in writing to the BlackRock Manager objecting to the implementation of, material change in, or continuation of the arrangement, the Client Plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the account or fund, without penalty to the Client Plan, within such time as may be necessary to effect such withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a Client Plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a Client Plan electing to withdraw; and

(iii) in the case of a Client Plan whose assets are proposed to be invested in the account or fund subsequent to the implementation of the compensation arrangement and which has not authorized the arrangement in the manner described in Sections III.M.4.(f)(i) and (ii), the Client Plan's investment in the account or fund shall be authorized in the manner described in Section III.M.4.(d)(i).

N. *To-Be-Announced Trades (TBAs) of GNMA, FHLMC or FNMA Mortgage-Backed Securities with an MPS Counterparty.* Relief under Section I of this exemption is available for trades (purchases and sales) on a principal basis of mortgage-backed Securities issued by FHLMC, FNMA or guaranteed by GNMA and meeting the definition of ''guaranteed governmental mortgage pool certificate'' in 29 CFR 2510.3–101(i) with an MPS on a TBA basis, including, when applicable, delivery of the underlying Securities to a Client Plan, provided that:

1. The Covered Transactions under this Section III.N. are a result of the Three Quote Process; provided that, solely for purposes of this Section III.N.1., firm quotes under the Three Quote Process may also include firm quotes obtained on comparable Securities, as described below, when firm quotes with respect to the applicable TBA transactions are not reasonably attainable.

2. With regard to purchases of FHLMC and FNMA mortgage-backed Securities on a TBA basis, (i) The BlackRock Manager makes a determination that such Securities are of substantially similar credit quality as GNMA guaranteed governmental mortgage pool certificates, (ii) the ECO (in regular consultation with and under the supervision of the IM) monitors the credit spread between GNMA and FHLMC/FNMA mortgage-backed Securities, and (iii) each of the ECO and the IM (independently) has the authority and responsibility to determine whether purchases of FHLMC and/or FNMA mortgage-backed Securities on a TBA basis should not be permitted due to such credit spread, and such authority and responsibility is reflected in the EPPs.

3. With regard to possible delivery of underlying Securities to Client Plans, as opposed to cash settlement, the ECO Function approves any such delivery in advance.

For purposes of Section III.N.1., ''comparable Securities'' are Securities that: (a) Are issued and/or guaranteed by the same agency, (b) have the same coupon, (c) have a principal amount at least equal to but no more than two percent (2%) greater than the Security purchased or sold, (d) are of the same program or class, and (e) either (i) Have an aggregate weighted average monthly maturity within a 12-month variance of the Security purchased or sold, but in no case can the variance be more than ten percent (10%) of such aggregate weighted average maturity of the Securities purchased or sold, or (ii) meet some other comparable objective standard containing a range of variance that is no greater than that described in (i) above and that assures that the aging of the Securities is properly taken into account.

O. *Foreign Exchange Transactions with an MPS Counterparty.* Relief under Section I of this exemption is available for a Foreign Exchange Transaction by a BlackRock Manager on behalf of Client Plans with an MPS as counterparty provided that:

1. (a) The Foreign Exchange Transaction is as a result of the Three Quote Process; or (b) the total net amount of the Foreign Exchange Transaction on behalf of Client Plans by BlackRock Managers is greater than $1 million and the exchange rate is within 0.5% above or below the Interbank Rate as represented to the BlackRock Managers by the MPS;

2. Foreign Exchange Transactions with an MPS counterparty only involve currencies of countries that are classified as ''developed'' or ''emerging'' markets by a third party Index provider that divides national economies into ''developed,'' ''emerging'' and ''frontier'' markets. The Index provider shall be selected by BlackRock, provided, however, the IM shall have the right to reject the Index provider in its sole discretion at any time; and

3. Each Foreign Exchange Transaction complying with Section III.O.1.(b) must be set forth in the applicable quarterly reports of the ECO to the IM.

P. *Agency Execution of Equity and Fixed Income Securities Trades and Related Clearing as Described in PTE 86–128, Including Agency Cross Trades, When the Broker is an MPS.* Relief under Section I of this exemption is available for transactions in Securities described in Section II of Prohibited Transaction Exemption 86–128, as

amended [22] (PTE 86–18), as if BlackRock Managers and MPS broker-dealers were ''affiliates'' as defined in Section I.(b) of PTE 86–128, provided the following conditions are satisfied:

1. The MPS is selected to perform Securities brokerage services for Client Plans pursuant to the normal brokerage placement practices, policies and procedures of the BlackRock Manager designed to ensure best execution.

2. The conditions of PTE 86–128 set forth in the following sections of that exemption must be complied with: Section III(e); Section III(f); Section III(g)(2); and Section III(h); provided, however, that, for purposes of Section III(e), Section III(f) and Section III(g)(2) of PTE 86–128, the ECO Function is the ''authorizing fiduciary'' referred to therein; and the ECO has the authority to terminate the use of the MPS as broker-dealer without penalty to Client Plans at any time; and provided further that the first sentence of Section III(h) of PTE 86–128 is amended for purposes of this Section III.P.2. to provide as follows: ''A trustee [other than a nondiscretionary trustee] may only engage in a covered transaction with a plan that has total net assets with a value of at least $50 million and in the case of a pooled fund, the $50 million requirement will be met if fifty percent (50%) or more of the units of beneficial interest in such pooled fund are held by investors having total net assets with a value of at least $50 million.''

3. With respect to agency cross transactions described in Section III(g) of PTE 86–128 that are being effected or executed by an MPS broker, (i) Neither the MPS broker effecting or executing the agency cross transaction nor any member of the same MPS Group as the MPS broker effecting or executing the agency cross transaction may have discretionary authority to act on behalf of, and/or provide investment advice to another party to the agency cross transaction which is a seller when the Client Plan is a buyer, or which is a buyer, when the Client Plan is a seller (Another Party), and (ii), the BlackRock Manager instituting the transaction for the Client Plan must not have knowledge that a BlackRock Entity has discretionary authority and/or provides investment advice to Another Party to the agency cross transaction.

4. The exceptions in Sections IV(a), (b), and (c) of PTE 86–128 are applicable to this exemption.

5. Notwithstanding the other conditions of this Section III.P., with respect to Client Plans which as of the date of the Acquisition had in place with BlackRock Managers either directed brokerage and/or wrap fee arrangements which required the BlackRock Managers to use an MPS as a Securities broker, BlackRock Managers may continue to use that MPS as the Securities broker for such Client Plans under the brokerage procedures in place as of the date of the Acquisition; provided that a list of all of such arrangements has been provided to the ECO and no material changes are made to such arrangements.

Q. *Use by BlackRock Managers of Exchanges and Automated Trading Systems on Behalf of Client Plans.* Relief under Section I of this exemption is available for the direct or indirect use by, or directing of trades to, U.S. and non-U.S. exchanges or U.S. Automated Trading Systems (ATS) in which one or more MPSs have an ownership interest by BlackRock Managers for Client Plans, provided that:

1. Prior to January 1, 2011,

(a) No single MPS (together with other members of the same MPS Group) has a greater than twenty percent (20%) ownership interest in the exchange or the ATS; and

(b) the ECO does not make a determination, summarized in the ECO quarterly report, that a BlackRock Manager or all BlackRock Managers must discontinue such direct or indirect use of or the directing of trades to any such exchange or ATS on the basis that either the amount of use or the volume of trades is unwarranted or not in the interests of the Client Plans and their participants and beneficiaries.

2. Effective on and after January 1, 2011, either

(a) No one MPS (together with other members of the same MPS Group) has (i) A greater than ten percent (10%) ownership interest in the exchange or ATS or (ii) the BlackRock Managers do not know the level of such ownership interest; or

(b) if a BlackRock Manager knows that an MPS (together with other members of the same MPS Group) has an ownership interest that is greater than ten percent (10%) but not greater than twenty percent (20%) in the exchange or ATS,

(i) The ECO makes a determination, summarized in the ECO quarterly report, that there is no reason for a BlackRock Manager or all BlackRock Managers to discontinue such direct or indirect use of or the directing of trades to any such exchange or ATS on the basis that the amount of use or the volume of trades is unwarranted or not in the interests of the Client Plans and their participants and beneficiaries, and does not make a determination that a BlackRock Manager or all BlackRock Managers must discontinue such direct or indirect use of or the directing of trades to any such exchange or ATS on the basis that the amount of use or the volume of trades is unwarranted or not in the interests of the Client Plans and their participants and beneficiaries. The IM may request any additional information relating to any such determination summarized in the ECO quarterly report and may, after consultation with the ECO, make a determination that a BlackRock Manager or all BlackRock Managers must discontinue such direct or indirect use of or the directing of trades to any such exchange or ATS on the basis that the amount of use or the volume of trades is unwarranted or not in the interests of the Client Plans and their participants and beneficiaries;

(ii) the price and compensation associated with any purchases or sales utilizing such exchange or ATS are not greater than the price and compensation associated with an arm's length transaction with an unrelated party;

(iii) all such exchanges and ATSs shall be situated within the jurisdiction of the U.S. District Courts and regulated by a U.S. Federal regulatory body or a U.S. federally approved self-regulatory body, provided that this condition shall not apply to the direct or indirect use of or the directing of trades to an exchange in a country other than the United States which is regulated by a government regulator or a government approved self-regulatory body in such country and which involves trading in Securities (including the lending of Securities) or futures contracts; and

(iv) Special Notice of all of the foregoing conditions for relief under this Section II.Q.2.(b) must be provided in accordance with the terms of Section II.F.

R. *Purchases in the Secondary Market of Common and Preferred Stock Issued by an MPS by BlackRock Managers for Client Plans Invested in an Index Account or Fund, or a Model-Driven Account or Fund.* Relief under Section I of this exemption is available for the purchase in the secondary market of common or preferred stock issued by an MPS by BlackRock Managers for Client Plans invested in an Index Account or Fund, or a Model-Driven Account or Fund provided that:

1. Such purchase is for the sole purpose of maintaining quantitative conformity with the weight of such Securities prescribed by the relevant Index, for Index Accounts or Funds, or the weight of such Securities prescribed by the relevant Model, for Model-Driven Accounts or Funds, and such purchase

[22] 51 FR 41686 (Nov. 18, 1986), as amended, 67 FR 64137 (Oct. 17, 2002).

is reasonably calculated not to exceed the purchase amount necessary for such Model or quantitative conformity by more than a de minimis amount.

2. Such purchase is not made from the issuing MPS.

3. Notwithstanding Section III.R.2.,

(a) With respect to Client Plans which as of the date of the Acquisition had in place with a BlackRock Manager either a directed brokerage and/or wrap fee arrangement which required the BlackRock Manager to use a certain MPS as a Securities broker, the BlackRock Manager may purchase MPS common or preferred stock through such MPS, including, if applicable, the issuing MPS, acting as agent under the brokerage arrangement in place as of the date of the Acquisition; provided that, a list of all of such arrangements has been provided to the ECO and no material changes are made to such arrangements. Special Notice of all of the foregoing conditions for relief under this Section III.R. must be provided in accordance with the terms of Section II.F.

(b) BlackRock Managers may rely on other exemptive relief when acquiring stock of an MPS for Client Plans through an MPS broker, including the issuing MPS.

S. *Purchase in the Secondary Market of Common and Preferred Stock Issued by an MPS by BlackRock Managers for Client Plans Invested in an Other Account or Fund.* Relief under Section I of this exemption is available for the purchase in the secondary market of common or preferred stock issued by an MPS by BlackRock Managers for Client Plans invested in an Other Account or Fund provided that:

1. Such purchase is not made from the issuing MPS.

2. Notwithstanding Section III.S.1.,

(a) With respect to Client Plans which as of the date of the Acquisition had in place with a BlackRock Manager either a directed brokerage and/or wrap fee arrangement which required the BlackRock Manager to use a certain MPS as a Securities broker, the BlackRock Manager may purchase MPS common or preferred stock through such MPS, including if applicable, the issuing MPS, acting as agent under the brokerage arrangements in place as of the date of the Acquisition; provided that, a list of all of such arrangements has been provided to the ECO and no material changes are made to such arrangements. Special Notice of all of the foregoing conditions for relief under this Section III.S. must be provided in accordance with the terms of Section II.F.

(b) BlackRock Managers may rely on other exemptive relief when acquiring stock of an MPS for Client Plans under this Section III.S. through an MPS broker, including the issuing MPS.

3. With respect to Client Plans described in Section III.S.2.(a), the ECO Function periodically monitors purchases of MPS stock for such Client Plans to ensure that the amount of stock of an MPS purchased for such Client Plans is not disproportionate to the amount of such stock of the same MPS purchased for Client Plans invested in Other Accounts or Funds not subject to directed brokerage and/or wrap fee arrangements and described in Section III.S.2.(a).

4. As a consequence of a purchase of MPS stock, the class of stock purchased does not constitute more than five percent (5%) of the Other Account or Fund. In the case of a Pooled Fund, the class of stock purchased and attributed to each Client Plan does not exceed five percent (5%) of such Client Plan's proportionate interest in the Pooled Fund.

5. Aggregate daily purchases of a class of MPS stock for Client Plans do not exceed the greater of (i) Fifteen percent (15%) of the aggregate average daily trading volume (ADTV) for the previous ten (10) trading days, or (ii) fifteen percent (15%) of trading volume on the date of the purchase. These volume limitations must be met on a portfolio manager by portfolio manager basis unless purchases are coordinated among portfolio managers, in which case the limitations are applied to the coordinated purchase.[23] Any coordinated purchases of the same class of MPS stock in the secondary market for Index Accounts or Funds or for Model-Driven Accounts or Funds must be taken into account when applying these ADTV limitations on purchases for an Other Account or Fund; provided, however, if coordinated purchases for Index Accounts or Funds, or for Model-Driven Accounts or Funds, would cause the fifteen percent (15%) limitation to be exceeded, BlackRock Managers can nonetheless acquire for Other Accounts or Funds up to the greater of five percent (5%) of ADTV for the previous ten (10) trading days or five percent (5%) of trading volume on the day of the Covered Transaction. For purposes of this Section III.S.5., cross trades of MPS equity Securities which comply with an applicable statutory or administrative prohibited transaction exemption are not taken into account.

6. The ECO Function monitors the volume limits on purchases of MPS stock described in Section III.S.5. and provides a monthly report to the IM with respect to such purchases and limits. The IM shall impose lower volume limitations and take other appropriate action with respect to such purchases if the IM determines on the basis of these reports by the ECO and publicly available information materially related to the trading of the Securities of an MPS on its primary listing exchange (or market) that the purchases described have a material positive impact on the market price for such Securities.

T. *The Provision of Custodial, Administrative and Similar Ministerial Services by an MPS for a Client Plan as a Consequence of a BlackRock Manager Exercising Investment Discretion on Behalf of the Client Plan or Rendering Investment Advice to the Client Plan.* Relief under Section I of this exemption is available for the provision of custodial, administrative and similar ministerial services by an MPS for a Client Plan as a consequence of a BlackRock Manager exercising investment discretion or rendering investment advice (in each case, within the meaning of ERISA section 3(21)(A)) for or to such Client Plan, provided that (1) the terms of such service are comparable to those a Client Plan would receive in an arm's length transaction with an unrelated party and (2) the ECO approves in advance and in writing (which may include electronic communication if retrievable by the ECO) the choice or recommendation of the MPS by the BlackRock Manager and the terms of the services, including but not limited to, the associated fees.

U. *Purchases, Sales and Holdings by BlackRock Managers for Client Plans of Commercial Paper Issued by ABCP Conduits, When an MPS Has One or More Roles.* Relief under Section I of this exemption is available for the purchase or sale, including purchases from or sales to an MPS, and the holding by BlackRock Managers acting on behalf of Client Plans of commercial paper issued by an ABCP Conduit with respect to which an MPS acts as seller, placement agent, and/or in some continuing capacity such as program administrator, provider of liquidity or provider of credit support, provided that:

1. (a)(i) The Client Plan is not an MPS Plan of the MPS with whom the purchase or sale takes place, or an MPS Plan of another member of the same

[23] For example, if two or more portfolio managers send their purchase orders to the same trading desk and the traders on that trading desk coordinate the purchases of the same MPS equity Securities, the limitations apply to the trading desk; if two or more portfolio managers or two or more trading desks are coordinating purchases of MPS equity Securities, the limitations are applied across the group of portfolio managers or traders who are coordinating the purchase orders.

MPS Group as such MPS, and (ii) the Client Plan is not an MPS Plan of an MPS which is acting in a continuing capacity, or an MPS Plan of another member of the same MPS Group as such MPS, and (iii) no MPS described in Sections III.U.1.(a)(i) or (ii), or another member of the same MPS Group as such MPS, has discretionary authority or control with respect to the Client Plan assets involved in the Covered Transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets;

(b) This Section III.U.1 shall be deemed satisfied notwithstanding the investment of assets of an MPS Plan of the MPS, which is placement agent or otherwise is acting in a continuing capacity, in a Pooled Fund as of the date of the Acquisition, which Pooled Fund is a bank-maintained common or collective trust, provided that such assets when aggregated with the assets of all other MPS Plans of the same MPS Group as the MPS which is the placement agent or otherwise is acting in a continuing capacity and invested in such Pooled Fund, at all times since the date of the Acquisition, constitute or are deemed pursuant to Section II.A.3.(b) to constitute less than ten percent (10%) of such Pooled Fund.

2. The commercial paper has a stated maturity date of nine months or less from the date of issue, exclusive of days of grace, or is a renewal of an issue of commercial paper the maturity of which is likewise limited;

3. At the time it is acquired, the commercial paper is ranked in the highest rating category by at least one of the Rating Organizations;

4. If the seller or purchaser of the ABCP Conduit commercial paper is an MPS, secondary market purchases and sales are pursuant to the Three Quote Process, provided that, for purposes of this Section III.U.4., firm quotes on comparable short-term money market instruments rated in the same category may be used as quotes for purposes of the Three Quote Process;

5. If an MPS performs a continuing role and there is a default, the taking of or refraining from taking of any action by the responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the IM;

No BlackRock Entity is to be regarded as an affiliate of any MPS for purposes of the Covered Transactions set forth in this Section III.U.

V. *Purchase, Holding and Disposition by BlackRock Managers for Client Plans of Shares of Exchange-Traded Open-End Investment Companies Registered Under the 1940 Act (ETF) Managed by BlackRock Managers.* Relief under Section I of this exemption is available for the purchase, holding and disposition by BlackRock Managers for Client Plans of shares of an ETF managed by a BlackRock Manager provided that:

1. (a) the BlackRock Manager purchases such ETF shares from or through a person other than an MPS or a BlackRock Entity, and

(b) no purchase is exempt under Section I of this exemption if the BlackRock Manager portfolio manager acting for the Client Plan knows or should know that the shares to be acquired for Client Plans are Creation Shares, or that the purchase for Client Plans will result in new Creation Shares.

2. Notwithstanding Section III.V.1.(a), BlackRock Managers may purchase shares of ETFs managed by a BlackRock Manager through an MPS acting as agent for Client Plans which, as of the date of the Acquisition, had in place with a BlackRock Manager either a directed brokerage and/or wrap fee arrangement which required the BlackRock Manager to use such MPS as a Securities broker; provided that, (i) A list of all of such arrangements has been provided to the ECO and no material changes are made to such arrangements and (ii) the ECO Function periodically monitors purchases of Securities to ensure that the amount of BlackRock-managed ETF shares purchased for Client Plans under Section III.V.2. is not disproportionate to the amount of BlackRock-managed ETF shares purchased for Client Plans pursuant to Section III.V.1. Special Notice of all of the foregoing conditions for relief under this Section III.V.2. must be provided in accordance with the terms of Section II.F.

W. *Investment of Assets of MPS Plans in a BlackRock Bank-Maintained Common or Collective Trust as of the Date of the Acquisition—Fees Paid Outside the Trust.* Relief under Section I of this exemption is available with respect to MPS Plans invested in Pooled Funds as of the date of the Acquisition, which Pooled Funds are common or collective trusts maintained by BlackRock Institutional Trust Company, N.A., and in connection with which investments such MPS Plans pay management fees directly to BlackRock Managers until the earliest of (i) Termination of the investment in the Pooled Fund, (ii) transition of the fee arrangement to one under which the BlackRock Manager's fees are paid from assets of the Pooled Fund or by the MPS Plan sponsor, or (iii) December 31, 2010 (Unwind Period 2) provided that:

1. The fees paid by such MPS Plans to the BlackRock Managers during Unwind Period 2 are neither more than reasonable compensation nor significantly more than fees paid to the BlackRock Managers by other, comparable Client Plans invested in such Pooled Funds which are not MPS Plans; and

2. The MPS Plans do not pay to BlackRock Managers during Unwind Period 2 any type of fee or other compensation that was not charged to or otherwise borne by MPS Client Plan investors in the Pooled Fund as of the date of the Acquisition.

During Unwind Period 2, the IM must review the investment by the MPS Plans in the Pooled Fund; all fees paid by the affected MPS Plans to BlackRock Managers must be disclosed to the IM; the IM must review the offering documents for the Pooled Funds and any advisory or management agreements with BlackRock Managers; and any material change in the terms and conditions of the investment by the affected MPS Plans in the Pooled Fund, including but not limited to changes to fees paid to BlackRock Managers or the terms of the advisory or management agreements with BlackRock Managers, must be promptly disclosed to the IM and be subject to the IM's written approval. Further, during Unwind Period 2, each such MPS Plan may terminate its investment in the Pooled Fund upon no more than thirty (30) days notice and without incurring a redemption fee paid to a BlackRock Manager.

X. *Purchase, Holding and Disposition of BlackRock Equity Securities in the Secondary Market by BlackRock Managers for an Index Account or Fund, or a Model-Driven Account or Fund, Including Buy-Ups.*[24] Relief under Section I of this exemption is available for the purchase, holding and disposition of common or preferred stock issued by BlackRock in the secondary market by BlackRock Managers for Client Plans in an Index Account or Fund, or in a Model-Driven Account or Fund provided that:

1. The acquisition, holding and disposition of the BlackRock Securities is for the sole purpose of maintaining quantitative conformity with the weight of such Securities prescribed by the relevant Index, for Index Accounts or Funds, or the weight of such Securities prescribed by the relevant Model, for Model-Driven Accounts or Funds, and

[24] BlackRock requested such relief for the avoidance of any issue about the necessity for such relief in particular circumstances; the Department is not opining on the need for such relief herein.

such purchase is reasonably calculated not to exceed the purchase amount necessary for such Model or quantitative conformity by more than a de minimis amount.

2. Any acquisition of BlackRock Securities does not involve any agreement, arrangement or understanding regarding the design or operation of the account or fund acquiring the BlackRock Securities which is intended to benefit BlackRock or any party in which BlackRock may have an interest.

3. With respect to an acquisition of BlackRock Securities by such an account or fund which constitutes a Buy-Up,

(a) The acquisition is made on a single trading day from or through one broker-dealer, which broker-dealer is not an MPS or a BlackRock Entity; provided, however, that if the volume limitation in Section III.X.3.(d) below cannot be satisfied in a single trading day, the acquisition will be completed in as few trading days as possible in compliance with such volume limitation and such trades will be reviewed by the ECO and reported to the IM;

(b) based upon the best available information, the acquisition is not the opening transaction of a trading day and is not made in the last half hour before the close of the trading day;

(c) the price paid by the BlackRock Manager is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from broker-dealers who are not MPSs or BlackRock Entities;

(d) aggregate daily purchases do not exceed fifteen percent (15%) of aggregate average daily trading volume for the Security, as determined by the greater of (i) The trading volume for the Security occurring on the applicable Recognized Securities Exchange and/or Automated Trading System on the date of the transactions, or (ii) the aggregate average daily trading volume for the Security occurring on the applicable Recognized Securities Exchange and/or Automated Trading System for the previous ten (10) trading days, both based on the best information reasonably available at the time of the transaction. These volume limitations are applied on a portfolio manager by portfolio manager basis unless purchases of BlackRock Securities are coordinated by the portfolio managers or trading desks, in which case the limitations are aggregated for the coordinating portfolio managers or trading desks. Provided further, if BlackRock, without Client Plan direction or consent, initiates a new Index Account or Fund or Model-Driven Account or Fund on its own accord, with BlackRock Securities included therein, the volume restrictions for such new account or fund shall be determined by aggregating all portfolio managers purchasing for such new account of fund. Cross trades of BlackRock Securities which comply with an applicable statutory or administrative prohibited transaction exemption are not included in the amount of aggregate daily purchases to which the limitations of this Section III.X. apply;

(e) All purchases and sales of BlackRock Securities occur either (i) On a Recognized Securities Exchange, (ii) through an Automated Trading System operated by a broker-dealer that is not a BlackRock Entity and is either registered under the 1934 Act, and thereby subject to regulation by the Securities and Exchange Commission, or subject to regulation and supervision by the Securities and Futures Authority of the UK or another applicable regulatory authority, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an Automated Trading System that is operated by a Recognized Securities Exchange, pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(f) the ECO designs acquisition procedures for BlackRock Managers to follow in Buy-Ups, which the IM approves in advance of the commencement of any Buy-Up, and the ECO Function monitors BlackRock Manager's compliance with such procedures.

Y. *Acquisition by BlackRock Managers of Financial Guarantees, Indemnities and Similar Protections for Client Plans from MPSs.* Relief under Section I of this exemption is available for the provision by an MPS of a financial guarantee, indemnification arrangement or similar instrument or arrangement providing protection to a Client Plan against possible losses or risks provided that:

1. The terms of the arrangement (including the identity of the provider) are approved by a fiduciary of the Client Plan which is independent of the MPS providing such protection and of BlackRock;

2. The compensation owed the MPS under the arrangement is paid by a BlackRock Entity and not paid out of the assets of the Client Plan;

3. In the event a Client Plan or the ECO concludes an event has occurred which should trigger the obligations of the MPS under the arrangement, and the MPS disagrees to any material extent, the IM determines the steps the BlackRock Manager must take to protect the interests of the Client Plan; and

4. The MPS providing the arrangement is capable of being sued in United States courts, has contractually agreed to be subject to litigation in the United States with respect to any matter relating to this Section III.Y., and has sufficient assets in the United States to honor its commitments under the arrangement.

Section IV: Affiliated Underwritings and Affiliated Servicing

A. Affiliated Underwritings

1. The Securities to be purchased are either:

(a) Part of an issue registered under the 1933 Act, or, if Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(i) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States,

(ii) are issued by a bank,

(iii) are exempt from such registration requirement pursuant to a Federal statute other than the 1933 Act, or

(iv) are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act, and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the SEC during the preceding twelve (12) months; or

(b) part of an issue that is an Eligible Rule 144A Offering. Where the Eligible Rule 144A Offering of the Securities is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum; or

(c) municipal bonds taxable by the United States, including Build America Bonds created under section 54AA of the Code or successor thereto, under which the United States pays a subsidy to the state or local government issuer, but not including Building America Bonds which provide a tax credit to investors.

2. The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that

is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that:

(a) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(b) if such Securities are debt Securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt Securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

3. The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if:

(a) such Securities are purchased by others pursuant to a rights offering; or

(b) such Securities are offered pursuant to an over-allotment option.

4. The issuer of the Securities to be purchased pursuant to this exemption must have been in continuous operation for not less than three (3) years, including the operation of any predecessors, unless the Securities to be purchased:

(a) Are non-convertible debt Securities rated in one of the four highest rating categories by a Rating Organization; provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(b)(i) are debt Securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(ii) are municipal bonds taxable by the United States, including Build America Bonds created under section 54AA of the Code or successor thereto, under which the United States pays a subsidy to the state or local government issuer, but not including Building America Bonds which provide a tax credit to investors; or

(c) are debt Securities which are fully guaranteed by a guarantor that has been in continuous operation for not less than three (3) years, including the operation of any predecessors, provided that such guarantor has issued other Securities registered under the 1933 Act; or if such guarantor has issued other Securities which are exempt from such registration requirement, such guarantor has been in continuous operation for not less than three (3) years, including the operation of any predecessors, and such guarantor is:

(i) a bank;

(ii) an issuer of Securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(iii) an issuer of Securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act, and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed hereunder with the SEC during the preceding twelve (12) months.

5. The aggregate amount of Securities of an issue purchased, pursuant to this exemption, by the BlackRock Manager with: (i) the assets of all Client Plans; and (ii) the assets, calculated on a *pro rata* basis, of all Client Plans investing in Pooled Funds managed by the BlackRock Manager; and (iii) the assets of plans to which the BlackRock Manager renders investment advice within the meaning of 29 CFR 2510.3 21(c) does not exceed:

(a) ten percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity securities;

(b) thirty five percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are Asset-Backed Securities rated in one of the three highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the third highest rating category;

(c) thirty five percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt Securities rated in one of the four highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(d) twenty five percent (25%) of the total amount of the Securities being offered in an issue, if such Securities are debt Securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(e) the assets of any single Client Plan (and the assets of any Client Plans investing in Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt Securities rated lower than the sixth highest rating category by any of the Rating Organizations;

(f) notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Subsections A.(5)(a)–(d) of this Section IV., the amount of Securities in any issue (whether equity or debt Securities or Asset-Backed Securities) purchased, pursuant to this exemption, by the BlackRock Manager on behalf of any single Client Plan, either individually or through investment, calculated on a pro rata basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, provided that a Sub-Advised Pooled Fund described in Section VI.AAA. as a whole may purchase up to three percent (3%) of an issue; and

(g) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section IV.A.5.(a)–(d) and (f), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to QIBs; plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

6. The aggregate amount to be paid by any single Client Plan in purchasing any Securities which are the subject of this exemption, including any amounts paid by any Client Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan, as of the last day of the most recent fiscal quarter of such Client Plan prior to such transaction, provided that a Sub-Advised Pooled Fund as a whole may pay up to one percent (1%) of fair market value of its net assets in purchasing such Securities.

7. The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit any BlackRock Entity or MPS.

8. Each Client Plan shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging

in covered transactions involving an Eligible Rule 144A Offering, each Client Plan shall have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in an Affiliated Underwriting, each Client Plan in such Pooled Fund other than a Sub-Advised Pooled Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan in a Pooled Fund other than a Sub-Advised Pooled Fund does not have total net assets with a value of at least $50 million, the $50 Million Net Asset Requirement will be met, if fifty percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by investors, each of which has total net assets with a value of at least $50 million.

For purposes of a Pooled Fund engaging in an Affiliated Underwriting involving an Eligible Rule 144A Offering, each Client Plan in such Pooled Fund other than a Sub-Advised Pooled Fund shall have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan. Notwithstanding the foregoing, if each such Client Plan in such Pooled Fund other than a Sub-Advised Pooled Fund does not have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan, the $100 Million Net Asset Requirement will be met if fifty percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by investors, each of which have total net assets of at least $100 million in Securities of issuers that are not affiliated with such investor, and the Pooled Fund itself qualifies as a QIB.

For purposes of the net asset requirements described, above in Section IV.A.8., where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in ERISA section 407(d)(7), the $50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the $100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

9. No more than twenty percent (20%) of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of In-House Plans for which the BlackRock Manager, or a BlackRock Entity exercises investment discretion.

10. The BlackRock Manager must be a QPAM, and, in addition to satisfying the requirements for a QPAM under section VI(a) of PTE 84–14, the BlackRock Manager must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

11. The BlackRock Manager maintains, or causes to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons described below in Section IV.A.12.(a) to determine whether the conditions of this exemption have been met, except that:

(a) No party in interest with respect to a plan which engages in the covered transactions, other than the BlackRock Manager, shall be subject to a civil penalty under ERISA section 502(i) or the taxes imposed by Code sections 4975(a) and (b), if such records are not maintained, or not available for examination as required below by Section IV.A.12.(a); and

(b) A separate prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the BlackRock Manager, such records are lost or destroyed prior to the end of the six-year period.

12. (a) Except as provided below, in Section IV.A.12.(b), and notwithstanding the provisions of subsections (a)(2) and (b) of ERISA section 504, the records referred to, above, in Section IV.A.11. are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC;

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary;

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(b) None of the persons described in Sections IV.A.12.(a)(ii) through (iv) shall be authorized to examine trade secrets of the BlackRock Manager, or commercial or financial information which is privileged or confidential; and

(c) Should the BlackRock Manager refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section IV.A.12.(b), the BlackRock Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

B. Affiliated Servicing

1. The Securities are CMBS that are rated in one of the three highest rating categories by a Rating Organization; provided that none of the Rating Organizations rates such Securities in a category lower than the third highest rating category.

2. The purchase of the CMBS meets the conditions of an applicable Underwriter Exemption.

3. (a) The aggregate amount of CMBS of an issue purchased, pursuant to this exemption, by the BlackRock Manager with:

(i) The assets of all Client Plans; and

(ii) The assets, calculated on a pro rata basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager; and

(iii) The assets of plans to which the Asset Manager renders investment advice, within the meaning of 29 CFR Sec. 2510.3–21(c), does not exceed thirty five percent (35%) of the total amount of the CMBS being offered in an issue.

(b) Notwithstanding the percentage of CMBS of an issue permitted to be acquired, as set forth in Section IV.B.3.(a) of this exemption, the amount of CMBS in any issue purchased, pursuant to this exemption, by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a pro rata basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such CMBS being offered in such issue, and

(c) If purchased in an Eligible Rule 144A Offering, the total amount of the CMBS being offered for purposes of determining the percentages described in Section IV.B.3(a), is the total of:

(i) The principal amount of the offering of such class of CMBS sold by underwriters or members of the selling syndicate to QIBs; plus

(ii) The principal amount of the offering of such class of CMBS in any concurrent public offering.

4. The aggregate amount to be paid by any single Client Plan in purchasing any CMBS which are the subject of this exemption, including any amounts paid by any Client Plan in purchasing such

CMBS through a Pooled Fund, calculated on a pro rata basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan, as of the last day of the most recent fiscal quarter of such Client Plan prior to such transaction.

5. The Covered Transactions under this Section IV.B. are not part of an agreement, arrangement, or understanding designed to benefit any MPS.

6. The requirements of Sections IV.A.8. through 12. are met.

Section V: Correction Procedures

A. 1. The ECO shall monitor Covered Transactions and shall determine whether a particular Covered Transaction constitutes a Violation. The ECO shall notify the IM within five (5) business days following the discovery of any Violation.

2. The ECO shall make an initial determination as to how to correct a Violation and place the conclusion of such determination in writing, with such conclusion disclosed to the IM within five (5) business days of the placing of the conclusion of such determination in writing. Following the initial determination, the ECO must keep the IM apprised on a current basis of the process of correction and must consult with the IM regarding each Violation and the appropriate form of correction. The ECO shall report the correction of the Violation to the IM within five (5) business days following completion of the correction. For purposes of this Section V.A.2., ''correction'' must be consistent with ERISA section 502(i) and Code section 4975(f)(5).

3. The IM shall determinate whether it agrees that the correction of a Violation by the ECO is adequate and shall place the conclusion of such determination in writing, and, if the IM does not agree with the adequacy of the correction, the IM shall have the authority to require additional corrective actions by BlackRock.

4. A summary of Violations and corrections of Violations will be in the IM's annual compliance report as described in Section II.E.12.

B. Special Correction Procedure

1. If a Covered Transaction which would otherwise constitute a Violation is corrected under this ''Special Correction Procedure,'' such Covered Transaction shall continue to be exempt under Section I of this exemption.

2. (a) The Special Correction Procedure is a complete correction of the Violation no later than fourteen (14) business days following the date on which the ECO submits the quarterly report to the IM for the quarter in which the Covered Transaction first would become a non-exempt prohibited transaction by reason of constituting a Violation if not for this Section V.B.

(b) Solely for purposes of the Special Correction Procedure, ''correction'' of a Covered Transaction which would otherwise be a Violation means either:

(i) Restoring the Client Plan to the position it would have been in had the conditions of the exemption been complied with;

(ii) correction consistent with ERISA section 502(i) and Code section 4975(f)(5); or

(iii) correction consistent with the Voluntary Fiduciary Correction Program.[25]

(c) Other than with respect to the definition of ''correction'' specified above, when utilizing the Special Correction Procedure the ECO and the IM shall comply with Section V.A.

Section VI: Definitions[26]

A. ''1933 Act'' means the Securities Act of 1933, as amended.

B. ''1934 Act'' or ''Exchange Act'' means the Securities Exchange Act of 1934, as amended.

C. ''1940 Act'' means the Investment Company Act of 1940, as amended.

D. ''$50 Million Net Asset Requirement'' shall have the meaning set forth in Section IV.A.8. of this exemption.

E. ''$100 Million Net Asset Requirement'' shall have the meaning set forth in Section IV.A.8. of this exemption.

F. ''ABCP Conduit'' means a special purpose vehicle that acquires assets from one or more originators and issues commercial paper to provide funding to the originator(s). Such vehicles are typically administered by a bank, but is not required to be administered by a bank, which provides liquidity support (standing ready to purchase the conduit's commercial paper if it cannot be rolled over) and/or credit support (committing to cover losses in the event of default). The program administrator also typically acts as placement agent for the commercial paper, sometimes together with one or more other placement agents. Commercial paper issued by such a conduit may be purchased directly from the program administrator or other placement agent, or traded on the secondary market with another broker-dealer making a market in the Securities.

G. ''Acquisition'' means the acquisition by BlackRock of Barclays Global Investors UK Holdings, Ltd. and its subsidiaries on December 1, 2009.

H. ''Affiliate'' of another person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative (as defined in section 3(15) of ERISA) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director, partner or employee.

I. ''Asset-Backed Securities'' means Securities which are pass-through certificates or trust certificates characterized as equity pursuant to 29 CFR 2510.3–101 that represent a beneficial ownership interest in the assets of an issuer which is a trust, with any such trust limited to (1) A single or multi-family residential or commercial mortgage investment trust, (2) a motor vehicle receivable investment trust, or (3) a guaranteed governmental mortgage pool certificate investment trust, and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of the trust, the corpus or assets of which consist solely or primarily of secured obligations that bear interest or are purchased at a discount. For purposes of Section IV.A. of this exemption, Asset-Backed Securities are treated as debt Securities.

J. ''authorizing fiduciary'' has the meaning set forth in Section III.M.4(d)(i) of this exemption.

K. ''Automated Trading System'' or ''ATS'' means an electronic trading system, ECN or electronic clearing network or similar venue that functions in a manner intended to simulate a Securities exchange by electronically matching orders from multiple buyers and sellers, such as an ''alternative trading system'' within the meaning of the SEC's Reg. ATS (17 CFR part 242.300), as such definition may be amended from time to time, or an ''automated quotation system'' as described in Section 3(a)(51)(A)(ii) of the 1934 Act.

L. ''B and C List'' has the meaning set forth in Section III.A.1. of this exemption.

M. ''BlackRock'' means BlackRock, Inc. and any successors thereof.

N. ''BlackRock Entity'' means BlackRock and any entity directly or indirectly, through one or more intermediaries, under the control of

[25] PTE 2002–51, 67 FR 70623 (November 25, 2002), as amended, 71 FR 20135 (April 19, 2006).

[26] The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Section headings are for convenience only.

BlackRock, and any other entity which subsequently becomes directly or indirectly, through one or more intermediaries, under the control of BlackRock, and successors of the foregoing.

O. ''BlackRock Manager'' means any bank, investment advisor, investment manager directly or indirectly, through one or more intermediaries, under the control of BlackRock, and any other bank, investment advisor, or investment manager which subsequently becomes directly or indirectly, through one or more intermediaries, under the control of BlackRock, and successors of the foregoing, including but not limited to BlackRock Advisors, LLC, BlackRock Financial Management, Inc., BlackRock Capital Management, Inc., BlackRock Institutional Management Corporation, BlackRock International, Ltd., State Street Research and Management Company, BlackRock Realty Advisors, Inc., BlackRock Investment Management, LLC, BlackRock Fund Advisors, and BlackRock Institutional Trust Company, N.A. and any of the investment advisors and investment manager it controls.

P. ''Buy-Up'' means an initial acquisition of Securities issued by BlackRock by a BlackRock Manager, if such acquisition exceeds one percent (1%) of the aggregate daily trading volume for such Security, for an Index Account or Fund, or a Model-Driven Account or Fund which is necessary to bring the fund's or account's holdings of such Securities either to its capitalization-weighted or other specified composition in the relevant Index, as determined by the organization maintaining such Index, or to its correct weighting as determined by the Model.

Q. ''Client Plan'' means any plan subject to ERISA section 406, Code section 4975 or FERSA section 8477(c) for which a BlackRock Manager is a fiduciary as described in ERISA section 3(21), including, but not limited to, any Pooled Fund, MPS Plan, Index Account or Fund, Model-Driven Account or Fund, Other Account or Fund, or In-House Plan, except where specified to the contrary.

R. ''CMBS'' means an Asset-Backed Security with respect to which the assets or corpus of the issuer consist solely or primarily of obligations secured by commercial real property (including obligations secured by leasehold interests on commercial real property).

S. ''Code'' means the Internal Revenue Code of 1986, as amended.

T. ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

U. ''Covered Transaction'' means each transaction set forth in Section III by a BlackRock Manager for a Client Plan with, affecting or involving, directly or indirectly, an MPS and/or a BlackRock Entity.

V. ''Creation Shares'' means new shares in an ETF created by an exchange of a specified basket of Securities and/or cash to the ETF for such new shares of the ETF.

W. ''ECO Function'' means the ECO and such other BlackRock Entity employees in legal and compliance roles working under the supervision of the ECO in connection with the Covered Transactions. The list of BlackRock Entity employees shall be shared with the IM from time to time, not less than quarterly, and such employees will be made available to discuss the relevant Covered Transactions with the IM to the extent the IM or the ECO deem it reasonably prudent.

X. ''Electronic Communications Network'' or ''ECN'' means an electronic system described in Rule 600(b)(23) of Regulation NMS under the 1934 Act.

Y. ''Eligible Rule 144A Offering'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) under the 1940 Act.

Z. ''Eligible Securities Depository'' means an eligible securities depository as that term is defined under Rule 17f–7 of the 1940 Act, as such definition may be amended from time to time.

AA. ''EPP Correction'' has the meaning set forth in Section II.C. of this exemption.

BB. ''ERISA'' means the Employee Retirement Income Security Act of 1974, as amended.

CC. ''Exemption Compliance Officer'' or ''ECO'' means an officer of BlackRock or of a BlackRock Entity appointed by BlackRock or such BlackRock Entity, subject to the approval of the IM, who is responsible for compliance with the exemption. The ECO, unless otherwise stated in this exemption, will be responsible for: monitoring all Covered Transactions and reviewing compliance with all of the conditions of the exemption applicable thereto; approving certain Covered Transactions in advance as required by the terms of the exemption; reviewing reports of Covered Transactions and the results of sampling of Covered Transactions; and determining when Covered Transactions transgress the EPPs and/or constitute a Violation.

DD. ''ETF'' means an exchange-traded open-end investment company registered under the 1940 Act.

EE. ''Exemption Polices and Procedures'' or ''EPPs'' means the written policy adopted and implemented by BlackRock for BlackRock Entities that is reasonably designed to ensure compliance with the terms of the exemption. The EPPs must reflect the specific requirements of the exemption, but must also be designed to ensure that the decisions to enter into Covered Transactions on behalf of Client Plans with the MPSs are in the interests of Client Plans and their participants and beneficiaries, including by ensuring to the extent possible that the terms of each Covered Transaction are at least as favorable to the Client Plan as the terms generally available in comparable arm's length transactions with unrelated parties.

FF. ''FERSA'' means the Federal Employees' Retirement System Act of 1986, as amended.

GG. ''FHLMC'' means the Federal Home Loan Mortgage Corporation.

HH. ''Fixed Income Obligations'' means: (1) Fixed income obligations including structured debt or other instruments characterized as debt pursuant to 29 CFR 2510.3–101, including, but not limited to, debt convertible into equity, certificates of deposit and loans (other than loans with respect to which an MPS is the entity which acts as lead lender) and (2) guaranteed governmental mortgage pool certificates within the meaning of 29 CFR 2510.3–101(i). Asset-Backed Securities are not Fixed Income Obligations for purposes of this exemption.

II. ''FNMA'' means the Federal National Mortgage Association.

JJ. ''Foreign Bank'' means an institution that has substantially similar powers to a bank as defined in section 202(a)(2) of the Investment Advisers Act, as amended, has as of the last day of its most recent fiscal year, equity capital which is the equivalent of no less than $200 million, and is:

(1)(a) Registered and regulated under the laws of the Financial Services Authority in the United Kingdom, or (b)(i) registered and regulated by a securities commission of a Province of Canada that is a member of the Canadian Securities Administration, and (ii) is subject to the oversight of a Canadian self-regulatory authority; or

(2) subject to regulation by the relevant governmental banking agency(ies) of a country other than the United States and the regulation and oversight of these banking agencies were applicable to a bank that received: (i) An individual exemption, granted by the Department under section 408(a) of ERISA, involving the loan of securities

by a plan to a bank or (ii) a final authorization by the Department to engage in an otherwise prohibited transaction pursuant to Prohibited Transaction Exemption 96–62, as amended (PTE 96–62), involving the loan of securities by a plan to a bank. On the date this exemption becomes effective, the following countries shall qualify for purposes of this clause (ii): United Kingdom, Canada, Germany, Japan, Australia, Switzerland, France, the Netherlands and Sweden.

KK. ''Foreign Broker-Dealer'' means a broker-dealer that has, as of the last day of its most recent fiscal year, equity capital that is the equivalent of no less than $200 million and is:

(1) Registered and regulated under the laws of the Financial Services Authority in the United Kingdom;

(2) Registered and regulated by a securities commission of a Province of Canada that is a member of the Canadian Securities Administration, and is subject to the oversight of a Canadian self-regulatory authority; or

(3) Registered and regulated under the relevant securities laws of a governmental entity of a country other than the United States and such securities laws and regulation were applicable to a broker-dealer that received: (a) An individual exemption, granted by the Department under section 408(a) of ERISA, involving the loan of securities by a plan to a broker-dealer or (b) a final authorization by the Department to engage in an otherwise prohibited transaction pursuant to PTE 96–62, as amended, involving the loan of securities by a plan to a broker-dealer. On the date this exemption becomes effective, the following countries shall qualify for purposes of this clause (2): United Kingdom, Canada, Germany, Japan, Australia, Switzerland, France, the Netherlands and Sweden.

LL. ''Foreign Collateral'' means:

(1) Securities issued by or guaranteed as to principal and interest by the following Multilateral Development Banks, the obligations of which are backed by the participating countries, including the United States: The International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development and the International Finance Corporation;

(2) Foreign sovereign debt securities provided that at least one nationally recognized statistical rating organization has rated in one of its two highest categories either the issue, the issuer or guarantor;

(3) The British pound, the Canadian dollar, the Swiss franc, the Japanese yen or the Euro;

(4) Irrevocable letters of credit issued by a Foreign Bank, other than the borrower or an affiliate thereof, which has a counterparty rating of investment grade or better as determined by a nationally recognized statistical rating organization; or

(5) Any type of collateral described in Rule 15c3–3 of the 1934 Act as amended from time to time provided that the lending fiduciary is a U.S. Bank or U.S. Broker-Dealer and such fiduciary indemnifies the plan with respect to the difference, if any, between the replacement cost of the borrowed Securities and the market value of the collateral on the date of a borrower default plus interest and any transaction costs which a plan may incur or suffer directly arising out of a borrower default. Notwithstanding the foregoing, collateral described in any of the categories enumerated in section V(e) of Prohibited Transaction Exemption 2006–16 will be considered U.S. Collateral for purposes of the exemption.

MM. ''Foreign Exchange Transaction'' means the exchange of the currency of one nation for the currency of another nation, or a contract for such an exchange. The term Foreign Exchange Transaction includes option contracts on foreign exchange transactions. Foreign Exchange Transactions may be either ''spot'', ''forward'' or ''split'' depending on the settlement date of the transaction.

NN. ''GNMA'' means the Government National Mortgage Association.

OO. ''Independent Monitor'' or ''IM'' means an individual or entity appointed by BlackRock to carry out certain functions set forth in Sections II, III and V of the exemption and who (or which), given the number of types of Covered Transactions and the number of actual individual Covered Transactions potentially covered by the exemption, must be knowledgeable and experienced with respect to each Covered Transaction and able to demonstrate sophistication in relevant markets, instruments and trading techniques relative thereto, and, in addition, must understand and accept in writing its duties and responsibilities under ERISA and the exemption with respect to the Client Plans. The IM must be independent of and unrelated to BlackRock and any MPS. For purposes of this exemption, such individual or entity will not be deemed to be independent of and unrelated to BlackRock and the MPSs if:

(1) Such individual or entity directly or indirectly controls, is controlled by, or is under common control with BlackRock or an MPS;

(2) Such individual or entity, or any employee thereof performing services in connection with this exemption, or an officer, director, partner, or highly compensated employee (as defined in Code section 4975(e)(2)(H)) thereof, is an officer, director, partner or highly compensated employee (as defined in Code section 4975(e)(2)(H)) of BlackRock or an MPS; or any member of the business segment performing services in connection with this exemption is a relative of an officer, director, partner or highly compensated employee (as defined in Code section 4975(e)(2)(H)) of BlackRock or an MPS.

However, if an individual is a director of the IM and an officer, director, partner or highly compensated employee (as defined in Code section 4975(e)(2)(H)) of BlackRock or an MPS, and if he or she abstains from participation in any of the services performed by the IM under this exemption, then this Section VI.OO.(2) shall not apply.

For purposes of this Subsection, the term officer means a president, any senior vice president in charge of a principal business unit, division or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for the IM, BlackRock, or an MPS.

(3) The IM directly or indirectly receives any compensation or other consideration for the IM's personal account in connection with any Covered Transaction, except that the IM may receive compensation from BlackRock for acting as IM as contemplated herein if the amount or payment of such compensation is reasonable and not contingent upon or in any way affected by any decision made by the IM while acting as IM; or

(4) The annual gross revenue received by the IM, during any year of its engagement, from the MPSs and BlackRock Entities for all services exceeds the greater of (a) Five percent (5%) of the IM's annual gross revenue from all sources for its prior tax year, or, (b) one percent (1%) of the annual gross revenue of the IM and its majority shareholder from all sources for their prior tax year.

PP. ''Index'' means an equity or debt Securities or commodities index that represents the investment performance of a specific segment of the market for equity or debt Securities or commodities in the United States and/or an individual foreign country or any

collection of foreign countries, but only if—

(1) The organization creating and maintaining the index is:

(a) Engaged in the business of providing financial information, evaluation, advice or Securities brokerage services to institutional clients,

(b) a publisher of financial news or information, or

(c) a public Securities exchange or association of Securities dealers; and

(2) The index is created and maintained by an organization independent of all BlackRock Entities. For purposes of this definition of ''Index,'' every BlackRock Entity is deemed to be independent of every MPS.

(3) The index is a generally accepted standardized index of Securities or commodities which is not specifically tailored for the use of a BlackRock Manager(s).

(4) If the organization creating, providing or maintaining the Index is an MPS:

(a) such Index must be widely-used in the market by independent institutional investors other than pursuant to an investment management or advisory relationship with a BlackRock Manager, and must be prepared or applied by such MPS in the same manner as for customers other than a BlackRock Manager(s);

(b) BlackRock must certify to the ECO whether, in its reasonable judgment, such Index is widely-used in the market. In making this determination, BlackRock shall take into consideration factors such as (i) Publication of summary Index information by the MPS providing the Index, Bloomberg, Reuters, or a similar institution involved in the dissemination of financial information, and (ii) delivery of Index information including but not limited to Index component information by such MPS to clients or other subscribers including by electronic means including via the Internet;

(c) BlackRock must notify the ECO if it becomes aware that: (i) Such Index is operated other than in accordance with objective rules, in the ordinary course of business, (ii) manipulation of any such Index has occurred for the purpose of benefiting BlackRock, or (iii) in the event that any rule change occurred in connection with the rules underlying such Index, such rule change was made by the MPS for the purpose of benefiting BlackRock; provided, however, this Subsection (c)(iii) expressly excludes instances where the rule changes were made in response to requests from clients/prospective clients of BlackRock even if BlackRock is ultimately hired to manage such a portfolio (*e.g.,* if plan sponsor X requests a ''Global ex-Sudan Fixed Income Index'', an MPS decides to sponsor such index and plan sponsor X approaches BlackRock or otherwise issues a ''Request for Proposal'' for investment managers who could manage an index portfolio benchmarked to the Global ex-Sudan Fixed Income Index).

(d) BlackRock must certify to the ECO annually that it is not aware of the occurrence of any of the events described in Section VI.PP.(4)(c), and if BlackRock cannot so certify, or if BlackRock provides the ECO with the notice described Section VI.PP.(4)(c), the ECO shall notify the IM, and the IM must take appropriate remedial action which may include, but need not be limited to, instructions for relevant BlackRock Managers to cease using such Index.

QQ. ''Index Account or Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by a BlackRock Manager or a BlackRock Entity, in which one or more Client Plans invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an Index by either (i) replicating the same combination of Securities or commodities which compose such Index or (ii) sampling the Securities or commodities which compose such Index based on objective criteria and data;

(2) for which the BlackRock Manager does not use its discretion, or data within its control, to affect the identity or amount of Securities or commodities to be purchased or sold;

(3) that contains ''plan assets'' subject to either ERISA section 406, Code section 4975 or FERSA section 8477(c); and,

(4) that involves no agreement, arrangement, or understanding regarding the design or operation of the Index Account or Fund which is intended to benefit a BlackRock Entity or an MPS, or any party in which a BlackRock Entity or an MPS may have an interest.

For purposes of this definition of ''Index Account or Fund'', every BlackRock Entity is deemed to be independent of each MPS.

RR. ''In-House Plan'' means an employee benefit plan that is subject to ERISA section 406 and/or Code section 4975, and that is sponsored by a BlackRock Entity for its employees.

SS. ''Interbank Rate'' means the interbank bid and asked rate for foreign exchange transactions of comparable size and maturity at the time of the transaction as quoted on a nationally recognized service for facilitating foreign currency trades between large commercial banks and Securities dealers.

TT. ''know'' means to have actual knowledge. BlackRock Managers will be deemed to have actual knowledge of information set forth in a written agreement or offering document as of the date the BlackRock Manager receives such agreement or document.

UU. ''Model'' means a computer model that is based on prescribed objective criteria using independent data not within the control of a BlackRock Entity to transform an Index.

VV. ''Model-Driven Account or Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by a BlackRock Manager or a BlackRock Entity in which one or more Client Plans invest, and—

(1) Which is composed of Securities or commodities the identity of which and the amount of which are selected by a Model;

(2) that contains ''plan assets'' subject to either ERISA section 406, Code section 4975 or FERSA section 8477(c); and

(3) that involves no agreement, arrangement, or understanding regarding the design or operation of the Model-Driven Account or Fund or the utilization of any specific objective criteria which is intended to benefit a BlackRock Entity or an MPS, or any party in which a BlackRock Entity or an MPS may have an interest.

For purposes of this definition of ''Model-Driven Account or Fund,'' every BlackRock Entity is deemed to be independent of each MPS.

WW. ''MPS'' or ''Minority Passive Shareholder'' means (1) Barclays PLC, (2) Bank of America Corporation, (3) The PNC Financial Services Group, Inc., or (4) each entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with one or more of Barclays PLC (Barclays MPSs), Bank of America Corporation (BOA MPSs) or The PNC Financial Services Group, Inc., (PNC MPSs) (each of the PNC MPSs, Barclays MPSs, and the BOA MPSs, an MPS Group) but excluding any and all BlackRock Entities. Bank of America Corporation and any entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Bank of America Corporation (collectively, the BOA Group) shall cease to be an MPS on the day after the number of representatives of the BOA Group on the BlackRock Board of Directors is reduced to one (1).

XX. ''MPS Group'' shall have the meaning set forth in the definition of MPS.

YY. ''MPS Plans'' means an employee benefit plan(s) that is subject to ERISA section 406 and/or Code section 4975, and that is sponsored by an MPS for its employees.

ZZ. ''Other Account or Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by a BlackRock Manager or a BlackRock Entity in which one or more Client Plans invest, and—

(1) which is not an Index Account or Fund or a Model-Driven Account or Fund; and

(2) that contains ''plan assets'' subject to either ERISA section 406, Code section 4975 or FERSA section 8477(c).

AAA. ''Pooled Fund'' means a common or collective trust fund or other pooled investment fund:

(1) In which Client Plan(s) invest;

(2) for which a BlackRock Manager exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s); and

(3) that contains ''plan assets'' subject to either ERISA section 406, Code section 4975 or FERSA section 8477(c).

Solely for purposes of Section IV of this exemption, ''Pooled Fund(s)'' shall only include funds or trusts which otherwise meet this definition but which also are either (i) Maintained by a BlackRock Entity or (ii) maintained by a person which is not a BlackRock Entity but is sub-advised by a BlackRock Manager, provided that with respect to a Pooled Fund described in (ii), (A) the fund or trust is either a bank-maintained common or collective trust fund or an insurance company pooled separate account that holds assets of at least $250 million, (B) the bank or insurance company sponsoring the pooled fund has total client assets under its management or control in excess of $5 billion as of the last day of its most recent fiscal year, and shareholders' or partners' equity in excess of $1 million, and (C) the decision to invest the Client Plan into the bank-maintained common or collective trust or insurance company pooled separate account and to maintain such investment is made by a Client Plan fiduciary which is not a BlackRock Entity. Such sub-advised Pooled Funds are sometimes referred to herein as ''Sub-Advised Pooled Funds''.

BBB. ''QPAM Exemption'' or ''PTE 84–14'' means Prohibited Transaction Exemption 84–14, as amended.

CCC. ''Qualified Professional Asset Manager'' or ''QPAM'' shall have the meaning set forth in Section VI(a) of the QPAM Exemption.

DDD. ''Qualified Institutional Buyer'' or ''QIB'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

EEE. ''Rating Organizations'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings Inc., DBRS Limited, DBRS, Inc., or any similar agency subsequently recognized by the Department as a Rating Organization or any successors thereto.

FFF. ''Recognized Securities Exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under section 6 of the 1934 Act, or a designated offshore securities market, as defined in Regulation S of the SEC (17 CFR part 230.902(b)), as such definition may be amended from time to time, which performs with respect to Securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable Securities laws (*e.g.,* 17 CFR part 240.3b–16).

GGG. ''Registered Investment Advisor'' means an investment advisor registered under the Investment Advisors Act of 1940, as amended, that has total client assets under its management or control in excess of $5 billion as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million, as shown in the most recent balance sheet prepared within the two years immediately preceding a Covered Transaction, in accordance with generally accepted accounting principles.

HHH. ''SEC'' means the United States Securities and Exchange Commission.

III. ''Securities'' shall have the same meaning as defined in section 2(a)(36) of the 1940 Act. For purposes of Section IV of this exemption, except as where specifically identified, Asset-Backed Securities are treated as debt Securities.

JJJ. ''Special Notice'' shall have the meaning set forth in Section II.F. of this exemption.

KKK. ''Three Quote Process'' means three bids or offers (either of which being sometimes referred to as quotes) are received by a trader for a BlackRock Manager each of which such quotes such trader reasonably believes is an indication that the dealer presenting the bid or offer is willing to transact the trade at the stipulated volume under discussion, and all material terms (including volume) under discussion are materially similar with respect to each other such quote. In selecting the best of three such quotes, a BlackRock Manager shall maintain books and records for the three firm bids/offers in a convention that it reasonably believes is customary for the specific asset class (such as ''price'' quotes, ''yield'' quotes or ''spread'' quotes). For example, corporate bonds are often quoted on a spread basis and dealers customarily quote the spread above a certain benchmark bond's yield (*e.g.,* for a given size and direction such as a BlackRock trader may ask for quotes to sell $1 million of a particular bond, dealer 1 may quote 50 bps above the yield of the 10 year treasury bond, dealer 2 might quote 52 bps above the yield of the 10 year treasury bond and dealer 3 might quote 53 bps above the yield of the 10 year treasury bond). If only two firm bids/offers can be obtained, the trade requires prior approval by the ECO and the ECO must inquire as to why three firm bids/offers could not be obtained. If in the case of a sale or purchase a trader for a BlackRock Manager reasonably believes it would be injurious to the Client Plan to specify the size of the intended trade to certain bidders, a bid on a portion of the intended trade may be treated as a firm bid if the trader documents (i) Why the bid price is a realistic indication of the economic terms for the actual amount being traded despite the difference in the size of the actual trade and (ii) why it would be harmful to the Client Plan to solicit multiple bids on the actual amount of the trade. If a trader for a BlackRock Manager solicits bids from three or more dealers on a sale or purchase of a certain volume of Securities, and receives back three or more bids, but at least one bid is not for the full amount of the intended sale, if the price offered by the partial bidder(s) is less than the price offered by the full bidder(s), the trader may assume a full bid by the partial bidder(s) would not be the best bid, and the trader can consummate the trade, in the case of at least two full bids, with the dealer making the better of the full bids, or in the case of only one full bid, with the dealer making that full bid.

LLL. ''Type A Transactions'' means transactions between BlackRock Managers on behalf of Client Plans with MPSs which (i) are or were continuing transactions within the meaning of section VI(i) of PTE 84–14 and/or section IV(h) of Prohibited Transaction Exemption 91–38 in existence on the date of the Acquisition, and (ii) pursuant to which there is no discretion on the part of either party, other than the ability of the BlackRock Manager to sell or otherwise transfer the Client Plan's position to a third party, or the ability of the MPS to sell or otherwise transfer its position to a third party, or

the ability of the MPS to otherwise terminate the transaction on previously specified terms.

MMM. ''Type B Covered Transactions'' means transactions which meet the criteria to be Type A Transactions but which possess the additional feature that the BlackRock Manager, on behalf of a Client Plan, has the option to terminate the transaction with the MPS on previously specified terms.

NNN. ''Type C Covered Transactions'' means transactions which meet the criteria to be Type B Covered Transactions but which possess the additional feature that the BlackRock Manager may terminate or modify the transaction on behalf of a Client Plan under certain circumstances, but only with negotiation and/or payment of consideration to the MPS or to the Client Plan which was not predetermined.

OOO. ''Underwriter Exemption(s)'' means a group of individual exemptions granted by the Department to provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition by plans of Asset-Backed Securities representing undivided interests in those trusts. Such group of individual exemptions was collectively amended by Prohibited Transaction Exemption 2009–31, 74 FR 59001 (Nov. 16, 2009).

PPP. ''Unwind Period'' shall have the meaning set forth in Section II.A.3.(b) of this exemption.

QQQ. ''Unwind Period 2'' shall have the meaning set forth in Section III.W. of this exemption.

RRR. ''U.S. Bank'' means a bank as defined in section 202(a)(2) of the Investment Advisers Act, as amended.

SSS. ''U.S. Broker-Dealer'' means a broker-dealer registered under the 1934 Act or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted government Securities (as defined in section 3(a)(12) of the 1934 Act).

TTT. ''U.S. Collateral'' means:

(1) U.S. currency;

(2) ''government securities'' as defined in section 3(a)(42)(A) and (B) of the 1934 Act;

(3) ''government securities'' as defined in section 3(a)(42)(C) of the 1934 Act issued or guaranteed as to principal or interest by the following corporations: The Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association and the Financing Corporation;

(4) mortgage-backed Securities meeting the definition of a ''mortgage related security'' set forth in section 3(a)(41) of the 1934 Act;

(5) negotiable certificates of deposit and bankers acceptances issued by a ''bank'' as that term is defined in section 3(a)(6) of the 1934 Act, and which are payable in the United States and deemed to have a ''ready market'' as that term is defined in 17 CFR 240.15c3–1; or

(6) irrevocable letters of credit issued by a U.S. Bank other than the borrower or an affiliate thereof, or any combination, thereof.

WWW. ''Violation'' means a Covered Transaction which is a prohibited transaction under section 406 or 407 of ERISA, Code section 4975, or FERSA section 8477(c) and which is not exempt by reason of a failure to comply with this exemption or another administrative or statutory exemption. To the extent that the non-exempt prohibited transaction relates to an act or omission that is separate and distinct from a prior otherwise exempt transaction that may relate to the same asset (*e.g.,* a conversion of a debt instrument into an equity instrument or a creditor's committee for a debt instrument), the Violation occurs only at the current point in time and no Violation shall be deemed to occur for the earlier transaction relating to the same asset (*e.g.,* the initial purchase of the asset) that was otherwise in compliance with ERISA, the Code or FERSA.

Signed at Washington, DC, this 4th day of August, 2011.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2011–20344 Filed 8–12–11; 8:45 am]

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Federal Register

Vol. 76, No. 157

Monday, August 15, 2011

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Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
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FEDERAL REGISTER PAGES AND DATE, AUGUST

45653–46184 1
46185–46594 2
46595–47054 3
47055–47422 4
47423–47984 5
47985–48712 8
48713–49278 9
49279–49648 10
49649–50110 11
50111–50402 12
50403–50660 15

CFR PARTS AFFECTED DURING AUGUST

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:
8696 46183
8697 49277
8698 49647

Administrative Orders:
Notices:
Notice of July 28, 2011 45653

5 CFR

Proposed Rules:
213 47495
250 47516
302 47495
315 47495
330 47495
334 47495
362 47495
530 45710
531 ..... 45710, 47495
536 ..... 45710, 47495
550 47495
575 47495
890 47495

6 CFR

Proposed Rules:
31 46908

7 CFR

205 46595
946 48713
1217 46185
1730 47055

Proposed Rules:
319 46209
906 49381
920 48742
923 46651

9 CFR

Proposed Rules:
71 50082
77 50082
78 50082
90 50082

10 CFR

429 46202
430 46202
433 49279
435 49279

Proposed Rules:
26 46651
40 47085
429 ..... 48745, 49238
430 ..... 47518, 49238, 50145
431 ..... 47518, 48745, 50148

12 CFR

100 48950
108 48950
109 48950
112 48950
116 48950
128 48950
133 48950
136 48950
141 48950
143 48950
144 48950
145 48950
146 48950
150 48950
151 48950
152 48950
155 48950
157 48950
159 48950
160 48950
161 48950
162 48950
163 48950
164 48950
165 48950
167 48950
168 48950
169 48950
170 48950
171 48950
172 48950
174 48950
190 48950
191 48950
192 48950
193 48950
194 48950
195 48950
196 48950
197 48950
Ch. III 47652

Proposed Rules:
240 46652

14 CFR

33 47423
39 ..... 45655, 45657, 46597, 47056, 47424, 47427, 47430, 50111, 50113, 50115, 50403, 50405
65 47058
71 ..... 47060, 47061, 47435, 49285
95 46202
97 ..... 47985, 47988

Proposed Rules:
39 ..... 45713, 47520, 47522, 48045, 48047, 48049, 48749, 50152
71 ..... 49383, 49385, 49386, 49387, 49388, 49390, 50156

15 CFR

744 50407

Proposed Rules:
Ch. VII....47527
801....50158

16 CFR

Ch. II....46598, 49286
1450....47436
Proposed Rules:
305....45715
1130....48053

17 CFR

35....49291
40....45666
200....46603
210....50117
229....46603, 50117
230....46603, 50117
232....46603, 47438
239....46603, 50117
240....46603, 46960, 50117
249....46603, 46960, 50117
270....50117
274....50117
Proposed Rules:
1....45724, 45730, 47526
23....45724, 45730, 47526
39....45730, 47526
71....46212
229....47948
230....47948, 49698
239....47948
240....46668
249....47948

18 CFR

35....49842
Proposed Rules:
357....46668

20 CFR

655....45667

21 CFR

520....48714, 49649
522....48714
524....48714
866....48715
Proposed Rules:
73....49707
101....46671, 49707
573....48751
870....47085, 48058
882....48062

22 CFR

126....47990

23 CFR

Proposed Rules:
655....46213

25 CFR

Proposed Rules:
Ch. III....47089, 50436

26 CFR

1....45673, 49300, 49570
20....49570
25....49570
54....46621
Proposed Rules:
40....46677
49....46677
54....46677

29 CFR

2590....46621
4022....50413

30 CFR

Proposed Rules:
917....50436

31 CFR

10....49650
1010....45689

32 CFR

159....49650
319....49658, 49659
323....49661

33 CFR

117....45690, 47440, 48717, 49300, 49662, 49663, 49664, 50123, 50124
165....45693, 46626, 47441, 47993, 47996, 48718, 49301, 49664, 49666, 50124
Proposed Rules:
117....50161
165....45738, 48070, 48751
167....47529

37 CFR

370....45695
382....45695

38 CFR

21....45697, 49669

39 CFR

20....50414
111....48722
Proposed Rules:
111....50438

40 CFR

1....49669
2....49669
9....47996
21....49669
35....49669
49....49669
51....48208
52....45705, 47062, 47068, 47074, 47076, 47443, 48002, 48006, 48208, 49303, 49313, 49669, 50128
59....49669
60....49669
61....49669
62....49669
63....49669
65....49669
72....48208, 50129
75....50129
78....48208
82....47451, 49669
97....48208
147....49669
180....49318
282....49669
300....49324, 50133, 50414
374....49669
707....49669
721....47996
745....47918
763....49669
Proposed Rules:
50....46084, 48073
52....45741, 47090, 47092, 47094, 48754, 49391, 49708, 49711
72....50164
75....50164
85....48758
86....48758
98....47392
174....49396
180....49396
260....48073
261....48073
300....49397, 50164, 50441
370....48093
600....48758
721....46678

41 CFR

Proposed Rules:
60....49398
Ch. 301....46216

42 CFR

412....47836
413....48486
418....47302
Proposed Rules:
5....50442
430....46684
433....46684
447....46684
457....46684

44 CFR

64....49329
65....49674, 50420, 50423
67....49676
Proposed Rules:
67....46701, 46705, 46715, 46716, 50443, 50446

45 CFR

147....46621
Proposed Rules:
170....48769

46 CFR

Proposed Rules:
1....45908, 46217, 48101
2....47531, 49976
10....45908, 46217, 48101
11....45908, 46217, 48101
12....45908, 46217, 48101
13....45908, 46217, 48101
14....45908, 46217, 48101
15....45908, 46217, 49976
136....49976
137....49976
138....49976
139....49976
140....49976
141....49976
142....49976
143....49976
144....49976
401....47095

47 CFR

1....49333, 49364
2....49364
25....49364, 50425
64....47469, 47476
73....49364, 49697
Proposed Rules:
9....47114
36....49401
54....49401
61....49401
64....49401
69....49401

48 CFR

1401....50141
1402....50141
1415....50141
1417....50141
1419....50141
1436....50141
1452....50141
1816....46206
9903....49365
Proposed Rules:
42....48776

49 CFR

228....50360
383....50433
390....50433
563....47478
571....48009
595....47078
1002....4662
Proposed Rules:
171....50332
172....50332
173....50332
174....50332
175....50332
176....50332
177....50332
178....50332
531....48758
533....48758
580....48101

50 CFR

17....46632, 47490, 48722, 49542, 50052
18....47010
80....46150
622....50143
635....49368
648....47491, 47492
679....45709, 46207, 46208, 47083, 47493
Proposed Rules:
17....46218, 46234, 46238, 46251, 46362, 47123, 47133, 48777, 49202, 49408, 49412, 50542
20....48694
223....50447, 50448
224....49412, 50447, 50448
622....46718
648....45742, 47533
660....50449
665....46719
679....49417
680....49423

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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H.R. 1383/P.L. 112–26

Restoring GI Bill Fairness Act of 2011 (Aug. 3, 2011; 125 Stat. 268)

Last List August 4, 2011

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