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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

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

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

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

WHEN: Tuesday, March 13, 2012
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1313; Airspace Docket No. 11–AWP–17]

Modification of Class E Airspace; Douglas, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Bisbee Douglas International Airport, Douglas, AZ. Decommissioning of the Cochise VHF Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC) has made this action necessary for the safety and management of aircraft operations at the airport. This action also adjusts the geographic coordinates of the airport, and corrects a typographical error in the legal description for the Class E 700 foot airspace. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, May 31, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On December 16, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Douglas, AZ (76 FR 78180). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found a typographical error in a bearing of the 1,200 foot airspace description and makes the correction in the rule.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface at Douglas, AZ. Additional controlled airspace is necessary to accommodate aircraft using VHF Omni-Directional Radio Range/ Distance Measuring Equipment, Global Positioning System standard instrument approach procedures at Bisbee Douglas International Airport, Douglas, AZ. Decommissioning of the Cochise VORTAC has made this action necessary and enhances the safety and management of aircraft operations at the airport. The geographic coordinates of the airport is also updated to coincide with the FAA's aeronautical database. In the 700 foot/1,200 foot airspace description, the 20-mile radius bearing 076° is corrected to 075° bearing of the airport.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AWP AZ E2 Douglas, AZ [Modified]

Bisbee Douglas International Airport, AZ
(Lat. 31°28′08″ N., long. 109°36′14″ W.)

Within a 4.3-mile radius of Bisbee Douglas International Airport, and within 1.8 miles each side of the Bisbee Douglas International Airport 332° bearing extending from the 4.3-mile radius to 7 miles northwest of the airport. This Class E airspace area is effective

during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

AWP AZ E5 Douglas, AZ [Modified]

Bisbee Douglas International Airport, AZ (Lat. 31°28′08″ N., long. 109°36′14″ W.)

That airspace extending upward from 700 feet above the surface within 3.9 miles northeast and 8.3 miles southwest of the Bisbee Douglas International Airport 333° bearing extending from the airport to 16.1 miles northwest. That airspace extending upward from 1,200 feet above the surface within a 7.8-mile radius of Bisbee Douglas International Airport, and within a 20-mile radius of Bisbee Douglas International Airport extending clockwise from the 288° bearing to the 075° bearing of the airport, and within 4.3 miles east and 7.4 miles west of the Bisbee Douglas International Airport 347° bearing extending from the airport to 34.5 miles north.

Issued in Seattle, Washington, on February 13, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–4156 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM12–5–000]

Annual Update of Filing Fees

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with its regulations, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Management, Administrative, and Payroll System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2011.

DATES: *Effective Date:* March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Raymond D. Johnson Jr., Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE., Room 42–66, Washington, DC 20426, 202–502–8402.

SUPPLEMENTARY INFORMATION:

Document Availability: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

From FERC's Web site on the Internet, this information is available in the eLibrary (formerly FERRIS). The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Annual Update of Filing Fees

The Federal Energy Regulatory Commission (Commission) is issuing this notice to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2011 costs. The adjusted fees announced in this notice are effective March 26, 2012. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this final rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this final rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

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Amount in controversy	
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$10,000–29,999. (18 CFR 381.303(b))	600
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3. Review of a Department of Energy denial of adjustment:	
Amount in controversy	
$0–9,999. (18 CFR 381.304(b))	100
$10,000–29,999. (18 CFR 381.304(b))	600
$30,000 or more. (18 CFR 381.304(a))	19,030
4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a))	7,130

Fees Applicable to Natural Gas Pipelines	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))	*1,000
Fees Applicable to Cogenerators and Small Power Producers	
1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))	21,380
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))	24,200

* This fee has not been changed.

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Dated: February 16, 2012.

Charles H. Schneider,

Executive Director.

In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 381—FEES

■ 1. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

2. In § 381.302, paragraph (a) is amended by removing ''$23,540'' and adding ''$24,860'' in its place.

§ 381.303 [Amended]

3. In § 381.303, paragraph (a) is amended by removing ''$34,370'' and adding ''$36,290'' in its place.

§ 381.304 [Amended]

4. In § 381.304, paragraph (a) is amended by removing ''$18,020'' and adding ''$19,030'' in its place.

§ 381.305 [Amended]

5. In § 381.305, paragraph (a) is amended by removing ''$ 6,750'' and adding ''$7,130'' in its place.

§ 381.403 [Amended]

6. Section 381.403 is amended by removing ''$11,720'' and adding ''$12,370'' in its place.

§ 381.505 [Amended]

7. In § 381.505, paragraph (a) is amended by removing ''$20,240'' and adding ''$21,380'' in its place and by removing ''$22,920'' and adding ''$24,200'' in its place.

[FR Doc. 2012–4146 Filed 2–22–12; 8:45 am]

BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2010–0044]

RIN 0960–AG89

How We Collect and Consider Evidence of Disability

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are modifying the requirement to recontact your medical source(s) first when we need to resolve an inconsistency or insufficiency in the evidence he or she provided. Depending on the nature of the inconsistency or insufficiency, there may be other, more appropriate sources from whom we could obtain the information we need. By giving adjudicators more flexibility in determining how best to obtain this information, we will be able to make a determination or decision on disability claims more quickly and efficiently in certain situations. Eventually, our need to recontact your medical source(s) in many situations will be significantly reduced as a result of our efforts to improve the evidence collection process through the increased use of Health Information Technology (HIT).

DATES: These rules are effective March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Brian Rudick, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7102. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

We are making final the proposed changes to our rules regarding when we will recontact your medical source(s) to resolve an inconsistency or insufficiency in the evidence he or she provided. We proposed these changes in a Notice of Proposed Rulemaking (NPRM) we published in the **Federal Register** on April 12, 2011 (76 FR 20282). The preamble to the NPRM discussed the changes from the current rules and our reasons for proposing those changes.[1] Because we are adopting the proposed rules as published, we are not repeating that information here.

Public Comments on the NPRM

In the NPRM, we provided the public a 60-day comment period, which ended on June 13, 2011. We received 59 public comments. The comments came from a member of the public, members of the disability advocacy community, and several national groups of Social Security claimants' representatives.

We provide below summaries of the significant comments that were relevant to this rulemaking and our responses to those comments. We have tried to present the commenters' concerns and suggestions accurately and completely.

Comment: All of the commenters recommended that we keep our current requirement to recontact a person's medical source(s) first when we need to resolve an inconsistency or insufficiency in the evidence he or she provided. Some of these commenters believed that the proposed modification of this requirement was inconsistent with sections 223(d)(5)(B) and 1614(a)(3)(H) of the Social Security Act (Act), which require us to make ''every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make [a] determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.'' Other commenters believed that any modification of the current requirement would make it less likely that adjudicators would obtain evidence from a person's medical source(s), and more likely that they would try and obtain evidence from a consultative examination (CE) instead. These commenters speculated that some adjudicators may even purchase CEs to undermine evidence provided by

[1] The NPRM is available at: *http://www.gpo.gov/fdsys/pkg/FR-2011-04-12/pdf/2011-8388.pdf.*

treating sources and to circumvent our rules on how we weigh medical opinions from these sources.[2] These commenters said that treating sources are usually the most knowledgeable about a person's condition, and therefore, can provide the best evidence regarding disability. One of these commenters also said that recontacting treating sources is simpler and more effective than purchasing a CE, and another commenter noted that it is more convenient for claimants to see their treating sources than it is for them to attend CEs.

Response: We did not adopt the comments. We disagree with the commenters' concerns for several reasons. First, we disagree that modification of the requirement to recontact a person's medical source(s) first when we need to resolve an inconsistency or insufficiency in the evidence he or she provided violates sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act or our regulations. As we explained in the NPRM, the proposed change ''would not alter our rules in §§ 404.1512(d) and 416.912(d) that require us to make every reasonable effort to help you get medical reports from your medical sources when you give us permission to request the reports. Rather, the proposed change would apply only *after* we have made those reasonable efforts.'' [3]

As we noted in the NPRM, the rules in §§ 404.1512(d) and 416.912(d) first require us to ''make every reasonable effort'' to develop ''your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application.'' [4] Our regulations define ''every reasonable effort'' to include ''an initial request for evidence from your medical source'' and ''one follow-up request'' at anytime ''between 10 and 20 calendar days after the initial request'' if we did not receive the evidence.[5] The recontact requirement applies only when we have already received evidence from a person's medical source; therefore, the revisions we are making to our rules here do not change the adjudicator's initial obligation to obtain medical evidence.

Because these final rules do not alter an adjudicator's obligations under §§ 404.1512(d) and 416.912(d), they are consistent with sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act. Contrary to what some of the commenters seemed to assume, when Congress enacted sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act in 1984, it did not intend to alter in any way the relative weight that we place on reports received from treating sources and consultative examiners or preclude us from obtaining consultative examinations when we find it necessary to obtain additional information or resolve conflicting evidence.[6]

Second, we disagree that these rules would permit adjudicators to purchase CEs rather than develop evidence from a person's medical source(s). We have regulations that govern the purchase of CEs, and those regulations provide, in part, that ''Generally, we will not request a consultative examination until we have made every reasonable effort to obtain evidence from your own medical sources.'' [7] Other CE regulations underscore this point by providing that ''If your medical sources cannot or will not give us sufficient medical evidence about your impairment, we may ask you to have one or more physical or mental examinations.[8] Our CE regulations also provide that before purchasing a CE, we will consider your ''existing medical reports.'' [9] It is also important to note that, subject to certain requirements, ''your treating source will be the preferred source to do the purchased examination.'' [10] We believe these regulations provide sufficient safeguards against any potential abuse of the CE process.

We agree with the commenters who stated that the treating source can be a valuable source of evidence about a person's condition. As we explained in the NPRM, there are times when we would still expect adjudicators to recontact a person's medical source first; that is, when recontact is the most effective and efficient way to obtain the information needed to resolve an inconsistency or insufficiency in the evidence received from that source. In the NPRM, we also gave two examples of situations where we would expect adjudicators to contact the medical source first, because the additional information needed is directly related to that source's medical opinion.[11] In fact, we expect that adjudicators will often contact a person's medical source(s) first whenever the additional information sought pertains to findings, treatment, and functional capacity, because the treating source may be the best source regarding these issues.

In further response to the commenters' concerns, we plan to conduct training on these final rules and will provide additional guidance on when adjudicators should recontact a person's medical source(s) first for additional information. In addition, we are currently conducting comprehensive training regarding the development of evidence from a person's medical source(s) and related rules regarding the purchase of CEs. These training efforts are ongoing and for adjudicators at all levels of the disability determination process.

Comment: Several commenters believed that the proposed modification to the recontact requirement will sacrifice the best evidence from a person's medical source(s) for the sake of efficiency, and will, therefore, result in less accurate decision making by adjudicators.

Response: We disagree with the commenters. As we pointed out in response to the comments above, modifying the recontact requirement does not alter how we comply with the provisions of the Act that require us to make ''every reasonable effort'' to obtain medical evidence from the individual's treating physician ''prior to evaluating medical evidence obtained from any other source on a consultative basis.'' Therefore, the efficiencies we expect to achieve by the changes we are making in these rules will not come at the expense of those statutory provisions. As we also noted in response to previous comments, we expect adjudicators will often recontact treating sources first in some situations because they may be the best sources of information about a person's medical condition. Accordingly, we do not believe the modification to our recontact requirement will cause a qualitative change in the medical evidence we consider or produce less accurate disability determinations and decisions.

Comment: One commenter noted that in the preamble to the NPRM, we gave two examples of when we believed it

[2] Those rules require us to generally give ''more weight'' to the opinions from a treating source and ''controlling weight'' when the treating source's opinions are well-supported and not inconsistent with other substantial evidence. *See* §§ 404.1527(d) and 416.927(d).

[3] 76 FR 20283 (emphasis added).

[4] 76 FR 20283.

[5] *See* §§ 404.1512(d)(1) and 416.912(d)(1).

[6] S. Rep. No. 98–466, at 26 (1984).

[7] Sections 404.1512(f) and 416.912(f). *See also* §§ 404.1517 through 416.1519t and 404.917 through 416.919t for our other rules governing the CE process.

[8] Sections 404.1517 and 416.917.

[9] Sections 404.1519a(a)(1) and 416.919a(a)(1). These regulations also state that, in addition to ''existing medical reports,'' we will consider ''the disability interview form containing your allegations as well as other pertinent evidence in your file'' before purchasing a CE.

[10] Sections 404.1519h and 416.919h.

[11] 76 FR 20283.

would be ''inefficient and ineffective'' to require recontact with a person's medical source. In one example, the person's medical source did not specialize in the area of the impairment alleged and we needed more evidence about its current severity.[12] We indicated that we may supplement the evidence ''by obtaining a CE with a specialist (such as a pulmonologist) who can perform the type of examination we need to determine disability under our rules.'' [13] In the other example, the medical records received contain a reference that the claimant has returned to work; we explained that it may be more appropriate to verify this information with the claimant and obtain related information rather than recontact the medical source.[14] The commenter suggested that we include some examples in the regulations, but believed the first example appears to absolve adjudicators of their obligation to recontact the medical source if that source is not a specialist.

Response: We did not adopt this comment because whether to obtain additional evidence often depends on specific case facts, and because we believe it is better to present examples in training and other instructions. As we indicated in response to the comments above, we plan to conduct training on these final rules and will provide additional guidance on when adjudicators should recontact a person's medical source(s) first for additional information. We disagree with the commenter that the first example about obtaining a CE with a specialist would absolve adjudicators of any recontact obligation if a person's medical source is not a specialist. Depending on the nature of the impairment or the additional information we need, it may be more appropriate for us to recontact the person's medical source(s) first before considering the purchase of a CE with a specialist. Because the situations when we need to obtain additional information are so variable, the type of guidance the commenter asked us to include would be too extensive to put in the regulation.

Comment: Several commenters said the proposed modification to the recontact requirement eliminates the ''treating physician rule,'' which relates to our regulations on how we weigh medical opinions from treating sources and the deference we give these opinions under certain circumstances.[15] These commenters also said that the proposed modification would diminish the role and weight of medical opinion evidence we receive from treating sources in our determination of disability.

Response: We did not propose any changes to our regulations on how we weigh treating source opinions in the NPRM. In addition, we disagree that modification of our recontact requirement diminishes the importance of medical evidence we receive from treating sources. As we described in response to the comments above, we have rules regarding how we obtain and consider evidence from a person's medical source(s) and rules that govern the purchase and use of CEs. These rules explain how we apply the provisions of the Act that require us to make ''every reasonable effort'' to obtain medical evidence from the individual's treating physician *before* we consider purchase of a CE. We believe these rules provide adequate safeguards against possible attempts to undermine the evidence received from a person's medical source(s), and we expect our adjudicators to follow these rules.

Comment: One commenter expressed concern about the impact our proposed modification of the recontact requirement could have at the hearings level. The commenter believed that giving administrative law judges the option of contacting someone other than a person's treating source(s) for additional information would make the proceeding adversarial. The commenter pointed out that our judges have a duty to develop the record fully and fairly and should seek out the most reliable evidence which, the commenter said, is ''presumptively'' from a treating source.

Response: We do not believe that modifying the recontact requirement will change the non-adversarial format of our administrative hearings. We agree that our judges have a duty to develop the record fully and fairly. Our rules regarding the development of medical evidence from a person's medical source(s) and the purchase of CEs apply equally to the judges. As we have discussed at length in our prior responses to comments, we believe these rules prevent both abuse of the CE process and any attempt to undermine the evidence received from treating sources at all levels of the disability determination process, including the hearings level.

Comment: Several commenters said the proposed modification to our recontact requirement is unnecessary because there is already an exception to this requirement in our current regulations that will permit adjudicators to contact someone other than the person's medical source first.

Response: We disagree with the commenters. Currently, the only exception to the recontact requirement is if we know from past experience that the medical source either cannot or will not provide the additional information we need.[16] We believe, however, that this exception is not always broad enough to cover other situations when contact with a different source first would be more appropriate. In the NPRM, we gave the example of evidence received from a medical source referencing a claimant's return to work.[17] Although the medical source *may* know something about this issue, the claimant would usually be a more appropriate source to contact first, because the claimant would be more likely to have all of the related information we need regarding work issues. Under our current rules, however, the adjudicator would first have to recontact the medical source for additional information, which could delay adjudicating the case. Therefore, we have found that our current requirement, even with its one exception, is simply too rigid at a time when our adjudicators need more flexibility in developing evidence as quickly and efficiently as possible.

Comment: One commenter said that the proposed regulation does not require us to document the case record when we know from past experience that a medical source either cannot or will not provide the additional information we need. This commenter also said it is unfair for us to assume that a medical source will not respond to an inquiry just because that source has been uncooperative in the past.

Response: Our current instructions require adjudicators to document the case development summary whenever they do not attempt to recontact a medical source because of past experience with that source.[18] Although these instructions are sub-regulatory, we expect our adjudicators to follow them, and we do not expect to change this procedure when we publish these final rules. In response to the commenter's other concern, we do not believe it is reasonable to require our adjudicators to attempt to recontact a medical source

[12] 76 FR 20283.

[13] 76 FR 20283.

[14] 76 FR 20283.

[15] *See* §§ 404.1527 and 416.927 for our rules on how we weigh medical opinion evidence, including opinions from treating sources.

[16] *See* §§ 404.1512(e)(2) and 416.912(e)(2).

[17] *See* 76 FR 20283.

[18] POMS DI 22505.008B.

when we know from past experience that this source either cannot or will not provide the information we need. Of course, adjudicators may recontact such a source whenever they have reason to believe that the source may provide information for a particular claimant. To require recontact in all cases, however, on the chance that the source might be cooperative, would not promote efficient claims adjudication.

Comment: Several commenters said that rather than modifying our recontact requirement, we should instead find better ways to develop the evidence we need from a person's medical source(s). Some of these commenters recommended that we send a medical source statement form to elicit information targeted to our specific disability criteria or templates of condition-specific questions at the same time we send our general request for records to a person's medical source(s). Other commenters suggested that we establish even more requirements for recontacting medical sources. For example, they suggested that we require adjudicators to contact the claimant, a family member, or the claimant's representative for assistance in recontacting the medical source(s), or that we require adjudicators to make at least three attempts to recontact a medical source(s) before ordering a CE. One of these commenters also suggested that we wait 45 days for feedback from the claimant or claimant's representative after requesting assistance in recontacting a medical source(s). Several commenters said that claimants' representatives can assist our adjudicators in getting the information they need and said we should develop better lines of communication between them. Another commenter suggested that we might be able to improve our ability to obtain additional information from a person's medical source(s) by finding out whether the claimant is receiving services or support from another source that could assist us in getting information from treating sources, or by establishing a telephone dictation system for medical sources that may not have clerical support, or by paying treating sources that are unwilling to provide additional information without some financial compensation.

Response: We did not adopt the comments. We believe our adjudicators need more flexibility to conduct case development in the most efficient way possible. Requiring them to repeatedly contact the medical source(s), or requiring them to wait for feedback or to contact another source for assistance in recontacting the medical source(s), regardless of the nature of the inconsistency or insufficiency in the evidence received, would not serve these goals. As we explained in the NPRM, ''[d]epending on the nature of the inconsistency or insufficiency, there may be other, more appropriate sources from whom we could obtain the information we need.'' [19] Therefore, adjudicators need more, not less, discretion than our current recontact requirement provides to obtain the needed information from the most appropriate source. In addition, we are confident that we will be able to identify and correct any problems in the exercise of that discretion, should they occur, through our quality review process.

In further response to the commenters' suggestions, it is important to note that we are always striving to find better methods of collecting medical evidence, such as using Health Information Technology (HIT). As we explained in the NPRM, using HIT will enable our adjudicators to access a person's complete medical records upon receipt of a claim and reduce the number of CEs.[20] In addition, our adjudicators already use a variety of methods to obtain the evidence we need to determine disability, including the use of forms and tailored requests for information from treating sources, which several commenters suggested. Our adjudicators also routinely contact claimants, representatives, and third parties designated by claimants for assistance in obtaining evidence. We will continue to explore ways of improving the medical evidence collection process, but there are many factors, especially cost, which we must consider before we can require any particular method of obtaining medical evidence.

Moreover, we believe there should be a variety of methods available to our adjudicators, and that they should have the flexibility to determine which method of development would be the most appropriate given the facts in each case. We do not believe there is any one method that is always the most suitable or efficient, and therefore, do not believe we should require any of the suggestions made by the commenters in all cases.

Comment: Several commenters noted our reference to HIT in the NPRM and said that using HIT cannot justify modifying the recontact requirement, because HIT is not yet widespread.

Response: We did not intend our reference to HIT in the NPRM to be a justification for the proposed change to the recontact requirement. Instead, we mentioned HIT simply to point out that we are engaging in other efforts to improve the medical evidence collection process. Many of the commenters encouraged such efforts, and several of these commenters agreed with our view that increased use of HIT will speed our review of medical evidence, reduce the need to recontact treating sources, and reduce the number of CEs we might otherwise need to purchase.[21] Although HIT is still in the early phases, we are positioning our agency to take full advantage of this technology as it becomes more widespread in the medical community.

Comment: One commenter thought the organization of the proposed changes to our regulations on how we collect and consider evidence of disability was confusing and would be clearer if we reorganized those changes.

Response: We did not adopt the comment. We received many comments on the NPRM, and it appears that the commenters generally had a good understanding of how we proposed to modify the recontact requirement. In addition, as we noted in the NPRM, we combined our rules on how we collect and consider evidence into one new section (final §§ 404.1520b and 416.1520b), ''so that these rules are easier to understand and apply.'' [22] We believe the consolidation of our rules into one section will achieve these goals.

Regulatory Procedures

Executive Order 12866 as Supplemented by Executive Order 13563

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the requirements for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed the final rule.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it only affects individuals. Accordingly, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and,

[19] 76 FR 20282.

[20] 76 FR 20283.

[21] 76 FR 20283.

[22] 76 FR 20283.

therefore, does not require Office of Management Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subpart P of part 404 and subpart I of part 416 of chapter III of title 20 Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.1512 by revising the third sentence of paragraph (a) and the last sentence of paragraph (b)(6), by removing paragraph (e), redesignating paragraph (f) as (e) and revising the heading and first sentence, and redesignating paragraph (g) as (f), to read as follows:

§ 404.1512 Evidence.

(a) * * * This means that you must furnish medical and other evidence that we can use to reach conclusions about your medical impairment(s) and, if material to the determination of whether you are disabled, its effect on your ability to work on a sustained basis. * * *

(b) * * *

(6) * * * See § 404.1527(e)(2)–(3).

* * * * *

(e) *Obtaining a consultative examination.* We may ask you to attend one or more consultative examinations at our expense. * * *

* * * * *

■ 3. Amend § 404.1519a by revising paragraph (a), revising paragraph (b) introductory text, adding ''or'' after the semi-colon in paragraph (b)(3), removing paragraph (b)(4), and redesignating paragraph (b)(5) as (b)(4), to read as follows:

§ 404.1519a When we will purchase a consultative examination and how we will use it.

(a) *General.* If we cannot get the information we need from your medical sources, we may decide to purchase a consultative examination. See § 404.1512 for the procedures we will follow to obtain evidence from your medical sources and § 404.1520b for how we consider evidence. Before purchasing a consultative examination, we will consider not only existing medical reports, but also the disability interview form containing your allegations as well as other pertinent evidence in your file.

(b) *Situations that may require a consultative examination.* We may purchase a consultative examination to try to resolve an inconsistency in the evidence, or when the evidence as a whole is insufficient to allow us to make a determination or decision on your claim. Some examples of when we might purchase a consultative examination to secure needed medical evidence, such as clinical findings, laboratory tests, a diagnosis, or prognosis, include but are not limited to:

* * * * *

■ 4. Amend § 404.1520 by adding a sentence to the end of paragraph (a)(3) to read as follows:

§ 404.1520 Evaluation of disability in general.

(a) * * *

(3) * * * See § 404.1520b.

* * * * *

■ 5. Add § 404.1520b to read as follows:

§ 404.1520b How we consider evidence.

After we review all of the evidence relevant to your claim, including medical opinions (see § 404.1527), we make findings about what the evidence shows. In some situations, we may not be able to make these findings because the evidence in your case record is insufficient or inconsistent. We consider evidence to be insufficient when it does not contain all the information we need to make our determination or decision. We consider evidence to be inconsistent when it conflicts with other evidence, contains an internal conflict, is ambiguous, or when the medical evidence does not appear to be based on medically acceptable clinical or laboratory diagnostic techniques. If the evidence in your case record is insufficient or inconsistent, we may need to take additional actions, as we explain in paragraphs (b) and (c) of this section.

(a) If all of the evidence we receive, including all medical opinion(s), is consistent and there is sufficient evidence for us to determine whether you are disabled, we will make our determination or decision based on that evidence.

(b) If any of the evidence in your case record, including any medical opinion(s), is inconsistent, we will weigh the relevant evidence and see whether we can determine whether you are disabled based on the evidence we have.

(c) If the evidence is consistent but we have insufficient evidence to determine whether you are disabled, or if after weighing the evidence we determine we cannot reach a conclusion about whether you are disabled, we will determine the best way to resolve the inconsistency or insufficiency. The action(s) we take will depend on the nature of the inconsistency or insufficiency. We will try to resolve the inconsistency or insufficiency by taking any one or more of the actions listed in paragraphs (c)(1) through (c)(4) of this section. We might not take all of the actions listed below. We will consider any additional evidence we receive together with the evidence we already have.

(1) We may recontact your treating physician, psychologist, or other medical source. We may choose not to seek additional evidence or clarification from a medical source if we know from experience that the source either cannot or will not provide the necessary evidence. If we obtain medical evidence over the telephone, we will send the telephone report to the source for review, signature, and return;

(2) We may request additional existing records (see § 404.1512);

(3) We may ask you to undergo a consultative examination at our expense (see §§ 404.1517 through 404.1519t); or

(4) We may ask you or others for more information.

(d) When there are inconsistencies in the evidence that we cannot resolve or when, despite efforts to obtain additional evidence, the evidence is

insufficient to determine whether you are disabled, we will make a determination or decision based on the evidence we have.

■ 6. Amend § 404.1527 as follows:
■ a. Revise paragraph (b);
■ b. Remove paragraph (c);
■ c. Redesignate paragraphs (d) through (f) as (c) through (e);
■ d. In newly redesignated paragraph (c) introductory text remove ''(d)(2)'' and add in its place ''(c)(2)'';
■ e. In newly redesignated paragraph (c)(2) introductory text remove ''(d)(2)(i) and (d)(2)(ii)'' and add in its place ''(c)(2)(i) and (c)(2)(ii)'' and remove ''(d)(3) through (d)(6)'' and add in its place ''(c)(3) through (c)(6)'';
■ f. In newly redesignated paragraph (d)(3) remove ''(e)(1) and (e)(2)'' and add in its place ''(d)(1) and (d)(2)'';
■ g. In newly redesignated paragraph (e) introductory text remove ''(a) through (e)'' and add in its place ''(a) through (d)'';
■ h. In newly redesignated paragraph (e)(2)(ii) remove ''(a) through (e)'' and add in its place ''(a) through (d)''; and
■ i. In newly redesignated paragraph (e)(2)(iii) remove ''(a) through (e)'' and add in its place ''(a) through (d)'', to read as follows:

§ 404.1527 Evaluating opinion evidence.

* * * * *

(b) *How we consider medical opinions.* In determining whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. See § 404.1520b.

* * * * *

■ 7. Amend § 404.1545 by revising the fifth sentence of paragraph (a)(3) to read as follows:

§ 404.1545 Your residual functional capacity.

(a) * * *

(3) * * * (*See* §§ 404.1512(d) through (e).) * * *

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

■ 8. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 9. Amend § 416.912 by revising the third sentence of paragraph (a) and the last sentence of paragraph (b)(6), by removing paragraph (e), redesignating paragraph (f) as (e) and revising the heading and first sentence, and redesignating paragraph (g) as (f), to read as follows:

§ 416.912 Evidence.

(a) * * * If material to the determination whether you are disabled, medical and other evidence must be furnished about the effects of your impairment(s) on your ability to work, or if you are a child, on your functioning, on a sustained basis. * * *

(b) * * *

(6) * * * See § 416.927(e)(2)–(3).

* * * * *

(e) *Obtaining a consultative examination.* We may ask you to attend one or more consultative examinations at our expense. * * *

* * * * *

■ 10. Amend § 416.919a by revising paragraph (a), revising paragraph (b) introductory text, adding ''or'' after the semi-colon in paragraph (b)(3), removing paragraph (b)(4), and redesignating paragraph (b)(5) as (b)(4), to read as follows:

§ 416.919a When we will purchase a consultative examination and how we will use it.

(a) *General.* If we cannot get the information we need from your medical sources, we may decide to purchase a consultative examination. See § 416.912 for the procedures we will follow to obtain evidence from your medical sources and § 416.920b for how we consider evidence. Before purchasing a consultative examination, we will consider not only existing medical reports, but also the disability interview form containing your allegations as well as other pertinent evidence in your file.

(b) *Situations that may require a consultative examination.* We may purchase a consultative examination to try to resolve an inconsistency in the evidence or when the evidence as a whole is insufficient to support a determination or decision on your claim. Some examples of when we might purchase a consultative examination to secure needed medical evidence, such as clinical findings, laboratory tests, a diagnosis, or prognosis, include but are not limited to:

* * * * *

■ 11. Amend § 416.920 by adding a sentence to the end of paragraph (a)(3) to read as follows:

§ 416.920 Evaluation of disability in general.

(a) * * *

(3) * * * See § 416.920b.

* * * * *

■ 12. Add § 416.920b to read as follows:

§ 416.920b How we consider evidence.

After we review all of the evidence relevant to your claim, including medical opinions (see § 416.927), we make findings about what the evidence shows. In some situations, we may not be able to make these findings because the evidence in your case record is insufficient or inconsistent. We consider evidence to be insufficient when it does not contain all the information we need to make our determination or decision. We consider evidence to be inconsistent when it conflicts with other evidence, contains an internal conflict, is ambiguous, or when the medical evidence does not appear to be based on medically acceptable clinical or laboratory diagnostic techniques. If the evidence in your case record is insufficient or inconsistent, we may need to take additional actions, as we explain in paragraphs (b) and (c) of this section.

(a) If all of the evidence we receive, including all medical opinion(s), is consistent and there is sufficient evidence for us to determine whether you are disabled, we will make our determination or decision based on that evidence.

(b) If any of the evidence in your case record, including any medical opinion(s), is inconsistent, we will weigh the relevant evidence and see whether we can determine whether you are disabled based on the evidence we have.

(c) If the evidence is consistent but we have insufficient evidence to determine whether you are disabled, or if after weighing the evidence we determine we cannot reach a conclusion about whether you are disabled, we will determine the best way to resolve the inconsistency or insufficiency. The action(s) we take will depend on the nature of the inconsistency or insufficiency. We will try to resolve the inconsistency or insufficiency by taking any one or more of the actions listed in paragraphs (c)(1) through (c)(4) of this section. We might not take all of the actions listed below. We will consider any additional evidence we receive together with the evidence we already have.

(1) We may recontact your treating physician, psychologist, or other medical source. We may choose not to seek additional evidence or clarification

from a medical source if we know from experience that the source either cannot or will not provide the necessary evidence. If we obtain medical evidence over the telephone, we will send the telephone report to the source for review, signature, and return;

(2) We may request additional existing records (see § 416.912);

(3) We may ask you to undergo a consultative examination at our expense (see §§ 416.917 through 416.919t); or

(4) We may ask you or others for more information.

(d) When there are inconsistencies in the evidence that we cannot resolve or when, despite efforts to obtain additional evidence, the evidence is insufficient to determine whether you are disabled, we will make a determination or decision based on the evidence we have.

■ 13. Amend § 416.927 as follows:
■ a. Revise paragraph (b);
■ b. Remove paragraph (c);
■ c. Redesignate paragraphs (d) through (f) as (c) through (e);
■ d. In newly redesignated paragraph (c) introductory text remove ''(d)(2)'' and add in its place ''(c)(2)'';
■ e. In newly redesignated paragraph (c)(2) introductory text remove ''(d)(2)(i) and (d)(2)(ii)'' and add in its place ''(c)(2)(i) and (c)(2)(ii)'' and remove ''(d)(3) through (d)(6)'' and add in its place ''(c)(3) through (c)(6)'';
■ f. In newly redesignated paragraph (d)(3) remove ''(e)(1) and (e)(2)'' and add in its place ''(d)(1) and (d)(2)'';
■ g. In newly redesignated paragraph (e) introductory text remove ''(a) through (e)'' and add in its place ''(a) through (d)'';
■ h. In newly redesignated paragraph (e)(2)(ii) remove ''(a) through (e)'' and add in its place ''(a) through (d)''; and
■ i. In newly redesignated paragraph (e)(2)(iii) remove ''(a) through (e)'' and add in its place ''(a) through (d)'', to read as follows:

§ 416.927 Evaluating opinion evidence.

* * * * *

(b) *How we consider medical opinions.* In determining whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. See § 416.920b.

* * * * *

■ 14. Amend § 416.945 by revising the fifth sentence of paragraph (a)(3) to read as follows:

§ 416.945 Your residual functional capacity.

(a) * * *

(3) * * * (*See* §§ 416.912(d) through (e).) * * *

* * * * *

[FR Doc. 2012–4177 Filed 2–22–12; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2011–0008]

RIN 0960–AH29

Protecting the Public and Our Employees in Our Hearing Process

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are clarifying our regulations to ensure the safety of the public and our employees in our hearing process. Due to increasing reports of threats to our hearing office employees, we are taking steps to explicitly increase the level of protection we provide to our staff and to the public during the hearing process. We expect these changes to result in a safer work environment for our employees, while at the same time ensuring that our claimants continue to receive a full and fair hearing on their claims for benefits.

DATES: These final rules are effective February 23, 2012.

FOR FURTHER INFORMATION CONTACT: Glen Colvin, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041–3260, 703–605–8444, for information about this final rule. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

With one minor change, we are making final the rules protecting the public and our employees in our hearing process that we published as interim final rules in the **Federal Register** on March 14, 2011 (76 FR 13506). The preamble to the interim final rules discussed the new rules and our reasons for proposing those additions. Interested readers may refer to the preamble to the interim final rules.[1]

[1] The interim final rules are available at *http://www.regulations.gov/#!documentDetail;D=SSA-2011-0008-0001.*

Explanation of Changes

We are revising our regulations at §§ 404.937 and 416.1437 to further describe when the Hearing Office Chief Administrative Law Judge will find a claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing. We are making these changes to respond to public comments we received.

Public Comments on the Interim Final Rules

In the interim final rules, we provided the public a 60-day comment period, which ended on May 13, 2011. We received three public comments. Since the comments were long, we have condensed, summarized, and paraphrased them. We summarized the commenters' views and responded to the significant issues raised by the commenters that were within the scope of this rule.

Comment: Two commenters wanted to make sure that the regulation consistently used the term ''poses a threat'' instead of any reference to ''has made a threat'' as the grounds for applying the regulation.

Response: We expanded this section to clarify that the Hearing Office Chief Administrative Judge will find that an individual poses a threat if the individual either has made a threat and there is reasonable likelihood that the claimant or other individual could act on the threat, or if evidence suggests that the claimant or other individual poses a threat.

Comment: Another commenter agreed with the goal of our interim final rules, but wanted to make sure that the regulation will not result in discrimination against claimants based on their disabilities, national origin, or primary language.

Response: These regulations are designed to protect our employees and the public we serve regardless of their disabilities, national origin or primary language. Nothing in these regulations increases the likelihood of discrimination against any claimant or other individual based disability, national origin or primary language. Rather, the regulations focus solely on the conduct of the individual posing a threat and the consequences of such activity.

Regulatory Procedures

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and

determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed these final rules.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-age, Survivors and disability insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Michael J. Astrue,

Commissioner of Social Security.

For the reasons stated in the preamble, we are amending subpart J of part 404 and subpart N of part 416 of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.937 by revising the second sentence of paragraph (b)(1) to read as follows:

§ 404.937 Protecting the safety of the public and our employees in our hearing process.

* * * * *

(b)(1) * * * The Hearing Office Chief Administrative Law Judge will find that a claimant or other individual poses a threat to the safety of our employees or other participants in the hearing when he or she determines that the individual has made a threat and there is a reasonable likelihood that the claimant or other individual could act on the threat or when evidence suggests that a claimant or other individual poses a threat. * * *

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

■ 3. The authority citation for subpart N continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 4. Amend § 416.1437 by revising the second sentence of paragraph (b)(1) to read as follows:

§ 416.1437 Protecting the safety of the public and our employees in our hearing process.

* * * * *

(b)(1) * * * The Hearing Office Chief Administrative Law Judge will find that a claimant or other individual poses a threat to the safety of our employees or other participants in the hearing when he or she determines that the individual has made a threat and there is a reasonable likelihood that the claimant or other individual could act on the threat or when evidence suggests that a claimant or other individual poses a threat. * * *

* * * * *

[FR Doc. 2012–4178 Filed 2–22–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2002–N–0153] (Formerly Docket No. 2002N–0277)

RIN 0910–AG73

Establishment, Maintenance, and Availability of Records: Amendment to Record Availability Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on establishment, maintenance, and availability of records. FDA is issuing this interim final rule (IFR) to amend FDA's regulation on the record availability requirements to implement the amendments to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) made by the FDA Food Safety Modernization Act (FSMA). The FSMA amendment expands FDA's former records access authority beyond records relating to the specific suspect article of food to records relating to any other article of food that the Secretary of Health and Human Services (the Secretary) reasonably believes is likely to be affected in a similar manner. In addition, the FSMA amendment permits FDA to access records relating to articles of food for which the Secretary believes that there is a reasonable probability that the use of or exposure to the article of food, and any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animals. This expanded records access authority will further help improve FDA's ability to respond to, and further contain threats of serious adverse health consequences or death to humans or animals.

DATES: *Effective date:* This interim final rule is effective March 1, 2012.

Comment date: Interested persons may submit either electronic or written comments on this interim final rule by May 23, 2012.

FOR FURTHER INFORMATION CONTACT: William A. Correll, Jr., Office of Compliance (HFS–607), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1611.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2002–N–0153 (formerly Docket No. 2002N–0277) and/or Regulatory Information Number (RIN) 0910–AG73 by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

• *FAX:* 301–827–6870.

• *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name, docket number and RIN for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legal Background

Each year about 48 million people (1 in 6 Americans) get sick, 128,000 are hospitalized, and 3,000 die from food borne diseases, according to recent data from the Centers for Disease Control and Prevention (CDC) (Estimates of Foodborne Illness in the United States—CDC 2011 Estimates, available at *http://www.cdc.gov/foodborneburden*). This is a significant public health burden that is largely preventable.

FSMA (Pub. L. 111–353), signed into law by President Obama on January 4, 2011, enables FDA to better protect public health by helping to ensure the safety and security of the food supply. It enables FDA to focus more on preventing food safety problems rather than relying primarily on reacting to problems after they occur. The law also provides FDA with new enforcement authorities to help it achieve higher rates of compliance with prevention and risk-based food safety standards and to better respond to and contain problems when they do occur. The law also gives FDA important new tools to better ensure the safety of imported foods and directs FDA to build an integrated national food safety system in partnership with State and local authorities.

Section 101 of FSMA amends section 414(a) of the FD&C Act (21 U.S.C. 350c(a)). Section 414 was added to the FD&C Act by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Pub. L. 107–188). As amended section 414(a) of the FD&C Act expands FDA's access to records. Specifically, FDA's access to records was expanded beyond records relating to the specific suspect article of food to records relating to any other article of food that the Secretary (by delegation FDA) reasonably believes is likely to be affected in a similar manner. In addition, FDA can now access records if FDA believes that there is a reasonable probability that the use of or exposure to an article of food, and any other article of food that FDA reasonably believes is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animals. Decisions regarding whether FDA ''reasonably believes'' a food is affected in a similar manner to cause serious adverse health consequences or death to humans or animals would be made on a case-by-case basis because such decisions are fact-specific. Section 414(a) of the FD&C Act further provides that, at the request of an officer or employee duly designated by FDA, each person (excluding farms and restaurants) who manufactures, processes, packs, distributes, receives, holds, or imports such article shall permit such officer or employee to have access to and copy all records relating to such article and any other article of food that FDA reasonably believes is likely to be affected in a similar manner. FDA shall have access to the records that are needed to assist FDA in determining whether there is a reasonable probability that the use of or exposure to the food will cause serious adverse health consequences or death to humans or animals. To gain access to these records, the officer or employee must present appropriate credentials and a written notice to such person, at reasonable times and within reasonable limits and in a reasonable manner. The Bioterrorism Act also amended section 704(a)(1)(B) of the FD&C Act (21 U.S.C. 374(a)(1)(B)) to include a cross-reference to section 414 of the FD&C Act. Section 101 of FSMA amends this section by updating the cross-reference to refer to the amended version of section 414(a).

The amendments made by section 101 of FSMA to the FD&C Act were effective upon enactment of the law (January 4, 2011).

B. Brief History of Establishment, Maintenance, and Availability of Records

Among other things, section 306(a) of the Bioterrorism Act amended the FD&C Act by adding section 414(a) to the FD&C Act, which provided FDA with the authority to access records if FDA has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals, persons who manufacture, process, pack, distribute, receive, hold, or import food must provide access to records related to the food that are needed to assist FDA in determining whether the food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals. The statute provided for such records to be provided under certain conditions, including at reasonable times.

In addition, section 306(a) of the Bioterrorism Act added a new section 414(b) to the FD&C Act that provided, in part, that FDA may by regulation establish requirements regarding establishment and maintenance, for not longer than 2 years, of records by persons (excluding farms and restaurants) who manufacture, process, pack, transport, distribute, receive, hold, or import food. The records that are required to be kept by these regulations are those needed by FDA for inspection to allow FDA to identify the immediate previous sources and immediate subsequent recipients of food.

Section 306(b) of the Bioterrorism Act also amended section 704(a) of the FD&C Act to authorize FDA inspections of all records and other information described in section 414 of the FD&C Act, when FDA has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals.

Further, section 306(c) of the Bioterrorism Act amended section 301 of the FD&C Act (21 U.S.C. 331) to make it a prohibited act to refuse to permit access to, or copying of, any record as required by section 414 or 704(a) of the FD&C Act; or to fail to establish or

maintain any record as required by section 414(b) of the FD&C Act; or to refuse to permit access to, or verification or copying of, any such required record; or for any person to use to his own advantage, or to reveal, other than to FDA or officers or employees of the Department of Health and Human Services, or to the courts when relevant in any judicial proceeding under the FD&C Act, any information acquired under authority of section 414 of the FD&C Act.

In accordance with the Bioterrorism Act, FDA issued a proposed rule in the **Federal Register** on May 9, 2003 (68 FR 25188) (the 2003 proposed rule), proposing to require the establishment and maintenance of records to identify the immediate previous sources and immediate subsequent recipients of food and the record availability requirements. On December 9, 2004, FDA issued a final rule in the **Federal Register** (69 FR 71562) (the 2004 final rule) specifying the requirements for the establishment and maintenance of records, including among other provisions the record availability requirements. The establishment, maintenance, and availability of records regulations have been codified at part 1, subpart J (21 CFR part 1, subpart J).

The current regulation at § 1.361 primarily tracks the language of section 414(a) of the FD&C Act prior to the amendments made by FSMA. However, the regulation does specify the timeframe in which the records must be provided in that requested records and information must be made available as soon as possible, not to exceed 24 hours, from the time of receipt of an official request. As specified by the statute, the request must be from an officer or employee designated by the Secretary who presents appropriate credentials and a written notice.

This IFR amends § 1.361 by replacing the current text with language that reflects the language of section 414 of the FD&C Act as amended by section 101 of FSMA. This amendment conforms the regulation to the statute that is now in effect. Upon publication of this IFR, records requested by FDA under amended section 414(a)(1) and (a)(2) of the FD&C Act will fall within the scope of the availability requirements in the regulation.

C. Justification for Interim Final Rulemaking

In accordance with the provisions of the Administrative Procedure Act at 5 U.S.C. 553(b)(3)(B) and FDA's administrative practices and procedures regulations at § 10.40(e)(1) (21 CFR 10.40(e)(1)), FDA finds for good cause that use of prior notice and comment procedures for issuing this IFR is contrary to the public interest. This IFR modifies § 1.361 to be consistent with the current statutory language in section 414(a) of the FD&C Act and to require that records and other information be provided as soon as possible, but no later than 24 hours from the receipt of an official records request. Because FDA's expanded records access authority was effective upon the enactment of FSMA, it is contrary to the public interest to require those members of the public whose records are requested under FDA's expanded authority to produce records without regulations explaining how to comply with FDA's new authority. Thus, in the interest of protecting the public health and eliminating any possible confusion about how to comply with FDA's expanded authority, FDA is dispensing with the need for prior notice and comment and is issuing this IFR.

Further, under 5 U.S.C. 553(d)(3) and § 10.40(d), we find good cause to make this IFR effective immediately. As stated previously in this document, to protect the public health it is necessary that we act quickly to make the regulation at issue consistent with the current statutory provisions in order to eliminate any possible confusion that may arise during the time that the regulation and statute are inconsistent. As discussed later in this document, FDA invites public comment on this IFR.

II. Analysis of Impacts

FDA has examined the impacts of this IFR under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Office of Management and Budget (OMB) has determined that this IFR is a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the additional costs per entity of this IFR are negligible if any, the Agency also concludes that this IFR will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this IFR to result in any 1-year expenditure that would meet or exceed this amount.

In the 2003 proposed rule, FDA analyzed the economic impact of the proposed rule to require the establishment and maintenance of records and record availability requirements under the Bioterrorism Act (68 FR 25188). The Economic Impact Analysis of the 2004 final rule (69 FR 71562 at 71611) revised the analysis set forth in the 2003 proposed rule in response to comments on the proposed rule and to account for the changes between the proposed and final rules. The Economic Impact Analysis in this IFR explains and further revises the analysis set forth in the 2004 final rule by addressing the economic impact of the amendments made by section 101 of FSMA.

A. Need for Regulation

The need for this IFR arises from section 101 of FSMA which expands FDA's access to records beyond records relating to the specific suspect article of food to records relating to any other article of food that FDA reasonably believes is likely to be affected in a similar manner. In addition, the FSMA amendment provides FDA additional access to records relating to articles of food for which FDA believes that there is a reasonable probability that the use of or exposure to the article of food, and any other article of food that FDA reasonably believes is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animals. This amendment will further help the Agency prevent potentially harmful food from reaching consumers and thereby improve the safety of the food supply in the United States. This IFR amends the record availability requirements in § 1.361 in accordance with the new records access authority in section 414(a) of the FD&C Act, which

became effective immediately upon the enactment of FSMA.

B. Costs

FDA expects the costs related to this IFR to be negligible. According to the 2004 final rule analysis, the final rule covered more than 1 million entities, and this IFR covers those same entities.

Because, as a standard business practice, most firms were already capable of providing records access within 24 hours of a request, records access planning costs and records retention (which include storage and retrieval) costs were estimated to be zero in the 2004 final rule and were not reported in the total costs estimate.

As this IFR only affects FDA's authority to access already existing records, most records management procedures will not change. As stated in the 2004 final rule (69 FR 71562 at 71635), the estimated records access costs are based on the private costs of planning for a records access request. The costs to plan for a records access request are the same under this IFR as they were under the 2004 final rule, regardless of the number of records requested. FDA does not estimate the probability of a records access request. To the extent that FDA would have access to additional records that we previously could not access, the following potential costs could be incurred by both FDA and businesses:

1. Costs to FDA: Costs incurred by FDA could result from the additional time it would take to analyze records in order to complete an investigative visit. On average, records access times depend, in part, on how records are stored and maintained; average travel times, length of overnight stays required for completing an investigative visit; and average records analysis times. According to the 2004 final rule, the time required to analyze records depends on the quality of the records (69 FR 71562 at 71616). Potential costs to the Agency from this IFR in terms of additional time needed to analyze more records than under the 2004 final rule are expected to be small.

2. Costs to businesses: Costs incurred by businesses could result from an FDA access request requiring them to retrieve a larger number of records than they would have otherwise retrieved under the current authority. Similar to the costs of planning for a records access request, the 2004 final rule estimated records retrieval costs are also based on the private costs of retrieving records (69 FR 71562 at 71635). This IFR does not require firms to make any changes in records retention practices beyond the requirement in the 2004 final rule (69 FR 71562 at 71654), and thus the marginal cost is estimated to be negligible.

Since neither the FDA nor firms are able to predict the number of records requested to complete an investigation under the current authority or the new authority, additional costs to retrieve any number of additional records are estimated to be the same under this IFR as they were under the 2004 final rule, regardless of the number of records requested.

FDA would use this new authority in a targeted fashion and it is unlikely that FDA would request all records from a suspect facility. The records FDA will access and copy will be focused on addressing the immediate needs of the inspection.

To the extent that FDA requests access to more records than it was previously allowed to access under similar circumstances, businesses may incur additional retrieval costs per record. However, the costs of retrieving one or more additional records from any number of records still remain part of the private costs for records retention which are determined by a firm's business plan. Thus, any potential costs to businesses from this IFR in terms of retrieving more records than under the 2004 final rule are also expected to be small.

C. Benefits

In the 2004 final rule analysis, FDA estimated the number of illnesses prevented (excluding those associated with food security) to be approximately 1,204 (69 FR 71562 at 71616). Averted illnesses in the 2004 final rule were attributed to having quicker access to records (24-hour time period) to initiate an investigation and also due to an increased ability to complete investigations that previously would have been prematurely terminated due to poor records quality (69 FR 71562 at 71614).

Similarly, the expected benefits from this IFR will be from minimizing consumer exposure to potentially dangerous foods. These benefits will be achieved by FDA having access to records beyond those relating only to the specifically suspect article of food. By expanding the current records access authority to include records relating to any other article of food that FDA reasonably believes is likely to be affected in a similar manner, FDA can now access additional information that can enhance FDA's food safety efforts.

FDA has not quantified any additional benefits from this IFR, but because this IFR enhances food safety and security efforts, we reason that any benefits resulting from this IFR are likely to be in addition to benefits already estimated in the 2004 final rule.

III. Small Entity Analysis (or Final Regulatory Flexibility Analysis)

FDA examined the economic implications of this IFR as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options that would lessen the economic effect of the rule on small entities.

The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses. In compliance with the Regulatory Flexibility Act this IFR will not have a significant impact on a substantial number of small businesses.

IV. Paperwork Reduction Act of 1995

This interim final rule contains information collection provisions that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

We conclude that these information collection provisions are exempt from OMB review under 44 U.S.C. 3518(c)(1)(B)(ii) and 5 CFR 1320.4(a)(2) as collections of information obtained during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities. The regulations in 5 CFR 1320.3(c) provide that the exception in 5 CFR 1320.4(a)(2) applies during the entire course of the investigation, audit or action, but only after a case file or equivalent is opened with respect to a particular party. Such a case file would be opened as part of the request to access records under § 1.361.

V. Analysis of Environmental Impact

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

VI. Federalism

FDA has analyzed this IFR in accordance with the principles set forth in Executive Order 13132. FDA has determined that the IFR does not contain policies that have substantial direct effects on the States, on the

relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency concludes that the IFR does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Comments

The requirements in this IFR will be in effect immediately upon publication in the **Federal Register.** FDA invites public comment on this IFR and will consider modifications to it based on comments made during the comment period when FDA issues the final rule. FDA intends to finalize this IFR 1 year from the close of the comment period.

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. 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.

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1 is amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

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

Authority: 15 U.S.C. 1453, 1454, 1455; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 333, 334, 335a, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 387, 387a, 393; 42 U.S.C. 216, 241, 243, 262, 264.

■ 2. Section 1.361 is revised to read as follows:

§ 1.361 What are the record availability requirements?

When FDA has a reasonable belief that an article of food, and any other article of food that FDA reasonably believes is likely to be affected in a similar manner, is adulterated and presents a threat of serious adverse health consequences or death to humans or animals, or when FDA believes that there is a reasonable probability that the use of or exposure to an article of food, and any other article of food that FDA reasonably believes is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animals, any records and other information accessible to FDA under section 414 or 704(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350c and 374(a)) must be made readily available for inspection and photocopying or other means of reproduction. Such records and other information must be made available as soon as possible, not to exceed 24 hours from the time of receipt of the official request, from an officer or employee duly designated by the Secretary of Health and Human Services who presents appropriate credentials and a written notice.

Dated: February 17, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4165 Filed 2–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2011–D–0598]

Guidance for Industry: Questions and Answers Regarding Establishment and Maintenance of Records by Persons Who Manufacture, Process, Pack, Transport, Distribute, Receive, Hold, or Import Food (Edition 5)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of guidance availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Questions and Answers Regarding Establishment and Maintenance of Records by Persons Who Manufacture, Process, Pack, Transport, Distribute, Receive, Hold, or Import Food (Edition 5).'' This guidance provides updated information pertaining to the establishment and maintenance of records by persons who manufacture, process, pack, transport, distribute, receive, hold, or import food in the United States under the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety and Modernization Act (FSMA) of January 4, 2011.

DATES: February 23, 2012. Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit electronic comments on the 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. Submit written requests for single copies of the guidance to the Outreach and Information Center (HFS–009), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: William A. Correll, Jr., Center for Food Safety and Applied Nutrition (HFS–607), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1611.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Questions and Answers Establishment and Maintenance of Records by Persons Who Manufacture, Process, Pack, Transport, Distribute, Receive, Hold, or Import Food (Edition 5),'' which replaces the fourth edition of a guidance of the same title issued in September 2006. The guidance is intended for persons who manufacture, process, pack, hold, or import human or animal foods intended for distribution to consumers, institutions, or food processors.

In the **Federal Register** of December 9, 2004 (69 FR 71562), FDA published a final rule implementing sections 414 and 704 of FD&C Act (21 U.S.C. 350c and 374) as amended by section 306 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The final rule requires the establishment and maintenance of records by persons who manufacture, process, pack, transport, distribute, receive, hold, or import food in the United States. Such records are to allow for the identification of the immediate previous sources and the immediate subsequent recipients of food. FSMA, signed into law on January 4, 2011 (Pub. L. 111–353), amended sections 414 and 704 of the FD&C Act by expanding FDA's access to records relating to foods that may cause serious adverse health consequences or death to humans or animals. In February 2012, FDA issued an interim final rule that revises § 1.361 (21 CFR 1.361) to reflect the FSMA amendments to the FD&C

Act. This guidance document has been updated to reflect these changes.

On September 12, 2005, FDA issued the first edition of a guidance entitled ''Questions and Answers Regarding the Establishment and Maintenance of Records.'' This document is the fifth edition of that guidance and is updated to reflect changes to the FD&C Act made by FSMA. This guidance is intended to provide individuals in the human and animal food industries with an updated overview of FDA's access to records. It provides practical information by answering common questions that cover a range of topics, including who is subject to records requirements, the scope of records retention and availability requirements, and the consequences of failing to establish and maintain required records or failing to make required records available to FDA. This guidance is being issued consistent with FDA's good guidance practices regulation § 10.115 (21 CFR 10.115) as a level 1 guidance. The Agency will accept comments, but it is implementing this document immediately, in accordance with § 10.115(g)(2) because the Agency has determined that prior public participation is not feasible or appropriate. The Agency made this determination because this guidance simply reflects the statutory changes made by section 101 of FSMA to sections 414 and 704 of the FD&C Act and seeks to remove any confusion that might arise due to the existence of a guidance document that is inconsistent with the FD&C Act and its implementing regulations. In addition, much of this guidance remains the same as the guidance issued in September 2006.

This guidance represents the Agency's current thinking on its authority to access and copy records. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to information collection provisions 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). We conclude that the collection of information in § 1.361 is exempt from OMB review under 44 U.S.C. 18(c)(1)(B)(ii) and 5 CFR 1320.4(a)(2) as collections of information obtained during the conduct of a civil action to which the United States or any official or Agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an Agency against specific individuals or entities. The regulations in 5 CFR 1320.3(c) provide that the exception in 5 CFR 1320.4(a)(2) applies during the entire course of the investigation, audit or action, but only after a case file or equivalent is opened with respect to a particular party. Such a case file would be opened as part of the request to access records under § 1.361.

III. 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. 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.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov.* Always access an FDA guidance document by using the Web sites listed previously to find the most current version of the guidance.

Dated: February 17, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4167 Filed 2–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 59

RIN 2900–AN77

Due Date of Initial Application Requirements for State Home Construction Grants

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) regulations concerning the calendar date by which VA must receive an initial application for a State Home Construction Grant in order for the application to be included on the priority list for the award of grants during the next fiscal year. We require that initial application materials must be received by VA no later than April 15, instead of August 15, of the year before the fiscal year in which the application would be considered for inclusion on the priority list for the award of grants. We require certification of State matching funds to be submitted no later than August 1, instead of August 15, in order for the project to be placed in priority group 1 of the priority list for the next fiscal year. The purpose of these changes is to ensure that VA has sufficient time to process all applications received and timely prepare the priority list, so that we can accurately notify States that VA intends to select and fund particular projects. We also make technical revisions to conform our regulations to these revisions.

DATES: This final rule is effective March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Vernon Wilkes, State Veterans Homes (10NA5), 1717 H Street NW., Washington, DC 20006, (202) 266–4617. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 8131 through 8138, VA is authorized to award grants to assist States in constructing, remodeling, altering, or expanding State home facilities that will furnish specified types of care to veterans. VA has implemented this statutory authority at 38 CFR part 59.

Under 38 U.S.C. 8135, States that wish to receive assistance for a State home construction project (or acquisition of an existing facility to be used as a State home facility) must submit an application that includes certain information and documentation described in the statute. VA has implemented the application requirement in current § 59.20(a), which requires that applicants seeking inclusion on the priority list for grants awarded during the next fiscal year submit to VA an original and one copy of a completed VA Form 10–0388–1 and all information, documentation, and other forms specified by VA Form 10–0388–1. Under current § 59.20(c), VA encourages the submission of the application by April 15 but considers any application submitted before August 16 for inclusion on the priority list. VA maintains the ''priority list'' pursuant to current 38 CFR 59.50. Additionally, under current § 59.70(b), VA requires a State to commit funds for a project before August 16 in order for that project to be eligible for inclusion in priority group 1 of the priority list for the next fiscal year.

On March 1, 2011, VA published a proposed rule to improve the clarity and efficacy of the application process and

to address certain administrative challenges presented by the current rules. 76 FR 11187 (Mar. 1, 2011). We proposed adopting April 15 as the due date for applications, including matching funding. We provided a 60-day comment period during which we received eight comments from State departments of veterans affairs and State veterans homes and a comment from the National Association of State Veterans Homes. All of the commenters raised similar or identical concerns, which we address below. We are grateful for their submissions and, after careful deliberation, make one change to the final rule based on these comments.

First, several commenters assert that they have consistently treated the April 15 date as a ''preapplication'' date and acknowledge that they complete as much of the application as possible on or before that date. However, they argue that it is impossible to meet an April 15 deadline for matching funds because the fiscal year for most States begins on July 1, which is after that deadline. To address this concern, the final rule adopts a separate, later, deadline for the official certification of matching funds. Under the final rule, the application must be received no later than April 15. If official certification of the matching funds is received on or before August 1, the State may be included in priority group 1.

This will allow VA to review the submissions and establish each application in priority groups 2 through 7 (which mirror the sub-priorities in priority group 1 with the distinction that projects in priority group 1 have State matching funds while those in priority groups 2 through 7 lack these resources). When a State is able to provide documentation of State matching funds, the application will be placed in the appropriate position in priority group 1. Should a State be unable to document matching funds by the new August 1 deadline, the project will be placed in one of groups 2 through 7 for the following fiscal year.

Some commenters argue that the burden of filing the application itself, not just the matching-funds requirement, would be impossible to meet before April 15. Previous experience is that most States already submit preapplication materials on or before April 15, as acknowledged by the commenters themselves, and thus, we do not think that there will be a new significant burden. The items required on the VA Form 10–0388–1 are generally administrative information (such as identifier numbers) and the schematics of the project. Schematics generally require an aerial view of the site of the project, a floor plan, and a rendering of the exterior of the building. Although these may require some financial expense, we believe that the cost is usually between $6,000 and $10,000. In any event, it is never a significant expense in relation to the cost of the project itself, which is usually over $30 million. We do not believe that it should be necessary to wait for a State legislature to authorize the expense or time for producing these application materials.

The commenters challenged VA's need for the additional review time, citing the impact of the American Recovery and Reinvestment Act of 2009 (ARRA) on the previous grant cycle asserting that it resulted in an anomalously high number of applications. We acknowledge that the ARRA increased the 2010 workload but maintain that there is a need for additional review time in general, based on the uniqueness of each fiscal year, the complexity of the projects, and the need for extensive detailed and careful review of each application. In fact, we had begun reassessing the August 15 due date before Fiscal Year 2010. Adoption of the proposed April 15 application due date, while allowing States to submit documentation of matching funds by August 1, will allow VA to provide due diligence in the review and prioritization process, while maximizing the States' opportunity to obtain and document matching funds to secure a position in priority group 1.

Several commenters recommended delaying publication of the priority list rather than altering the due date. We appreciate the flexibility recommended by these parties but note that release of the priority list is determined by the time federal budget funds are appropriated. Regardless of the ultimate date the budget is finalized, VA strives to publish the priority list in a timely manner and will continue to do so in an effort to provide quick, efficient distribution of and maximum access to available funds.

The commenters also argue administrative inconvenience. However, the initial application materials are not overly burdensome, and requiring the earlier deadlines will help VA ensure the timely delivery of funds to worthy State projects. Because most applications are already received by April 15, this date is reasonable, and allowing for the August 1 date for the certification of matching funds addresses the administrative needs of the States.

Finally, commenters objected to VA's rulemaking as being based solely on the administrative needs of VA staff, at the expense of America's veterans. VA strives diligently to remain veteran-centric in all of its programs. Clarification of the due date and the technical changes proposed in this amendment are designed to mirror current practice and to facilitate a thorough and complete review of grant applications prior to funding, in an effort to minimize program delays and make space in the State homes available to our veterans as quickly as possible. VA has always initiated review of proposals upon receipt, which in most cases has been by the April 15 date cited in § 59.20. However, VA's review of these grants and their construction plans necessitates numerous internal concurrences; communications with the States for clarification of the application materials; development and adoption of memorandums of understanding for each project; and other significant, time-consuming, relevant processes. Each proposal is unique and may have special issues, including terrain, access, potential for natural disaster, facility measures, varying codes and local requirements, etc. VA staff assesses new construction as well as renovations to facilities of various ages, under an assortment of State and national construction and safety standards, to ascertain that each element of the application is thorough, complete, and current. Requiring this detailed review prior to prioritization and funding ensures that the project is ''shovel ready'' when funds become available. This, in turn, helps ensure that VA funds projects that will be ready, on time, for waiting veterans.

Acknowledging the effort the States have historically made to submit applications by the April 15 date to secure their position on the priority list, we believe formal adoption of an April 15 deadline, with the August 1 date for documentation of matching funds for placement in priority group 1, will help VA and the States and, most importantly, serve the needs of veterans by improving existing space and making new space available for eligible veterans at the earliest possible moment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

Although this document contains provisions constituting collections of information, at 38 CFR 59.20, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), no new or revised collections of information are associated with this rule. The information collection requirements for § 59.20 are currently approved by OMB and have been assigned OMB control number 2900–0661.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined to be a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule affects States and has no impact on any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

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 November 14, 2011, for publication.

List of Subjects in 38 CFR Part 59

Administrative practice and procedure; Alcohol abuse; Alcoholism; Claims; Day care; Dental health; Drug abuse; Government contracts; Grant programs—health; Grant programs—veterans; Health care; Health facilities; Health professions; Health records; Homeless; Mental health programs; Nursing homes; Philippines, Reporting and recordkeeping requirements; Veterans.

Dated: February 17, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 59 as follows:

PART 59—GRANTS TO STATES FOR CONSTRUCTION OR ACQUISITION OF STATE HOMES

■ 1. Revise the authority citation for part 59 to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137.

■ 2. Amend § 59.20 by:
■ a. Revising paragraph (c).
■ b. Removing ''August'' from paragraph (d) and adding, in its place, ''April''.
■ c. Adding an information collection approval parenthetical after the authority citation at the end of the section.

The revision and addition read as follows:

§ 59.20 Initial application requirements.

* * * * *

(c) The items requested under paragraph (a) of this section must be received by VA no later than April 15 in order for VA to include the application on the priority list for the award of grants during the next fiscal year. *See* § 59.50, Priority List.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0661)

■ 3. Amend § 59.50 by removing ''August'' from the introductory text of paragraph (a) and adding, in its place, ''April''.
■ 4. Amend § 59.70 by removing ''August 15'' from paragraph (b) and adding, in its place, ''August 1''.

[FR Doc. 2012–4234 Filed 2–22–12; 8:45 am]

BILLING CODE 8320–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 519 and 552

[GSAR Amendment 2012–02; GSAR Case 2011–G502; (Change 54) Docket 2012–0003, Sequence 1]

RIN 3090–AJ24

General Services Administration Acquisition Regulation; Acquisition-Related Thresholds

AGENCIES: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to update the acquisition-related thresholds in two GSAR clauses.

DATES: *Effective Date:* March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at (202) 501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite GSAR Amendment 2012–02, GSAR Case 2011–G502.

SUPPLEMENTARY INFORMATION:

I. Background

The General Services Administration is amending the GSAR to comply with changes made to acquisition-related thresholds by Federal Acquisition Circular 2005–45 (Federal Acquisition Regulation (FAR) Case 2008–024), published in the **Federal Register** at 75 FR 53129, August 30, 2010, with an effective date of October 1, 2010. FAR Case 2008–024 implements Section 807 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375). Section 807 provides for adjustment every 5 years of acquisition-related thresholds, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds.

As a result of changes made to the acquisition-related thresholds, the GSAR clause at 552.219–71, Notice to Offerors of Subcontracting Plan Requirements, is revised by removing ''$500,000'' and ''$1,000,000'' and replacing the GSAR text with ''$650,000'' and ''$1,500,000'', respectively. The GSAR clause at 552.219–72, Preparation, Submission, and Negotiation of Subcontracting Plans, is revised by removing ''$500,000'' and ''$1,000,000'' and replacing the GSAR text with ''$650,000'' and ''$1,500,000'', respectively.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The General Services Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because FAR Case 2008–024, which addresses the acquisition-related thresholds, was published in the **Federal Register** at 75 FR 53129, August 30, 2010, with an effective date of October 1, 2010. Further, Acquisition Letter MV–11–01, Adjustment of GSAM Acquisition-Related Thresholds due to Federal Acquisition Circular 2005–45 (Item I, Inflation Adjustment of Acquisition-Related Thresholds), was effective immediately upon the publishing of Acquisition Letter (October 8, 2010). All other revisions to the GSAM are non-regulatory.

IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 519 and 552

Government procurement.

Dated: February 16, 2011.

Joseph A. Neurauter,

Senior Procurement Executive, Office of Acquisition Policy, General Services Administration.

Therefore, GSA amends 48 CFR parts 519 and 552 as set forth below:

PART 519—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 519 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

■ 2. Amend section 519.870–8 by revising paragraph (a)(3) to read as follows:

519.870–8 Contract clauses.

(a) * * *

(3) Insert the clause at FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns. Substitute the following paragraph for paragraph (c) of the clause. Add the word ''Deviation'' at the end of the clause title.

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 4. Amend section 552.219–71 by revising the date of the provision; and by removing from the introductory text ''$500,000 ($1,000,000'' and adding ''$650,000 ($1,500,000'' in its place. The revised text reads as follows:

552.219–71 Notice to Offerors of Subcontracting Plan Requirements.

* * * * *

Notice to Offereors of Subcontracting Plan Requirements (MAR 2012)

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■ 5. Amend section 552.219–72 by revising the date of the provision; and removing from the introductory text ''$500,000 ($1,000,000'' and adding ''$650,000 ($1,500,000'' in its place. The revised text reads as follows:

552.219–72 Preparation, Submission, and Negotiation of Subcontracting Plans.

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Preparation, Submission, and Negotiation of Subcontracting Plans (MAR 2012)

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■ 6. Amend section 552.219–76 by revising the date of the clause; and removing from paragraph (f) ''519.7011(j)'' and adding ''519.7010(j)'' in its place. The revised text reads as follows:

552.219–76 Mentor Requirements and Evaluation.

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Mentor Requirements and Evaluation (MAR 2012)

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[FR Doc. 2012–4229 Filed 2–22–12; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 199

[Docket No. PHMSA–2011–0335]

Pipeline Safety: Post Accident Drug and Alcohol Testing

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice of Issuance of Advisory Bulletin.

SUMMARY: PHMSA regulations in Part 199 require pipeline operators and operators of Liquefied Natural Gas (LNG) facilities to conduct post-accident drug and alcohol tests of covered employees. Within the mandated timelines after a reportable pipeline accident or incident, operators must drug and alcohol test each covered employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident or incident. Operators must make the determination of employee contribution to the accident or incident promptly to meet the timelines for testing required by the regulations. This was further emphasized by the National Transportation Safety Board (NTSB) in its report of the September 9, 2010, incident in San Bruno, California.

DATES: February 23, 2012.

FOR FURTHER INFORMATION CONTACT: Stanley Kastanas by phone at 202–550–0629 or by email at *stanley.kastanas@dot.gov,* regarding the subject matter of this advisory bulletin, or the Dockets Unit, 202–366–4453, for copies of this advisory bulletin or other material in the docket. All materials in this docket may be accessed electronically at *http://www.regulations.gov/search/Regs/home.html#home*. General information about the PHMSA Office of Pipeline Safety (OPS) can be obtained by accessing OPS's Internet home page at *http://www.phmsa.dot.gov/pipeline*.

SUPPLEMENTARY INFORMATION:

I. Background

On September 9, 2010, a 30-inch-diameter segment of an intrastate natural gas transmission pipeline owned and operated by the Pacific Gas and Electric Company ruptured in a residential area in San Bruno, California. As a result of an NTSB investigation of this event, one of its recommendations to PHMSA was to issue guidance clarifying the need to conduct post-accident drug and alcohol testing of all potentially involved personnel despite uncertainty about the circumstances of the accident. This advisory bulletin fulfills the NTSB recommendation and PHMSA's ongoing commitment to pipeline safety.

II. Advisory Bulletin (ADB–2012–02)

To: Operators of Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities.

Subject: Post-Accident Drug and Alcohol Testing.

Advisory: ''The need to conduct post-accident drug and alcohol testing of all potentially involved personnel despite uncertainty about the circumstances of the accident'' is an important reminder and recommendation in the final report of the NTSB—*Pacific Gas and Electric Company Natural Gas Transmission Pipeline Rupture and Fire, San Bruno, California, September 9, 2010,* Pipeline Accident Report [NTSB/PAR–11/01; Washington, DC]. The term ''accident'' in Part 199 includes both ''incidents'' reportable under Part 191 and ''accidents'' reportable under Part 195. Covered employees include both operator employees and contractor employees performing operations, maintenance, or emergency response functions. Operators and contractors are encouraged to review and update, where necessary, plans and procedures governing post-accident substance abuse/misuse testing and train all those involved with ensuring that such testing is performed promptly and in an effective manner.

Compliance Reminder

Operators are reminded that covered functions encompass a broad range of employee and contractor positions, including, but not limited to, contract emergency responders, pressure control technicians, temp-agency covered employees, and control room operators. If a covered employee's performance cannot be completely discounted as a contributing factor to the accident or incident, the employee must be tested for the potential substance abuse or misuse of both drugs and alcohol. In order to meet the testing timelines, do not delay testing in order to determine the circumstances surrounding the accident or incident. However, the accident or incident circumstances and events must be assessed promptly and documented, especially the reasons for not drug or alcohol testing an accident-related covered employee.

Key Regulatory Sections Applicable to Post-Accident Drug and Alcohol Testing

The following are key regulatory sections addressing post-accident drug and alcohol testing that should be reviewed, along with other applicable sections of Part 199:

- Under § 199.105, post-accident drug tests of covered employees whose performance cannot be completely discounted as a contributing factor to the accident must be completed no later than 32 hours after the accident.
- Under § 199.225(a), if an operator does not complete post-accident alcohol testing of covered employees whose performance cannot be completely discounted as a contributing factor to the accident within two hours of the accident, the operator must prepare and maintain on file a record stating the reasons the test was not promptly administered. If post-accident alcohol testing is not administered within eight hours following the accident, the operator must cease attempts to administer an alcohol test and must state in the record the reasons for not administering the test. Covered employees must remain available for post-accident testing, but emergency response or medical care of the employee are never to be delayed for alcohol testing.
- Under § 199.221, each operator shall prohibit a covered employee who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the operator as a contributing factor to the accident from using alcohol for eight hours following the accident, unless he or she has been given a post-accident test under § 199.225(a), or the operator has determined that the employee's performance could not have contributed to the accident.
- Under § 199.103(a) an operator may not knowingly use as an employee any person who (1) Fails a drug test required by this part and the Medical Review Officer makes a determination under DOT Procedures Part 40; or (2) refuses to take a drug test required by this part.
- Under § 199.223, each operator shall require a covered employee to submit to a post-accident alcohol test required under § 199.225(a). No operator shall permit an employee who refuses to submit to such a test to perform or continue to perform covered functions.
- Under § 199.233, no operator shall permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by §§ 199.215 through 199.223.

Issued in Washington, DC, February 15, 2012.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2012–4157 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907301205–0289–02]

RIN 0648–XB001

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Sub-ACL (Annual Catch Limit) Harvested for Management Area 2

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the directed herring fishery in management area 2, because 95 percent of the catch limit for that area has been caught. Effective 0001 hr, February 20, 2012, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring (herring) in or from Management Area 2 per calendar day until January 1, 2013, when the 2013 allocation for Area 2 becomes available.

DATES: Effective 0001 hr local time, February 20, 2012, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management Specialist, (978) 675–2079.

SUPPLEMENTARY INFORMATION: Regulations governing the herring fishery are found at 50 CFR part 648. The regulations require annual specification of the overfishing limit, acceptable biological catch, annual catch limit (ACL), optimum yield, domestic harvest and processing, U.S. at-sea processing, border transfer, and sub-ACLs for each management area. The 2012 Domestic Annual Harvest is 91,200 metric tons (mt); the 2012 sub-ACL allocated to Area 2 is 22,146 mt, and 0 mt of the sub-ACL is set aside for research (75 FR 48874, August 12, 2010).

Section 648.201 requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor the herring fishery in each of the four management areas designated in the Fishery Management Plan for the herring fishery and, based on dealer reports, state data, and other available information, to determine when the harvest of herring is projected to reach 95 percent of the management area sub-ACL. When such a determination is made, NMFS must publish notification in the **Federal Register** and prohibit herring vessel permit holders from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring per calendar day in or from the specified management area for the remainder of the closure period. Transiting of Area 2 with more than 2,000 lb (907.2 kg) of herring on board is allowed under the conditions described below.

The Regional Administrator has determined, based upon dealer reports and other available information that 95 percent of the total herring sub-ACL allocated to Area 2 for 2012 is projected to be harvested. Therefore, effective 0001 hr local time, February 20, 2012, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of herring in or from Area 2 per calendar day through December 31, 2012. Vessels may transit through Area 2 with more than 2,000 lb (907.2 kg) of herring on board, provided such herring was not caught in Area 2 and provided all fishing gear aboard is stowed and not available for immediate use as required by § 648.23(b). Effective 0001 hr, February 20, 2012, federally permitted dealers are also advised that they may not purchase herring from federally permitted herring vessels that harvest more than 2,000 lb (907.2 kg) of herring from Area 2 through 2400 hr local time, December 31, 2012.

Classification

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

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. This action closes the herring fishery for Management Area 2 until January 1, 2013, under current regulations. The regulations at § 648.201(a) require such action to ensure that herring vessels do not exceed the 2012 sub-ACL allocated to Area 2. The herring fishery opened for the 2012 fishing year on January 1, 2012. Data indicating the herring fleet will have landed at least 95 percent of the 2012 sub-ACL allocated to Area 2 have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the sub-ACL for Area 2 for this fishing year can be exceeded, thereby undermining the conservation objectives of the FMP. NMFS further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: February 17, 2012.

Carrie Selberg,

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

[FR Doc. 2012–4243 Filed 2–17–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XB028

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod for American Fisheries Act Catcher/Processors Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by American Fisheries Act (AFA) trawl catcher/processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2012 Pacific cod total allowable catch (TAC) specified for AFA trawl catcher-processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 17, 2012, through 1200 hrs, A.l.t., April 1, 2012.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2012 Pacific cod TAC specified for AFA trawl catcher-processors in the BSAI is 4,021 metric tons as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011) and inseason adjustment (76 FR 81875, December 29, 2011).

In accordance with § 679.20(d)(1)(i) and (d)(1)(ii)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the 2012 Pacific cod TAC allocated to AFA trawl catcher processors in the BSAI will be taken as incidental catch in the directed fishing for other species. Therefore, the Regional Administrator is establishing a directed fishing allowance for Pacific cod allocated to AFA trawl catcher processors in the BSAI of 0 mt. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by AFA trawl catcher processors in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by AFA trawl catcher/processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 16, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 17, 2012.

Carrie Selberg,

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

[FR Doc. 2012–4245 Filed 2–17–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111213751–2102–02]

RIN 0648–XA758

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Final 2012 and 2013 Harvest Specifications for Groundfish

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

ACTION: Final rule; closures.

SUMMARY: NMFS announces final 2012 and 2013 harvest specifications and prohibited species catch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2012 and 2013 fishing years, and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the BSAI (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective from 1200 hrs, Alaska local time (A.l.t.), February 23, 2012, through 2400 hrs, A.l.t., December 31, 2013.

ADDRESSES: Electronic copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (EIS), Record of Decision (ROD), Supplementary Information Report (SIR) to the EIS, and the Final Regulatory Flexibility Analysis (FRFA), prepared for this action are available from *http://alaskafisheries.noaa.gov.* The final 2011 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2011 and SAFE reports for previous years, are available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, phone 907–271–2809, or from the Council's Web site at *http://alaskafisheries.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish fisheries in the BSAI. The Council prepared the FMP, and NMFS approved it under the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species; the sum TAC for all groundfish species must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (see § 679.20(a)(1)(i)). This final rule specifies the TAC at 2.0 million mt for both 2012 and 2013. NMFS also must specify apportionments of TACs, prohibited species catch (PSC) allowances, and prohibited species quota (PSQ) reserves established by § 679.21; seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC; Amendment 80 allocations; and Community Development Quota (CDQ) reserve amounts established by § 679.20(b)(1)(ii). The final harvest specifications set forth in Tables 1 through 16 of this action satisfy these requirements.

Section 679.20(c)(3)(i) further requires NMFS to consider public comment on the proposed annual TACs (and apportionments thereof) and PSC allowances, and to publish final harvest specifications in the **Federal Register**. The proposed 2012 and 2013 harvest specifications and PSC allowances for the groundfish fishery of the BSAI were published in the **Federal Register** on December 27, 2011 (76 FR 80782). Comments were invited and accepted through January 26, 2012. NMFS received 1 letter with 1 comment on the proposed harvest specifications. This comment is summarized and responded to in the ''Response to Comments'' section of this rule. NMFS consulted with the Council on the final 2012 and 2013 harvest specifications during the December 2011 Council meeting in Anchorage, AK. After considering public comments, as well as biological and economic data that were available at the Council's December meeting, NMFS is implementing the final 2012 and 2013 harvest specifications as recommended by the Council.

Acceptable Biological Catch (ABC) and TAC Harvest Specifications

The final ABC levels for Alaska groundfish are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and overfishing

levels (OFLs) involves sophisticated statistical analyses of fish populations. The FMP specifies a series of six tiers to define OFL and ABC amounts based on the level of reliable information available to fishery scientists. Tier 1 represents the highest level of information quality available while Tier 6 represents the lowest.

In December 2011, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed current biological information about the condition of the BSAI groundfish stocks. The Council's Plan Team compiled and presented this information in the 2011 SAFE report for the BSAI groundfish fisheries, dated November 2011. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. NMFS notified the public and asked for review of the SAFE report in the notice of proposed harvest specifications; the report is still available (see **ADDRESSES**). From these data and analyses, the Plan Team estimated an OFL and ABC for each species or species category.

In December 2011, the SSC, AP, and Council reviewed the Plan Team's recommendations. The SSC concurred with the Plan Team's recommendations, and the Council adopted the OFL and ABC amounts recommended by the SSC (Table 1). The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the sum of the TACs within the required OY range of 1.4 million to 2.0 million mt. As required by annual catch limit rules for all fisheries (74 FR 3178, January 16, 2009), none of the Council's recommended TACs for 2012 or 2013 exceeds the final 2012 or 2013 ABCs for any species category. The final 2012 and 2013 harvest specifications approved by the Secretary of Commerce are unchanged from those recommended by the Council and are consistent with the preferred harvest strategy alternative in the EIS (see **ADDRESSES**). NMFS finds that the Council's recommended OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as described in the 2011 SAFE report that was approved by the Council.

Other Actions Potentially Affecting the 2012 and 2013 Harvest Specifications

The Council is currently considering implementing management measures in the event that Pacific cod is split from a BSAI-wide fishery into separate OFLs, ABCs, and TACs for the Bering Sea subarea and the Aleutian Island subarea. This split depends on NMFS developing an age-structured model for the Aleutian Islands Pacific cod stock assessment that will be reviewed by the Plan Team and SSC in 2012 or 2013. This split could impact the OFLs, ABCs, and TACs for Pacific cod on Table 1 for 2013.

Changes From the Proposed 2012 and 2013 Harvest Specifications for the BSAI

In October 2011, the Council proposed its recommendations for the 2012 and 2013 harvest specifications (76 FR 80782, December 27, 2011), based largely on information contained in the 2010 SAFE report for the BSAI groundfish fisheries. Through the proposed harvest specifications, NMFS notified the public that these harvest specifications could change, as the Council would consider information contained in the 2011 SAFE report, recommendations from the SSC, Plan Team, and AP committees, and public testimony when making its recommendations for final harvest specification levels at the December Council meeting. NMFS further notified the public that, as required by the FMP and its implementing regulations, the sum of the TACs must be within the OY range of 1.4 million and 2.0 million mt.

Information contained in the 2011 SAFE reports indicates biomass changes for several groundfish species from the 2010 SAFE reports. At the December 2011 Council meeting, the SSC recommended the ABCs for many species in 2012 and 2013 based on the best and most recent information contained in the 2011 SAFE reports. This recommendation resulted in an ABC sum total for all BSAI groundfish species that exceeds 2 million mt for both 2012 and 2013. Based on the SSC ABC recommendations and the 2011 SAFE reports, the AP recommended raising the TACs for more economically valuable species that have increasing biomasses, such as Pacific cod and Greenland turbot. Conversely, the SSC reduced the OFL and ABC of Bering Sea pollock from the proposed OFL and ABC, and these reductions led to the largest decrease in TAC in terms of tonnage. In terms of percentage change from the proposed TACs, octopuses and sharks had the largest increases in TAC. This is due to model changes for the calculation of octopuses OFL and ABC, and recommendations by the AP and the Council of TACs that are more realistic of incidental harvest of these species in other fisheries. The Bogoslof pollock TAC also had a large percentage increase, because the SSC discontinued the target biomass of 2 million mt and adopted a traditional OFL and ABC estimate under the Tier 5 approach of the FMP. The Council recommended a TAC to account for incidental catch in other fisheries. However, under § 679.22(a)(7)(i)(B), directed fishing for pollock in the Bogoslof area is prohibited, so changes in TAC will have little effect upon fisheries. The changes to TAC between the proposed and final harvest specifications are based on the most recent scientific and economic information and are consistent with the FMP and regulatory obligations and harvest strategy as described in the proposed harvest specifications. These changes are compared in the following table.

Table 1 lists the Council's recommended final 2012 and 2013 OFL, ABC, TAC, initial TAC (ITAC), and CDQ reserve amounts of the BSAI groundfish. NMFS concurs in these recommendations. The final 2012 and 2013 TAC recommendations for the BSAI are within the OY range established for the BSAI and do not exceed the ABC for any single species or complex. The apportionment of TAC amounts among fisheries and seasons is discussed below.

COMPARISON OF FINAL 2012 AND 2013 WITH PROPOSED 2012 AND 2013 TOTAL ALLOWABLE CATCH IN THE BSAI

[Amounts are in metric tons]

Species	Area [1]	2012 final TAC	2012 proposed TAC	2012 difference from proposed	2013 final TAC	2013 proposed TAC	2013 difference from proposed
Pollock	BS	1,200,000	1,253,658	−53,658	1,201,900	1,253,658	−51,758
	AI	19,000	19,000	0	19,000	19,000	0

COMPARISON OF FINAL 2012 AND 2013 WITH PROPOSED 2012 AND 2013 TOTAL ALLOWABLE CATCH IN THE BSAI—Continued

[Amounts are in metric tons]

Species	Area [1]	2012 final TAC	2012 proposed TAC	2012 difference from proposed	2013 final TAC	2013 proposed TAC	2013 difference from proposed
	Bogoslof	500	150	350	500	150	350
Pacific cod	BSAI	261,000	229,608	31,392	262,900	229,608	33,292
Sablefish	BS	2,230	2,610	−380	2,200	2,610	−410
	AI	2,050	1,740	310	2,020	1,740	280
Atka mackerel	EAI/BS	38,500	36,800	1,700	31,700	36,800	−5,100
	CAI	10,763	10,293	470	8,883	10,293	−1,410
	WAI	1,500	1,500	0	1,500	1,500	0
Yellowfin sole	BSAI	202,000	197,660	4,340	203,900	197,660	6,240
Rock sole	BSAI	87,000	85,000	2,000	87,000	85,000	2,000
Greenland turbot	BS	6,230	3,500	2,730	6,010	3,500	2,510
	AI	2,430	1,450	980	2,020	1,450	570
Arrowtooth flounder	BSAI	25,000	25,900	−900	25,000	25,900	−900
Kamchatka flounder	BSAI	17,700	17,700	0	17,700	17,700	0
Flathead sole	BSAI	34,134	41,548	−7,414	34,134	41,548	−7,414
Other flatfish	BSAI	3,200	3,000	200	3,200	3,000	200
Alaska plaice	BSAI	24,000	16,000	8,000	24,000	16,000	8,000
Pacific ocean perch	BS	5,710	5,710	0	6,540	5,710	830
	EAI	5,620	5,660	−40	6,440	5,660	780
	CAI	4,990	4,960	30	5,710	4,960	750
	WAI	8,380	8,370	10	9,610	8,370	1,240
Northern rockfish	BSAI	4,700	4,000	700	4,700	4,000	700
Shortraker rockfish	BSAI	393	393	0	393	393	0
Rougheye rockfish	BS/EAI	231	240	−9	241	240	1
	CAI/WAI	244	225	19	258	225	33
Other rockfish	BS	500	500	0	500	500	0
	AI	570	500	70	570	500	70
Squids	BSAI	425	425	0	425	425	0
Skates	BSAI	24,700	16,500	8,200	24,746	16,500	8,246
Sharks	BSAI	200	50	150	200	50	150
Octopuses	BSAI	900	150	750	900	150	750
Sculpins	BSAI	5,200	5,200	0	5,200	5,200	0
Total	BSAI	2,000,000	2,000,000	0	2,000,000	2,000,000	0

[1] Bering Sea subarea (BS), Aleutian Islands subarea (AI), Bering Sea and Aleutian Islands management area (BSAI), Eastern Aleutian District (EAI), Central Aleutian District (CAI), and Western Aleutian District (WAI).

TABLE 1—FINAL 2012 AND 2013 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI [1]

[Amounts are in metric tons]

Species	Area	2012					2013				
		OFL	ABC	TAC	ITAC [2]	CDQ [3]	OFL	ABC	TAC	ITAC [2]	CDQ [3]
Pollock [4]	BS	2,474,000	1,220,000	1,200,000	1,080,000	120,000	2,840,000	1,360,000	1,201,900	1,081,710	120,190
	AI	39,600	32,500	19,000	17,100	1,900	42,900	35,200	19,000	17,100	1,900
	Bogoslof	22,000	16,500	500	500	0	22,000	16,500	500	500	0
Pacific cod [5]	BSAI	369,000	314,000	261,000	233,073	27,927	374,000	319,000	262,900	234,770	28,130
Sablefish	BS	2,640	2,230	2,230	1,840	307	2,610	2,200	2,200	935	83
	AI	2,430	2,050	2,050	1,666	346	2,400	2,020	2,020	429	38
Atka mackerel	BSAI	96,500	81,400	50,763	45,331	5,432	78,300	67,100	42,083	37,580	4,503
	EAI/BS	n/a	38,500	38,500	34,381	4,120	n/a	31,700	31,700	28,308	3,392
	CAI	n/a	22,900	10,763	9,611	1,152	n/a	18,900	8,883	7,933	950
	WAI	n/a	20,000	1,500	1,340	161	n/a	16,500	1,500	1,340	161
Yellowfin sole	BSAI	222,000	203,000	202,000	180,386	21,614	226,000	207,000	203,900	182,083	21,817
Rock sole	BSAI	231,000	208,000	87,000	77,691	9,309	217,000	196,000	87,000	77,691	9,309
Greenland turbot.	BSAI	11,700	9,660	8,660	7,361	n/a	9,700	8,030	8,030	6,826	n/a
	BS	n/a	7,230	6,230	5,296	667	n/a	6,010	6,010	5,109	643
	AI	n/a	2,430	2,430	2,066	0	n/a	2,020	2,020	1,717	0
Arrowtooth flounder.	BSAI	181,000	150,000	25,000	21,250	2,675	186,000	152,000	25,000	21,250	2,675
Kamchatka flounder.	BSAI	24,800	18,600	17,700	15,045	0	24,800	18,600	17,700	15,045	0
Flathead sole	BSAI	84,500	70,400	34,134	30,482	3,652	83,100	69,200	34,134	30,482	3,652
Other flatfish [6]	BSAI	17,100	12,700	3,200	2,720	0	17,100	12,700	3,200	2,720	0
Alaska plaice	BSAI	64,600	53,400	24,000	20,400	0	65,000	54,000	24,000	20,400	0
Pacific ocean perch.	BSAI	35,000	24,700	24,700	21,812	n/a	33,700	28,300	28,300	24,991	n/a

TABLE 1—FINAL 2012 AND 2013 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI [1]—Continued

[Amounts are in metric tons]

Species	Area	2012					2013				
		OFL	ABC	TAC	ITAC [2]	CDQ [3]	OFL	ABC	TAC	ITAC [2]	CDQ [3]
	BS	n/a	5,710	5,710	4,854	0	n/a	6,540	6,540	5,559	0
	EAI	n/a	5,620	5,620	5,019	601	n/a	6,440	6,440	5,751	689
	CAI	n/a	4,990	4,990	4,456	534	n/a	5,710	5,710	5,099	611
	WAI	n/a	8,380	8,380	7,483	897	n/a	9,610	9,610	8,582	1,028
Northern rockfish.	BSAI	10,500	8,610	4,700	3,995	0	10,400	8,490	4,700	3,995	0
Shortraker rockfish.	BSAI	524	393	393	334	0	524	393	393	334	0
Rougheye rockfish.	BSAI	576	475	475	404	0	605	499	499	424	0
	EBS/EAI	n/a	231	231	196	0	n/a	241	241	205	0
	CAI/WAI	n/a	244	244	207	0	n/a	258	258	219	0
Other rockfish [7].	BSAI	1,700	1,280	1,070	910	0	1,700	1,280	1,070	910	0
	BS	n/a	710	500	425	0	n/a	710	500	425	0
	AI	n/a	570	570	485	0	n/a	570	570	485	0
Squids	BSAI	2,620	1,970	425	361	0	2,620	1,970	425	361	0
Skates	BSAI	39,100	32,600	24,700	20,995	0	38,300	32,000	24,746	21,034	0
Sharks	BSAI	1,360	1,020	200	170	0	1,360	1,020	200	170	0
Octopuses	BSAI	3,450	2,590	900	765	0	3,450	2,590	900	765	0
Sculpins	BSAI	58,300	43,700	5,200	4,420	0	58,300	43,700	5,200	4,420	0
Total		3,996,000	2,511,778	2,000,000	1,789,010	195,860	4,341,869	2,639,792	2,000,000	1,786,924	195,269

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to hook-and-line and pot gear, and Amendment 80 species, 15 percent of each TAC is put into a reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves. For pollock and Amendment 80 species, ITAC is the non-CDQ allocation of TAC (see footnotes 3 and 5).

[3] For the Amendment 80 species (Atka mackerel, flathead sole, rock sole, yellowfin sole, Pacific cod, and Aleutian Islands Pacific ocean perch), 10.7 percent of the TAC is reserved for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland turbot and arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). Aleutian Islands Greenland turbot, ''other flatfish,'' Alaska plaice, Bering Sea Pacific ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, ''other rockfish,'' squid, sculpins, sharks, skates, and octopuses are not allocated to the CDQ program.

[4] Under § 679.20(a)(5)(i)(A)(*1*), the annual BS subarea pollock TAC after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (4.0 percent), is further allocated by sector for a directed pollock fishery as follows: inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Under § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (1,600 mt) is allocated to the Aleut Corporation for a directed pollock fishery.

[5] The Pacific cod TAC is reduced by 3 percent from the ABC to account for the State of Alaska's (State) guideline harvest level in State waters of the Aleutian Islands subarea.

[6] ''Other flatfish'' includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, Kamchatka flounder, and Alaska plaice.

[7] ''Other rockfish'' includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, dark, shortraker, and rougheye rockfish.

Note: Regulatory areas and districts are defined at § 679.2 (BS = Bering Sea subarea, AI = Aleutian Islands subarea, EAI = Eastern Aleutian Islands district, CAI = Central Aleutian Islands district, WAI = Western Aleutian Islands district).

Groundfish Reserves and the Incidental Catch Allowance (ICA) for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Yellowfin Sole, and Aleutian Islands Pacific Ocean Perch

Section 679.20(b)(1)(i) requires NMFS to reserve 15 percent of the TAC for each target species, except for pollock, the hook-and-line and pot gear allocation of sablefish, and the Amendment 80 species, in a non-specified reserve. Section 679.20(b)(1)(ii)(B) requires that 20 percent of the hook-and-line and pot gear allocation of sablefish be set aside for the fixed gear sablefish CDQ reserve. Section 679.20(b)(1)(ii)(D) requires NMFS to allocate 7.5 percent of the trawl gear allocations of sablefish and 10.7 percent of the Bering Sea Greenland turbot and arrowtooth flounder TACs to the respective CDQ reserves. Under section 679.20(b)(1)(ii)(C), NMFS must allocate 10.7 percent of the TACs for Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod to the CDQ reserves. Sections 679.20(a)(5)(i)(A) and 679.31(a) also require that 10 percent of the BSAI pollock TACs be allocated to the pollock CDQ directed fishing allowance (DFA). The entire Bogoslof District pollock TAC is allocated as an ICA (see § 679.20(a)(5)(ii)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ allocations by gear.

Pursuant to § 679.20(a)(5)(i)(A)(*1*), NMFS allocates a pollock ICA of 3 percent of the BS subarea pollock TAC after subtracting the 10 percent CDQ reserve. This allowance is based on NMFS' examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 1999 through 2011. During this 13-year period, the pollock incidental catch ranged from a low of 2.4 percent in 2006 to a high of 5 percent in 1999, with a 13-year average of 3.2 percent. Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), NMFS establishes a pollock ICA of 1,600 mt of the AI subarea TAC after subtracting the 10 percent CDQ DFA. This allowance is based on NMFS' examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2003 through 2011. During this 9-year period, the incidental catch of pollock ranged from a low of 5 percent in 2006 to a high of 10 percent in 2003, with a 9-year average of 7 percent.

Pursuant to § 679.20(a)(8) and (10), NMFS allocates ICAs of 5,000 mt of flathead sole, 10,000 mt of rock sole, 2,000 mt of yellowfin sole, 10 mt of Western Aleutian District Pacific (WAI) ocean perch, 75 mt of Central Aleutian District (CAI) Pacific ocean perch, 100 mt of Eastern Aleutian District (EAI) Pacific ocean perch, 40 mt of WAI Atka mackerel, 100 mt of CAI Atka mackerel,

and 1,000 mt of EAI and BS subarea Atka mackerel TAC after subtracting the 10.7 percent CDQ reserve. These ICA allowances are based on NMFS' examination of the incidental catch in other target fisheries from 2003 through 2011.

The regulations do not designate the remainder of the non-specified reserve by species or species group. Any amount of the reserve may be apportioned to a target species category during the year, providing that such apportionments do not result in overfishing (see § 679.20(b)(1)(i)). The Regional Administrator has determined that the ITACs specified for the species listed in Table 2 need to be supplemented from the non-specified reserve because U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocations. Therefore, in accordance with § 679.20(b)(3), NMFS is apportioning the amounts shown in Table 2 from the non-specified reserve to increase the ITAC for northern rockfish, shortraker rockfish, rougheye rockfish, Bering Sea ''other rockfish,'' skates, sharks, octopuses, and sculpins by 15 percent of the TAC in 2012 and 2013.

TABLE 2—FINAL 2012 AND 2013 APPORTIONMENT OF RESERVES TO ITAC CATEGORIES

[Amounts are in metric tons]

Species-area or subarea	2012 ITAC	2012 reserve amount	2012 final ITAC	2013 ITAC	2013 reserve amount	2013 final ITAC
Shortraker rockfish—BSAI	334	59	393	334	59	393
Rougheye rockfish—EBS/EAI	196	35	231	205	36	241
Rougheye rockfish—CAI/WAI	207	37	244	219	39	258
Northern rockfish—BSAI	3,995	705	4,700	3,995	705	4,700
Other rockfish—Bering Sea subarea	425	75	500	425	75	500
Skates—BSAI	20,995	3,705	24,700	21,034	3,712	24,746
Sharks—BSAI	170	30	200	170	30	200
Octopuses—BSAI	765	135	900	765	135	900
Sculpins—BSAI	4,420	780	5,200	4,420	780	5,200
Total	31,508	5,560	37,068	31,567	5,571	37,138

Allocation of Pollock TAC Under the American Fisheries Act (AFA)

Section 679.20(a)(5)(i)(A) requires that the BS subarea pollock TAC be apportioned, after subtracting the 10 percent for the CDQ program and the 3 percent for the ICA, as a DFA as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor (C/P) sector, and 10 percent to the mothership sector. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10), and 60 percent of the DFA is allocated to the B season (June 10–November 1) (§ 679.20(a)(5)(i)(A)). The AI directed pollock fishery allocation to the Aleut Corporation is the amount of pollock remaining in the AI subarea after subtracting 1,900 mt for the CDQ DFA (10 percent) and 1,600 mt for the ICA (§ 679.20(a)(5)(iii)(B)(*2*)(*ii*)). In the AI subarea, 40 percent of the DFA is allocated to the A season and the remainder of the directed pollock fishery is allocated to the B season. Table 3 lists these 2012 and 2013 amounts.

Section 679.20(a)(5)(i)(A)(*4*) also includes several specific requirements regarding BS subarea pollock allocations. First, it requires that 8.5 percent of the pollock allocated to the C/P sector be available for harvest by AFA catcher vessels (CVs) with C/P sector endorsements, unless the Regional Administrator receives a cooperative contract that allows the distribution of harvest among AFA C/Ps and AFA CVs in a manner agreed to by all members. Second, AFA C/Ps not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the C/P sector. Table 3 lists the 2012 and 2013 allocations of pollock TAC. Tables 11 through 16 list the AFA C/P and CV harvesting sideboard limits. The tables for the pollock allocations to the BS subarea inshore pollock cooperatives and open access sector will be posted on the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Table 3 also lists seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the annual DFA until 12 noon, April 1 as provided in § 679.20(a)(5)(i)(C). The remaining 12 percent of the 40 percent annual DFA allocated to the A season may be taken outside the SCA before 12 noon, April 1 or inside the SCA after 12 noon, April 1. If less than 28 percent of the annual DFA is taken inside the SCA before 12 noon, April 1, the remainder will be available to be taken inside the SCA after 12 noon, April 1. The A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated percentage of the DFA. Table 3 lists these 2012 and 2013 amounts by sector.

TABLE 3—FINAL 2012 AND 2013 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2012 Allocations	2012 A season [1]		2012 B season [1]	2013 Allocations	2013 A season [1]		2013 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea	1,200,000	n/a	n/a	n/a	1,201,900	n/a	n/a	n/a
CDQ DFA	120,000	48,000	33,600	72,000	120,190	48,076	33,653	72,114
ICA [1]	32,400	n/a	n/a	n/a	32,451	n/a	n/a	n/a
AFA Inshore	523,800	209,520	146,664	314,280	524,629	209,852	146,896	314,778

TABLE 3—FINAL 2012 AND 2013 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

Area and sector	2012 Allocations	2012 A season [1]		2012 B season [1]	2013 Allocations	2013 A season [1]		2013 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
AFA Catcher/Processors [3]	419,040	167,616	117,331	251,424	419,703	167,881	117,517	251,822
Catch by C/Ps	383,422	153,369	n/a	230,053	384,029	153,611	n/a	230,417
Catch by CVs [3]	35,618	14,247	n/a	21,371	35,675	14,270	n/a	21,405
Unlisted C/P Limit [4]	2,095	838	n/a	1,257	2,099	839	n/a	1,259
AFA Motherships	104,760	41,904	29,333	62,856	104,926	41,970	29,379	62,956
Excessive Harvesting Limit [5]	183,330	n/a	n/a	n/a	183,620	n/a	n/a	n/a
Excessive Processing Limit [6]	314,280	n/a	n/a	n/a	314,778	n/a	n/a	n/a
Total Bering Sea DFA	1,047,600	419,040	293,328	628,560	1,049,259	419,703	293,792	629,555
Aleutian Islands subarea [1]	19,000	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	15,500	15,500	n/a	0	15,500	15,500	n/a	0
Bogoslof District ICA [7]	150	n/a	n/a	n/a	150	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (3 percent), is allocated as a DFA as follows: inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(*A*)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(*A*)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Allocation of the Atka Mackerel TACs

Section 679.20(a)(8) allocates the Atka mackerel TACs to the Amendment 80 and BSAI trawl limited access sectors, after subtracting the CDQ reserves, jig gear allocation, and ICAs for the BSAI trawl limited access sector and non-trawl gear sector (Table 4). The process for allocating the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is listed in Table 33 to part 679 and § 679.91. Pursuant to § 679.20(a)(8)(i), up to 2 percent of the EAI and the BS subarea Atka mackerel ITAC may be allocated to the jig gear sector. This allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended, and NMFS approves, a 0.5 percent allocation of the Atka mackerel ITAC in the EAI and BS subarea to the jig gear sector in 2012 and 2013. This percentage is applied to the Atka mackerel TAC after subtracting the CDQ reserve and the ICA.

Section 679.20(a)(8)(ii)(C)(*3*) limits the annual Atka mackerel TAC for Area 542 (the CAI) to no more than 47 percent of the Area 542 ABC. Section 679.7(a)(19) prohibits retention of Atka mackerel in Area 543 (the WAI), and the amount set here accounts for discards in other fisheries.

Section 679.20(a)(8)(ii)(A) apportions the Atka mackerel ITAC into two equal seasonal allowances. Section 679.23(e)(3) sets the first seasonal allowance for directed fishing with trawl gear from January 20 through June 10 (A season), and the second seasonal allowance from June 10 through November 1 (B season). Section 679.23(e)(4)(iii) applies Atka mackerel seasons to CDQ Atka mackerel fishing. The jig gear allocation is not apportioned by season.

Section 679.20(a)(8)(ii)(C) requires the Amendment 80 cooperatives and CDQ groups to limit harvest to 10 percent of their Central Aleutian District Atka mackerel allocation equally divided between the A and B seasons, within waters 10 nm to 20 nm of Gramp Rock and Tag Island, as described on Table 12 to part 679. Vessels not fishing under the authority of an Amendment 80 cooperative quota or CDQ allocation are prohibited from conducting directed fishing for Atka mackerel inside Steller sea lion critical habitat in the Central Aleutian District.

Table 4 lists these 2012 and 2013 Atka mackerel season and area allowances, as well as the sector allocations. The 2013 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2012.

TABLE 4—FINAL 2012 AND 2013 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2012 allocation by area			2013 allocation by area		
		Eastern Aleutian District/ Bering Sea	Central [5] Aleutian District	Western Aleutian District	Eastern Aleutian District/ Bering Sea	Central [5] Aleutian District	Western Aleutian District
TAC	n/a	38,500	10,763	1,500	31,700	8,883	1,500
CDQ reserve	Total	4,120	1,152	161	3,392	950	161
	A	2,060	576	80	1,696	475	80
	Critical Habitat [5].	n/a	58	n/a	n/a	48	n/a
	B	2,060	576	80	1,696	475	80
	Critical Habitat [5].	n/a	58	n/a	n/a	48	n/a
ICA	Total	1,000	100	40	1,000	100	40
Jig [6]	Total	167	0	0	137	0	0
BSAI trawl limited access.	Total	3,321	951	0	2,717	783	0
	A	1,661	476	0	1,359	392	0
	B	1,661	476	0	1,359	392	0
Amendment 80 sectors	Total	29,892	8,560	1,300	24,454	7,049	1,300
	A	14,946	4,280	650	12,227	3,525	650
	B	14,946	4,280	650	12,227	3,525	650
Alaska Groundfish Cooperative.	Total	17,432	5,020	759	n/a	n/a	n/a
	A	8,716	2,510	380	n/a	n/a	n/a
	Critical Habitat [5].	n/a	251	n/a	n/a	n/a	n/a
	B	8,716	2,510	380	n/a	n/a	n/a
	Critical Habitat [5].	n/a	251	n/a	n/a	n/a	n/a
Alaska Seafood Cooperative.	Total	12,461	3,540	541	n/a	n/a	n/a
	A	6,231	1,770	271	n/a	n/a	n/a
	Critical Habitat [5].	n/a	177	n/a	n/a	n/a	n/a
	B	6,231	1,770	271	n/a	n/a	n/a
	Critical Habitat [5].	n/a	177	n/a	n/a	n/a	n/a

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtractng the CDQ reserves, jig gear allocation, and ICAs to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to November 1.

[5] Section 679.20(a)(8)(ii)(C) requires the TAC in area 542 shall be no more than 47% of ABC, and Atka mackerel harvests for Amendment 80 cooperatives and CDQ groups within waters 10 nm to 20 nm of Gramp Rock and Tag Island, as described Table 12 to part 679, in Area 542 are limited to no more than 10 percent of the Amendment 80 cooperative Atka mackerel allocation or 10 percent of the CDQ Atka mackerel allocation.

[6] Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Allocation of the Pacific Cod ITAC

Section 679.20(a)(7)(i) and (ii) requires NMFS to allocate the Pacific cod TAC in the BSAI, after subtracting 10.7 percent for the CDQ reserve, as follows: 1.4 percent to vessels using jig gear; 2.0 percent to hook-and-line and pot CVs less than 60 ft (18.3 m) length overall (LOA); 0.2 percent to hook-and-line CVs greater than or equal to 60 ft (18.3 m) LOA; 48.7 percent to hook-and-line C/P; 8.4 percent to pot CVs greater than or equal to 60 ft (18.3 m) LOA; 1.5 percent to pot C/Ps; 2.3 percent to AFA trawl C/Ps; 13.4 percent to non-AFA trawl C/Ps; and 22.1 percent to trawl CVs. The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. For 2012 and 2013, the Regional Administrator establishes an ICA of 500 mt based on anticipated incidental catch by these sectors in other fisheries. The ITAC allocation of Pacific cod to the Amendment 80 sector is established in Table 33 to part 679 and § 679.91. The 2013 allocations for Pacific cod between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until November 1, 2012, the date by which the applicants eligible to apply for participation in the Amendment 80 program must file their application. Amendment 80 applications for 2013 have not yet been submitted to NMFS, thereby preventing NMFS from calculating 2013 allocations. NMFS will post 2013 Amendment 80 allocations when they become available in December 2012.

The Pacific cod ITAC is apportioned into seasonal allowances to disperse the Pacific cod fisheries over the fishing year (see §§ 679.20(a)(7) and 679.23(e)(5)). In accordance with § 679.20(a)(7)(iv)(B) and (C), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

The CDQ and non-CDQ season allowances by gear based on the 2012 and 2013 Pacific cod TACs are listed in Tables 5a and 5b, and are based on the sector allocation percentages of Pacific cod set forth at §§ 679.20(a)(7)(i)(B) and 679.20(a)(7)(iv)(A); and the seasonal allowances of Pacific cod set forth at § 679.23(e)(5).

Section 679.7(a)(19) prohibits retaining Pacific cod in Area 543, and § 679.7(a)(23) prohibits directed fishing for Pacific cod with hook-and-line, pot, or jig gear in the Aleutian Islands subarea November 1 through December 31.

TABLE 5A—FINAL 2012 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

Gear sector	Percent	Share of gear sector total	Share of sector total	Seasonal apportionment	
				Dates	Amount
Total TAC	100	261,000	n/a	n/a	n/a
CDQ	10.7	27,927	n/a	See § 679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	141,708	n/a	n/a	n/a
Hook-and-line/pot ICA[1]	n/a	500	n/a	See 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	141,208	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	113,106	Jan 1–Jun 10	57,684
				Jun 10–Dec 31	55,422
Hook-and-line catcher vessel ≥60 ft LOA	0.2	n/a	465	Jan 1–Jun 10	237
				Jun 10–Dec 31	228
Pot catcher/processor	1.5	n/a	3,484	Jan 1–Jun 10	1,777
				Sept 1–Dec 31	1,707
Pot catcher vessel ≥60 ft LOA	8.4	n/a	19,509	Jan 1–Jun 10	9,950
				Sept 1–Dec 31	9,559
Catcher vessel <60 ft LOA using hook-and-line or pot gear	2	n/a	4,645	n/a	n/a
Trawl catcher vessel	22.1	51,509	n/a	Jan 20–Apr 1	38,117
				Apr 1–Jun 10	5,666
				Jun 10–Nov 1	7,726
AFA trawl catcher/processor	2.3	5,361	n/a	Jan 20–Apr 1	4,021
				Apr 1– Jun 10	1,340
				Jun 10–Nov 1	0
Amendment 80	13.4	31,232	n/a	Jan 20–Apr 1	23,424
				Apr 1– Jun 10	7,808
				Jun 10–Nov 1	0
Alaska Groundfish Cooperative	n/a	n/a	5,816	Jan 20–Apr 1	4,362
				Apr 1– Jun 10	1,454
				Jun 10–Nov 1	0
Alaska Seafood Cooperative	n/a	n/a	25,416	Jan 20–Apr 1	19,062
				Apr 1– Jun 10	6,354
				Jun 10–Nov 1	0
Jig	1.4	3,263	n/a	Jan 1–Apr 30	1,958
				Apr 30–Aug 31	653
				Aug 31–Dec 31	653

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt based on anticipated incidental catch in these fisheries.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 5B—FINAL 2013 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	Share of gear sector total	Share of sector total	Seasonal apportionment[2]	
				Dates	Amount
Total TAC	100	262,900	n/a	n/a	n/a
CDQ	10.7	28,130	n/a	See § 679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	142,740	n/a	n/a	n/a
Hook-and-line/pot ICA[1]	n/a	500	n/a	See § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	142,240	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	113,932	Jan 1–Jun 10	58,105
				Jun 10–Dec 31	55,827
Hook-and-line catcher vessel ≥60 ft LOA	0.2	n/a	468	Jan 1–Jun 10	239
				Jun 10–Dec 31	229
Pot catcher/processor	1.5	n/a	3,509	Jan 1–Jun 10	1,790
				Sept 1–Dec 31	1,720
Pot catcher vessel ≥60 ft LOA	8.4	n/a	19,652	Jan 1–Jun 10	10,022
				Sept 1–Dec 31	9,629
Catcher vessel <60 ft LOA using hook-and-line or pot gear	2	n/a	4,679	n/a	n/a

TABLE 5B—FINAL 2013 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

[Amounts are in metric tons]

Gear sector	Percent	Share of gear sector total	Share of sector total	Seasonal apportionment [2]	
				Dates	Amount
Trawl catcher vessel	22.1	51,884	n/a	Jan 20–Apr 1	38,394
				Apr 1–Jun 10	5,707
				Jun 10–Nov 1	7,783
AFA trawl catcher/processor	2.3	5,400	n/a	Jan 20–Apr 1	4,050
				Apr 1–Jun 10	1,350
				Jun 10–Nov 1	0
Amendment 80	13.4	31,459	n/a	Jan 20–Apr 1	23,594
				Apr 1–Jun 10	7,865
				Jun 10–Nov 1	0
Amendment 80 limited access[2]	n/a	n/a	See footnote 2	Jan 20–Apr 1	75%
				Apr 1–Jun 10	25%
				Jun 10–Nov 1	0
Amendment 80 cooperatives[2]	n/a	n/a	See footnote 2	Jan 20–Apr 1	75%
				Apr 1–Jun 10	25%
				Jun 10–Nov 1	0
Jig	1.4	3,287	n/a	Jan 1–Apr 30	1,972
				Apr 30–Aug 31	657
				Aug 31–Dec 31	657

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt based on anticipated incidental catch in these fisheries.

[2] The 2013 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known November 1, 2012, the date by which the applicants eligible to apply for participation in the Amendment 80 program must file their application.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Sablefish Gear Allocation

Sections 679.20(a)(4)(iii) and (iv) require that sablefish TACs for the BS and AI subareas be allocated between trawl and hook-and-line or pot gear sectors. Of the TAC for the BS subarea, 50 percent is allocated to vessels using trawl gear, and 50 percent to hook-and-line or pot gear vessels. TACs for the AI subarea are divided 25 percent to the trawl gear vessels, and 75 percent to hook-and-line or pot gear sector. Section 679.20(b)(1)(ii)(B) requires NMFS to allot 20 percent of the hook-and-line and pot gear allocation of sablefish to the CDQ reserve. Additionally, § 679.20(b)(1)(ii)(D) requires that 7.5 percent of the trawl gear allocation of sablefish from the nonspecified reserves, established under § 679.20(b)(1)(i), be assigned to the CDQ reserve. The Council recommended that only trawl sablefish TAC be established biennially, because the harvest specifications for the hook-and-line gear and pot gear sablefish Individual Fishing Quota (IFQ) fisheries will be limited to the 2012 fishing year to ensure those fisheries are conducted concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries will remain closed at the beginning of each fishing year until the final specifications for the sablefish IFQ fisheries are in effect. Table 6 lists the 2012 and 2013 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 6—FINAL 2012 AND 2013 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

Subarea and gear	Percent of TAC	2012 Share of TAC	2012 ITAC	2012 CDQ reserve	2013 Share of TAC	2013 ITAC	2013 CDQ reserve
Bering Sea							
Trawl [1]	50	1,115	948	84	1,100	935	83
Hook-and-line/pot gear [2]	50	1,115	892	223	n/a	n/a	n/a
Total	100	2,230	1,840	307	1,100	935	83
Aleutian Islands							
Trawl [1]	25	513	436	38	505	429	38
Hook-and-line/pot gear [2]	75	1,537	1,230	307	n/a	n/a	n/a
Total	100	2,050	1,666	346	505	429	38

[1] Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtracting these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. The Council recommended that specifications for the hook-and-line gear sablefish IFQ fisheries be limited to one year.

Note: Sector apportionments may not total precisely due to rounding.

Allocation of the AI Pacific Ocean Perch, and BSAI Flathead Sole, Rock Sole, and Yellowfin Sole TACs

Sections 679.20(a)(10)(i) and (ii) require that NMFS allocate AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs between the Amendment 80 sector and BSAI trawl limited access sector, after subtracting 10.7 percent for the CDQ reserve and an ICA for the BSAI trawl limited access sector and vessels using non-trawl gear. The allocation of the ITAC for AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole to the Amendment 80 sector is established in accordance with Tables 33 and 34 to part 679 and § 679.91. The 2013 allocations for Amendment 80 species between Amendment 80 cooperatives and limited access sector will not be known until November 1, 2012, the date by which the applicants eligible to apply for participation in the Amendment 80 program must file their application. Amendment 80 applications for 2013 have not yet been submitted to NMFS, thereby preventing NMFS from calculating 2013 allocations. NMFS will publish 2013 Amendment 80 allocations when they become available in December 2012. Table 7a and 7b lists the 2012 and 2013 allocations of the AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs.

TABLE 7A—FINAL 2012 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	5,620	4,990	8,380	34,134	87,000	202,000
CDQ	601	534	897	3,652	9,309	21,614
ICA	100	75	10	5,000	10,000	2,000
BSAI trawl limited access	492	438	149	0	0	36,297
Amendment 80	4,427	3,943	7,324	25,482	67,691	142,089
Alaska Groundfish Cooperative	2,347	2,091	3,883	4,976	19,000	60,313
Alaska Seafood Cooperative	2,080	1,852	3,440	20,506	48,691	81,776

Note: Sector apportionments may not total precisely due to rounding.

TABLE 7B—FINAL 2013 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	6,440	5,710	9,610	34,134	87,000	203,900
CDQ	689	611	1,028	3,652	9,309	21,817
ICA	100	75	10	5,000	10,000	2,000
BSAI trawl limited access	565	502	171	0	0	36,975
Amendment 80[1]	5,086	4,522	8,400	25,482	67,691	143,107

[1] The 2013 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until November 1, 2012, the date by which the applicants eligible to apply for participation in the Amendment 80 program must file their application.

Note: Sector apportionments may not total precisely due to rounding.

Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring

Section 679.21(e) sets forth the BSAI PSC limits. Pursuant to § 679.21(e)(1)(iv) and (e)(2), the 2012 and 2013 BSAI halibut mortality limits are 3,675 mt for trawl fisheries and 900 mt for the non-trawl fisheries. Under sections 679.21(e)(3)(i)(A)(*2*) and (e)(4)(i)(A), NMFS allocates 326 mt of the trawl halibut mortality limit and 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program.

Section 679.21(e)(4)(i) authorizes NMFS to apportion the non-trawl halibut PSC limit into PSC bycatch allowances among six fishery categories. Table 8c lists the fishery bycatch allowances for the trawl and non-trawl fisheries.

Pursuant to section 3.6 of the BSAI FMP, the Council recommends, and NMFS agrees, that certain specified non-trawl fisheries be exempt from the halibut PSC limit. As in past years, after consulting with the Council, NMFS exempts pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions for the following reasons: (1) The pot gear fisheries have low halibut bycatch mortality; (2) NMFS estimates halibut mortality for the jig gear fleet to be negligible because of the small size of the fishery and the selectivity of the gear; and (3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ program requires legal-size halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ (subpart D of 50 CFR part 679). In 2011, total groundfish catch for the pot gear fishery in the BSAI was approximately 29,508 mt, with an associated halibut bycatch mortality of about 6 mt.

The 2011 jig gear fishery harvested about 505 mt of groundfish. Most

vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and thus are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, as mentioned above, NMFS estimates the jig gear sector will have a negligible amount of halibut bycatch mortality because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Section 679.21(f)(2) requires NMFS to annually allocate portions of either 47,591 or 60,000 Chinook salmon PSC among the AFA sectors, depending upon past catch performance and upon whether or not Chinook salmon bycatch incentive plan agreements are formed. If an AFA sector participates in an approved Chinook salmon bycatch incentive plan agreement, then NMFS will allocate a portion of the 60,000 PSC limit to that sector as specified in § 679.21(f)(3)(iii)(A). If no Chinook salmon bycatch incentive plan agreement is approved, or if the sector has exceeded its performance standard under § 679.21(f)(6), NMFS will allocate a portion of the 47,591 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(B). In 2012, the Chinook salmon PSC limit is 60,000 and the AFA sector Chinook salmon allocations are seasonally allocated with 70 percent of the allocation for the A season pollock fishery, and 30 percent of the allocation for the B season pollock fishery as stated in § 679.21(f)(3)(iii)(A). The basis for these PSC limits is described in detail in the final rule implementing management measures for Amendment 91 (75 FR 53026, August 30, 2010). NMFS publishes the approved Chinook salmon bycatch incentive plan agreements, 2012 allocations and reports at: *http://alaskafisheries.noaa.gov/sustainablefisheries/bycatch/default.htm*.

Section 679.21(e)(1)(viii) specifies 700 fish as the 2012 and 2013 Chinook salmon PSC limit for the AI subarea pollock fishery. Pursuant to section 679.21(e)(3)(i)(A)(*3*)(*i*), NMFS allocates 7.5 percent, or 53 Chinook salmon, to the AI subarea PSQ for the CDQ program, and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries.

Section 679.21(e)(1)(vii) specifies 42,000 fish as the 2012 and 2013 non-Chinook salmon PSC limit. Section 679.21(e)(3)(i)(A)(*3*)(*ii*) requires NMFS to allocate 10.7 percent, or 4,494 non-Chinook salmon, as the PSQ for the CDQ program and allocates the remaining 37,506 non-Chinook salmon to the non-CDQ fisheries.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Pursuant to § 679.21(e)(3)(i)(A)(*1*), 10.7 percent from each trawl gear PSC limit specified for crab is allocated as a PSQ reserve for use by the groundfish CDQ program.

Based on the 2011 survey data, the red king crab mature female abundance is estimated at 27.6 million red king crabs, and the effective spawning biomass is estimated at 43.1 million lb. Based on the criteria set out at § 679.21(e)(1)(i), the 2012 and 2013 PSC limit of red king crab in Zone 1 for trawl gear is 97,000 animals. This limit derives from the mature female abundance of more than 8.4 million king crab and the effective spawning biomass estimate of less than 55 million lb (24,948 mt).

Section 679.21(e)(3)(ii)(B)(*2*) establishes criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations require NMFS to set the RKCSS red king crab bycatch limit to up to 25 percent of the red king crab PSC limit, based on the need to optimize the groundfish harvest relative to red king crab bycatch. In December 2011, the Council recommended that the red king crab bycatch limit be equal to 25 percent of the red king crab PSC limit within the RKCSS (Table 8b). NMFS concurs with the Council's recommendation.

Based on 2011 survey data, Tanner crab (*Chionoecetes bairdi*) abundance is estimated at 670 million animals. Pursuant to criteria set out at § 679.21(e)(1)(ii), NMFS calculates 2012 and 2013 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2. These limits are derived from the *C. bairdi* crab abundance estimate being in excess of the 400 million animals for both the Zone 1 and Zone 2 allocations.

Pursuant to § 679.21(e)(1)(iii), the PSC limit for snow crab (*C. opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the BS abundance index minus 150,000 crabs. Based on the 2011 survey estimate of 6.337 billion animals, the calculated *C.* opilio crab PSC limit is 7,029,520 animals.

Pursuant to § 679.21(e)(1)(v), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern BS herring biomass. The best estimate of 2012 and 2013 herring biomass is 209,419 mt. This amount was derived using 2011 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit for 2012 and 2013 is 2,094 mt for all trawl gear, as presented in Tables 8a and b.

Section 679.21(e)(3)(A) requires PSQ reserves to be subtracted from the total trawl PSC limits. The amounts of 2011 PSC limits assigned to the Amendment 80 and BSAI trawl limited access sectors are specified in Table 35 to part 679. The resulting allocation of PSC limit to CDQ PSQ, the Amendment 80 sector, and the BSAI trawl limited access fisheries are listed in Table 8a. Pursuant to § 679.21(e)(1)(iv) and § 679.91(d) through (f), crab and halibut trawl PSC limits assigned to the Amendment 80 sector are then further allocated to Amendment 80 cooperatives as PSC cooperative quota, as listed in Table 8e. PSC cooperative quota assigned to Amendment 80 cooperatives is not allocated to specific fishery categories. In 2012, there are no vessels in the Amendment 80 limited access sector. NMFS will not know the 2013 PSC allocations between Amendment 80 cooperatives and the Amendment 80 limited access sector until November 1, 2012, the date by which the applicants eligible to apply to participate in the Amendment 80 program must file their application. Section 679.21(e)(3)(i)(B) requires NMFS to apportion each trawl PSC limit not assigned to Amendment 80 cooperatives into PSC bycatch allowances for seven specified fishery categories.

Section 679.21(e)(5) authorizes NMFS, after consulting with the Council, to establish seasonal apportionments of PSC amounts for the BSAI trawl limited access and Amendment 80 limited access sectors in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are (1) seasonal distribution of prohibited species; (2) seasonal distribution of target groundfish species; (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass; (4) expected variations in bycatch rates throughout the year; (5) expected start of fishing effort; and (6) economic effects of seasonal PSC apportionments on industry sectors. The Council recommended and NMFS approves the seasonal PSC apportionments in Tables 8c and 8d to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based on the above criteria.

TABLE 8A—FINAL 2012 AND 2013 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

PSC species	Total non-trawl PSC	Non-trawl PSC remaining after CDQ PSQ [1]	Total trawl PSC	Trawl PSC remaining after CDQ PSQ [1]	CDQ PSQ reserve [1]	Amendment 80 sector [2]	BSAI trawl limited access fishery
Halibut mortality (mt) BSAI	900	832	3,675	3,349	393	2,325	875
Herring (mt) BSAI	n/a	n/a	2,094	n/a	n/a	n/a	n/a
Red king crab (animals) Zone 1 [1]	n/a	n/a	97,000	86,621	10,379	43,293	26,489
C. *opilio* (animals) COBLZ [2]	n/a	n/a	7,029,520	6,277,361	752,159	3,085,323	2,017,544
C. *bairdi* crab (animals) Zone 1 [2]	n/a	n/a	980,000	875,140	104,860	368,521	411,228
C. *bairdi* crab (animals) Zone 2	n/a	n/a	2,970,000	2,652,210	317,790	627,778	1,241,500

[1] Section 679.21(e)(3)(i)(A)(*2*) allocates 326 mt of the trawl halibut mortality limit and § 679.21(e)(4)(i)(A) allocates 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.

[2] The Amendment 80 program reduced apportionment of the trawl PSC limits by 150 mt for halibut mortality and 20 percent for crab. These reductions are not apportioned to other gear types or sectors.

Note: Refer to § 679.2 for definitions of zones.

Note: Sector apportionments may not total precisely due to rounding.

TABLE 8B—FINAL 2012 AND 2013 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS

Fishery categories	Herring (mt) BSAI	Red king crab (animals) Zone 1
Yellowfin sole	179	n/a
Rock sole/flathead sole/other flatfish [1]	31	n/a
Turbot/arrowtooth/sablefish [2]	15	n/a
Rockfish	11	n/a
Pacific cod	31	n/a
Midwater trawl pollock	1,600	n/a
Pollock/Atka mackerel/other species [3 4]	227	n/a
Red king crab savings subarea non-pelagic trawl gear [5]	n/a	24,250
Total trawl PSC	2,094	97,000

[1] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[2] "Arrowtooth flounder" for PSC monitoring includes Kamchatka flounder.

[3] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

[4] "Other species" for PSC monitoring includes sculpins, sharks, skates, and octopuses.

[5] In December 2011 the Council recommended that the red king crab bycatch limit for non-pelagic trawl fisheries within the RKCSS be limited to 25 percent of the red king crab PSC allowance (see § 679.21(e)(3)(ii)(B)(*2*)).

Note: Species apportionments may not total precisely due to rounding.

TABLE 8C—FINAL 2012 AND 2013 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR

BSAI trawl limited access fisheries	Prohibited species and area [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
Yellowfin sole	167	23,338	1,901,193	346,228	1,185,500
Rock sole/flathead sole/other flatfish [2]	0	0	0	0	0
Turbot/arrowtooth/sablefish [3]	0	0	0	0	0
Rockfish April 15–December 31	5	0	3,232	0	1,000
Pacific cod	453	2,954	80,799	60,000	50,000
Pollock/Atka mackerel/other species [4]	250	197	32,320	5,000	5,000
Total BSAI trawl limited access PSC	875	26,489	2,017,544	411,228	1,241,500

[1] Refer to § 679.2 for definitions of areas.

[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, and arrowtooth flounder.

[3] Arrowtooth flounder for PSC monitoring includes Kamchatka flounder.

[4] "Other species" for PSC monitoring includes sculpins, sharks, skates, and octopuses.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 8D—FINAL 2012 AND 2013 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR NON-TRAWL FISHERIES

Non-trawl fisheries	Catcher/processor	Catcher vessel
Pacific cod—Total	760	15
January 1–June 10	455	10
June 10–August 15	190	3
August 15–December 31	115	2
Other non-trawl—Total		58
May 1–December 31		58
Groundfish pot and jig		Exempt
Sablefish hook-and-line		Exempt
Total non-trawl PSC		833

Note: Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 8E—FINAL 2012 PROHIBITED SPECIES BYCATCH ALLOWANCE FOR THE BSAI AMENDMENT 80 COOPERATIVES

Cooperative	Prohibited species and zones [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
Alaska Seafood Cooperative	1,609	29,484	1,991,961	259,427	433,149
Alaska Groundfish Cooperative	716	13,809	1,093,362	109,094	194,629

[1] Refer to § 679.2 for definitions of zones.
Note: Sector apportionments may not total precisely due to rounding.

Halibut Discard Mortality Rates (DMR)

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut bycatch rates, DMRs, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information contained in the annual SAFE report.

NMFS approves the halibut DMRs developed and recommended by the International Pacific Halibut Commission (IPHC) and the Council for the 2012 and 2013 BSAI groundfish fisheries for use in monitoring the 2012 and 2013 halibut bycatch allowances (see Tables 8a–8e). The IPHC developed these DMRs for the 2010 and 2011 BSAI fisheries using the 10-year mean DMRs for those fisheries. The IPHC will analyze observer data annually and recommend changes to the DMRs when a fishery DMR shows large variation from the mean. The document justifying these DMRs is available in Appendix 2 in the final 2009 SAFE report dated November 2009 (see **ADDRESSES**). Table 9 lists the 2012 and 2013 DMRs.

TABLE 9—FINAL 2012 AND 2013 PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI

Gear	Fishery	Halibut discard mortality rate (percent)
Non-CDQ hook-and-line	Greenland turbot	11
	Other species [1]	10
	Pacific cod	10
	Rockfish	9
Non-CDQ trawl	Arrowtooth flounder [2]	76
	Atka mackerel	76
	Flathead sole	74
	Greenland turbot	67
	Non-pelagic pollock	73
	Pelagic pollock	89
	Other flatfish [3]	72
	Other species [1]	71
	Pacific cod	71
	Rockfish	81
	Rock sole	82
	Sablefish	75
	Yellowfin sole	81
Non-CDQ Pot	Other species [1]	8
	Pacific cod	8
CDQ trawl	Atka mackerel	85
	Greenland turbot	88
	Flathead sole	84
	Non-pelagic pollock	85
	Pacific cod	90
	Pelagic pollock	90

TABLE 9—FINAL 2012 AND 2013 PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI—Continued

Gear	Fishery	Halibut discard mortality rate (percent)
	Rockfish	84
	Rock sole	87
	Yellowfin sole	85
CDQ hook-and-line	Greenland turbot	4
	Pacific cod	10
CDQ pot	Pacific cod	8
	Sablefish	32

[1] "Other species" includes sculpins, sharks, skates, and octopuses.
[2] Arrowtooth flounder includes Kamchatka flounder.
[3] "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, and arrowtooth flounder.

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), the Regional Administrator may establish a DFA for a species or species group if the Regional Administrator determines that any allocation or apportionment of a target species has been or will be reached. If the Regional Administrator establishes a DFA, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (see § 697.20(d)(1)(iii)). Similarly, pursuant to § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, *C. bairdi* crab, or *C. opilio* crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

Based upon historic catch patterns and anticipated fishing activity, the Regional Administrator has determined that the groundfish allocation amounts in Table 10 will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2012 and 2013 fishing years. Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species and species groups in Table 10 as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for these sectors and species in the specified areas effective at 1200 hrs, A.l.t., February 23, 2012, through 2400 hrs, A.l.t., December 31, 2013. Also, for the BSAI trawl limited access sector, bycatch allowances of halibut, red king crab, *C. bairdi* crab, and *C. opilio* crab listed in Table 10 are insufficient to support directed fisheries. Therefore, in accordance with § 679.21(e)(7), NMFS is prohibiting directed fishing for these sectors and fishery categories in the specified areas effective at 1200 hrs, A.l.t., February 23, 2012, through 2400 hrs, A.l.t., December 31, 2013.

TABLE 10—2012 AND 2013 DIRECTED FISHING CLOSURES [1]

[Groundfish and halibut amounts are in metric tons. Crab amounts are in number of animals]

Area	Sector	Species	2012 incidental catch allowance	2013 incidental catch allowance
Bogoslof District	All	Pollock	500	500
Aleutian Islands subarea	All	ICA pollock	1,600	1,600
		"Other rockfish" [2]	570	570
Eastern Aleutian District/Bering Sea	Non-amendment 80 and BSAI trawl limited access.	ICA Atka mackerel	1,000	1,000
Eastern Aleutian District/Bering Sea	All	Rougheye rockfish	231	241
Eastern Aleutian District	Non-amendment 80 and BSAI trawl limited access.	ICA Pacific ocean perch	100	100
Central Aleutian District	Non-amendment 80 and BSAI trawl limited access.	ICA Atka mackerel	100	100
		ICA Pacific ocean perch	75	75
Western Aleutian District	Non-amendment 80 and BSAI trawl limited access.	ICA Atka mackerel	40	40
		ICA Pacific ocean perch	10	10
Central and Western Aleutian Districts.	All	Rougheye rockfish	244	258
Bering Sea subarea	All	Pacific ocean perch	4,854	5,559
		"Other rockfish" [2]	500	500
		ICA pollock	32,400	32,451
Bering Sea and Aleutian Islands	All	Northern rockfish	4,700	4,700
		Shortraker rockfish	393	393
		Squids	361	361
		Skates	24,700	24,746
		Sharks	200	200
		Octopuses	900	900
		Sculpins	5,200	5,200
	Hook-and-line and pot gear	ICA Pacific cod	500	500
	Non-amendment 80	ICA flathead sole	5,000	5,000

TABLE 10—2012 AND 2013 DIRECTED FISHING CLOSURES [1]—Continued

[Groundfish and halibut amounts are in metric tons. Crab amounts are in number of animals]

Area	Sector	Species	2012 incidental catch allowance	2013 incidental catch allowance
		ICA rock sole	10,000	10,000
	Non-amendment 80 and BSAI trawl limited access.	ICA yellowfin sole	2,000	2,000
	BSAI trawl limited access	Rock sole/flathead sole/other flatfish—halibut mortality, red king crab Zone 1, *C. opilio* COBLZ, *C. bairdi* Zone 1 and 2.	0	0
		Turbot/arrowtooth/sablefish—halibut mortality, red king crab Zone 1, *C. opilio* COBLZ, *C. bairdi* Zone 1 and 2.	0	0
		Rockfish—red king crab Zone 1	0	0

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.

[2] ''Other rockfish'' includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern rockfish, dark rockfish, shortraker rockfish, and rougheye rockfish.

Closures implemented under the 2011 and 2012 BSAI harvest specifications for groundfish (76 FR 11139, March 1, 2011) remain effective under authority of these final 2012 and 2013 harvest specifications, and are posted at the following Web sites: *http://alaskafisheries.noaa.gov/index/infobulletins/infobulletins.asp?Yr=2012* and *http://alaskafisheries.noaa.gov/2012/status.htm.* While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679.

Listed AFA Catcher/Processor Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of listed AFA C/Ps to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. These restrictions are set out as ''sideboard'' limits on catch. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). Table 11 lists the 2012 and 2013 C/P sideboard limits.

All harvest of groundfish sideboard species by listed AFA C/Ps, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in Table 11. However, groundfish sideboard species that are delivered to listed AFA C/Ps by CVs will not be deducted from the 2012 and 2013 sideboard limits for the listed AFA C/Ps.

Section 679.64(a)(2) and Tables 40 and 41 of part 679 establish a formula for calculating PSC sideboard limits for listed AFA C/Ps. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

PSC species listed in Table 12 that are caught by listed AFA C/Ps participating in any groundfish fishery other than pollock will accrue against the 2012 and 2013 PSC sideboard limits for the listed AFA C/Ps. Section 679.21(e)(3)(v) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA C/Ps once a 2012 or 2013 PSC sideboard limit listed in Table 12 is reached.

Crab or halibut PSC caught by listed AFA C/Ps while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 11—FINAL 2012 AND 2013 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS

[Amounts are in metric tons]

Target species	Area/season	1995–1997			2012 ITAC available to trawl C/Ps [1]	2012 AFA C/P sideboard limit	2013 ITAC available to trawl C/Ps [1]	2013 AFA C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch to total catch				
Sablefish trawl	BS	8	497	0.016	948	15	935	15
	AI	0	145	0	436	0	429	0
Atka mackerel	Central AI A season [2].	n/a	n/a	0.115	4,806	553	3,966	456
	Central AI B season [2].	n/a	n/a	0.115	4,806	553	3,966	456
	Western AI A season [2].	n/a	n/a	0.2	670	134	670	134
	Western AI B season [2].	n/a	n/a	0.2	670	134	670	134
Rock sole	BSAI	6,317	169,362	0.037	77,691	2,875	77,691	2,875

TABLE 11—FINAL 2012 AND 2013 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS—Continued

[Amounts are in metric tons]

Target species	Area/season	1995–1997			2012 ITAC available to trawl C/Ps [1]	2012 AFA C/P sideboard limit	2013 ITAC available to trawl C/Ps [1]	2013 AFA C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch to total catch				
Greenland turbot	BS	121	17,305	0.007	5,296	37	5,109	36
	AI	23	4,987	0.005	2,066	10	1,717	9
Arrowtooth flounder	BSAI	76	33,987	0.002	21,250	43	21,250	43
Kamchatka flounder.	BSAI	76	33,987	0.002	15,045	30	15,045	30
Flathead sole	BSAI	1,925	52,755	0.036	30,482	1,097	30,482	1,097
Alaska plaice	BSAI	14	9,438	0.001	20,400	20	20,400	20
Other flatfish	BSAI	3,058	52,298	0.058	2,720	158	2,720	158
Pacific ocean perch.	BS	12	4,879	0.002	4,854	10	5,559	11
	Eastern AI	125	6,179	0.02	5,019	100	5,751	115
	Central AI	3	5,698	0.001	4,456	4	5,099	5
	Western AI	54	13,598	0.004	7,483	30	8,582	34
Northern rockfish	BSAI	91	13,040	0.007	4,700	33	4,700	33
Shortraker rockfish	BSAI	50	2,811	0.018	393	7	393	7
Rougheye rockfish	EBS/EAI	50	2,811	0.018	231	4	241	4
	CAI/WAI	50	2,811	0.018	244	4	258	5
Other rockfish	BS	18	621	0.029	500	15	500	15
	AI	22	806	0.027	570	15	570	15
Squids	BSAI	73	3,328	0.022	361	8	361	8
Skates	BSAI	553	68,672	0.008	24,700	198	24,746	198
Sharks	BSAI	553	68,672	0.008	200	2	200	2
Octopuses	BSAI	553	68,672	0.008	900	7	900	7
Sculpins	BSAI	553	68,672	0.008	5,200	42	5,200	42

[1] Aleutian Islands Pacific ocean perch, and BSAI Atka mackerel, flathead sole, rock sole, yellowfin sole are multiplied by the remainder of the TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

[2] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual ITAC specified for the Western Aleutian District, and 11.5 percent of the annual ITAC specified for the Central Aleutian District.

TABLE 12—FINAL 2012 AND 2013 BSAI AFA LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS

PSC species and area[1]	Ratio of PSC catch to total PSC	2012 and 2013 PSC available to trawl vessels after subtraction of PSQ [2]	2012 and 2013 catcher/processor sideboard limit [2]
Halibut mortality BSAI	n/a	n/a	286
Red king crab zone 1	0.007	86,621	606
C. opilio (COBLZ)	0.153	6,277,361	960,436
C. bairdi Zone 1	0.14	875,140	122,520
C. bairdi Zone 2	0.05	2,652,210	132,611

[1] Refer to § 679.2 for definitions of areas.

[2] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

AFA Catcher Vessel Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of AFA CVs to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Section 679.64(b) establishes a formula for setting AFA CV groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). Tables 13 and 14 list the 2012 and 2013 AFA CV sideboard limits.

All catch of groundfish sideboard species made by non-exempt AFA CVs, whether as targeted catch or incidental catch, will be deducted from the 2012 and 2013 sideboard limits listed in Table 13.

TABLE 13—FINAL 2012 AND 2013 AMERICAN FISHERIES ACT CATCHER VESSEL BSAI GROUNDFISH SIDEBOARD LIMITS

[Amounts are in metric tons]

Species/gear	Fishery by area/season	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2012 initial TAC [1]	2012 AFA catcher vessel sideboard limits	2013 initial TAC [1]	2013 AFA catcher vessel sideboard limits
Pacific cod/Jig gear	BSAI	0	n/a	0	n/a	0
Pacific cod/Hook-and-line CV.	BSAI Jan 1–Jun 10	0.0006	237	0	239	0
	BSAI Jun 10–Dec 31	0.0006	228	0	229	0
Pacific cod pot gear CV	BSAI Jan 1–Jun 10	0.0006	9,950	6	10,022	6
	BSAI Sept 1—Dec 31	0.0006	9,959	6	9,629	6
Pacific cod CV < 60 feet LOA using hook-and-line or pot gear.	BSAI	0.0006	4,645	3	4,679	3
Pacific cod trawl gear CV.	BSAI Jan 20–Apr 1	0.8609	38,117	32,815	38,394	33,053
	BSAI Apr 1–Jun 10	0.8609	5,666	4,878	5,707	4,913
	BSAI Jun 10–Nov 1	0.8609	7,726	6,651	7,783	6,700
Sablefish trawl gear	BS	0.0906	948	86	935	85
	AI	0.0645	436	28	429	28
Atka mackerel	Eastern AI/BS Jan 1–Jun 10.	0.0032	17,190	55	14,154	45
	Eastern AI/BS Jun 10–Nov 1.	0.0032	17,190	55	14,154	45
	Central AI Jan 1–Jun 10	0.0001	4,806	0	3,966	0
	Central AI Jun 10–Nov 1	0.0001	4,806	0	3,966	0
	Western AI Jan 1–Jun 10.	0	n/a	0	n/a	0
	Western AI Jun 10–Nov 1.	0	n/a	0	n/a	0
Rock sole	BSAI	0.0341	77,691	2,649	77,691	2,649
Greenland turbot	BS	0.0645	5,296	342	5,109	330
	AI	0.0205	2,066	42	1,717	35
Arrowtooth flounder	BSAI	0.069	21,250	1,466	21,250	1,466
Kamchatka flounder	BSAI	0.069	15,045	1,038	15,045	1,038
Alaska plaice	BSAI	0.0441	20,400	900	20,400	900
Other flatfish	BSAI	0.0441	2,720	120	2,720	120
Flathead sole	BS	0.0505	30,482	1,539	30,482	1,539
Pacific ocean perch	BS	0.1	4,854	485	5,559	556
	Eastern AI	0.0077	5,019	39	5,751	44
	Central AI	0.0025	4,456	11	5,099	13
	Western AI	0	n/a	0	n/a	0
Northern rockfish	BSAI	0.0084	4,700	39	4,700	39
Shortraker rockfish	BSAI	0.0037	393	1	393	1
Rougheye rockfish	EBS/EAI	0.0037	231	1	241	1
	CAI/WAI	0.0037	244	1	258	1
Other rockfish	BS	0.0048	500	2	500	2
	AI	0.0095	570	5	570	5
Squids	BSAI	0.3827	361	138	361	138
Skates	BSAI	0.0541	24,700	1,336	24,746	1,339
Sharks	BSAI	0.0541	200	11	200	11
Octopuses	BSAI	0.0541	900	49	900	49
Sculpins	BSAI	0.0541	5,200	281	5,200	281

[1] Aleutians Islands Pacific ocean perch, and BSAI Atka mackerel, flathead sole, and rock sole are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

Halibut and crab PSC limits listed in Table 14 that are caught by AFA CVs participating in any groundfish fishery for groundfish other than pollock will accrue against the 2012 and 2013 PSC sideboard limits for the AFA CVs. Sections 679.21(d)(8) and 679.21(e)(3)(v) authorize NMFS to close directed fishing for groundfish other than pollock for AFA CVs once a 2012 or 2013 PSC sideboard limit listed in Table 14 is reached. The PSC that is caught by AFA CVs while fishing for pollock in the BSAI will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 14—FINAL 2012 AND 2013 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]

PSC species	Target fishery category [2]	AFA catcher vessel PSC sideboard limit ratio	2012 and 2013 PSC limit after subtraction of PSQ reserves	2012 and 2013 AFA catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	n/a	n/a	887
	Pacific cod hook-and-line or pot	n/a	n/a	2
	Yellowfin sole total	n/a	n/a	101
	Rock sole/flathead sole/other flatfish [3]	n/a	n/a	228
	Greenland turbot/arrowtooth/sablefish [4]	n/a	n/a	0
	Rockfish	n/a	n/a	2
	Pollock/Atka mackerel/other species [5]	n/a	n/a	5
Red king crab Zone 1 [4 6]	n/a	0.299	86,621	25,900
C. opilio COBLZ [4 6]	n/a	0.168	6,277,361	1,054,597
C. bairdi Zone 1 [4 6]	n/a	0.33	875,140	288,796
C. bairdi Zone 2 [6]	n/a	0.186	2,652,210	493,311

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, and arrowtooth flounder.
[4] Arrowtooth for PSC monitoring includes Kamchatka flounder.
[5] "Other species" for PSC monitoring includes sculpins, sharks, skates, and octopuses.
[6] Refer to § 679.2 for definitions of areas.

AFA Catcher/Processor and Catcher Vessel Sideboard Directed Fishing Closures

Based upon historical catch patterns, the Regional Administrator has determined that many of the AFA C/P and CV sideboard limits listed in Tables 15 and 16 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2012 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the sideboard limits listed in Tables 15 and 16 as DFAs. Because many of these DFAs will be reached before the end of the year, the Regional Administrator has determined, in accordance with § 679.20(d)(1)(iii), that NMFS is prohibiting directed fishing by listed AFA C/Ps for the species in the specified areas set out in Table 15 and directed fishing by non-exempt AFA CVs for the species in the specified areas set out in Table 16.

TABLE 15—FINAL 2012 AND 2013 AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES [1]

[Amounts are in metric tons]

Species	Area	Gear types	2012 sideboard limit	2013 sideboard limit
Sablefish trawl	BS	trawl	15	15
	AI	trawl	0	0
Rock sole	BSAI	all	2,875	2,875
Greenland turbot	BS	all	37	36
	AI	all	10	9
Arrowtooth flounder	BSAI	all	43	43
Kamchatka flounder	BSAI	all	30	30
Alaska plaice	BSAI	all	20	20
Other flatfish [2]	BSAI	all	158	158
Flathead sole	BSAI	all	1,097	1,097
Pacific ocean perch	BS	all	10	11
	Eastern AI	all	100	115
	Central AI	all	4	5
	Western AI	all	30	34
Northern rockfish	BSAI	all	33	33
Shortraker rockfish	BSAI	all	7	7
Rougheye rockfish	EBS/EAI	all	4	4
	CAI/WAI	all	4	5
Other rockfish [3]	BS	all	15	15
	AI	all	15	15
Squids	BSAI	all	8	8
Skates	BSAI	all	198	198
Sharks	BSAI	all	2	2
Octopuses	BSAI	all	7	7
Sculpins	BSAI	all	42	42

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.
[2] "Other flatfish" includes all flatfish species, except for halibut, flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, and arrowtooth flounder.

[3] "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, dark, shortraker, and rougheye rockfish.

TABLE 16—FINAL 2012 AND 2013 AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES [1]

[Amounts are in metric tons]

Species	Area	Gear types	2012 sideboard limit	2013 sideboard limit
Pacific cod	BSAI	hook-and-line	0	0
	BSAI	pot	12	12
	BSAI	CV< 60 feet LOA	3	3
	BSAI	jig	0	0
Sablefish	BS	trawl	86	85
	AI	trawl	28	28
Atka mackerel	Eastern AI/BS	all	110	90
	Central AI	all	0	0
	Western AI	all	0	0
Greenland turbot	BS	all	342	330
	AI	all	42	35
Arrowtooth flounder	BSAI	all	1,466	1,466
Kamchatka flounder	BSAI	all	1,038	1,038
Alaska plaice	BSAI	all	900	900
Other flatfish [2]	BSAI	all	120	120
Flathead sole	BSAI	all	1,539	1,539
Rock sole	BSAI	all	2,649	2,649
Pacific ocean perch	BS	all	485	556
	Eastern AI	all	39	44
	Central AI	all	11	13
	Western AI	all	0	0
Northern rockfish	BSAI	all	39	39
Shortraker rockfish	BSAI	all	1	1
Rougheye rockfish	BS/EAI	all	1	1
	CAI/WAI	all	1	1
Other rockfish [3]	BS	all	2	2
	AI	all	5	5
Squids	BSAI	all	138	138
Skates	BSAI	all	1336	1339
Sharks	BSAI	all	11	11
Octopuses	BSAI	all	49	49
Sculpins	BSAI	all	281	281

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.
[2] "Other flatfish" includes all flatfish species, except for halibut, flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, and arrowtooth flounder.
[3] "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, dark, shortraker, and rougheye rockfish.

Response to Comments

NMFS received one comment from the Western Alaska Community Development Association, which represents the six CDQ groups.

Comment: This comment states that the CDQ portion of a Kamchatka flounder fishery would be too small to support a viable fishery, and that it could also constrain other CDQ fisheries. Therefore, the CDQ groups request that NMFS does not allocate Kamchatka flounder to the CDQ groups for 2012 or 2013.

Response: In the proposed 2012 and 2013 harvest specifications NMFS requested comments about whether Kamchatka flounder was a directed fishery under section 305(i)(1)(B)(ii)(II) of the MSA. If it were, NMFS would allocate 10.7 percent of the Kamchatka flounder TAC to the CDQ program. NMFS specifically requested comments from the CDQ groups about the economic value of Kamchatka flounder and whether the CDQ groups intended to conduct directed fishing for Kamchatka flounder in the future. Based on the comment received, NMFS has determined that Kamchatka flounder is not a directed fishery of the BSAI under section 305(i)(1)(B)(ii)(II). Therefore, NMFS will not allocate Kamchatka flounder to the CDQ Program in the final 2012 and 2013 harvest specifications. However, NMFS will consider allocating Kamchatka flounder to the CDQ program if information is presented in future harvest specifications that the status of Kamchatka flounder as a directed fishery of the BSAI has changed.

Classification

NMFS has determined that these final harvest specifications are consistent with the FMP and with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Orders 12866 and 13563.

NMFS prepared an EIS for this action (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the EIS. In January 2012, NMFS prepared a Supplemental Information Report (SIR) for this action. Copies of the EIS, ROD, and SIR for this action are available from NMFS (see **ADDRESSES**). The EIS analyzes the environmental consequences of the groundfish harvest specifications and alternative harvest strategies on resources in the action area. The EIS found no significant environmental consequences of this action and its alternatives. The SIR

evaluates the need to prepare a Supplemental EIS (SEIS) for the 2012 and 2013 groundfish harvest specifications.

A SEIS should be prepared if (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)(1)). After reviewing the information contained in the SIR and SAFE reports, the Regional Administrator has determined that (1) approval of the 2012 and 2013 harvest specifications, which were set according to the preferred harvest strategy in the EIS, do not constitute a change in the action; and (2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts. Additionally, the 2012 and 2013 harvest specifications will result in environmental impacts within the scope of those analyzed and disclosed in the EIS. Therefore, supplemental National Environmental Protection Act documentation is not necessary to implement the 2012 and 2013 harvest specifications.

Pursuant to section 604 of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* a FRFA was prepared for this action. The FRFA incorporates the IRFA, and includes a summary of the significant issues raised by public comments in response to the IRFA, and NMFS' responses to those comments, and a summary of the analyses completed to support the action.

A copy of the FRFA prepared for this final rule is available from NMFS (see **ADDRESSES**). A description of this action, its purpose, and its legal basis are contained at the beginning of the preamble to this final rule and are not repeated here.

NMFS published the proposed rule on December 27, 2011 (76 FR 80782). The rule was accompanied by an Initial Regulatory Flexibility Analysis (IRFA), which was summarized in the proposed rule. The comment period closed on January 26, 2012. No comments were received on the IRFA.

The entities directly regulated by this action are those that receive allocations of groundfish in the EEZ of the BSAI, and in parallel fisheries within State of Alaska waters, during the annual harvest specifications process. These directly regulated entities include the groundfish CVs and C/Ps active in these areas. Direct allocations of groundfish are also made to certain organizations, including the CDQ groups, American Fisheries Act (AFA) C/P and inshore CV sectors, Aleut Corporation, and Amendment 80 cooperatives. These entities are, therefore, also considered directly regulated.

In 2009, there were 191 individual catcher vessels with total gross revenues less than or equal to $4 million. Many of these vessels are members in AFA inshore pollock cooperatives. Vessels that participate in these cooperatives are considered to be large entities within the meaning of the RFA. After accounting for membership in these cooperatives, there are an estimated 103 small CVs remaining in the BSAI.

In 2009, 18 C/Ps grossed less than $4 million. Some of these vessels were affiliated through ownership by the same business firm. NMFS estimates that these vessels were owned by 11 separate firms. By 2011, the vessels in this group were also affiliated through membership in two cooperatives (the Amendment 80 ''Best Use'' cooperative, or the Freezer Longline Conservation Cooperative). Applying the 2011 firm and cooperative affiliations to these vessels, NMFS estimates that these 18 vessels currently represent two small entities.

Through the CDQ program, the Council and NMFS allocate a portion of the BSAI groundfish TACs, and prohibited species halibut and crab PSC limits, to 65 eligible Western Alaska communities. These communities work through six non-profit CDQ groups, and are required to use the proceeds from the CDQ allocations to start or support activities that will result in ongoing, regionally based, commercial fishery or related businesses. The CDQ groups receive allocations through the harvest specifications process, and are directly regulated by this action, but the 65 communities are not directly regulated. Because they are nonprofit entities, the CDQ groups are considered small entities for RFA purposes.

The AFA and Amendment 80 fisheries cooperatives are directly regulated because they receive allocations of TAC through the harvest specifications process. However, the Freezer Longline Conservation Cooperative (FLCC), a voluntary private cooperative which became fully effective in 2010, is not considered to be directly regulated. The FLCC runs a catch share program among its members, but it does not, itself, receive an allocation under the harvest specifications. NMFS allocates TAC to the freezer longline sector, and the cooperative members voluntarily allocate this TAC among themselves via the FLCC. The AFA and Amendment 80 cooperatives are large entities, since they are affiliated with firms with joint revenues over $4 million.

The Aleut Corporation is an Alaska Native Corporation that receives an allocation of pollock in the Aleutian Islands. The Aleut Corporation is a holding company and evaluated according to the SBA criteria at 13 CFR 121.201, using a $6 million gross annual receipts threshold for ''Offices of Other Holding Companies.'' Aleut Corporation revenues are believed to exceed this threshold, and the Aleut Corporation is considered to be a large entity. This determination follows the analysis in the RFA certification for BSAI FMP Amendment 82. (NMFS–AKR 2005: 413).

This action does not modify recordkeeping or reporting requirements.

The significant alternatives were those considered as alternative harvest strategies when the Council selected its preferred harvest strategy in December 2006. These included the following:

- Alternative 1: Set TACs to produce fishing mortality rates, *F,* that are equal to *maxFABC,* unless the sum of the TACs is constrained by the OY established in the FMPs. This is equivalent to setting TACs to produce harvest levels equal to the maximum permissible ABCs, as constrained by OY. The term ''*maxFABC*'' refers to the maximum permissible value of *FABC* under Amendment 56 to the groundfish FMPs. Historically, the TAC has been set at or below the ABC, therefore, this alternative represents a likely upper limit for setting the TAC within the OY and ABC limits.
- Alternative 3: For species in Tiers 1, 2, and 3, set TAC to produce F equal to the most recent 5-year average actual *F.* For species in Tiers 4, 5, and 6, set TAC equal to the most recent 5-year average actual catch. For stocks with a high level of scientific information, TACs would be set to produce harvest levels equal to the most recent five year average actual fishing mortality rates. For stocks with insufficient scientific information, TACs would be set equal to the most recent five year average actual catch. This alternative recognizes that for some stocks, catches may fall well below ABCs, and recent average F may provide a better indicator of actual *F* than *FABC* does.
- Alternative 4: (1) Set TACs for rockfish species in Tier 3 at F75%. Set TACs for rockfish species in Tier 5 at F=0.5M. Set spatially explicit TACs for shortraker and rougheye rockfish in the BSAI. (2) Taking the rockfish TACs as calculated above, reduce all other TACs by a proportion that does not vary across species, so that the sum of all

TACs, including rockfish TACs, is equal to the lower bound of the area OY (1,400,000 mt in the BSAI). This alternative sets conservative and spatially explicit TACs for rockfish species that are long-lived and late to mature and sets conservative TACs for the other groundfish species.

- Alternative 5: Set TACs at zero.

Alternative 2 is the preferred alternative chosen by the Council: Set TACs that fall within the range of ABCs recommended through the Council harvest specifications process and TACs recommended by the Council. Under this scenario, *F* is set equal to a constant fraction of *maxFABC.* The recommended fractions of *maxFABC* may vary among species or stocks, based on other considerations unique to each. This is the method for determining TACs that has been used in the past.

Alternatives 1, 3, 4, and 5 do not both meet the objectives of this action although they have a smaller adverse economic impact on small entities than the preferred alternative. The Council rejected these alternatives as harvest strategies in 2006, and the Secretary did so in 2007. Alternative 1 would lead to TACs whose sum exceeds the fishery OY, which is set out in statute and the FMP. As shown in Table 1, the sum of ABCs in 2012 and 2013 would be 2,511,778 and 2,639,792 million mt. Both of these are substantially in excess of the fishery OY for the BSAI. This would be inconsistent with the objectives of this action, in that it would violate the Consolidated Appropriations Act of 2004, Pub. L. No. 108–199, Sec. 803(c), and the FMP for the BSAI groundfish fishery, which both set a 2,000,000 mt maximum harvest for BSAI groundfish.

Alternative 3 selects harvest rates based on the most recent five years' worth of harvest rates (for species in Tiers 1 through 3) or for the most recent five years' worth of harvests (for species in Tiers 4 through 6). This alternative is also inconsistent with the objectives of this action, because it does not take account of the most recent biological information for this fishery.

Alternative 4 would lead to significantly lower harvests of all species to reduce TACs from the upper end of the OY range in the BSAI, to its lower end. This would lead to significant reductions in harvests of species by small entities. While reductions of this size could be associated with offsetting price increases, the size of these increases is very uncertain, and there can be no confidence that they would be sufficient to offset the volume decreases and leave revenues unchanged. Thus, this action would have an adverse economic impact on small entities, compared to the preferred alternative.

Alternative 5, which sets all harvests equal to zero, may also address conservation issues, but would have a significant adverse economic impact on small entities.

Impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the EIS (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effectiveness for this rule, because delaying this rule is contrary to the public interest. Plan Team review occurred in November 2011, and Council consideration and recommendations occurred in December 2011. Accordingly, NMFS review could not begin until January 2012. If this rule's effectiveness is delayed, fisheries that might otherwise remain open under these rules may prematurely close based on the lower 2011 and 2012 harvest specifications (76 FR 11139, March 1, 2011). If implemented immediately, this rule would allow these fisheries to continue fishing without worrying about a potential closure, because the new TACs are higher than the ones under which they are currently fishing. Certain fisheries, such as those for pollock and Pacific cod are intensive, fast-paced fisheries. Other fisheries, such as those for flatfish, rockfish, octopuses, sculpins, sharks, skates, and squids, are critical as directed fisheries and as incidental catch in other fisheries. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in these fisheries. Any delay in allocating the final TACs in these fisheries would cause confusion to the industry and potential economic harm through unnecessary discards. Determining which fisheries may close is impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing up fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries and causing them to close at an accelerated pace.

Additionally, in fisheries subject to declining sideboards, delaying this rule's effectiveness could allow some vessels inadvertently reach or exceed their new sideboard levels. Because sideboards are intended to protect traditional fisheries in other sectors, allowing one sector to exceed its new sideboards by delaying this rule's effectiveness would effectively reduce the available catch for non-sideboarded sectors. Thus, the delay is contrary to the public interest in protecting traditional fisheries.

If the final harvest specifications are not effective by March 17, 2012, which is the start of the 2012 Pacific halibut season as specified by the IPHC, the hook-and-line sablefish fishery will not begin concurrently with the Pacific halibut IFQ season. Delayed effectiveness of this action would result in confusion for sablefish harvesters and economic harm from unnecessary discard of sablefish that are caught along with Pacific halibut, as both hook-and-line sablefish and Pacific halibut are managed under the same IFQ program. Immediate effectiveness of the final 2012 and 2013 harvest specifications will allow the sablefish IFQ fishery to begin concurrently with the Pacific halibut IFQ season. Also, the immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information. This is particularly true of those species which have lower 2012 ABCs and TACs than those established in the 2011 and 2012 harvest specifications (76 FR 11139, March 1, 2011). Immediate effectiveness also would give the fishing industry the earliest possible opportunity to plan and conduct its fishing operations with respect to new information about TAC limits. Therefore, NMFS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

Small Entity Compliance Guide

This final rule is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary purpose is to announce the final 2012 and 2013 harvest specifications and prohibited species bycatch allowances for the groundfish fisheries of the BSAI. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2012 and 2013 fishing years and to accomplish the goals and objectives of the FMP. This action affects all fishermen who participate in the BSAI fisheries. The specific amounts of OFL, ABC, TAC, and PSC are provided in tables to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

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

Dated: February 15, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–4106 Filed 2–22–12; 8:45 am]

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Proposed Rules

Federal Register
Vol. 77, No. 36
Thursday, February 23, 2012

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0152; Directorate Identifier 2011–NM–059–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A330–200 series airplanes; Airbus Model A330–200 Freighter series airplanes; Airbus Model A330–300 series airplanes; Airbus Model A340–200 series airplanes; and Airbus Model A340–300 series airplanes. This proposed AD was prompted by reports of sheared fasteners located on the outside skin of the forward cargo door and cracks on the frame fork ends, as well as cracks of the aft cargo door frame 64A. This proposed AD would require performing a detailed inspection of the outer skin rivets at the frame fork ends of the forward and aft cargo door for sheared, loose, and missing rivets, repairing the outer skin rivets, if necessary, and performing repetitive inspections. We are proposing this AD to detect and correct sheared, loose or missing fasteners on the forward and aft cargo door frame, which could result in the loss of structural integrity of the forward and aft cargo door.

DATES: We must receive comments on this proposed AD by April 9, 2012.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0152; Directorate Identifier 2011–NM–059–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0007R1, dated February 14, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Two operators have reported cases of some sheared fasteners on the outside skin of the forward cargo door, detected during walk around checks. Further inspections revealed crack findings on the frame (FR) fork ends.
>
> In addition, during a scheduled maintenance check, the aft cargo door frame 64A of an aeroplane has been found cracked for a length of more than 3 inches. Outer skin rivets were also found sheared. At time of findings the aeroplane had accumulated 10564 flight cycles (FC), i.e. below the 12000 FC threshold defined in DGAC [Direction Générale de l'Aviation Civile] France AD F–2001–124(B) and DGAC France AD F–2001–126(B) [which corresponds with FAA AD 2001–16–01, Amendment 39–12369 (66 FR 40874, August 6, 2001], which require a special detailed inspection of the aft cargo compartment door.
>
> In case of cracked or ruptured (forward or aft) cargo door frame, the loads will be transferred to the remaining structural elements. Such second load path is able to sustain the loads for a limited number of flight cycles only. Rupture of two vertical frames could result in the loss of the structural integrity of the forward or aft cargo door.
>
> For the above described reasons, this AD requires repetitive detailed visual inspections of the aft and forward cargo doors outer skin for sheared, loose or missing rivets at all frame fork ends and the accomplishment of the applicable corrective actions [repair if necessary].
>
> This [EASA] AD is considered to be an interim action, further actions might be required to revise/supersede the above mentioned DGAC France ADs.
>
> This [EASA] AD is revised in order to recognize that aeroplanes on which Airbus modification 44852 has been embodied in production are not affected by the repetitive inspection requirements of this AD on the Aft Cargo Compartment Door.

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

Relevant Service Information

Airbus has issued the following service information:

- All Operators Telex A330–52A3084, dated December 20, 2010 (for Model A330–200 and A330–300 series airplanes);
- All Operators Telex A330–52A3085, dated December 20, 2010 (for Model A330–200 and A330–300 series airplanes);
- All Operators Telex A340–52A4091, dated December 20, 2010 (for Model A340–200 and A340–300 series airplanes); and
- All Operators Telex A340–52A4092, dated December 20, 2010 (for Model A340–200 and A340–300 series airplanes).

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

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 55 products of U.S. registry. We also estimate that it would take about 1 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,675, or $85 per product.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2012–0152; Directorate Identifier 2011–NM–059–AD.

(a) Comments Due Date

We must receive comments by April 9, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 52: Doors.

(e) Reason

This AD was prompted by reports of sheared fasteners located on the outside skin of the forward cargo door and cracks on the frame fork ends, as well as cracks of the aft cargo door frame 64A. We are issuing this AD to detect and correct sheared, loose or missing fasteners on the forward and aft cargo door frame, which could result in the loss of structural integrity of the forward and aft cargo door.

(f) Compliance

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

(g) Forward Cargo Compartment Door

Before the accumulation of 6,000 total flight cycles since first flight of the airplane or within 400 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed inspection of the outer skin rivets at the frame fork ends between FR20B and FR25 of the forward cargo door for sheared, loose, and missing rivets, in accordance with the instructions of Airbus All Operators Telex (AOT) A330–52A3085, dated December 20, 2010 (for Model A330–200 and A330–300 series airplanes); or Airbus AOT A340–52A4092, dated December 20, 2010 (for Model A340–200 and A340–300 series airplanes). Thereafter repeat the inspection at intervals not to exceed 800 total flight cycles.

(h) Aft Cargo Compartment Door

For all airplanes, except those on which Airbus Modification 44854 or Modification 44852 has been embodied in production, or Airbus Service Bulletin A330–52–3044 or Airbus Service Bulletin A340–52–4054 has been embodied in service: Before the accumulation of 4,000 total flight cycles since first flight of the airplane, or within 400 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed inspection of outer skin rivets at the frame fork ends between FR60 and FR64A of the aft cargo door for sheared, loose or missing rivets, in accordance with the instructions of Airbus AOT A330–52A3084, dated December 20, 2010 (for Model A330–

200 and A330–300 series airplanes); or Airbus AOT A340–52A4091, dated December 20, 2010 (for Model A340–200 and A340–300 series airplanes). Thereafter repeat the inspection at intervals not to exceed 400 flight cycles.

(i) Corrective Action

If any sheared, loose, or missing rivets are found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, FAA; or European Aviation Safety Agency (EASA) (or its delegated agent).

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0007R1, dated February 14, 2011, and the service information specified in paragraphs (k)(1) through (k)(4) of this AD, for related information.

(1) Airbus All Operators Telex (AOT) A330–52A3085, dated December 20, 2010.

(2) Airbus AOT A340–52A4092, dated December 20, 2010.

(3) Airbus AOT A330–52A3084, dated December 20, 2010.

(4) Airbus AOT A340–52A4091, dated December 20, 2010.

Issued in Renton, Washington, on February 14, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4208 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0150; Directorate Identifier 2011–NM–234–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A318 series airplanes, Airbus Model A319 series airplanes, Airbus Model A320 series airplanes, and Airbus Model A321 series airplanes. This proposed AD was prompted by reports of oil residue between the stator and the rotor parts of the position resolvers of the angle of attack (AOA) vane, which was a result of incorrect removal of the machining oil during the manufacturing process of the AOA resolvers. This proposed AD would require inspecting to determine if certain AOA probes are installed, and replacing the affected AOA probe if necessary. We are proposing this AD to prevent erroneous AOA information and consequent delayed or non-activation of the AOA protection systems which, during flight at a high angle of attack, could result in reduced control of the airplane.

DATES: We must receive comments on this proposed AD by April 9, 2012.

ADDRESSES: You may send comments by any of the following methods:

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

For Airbus service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*. For Thales Avionics service information identified in this proposed AD, contact Thales Avionics, Retrofit Manager, 105, Avenue du Général Eisenhower, BP 63647, 31036 Toulouse Cedex 1, France; telephone +33 5 61 19 76 95; fax +33 5 61 19 68 20; email *retrofit.ata@fr.thalesgroup.com;* Internet *http://www.thalesgroup.com/aerospace*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0150; Directorate Identifier 2011–NM–234–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European

Community, has issued EASA Airworthiness Directive 2011–0203, dated October 13, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During Airbus Final Assembly Line flight tests, AoA [angle of attack] data from two different aeroplanes were found inaccurate, which was confirmed by flight data analysis.

Investigation conducted by Airbus and Thales on the removed probes revealed oil residue between the stator and the rotor parts of the AoA vane position resolvers. This oil residue was the result of incorrect removal of machining oil during the manufacturing process of the AoA resolvers. At low temperatures, this oil residue becomes viscous (typically in cruise), causing delayed and/or reduced AoA vane movement. Multiple AOA probes could be simultaneously affected, providing incorrect indications of the AoA of the aeroplane.

This condition, if not corrected, could lead to erroneous AoA information and consequent delayed or non-activation of the AoA protection systems which, during flight at a high angle of attack, could result in reduced control of the aeroplane.

For the reasons described above, this [EASA] AD requires the identification of the serial number (s/n) of each installed Thales Avionics Part Number (P/N) C16291AA AOA probe and the replacement of all suspect units with serviceable ones. This AD also prohibits the (re)installation of these same s/n probes on any aeroplane, unless corrective measures have been accomplished.

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

Relevant Service Information

Airbus has issued Service Bulletin A320–34–1452, including Appendix 01, dated January 29, 2010. Thales Avionics has issued Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 755 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $128,350, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $0, for a cost of $255 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2012–0150; Directorate Identifier 2011–NM–234–AD.

(a) Comments Due Date

We must receive comments by April 9, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 34: Navigation.

(e) Reason

This AD was prompted by reports of oil residue between the stator and the rotor parts of the position resolvers of the angle of attack (AOA) vane, which was a result of incorrect removal of the machining oil during the manufacturing process of the AOA resolvers. We are issuing this AD to prevent erroneous AOA information and consequent delayed or non-activation of the AOA protection systems which, during flight at a high angle of attack, could result in reduced control of the airplane.

(f) Compliance

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

(g) Inspection

Except as provided by paragraph (h) of this AD: Within 12 months after the effective date of this AD, inspect to determine the part number and serial number of each Thales Avionics AOA probe, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–34–1452, excluding Appendix 01, dated January 29, 2010. If any probe is found having part number (P/N) C16291AA and having a serial number listed in Thales Avionics Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009: Within 12 months after the effective date of this AD, replace the AOA probe, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–34–1452, excluding Appendix 01, dated January 29, 2010. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of the installed AOA probes can be conclusively determined from that review.

(h) Exception

For any airplane on which Airbus modification 150006 (installation of Thales Avionics AOA probes P/N C16291AB) or modification 26934 (installation of Goodrich AOA probes P/N 0861ED) has been embodied in production and on which no AOA probe replacement has been made since first flight: The actions specified in paragraph (g) of this AD are not required.

(i) Parts Installation

As of the effective date of this AD, no person may install a Thales Avionics AOA probe, P/N C16291AA, having a serial number listed in Thales Avionics Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009, on any airplane, unless that Thales Avionics probe has been inspected, re-identified and tested, in accordance with the Accomplishment Instructions of Thales Avionics Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to Attn: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0203, dated October 13, 2011; Airbus Service Bulletin A320–34–1452, excluding Appendix 01, dated January 29, 2010; and Thales Avionics Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009; for related information.

Issued in Renton, Washington, on February 6, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4209 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter II

[Docket No. FR–5572–N–01]

Federal Housing Administration (FHA) Risk Management Initiatives: Revised Seller Concessions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Request for comments.

SUMMARY: On July 15, 2010 (75 FR 41217), HUD issued a notice seeking comment on three initiatives that HUD proposed would contribute to the restoration of the Mutual Mortgage Insurance Fund (MMIF) capital reserve account. On September 3, 2010 (75 FR 54020), HUD published a follow-up final rule implementing the proposal to introduce a minimum credit score and reduce the maximum loan-to-value ratio for FHA single family mortgage insurance. HUD is in the process of implementing another notice tightening the underwriting standards for mortgage loan transactions that are manually underwritten. This document addresses the third proposal; namely, the proposal to reduce the amount of closing costs a seller may pay on behalf of a homebuyer purchasing a home with financing insured by the Federal Housing Administration (FHA). This document takes into consideration the public comments on the July 15, 2010, final rule regarding the proposed cap on ''seller concessions'' and revises the proposed cap in response. HUD is seeking comment for 30 days on this revised proposal for limiting seller concessions.

DATES: *Comment Due Date* March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Karin Hill, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410; telephone number 202–708–4308 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. HUD's July 15, 2010 Notice

On July 15, 2010, at 75 FR 41217, HUD issued a notice seeking comment on three initiatives that HUD proposed would contribute to the restoration of the Mutual Mortgage Insurance Fund (MMIF) capital reserve account. The proposed changes were developed to preserve both the historical role of the Federal Housing Administration (FHA) in providing a home financing vehicle during periods of economic volatility and HUD's social mission of helping underserved borrowers. In the July 15, 2010, notice, HUD proposed the following: (1) To reduce the amount of closing costs a seller (or other interested third parties) may pay on behalf of a homebuyer purchasing a home with FHA-insured mortgage financing for the purposes of calculating the maximum mortgage amount; (2) to introduce a credit score threshold, as well as reduce the maximum loan-to-value (LTV) for borrowers with lower credit scores who represent a higher risk of default and mortgage insurance claim; and (3) to tighten underwriting standards for mortgage loan transactions that are manually underwritten.

Over the past 3 years, the volume of FHA insurance has increased rapidly as private sources of mortgage finance retreated from the market. FHA's share of the single-family mortgage market was estimated at 17 percent (33 percent for home purchase mortgages) in Fiscal Year (FY) 2010, up from 3.4 percent in FY 2007, and the dollar volume of insurance written has jumped from the $77 billion issued in FY 2007 to $319 billion in FY 2010. The growth in the MMIF portfolio over such a short period of time coincided with worsening

economic conditions that have seen high levels of defaults and foreclosures and, consequently, unacceptable risks of loss to the MMIF.[1] The National Housing Act (12 U.S.C. 1701 *et seq.*), which authorizes FHA's mortgage insurance, envisions that FHA will adjust program standards and practices, as necessary, to operate the MMIF on a financially sound basis.

The independent actuarial study conducted in 2009 showed that the MMIF capital ratio has fallen below its statutorily mandated threshold.[2] Consistent with HUD's responsibility under the National Housing Act to ensure that the MMIF remains financially sound, HUD published the July 15, 2010, notice and sought public comment on the three proposals described above. The July 15, 2010, notice represented another step in HUD's effort to preserve the MMIF and preserve FHA as a source of available credit for affordable home mortgages. Interested parties are referred to the July 15, 2010, notice for details regarding the proposed changes to FHA requirements.

B. The September 3, 2010 Final Rule Implementing New Credit Score and Loan-to-Value Requirements

At the close of the public comment period on August 16, 2010, HUD had received 902 public comments in response to the July 15, 2010, notice. The majority of the public comments focused on the reduction in seller concessions. In order to provide the necessary additional time to consider the issues raised by the commenters, HUD decided to separately implement the three proposals contained in the July 15, 2010, notice.

On September 3, 2010, at 75 FR 54020, HUD published a final rule implementing the introduction of a minimum credit score and the reduction in the maximum LTV ratio for FHA single family mortgage insurance. The September 3, 2010, final rule also contained a discussion of the public comments received in response to the new credit score and LTV requirements. The final rule advised that HUD's decision on the two other proposals described in the July 15, 2010, notice would be addressed separately.

Commencing on October 4, 2010, borrowers were required to have a minimum decision credit score of no less than 500 to be eligible for FHA financing. The LTV for FHA-insured mortgage loans (purchase and refinance) is limited to 90 percent for borrowers with a decision score between 500 and 579. Maximum FHA-insured financing (96.5 percent LTV for purchase transactions and 97.75 percent for rate-and-term refinance transactions) continues to be available for borrowers with credit scores at or above 580. However, FHA is providing a special, temporary allowance to permit higher LTV mortgage loans for borrowers with lower decision credit scores, so long as they involve a reduction of existing mortgage indebtedness pursuant to FHA program adjustments announced in HUD Mortgagee Letter 2010–23. Interested readers are referred to the September 3, 2010, final rule and HUD Mortgagee Letter 2010–29 for additional information regarding the new credit score and LTV requirements. All HUD Mortgagee Letters are available at: *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/*.

C. Proposed Final Rule Implementing Revised Manual Underwriting Requirement

HUD is in the process of finalizing a rule implementing the revised manual underwriting requirements and addressing the public comments received on this proposal in response to the July 15, 2010, notice. The new manual underwriting requirements will reduce the risk to the MMIF and ensure that homebuyers are offered mortgage loans that are sustainable.

As discussed in the July 15, 2010, notice, the purpose of mortgage underwriting is to determine a borrower's ability and willingness to repay the debt and to limit the probability of default. An underwriter must consider a borrower's credit history, evaluate the borrower's capacity to repay the loan based on income and current debt, determine if cash to be used for closing is sufficient and from an acceptable source, and determine if the value of the collateral supports the amount of money being borrowed. In cases where the borrower has a very limited or nontraditional credit history, a credit score may not have been issued by the credit bureaus, or the credit score may be based on references that are few in number or do not effectively predict future credit worthiness. Mortgage loans for borrowers in this category are manually underwritten as are all ''Refer'' risk classifications provided by FHA's TOTAL Mortgage Score Card. These categories of borrowers require a more extensive review that can be tailored to circumstances to discern the level of risk. Manual underwriting guidelines are generally more stringent to address that higher risk level. The final rule will consider factors for manually underwritten mortgage loans.

II. This Notice—Reduction of Seller Concession: Revised Proposal for Reducing Seller Concessions

This notice revises the third proposal contained in the July 15, 2010, notice; namely, the proposed cap on the amount of ''seller concessions'' that can be considered as offsets to actual closing costs rather than inducements to purchase. When a homeseller pays all or part of the buyer's closing costs and other fees, such payments are referred to as seller concessions. Seller concessions include any payment toward the borrower's closing costs and other fees, by any third party with an interest in the transaction, including the seller, builder, developer, mortgage broker, lender, or Settlement Company. HUD's existing policy defining seller concessions provides that any concessions exceeding 6 percent must be treated as inducements to purchase, resulting in a reduction in the FHA mortgage amount.

A. Changes to the July 15, 2010, Notice

In the July 15, 2010, notice, HUD proposed to cap the seller concessions in FHA-insured, single-family mortgage transactions at 3 percent of the lesser of the sales price or appraised value, for the purpose of calculating the maximum insured mortgage amount, reducing it from the 6 percent limitation currently in place. As discussed in the July 15, 2010, notice, conventional mortgage lenders have capped allowances for seller concessions at 3 percent of the sales price on loans with LTV ratios similar to FHA. Loans guaranteed by the Department of Veterans Affairs have a cap on seller concessions of 4 percent of the sales price. In the July 15, 2010, notice, HUD also provided statistical data illustrating a higher incidence of home loss for borrowers who received seller concessions in excess of 3 percent. The proposed cap was designed to align FHA's single-family mortgage

[1] While the Federal Credit Reform Act of 1990 requires that FHA (and all other government credit agencies) estimate and budget for the anticipated cost of mortgage loan guarantees, the National Housing Act imposes a special requirement that the MMIF hold an additional amount of funds in reserve to cover unexpected losses. FHA maintains these back-up funds in the MMIF capital reserve account, a special reserve account.

[2] On November 13, 2009, HUD released an independent actuarial study that reported that FHA will likely sustain significant losses from mortgage loans made prior to 2009, due to the high concentration of seller-financed downpayment assistance mortgage loans and declining real estate values nationwide, and that the MMIF capital reserve relative to the amount of outstanding insurance in force had fallen below the statutorily mandated 2 percent ratio. The capital ratio generally reflects the reserves available (net of expected claims and expenses), as a percentage of the current portfolio, to address unexpected losses. The report can be found at: *http://www.hud.gov/offices/hsg/fhafy09annualmanagementreport.pdf.*

insurance programs to industry practice and reduce home loss among homebuyers relying on FHA-insured financing. Of the homebuyers with FHA-insured mortgages, 82 percent of such homebuyers make only the minimum required downpayment of 3.5 percent. It is important, therefore, for HUD to assure that allowable mortgage amounts are appropriately adjusted for what may actually be inducements to purchase. For borrowers having more than the minimum required downpayment of 3.5 percent, this rule may or may not affect them.

As noted in the preamble, the majority of the 902 public comments received in response to the July 15, 2010, notice pertained to the proposed cap on seller concessions. Comments were submitted by mortgage lenders, credit unions, realtors, home builders, state housing finance agencies, and other interested organizations. After careful consideration of the issues raised by the commenters, HUD has decided to make the following changes to the proposed cap to seller concessions and seek public comment on those changes:

• Reduce the amount of seller concessions permitted as offsets to actual closing costs to 3 percent [3] or $6,000, whichever is greater, but not allow the offsets, in any event, to exceed the borrower's actual costs. This reduction in concession allowances does not apply to HUD's Real Estate Owned homes and Neighborhood Stabilization programs, for which the allowance remains at 6 percent.

• Limit acceptable uses of seller concessions to payments toward borrower closing costs, prepaid items, discount points, the FHA Up Front Mortgage Insurance Premium, and any Interest Rate Buydown. This revised definition eliminates payment supplements such as homeowner or condominium association fees, mortgage interest payments, and mortgage payment protection plans.

To address potential future increases in closing costs, the $6,000 cap established in this notice is not static but tied to an index. The dollar limitation may increase annually, and at the same percentage rate as the FHA national loan limit floor, rounded up to the nearest $100 for anything at or above $50 increments and rounded down to the nearest $100 for anything below $50 increments. For example, should the FHA national loan limit floor rise by 1.5 percent, then the cap may increase to $6,100. Any increase in the dollar limitation will be announced via mortgagee letter, most likely in the same mortgagee letter that announces the new FHA loan limits for the upcoming calendar year.

This revised proposal takes into consideration the disproportionately negative impact an across-the-board reduction to 3 percent would have had on borrowers with low and moderate incomes who are purchasing modestly priced homes. It also appropriately limits the dollar amount of seller concessions on higher-priced homes, which under currently policy could be as high as $43,785.[4] Concession amounts above the revised-proposal limit would not be prohibited, but rather would result in a dollar-for-dollar reduction in the sales price for the purpose of calculating the maximum insured loan amount.

B. Definition of Acceptable Concessions

As part of the revised proposal on reducing seller concessions, HUD is also proposing to narrow the definition of acceptable concessions. In this new definition, HUD continues to permit sellers to pay for the borrower's actual costs to close on the loan, as well as pay the Up Front Mortgage Insurance Premium due on the loan and fund an Interest Rate Buydown.[5] What HUD proposes to eliminate are payment supplements offered by sellers, such as a year's worth of homeowner association fees, 6 months' worth of mortgage interest, or mortgage payment protection plans. HUD believes that these types of payment supplements, while permissible under current seller concession guidance, are really inducements to purchase and should be treated as such. The impact of this revised definition should be minimal on the housing market since the loan level review of FHA-insured loans revealed that sellers typically offer concessions that pay for borrowers' actual costs to acquire the property, and not payment supplements.

Current seller concession definition	Proposed seller concession definition
The seller and/or interested third party may contribute towards the buyer's: • Closing Costs • Prepaid Expenses • Discount Points • Interest Rate Buydowns and other payment supplements (i.e. Homeowner Association fees) • Payments of mortgage interest for fixed-rate mortgages • Mortgage Payment Protection Insurance and Up-Front Mortgage Insurance Premium All other third-party contributions are considered inducements to purchase, resulting in a dollar-for-dollar reduction to the lesser of sale price or appraised value before applying the appropriate LTV factor (96.5%). This excludes closing costs and prepaid items paid by the lender through premium (rebate) pricing.	The seller and/or interested third party may contribute towards the buyer's: • Closing Costs • Prepaid Expenses • Discount Points • UFMIP • Interest Rate Buydowns All other third-party contributions are considered inducements to purchase, resulting in a dollar-for-dollar reduction to the lesser of sale price or appraised value before applying the appropriate LTV factor (96.5%). This excludes closing costs and prepaid items paid by the lender through premium (rebate) pricing.

Closing costs vary from borrower to borrower, lender to lender, and state to state. These costs even vary from closing cost study to closing cost study, because each study defines closing costs in slightly different ways. The definition of closing costs for HUD's analysis included fixed and variable closing costs, but not prepaid expenses, because prepaid expenses are typically financed. Fixed costs are those that are a fixed dollar amount, are not tied to a percentage of the loan amount, and are generally offered within a dollar range. Variable costs are those that are based

[3] The percentage is based on the lesser of sales price or appraised value.

[4] That amount is 6 percent of FHA's current national mortgage limit ceiling of $729,750.

[5] Interest Rate Buydowns are designed to reduce the borrower's monthly payment during the early years of the mortgage. At settlement, an escrow account is established and each month, the servicing lender draws down an amount equal to the difference between the principal and interest payment (P&I) at the Note rate, and the P&I at the buydown rate. For more information on FHA requirements for Interest Rate Buydowns, see HUD Handbook 4155.1 6.A.2.

on a percentage of the loan amount, or property value. Prepaid items include funds needed to establish an escrow account, as well as state and local property taxes and per diem interest. FHA's Upfront Mortgage Insurance Premium is also included in this category, and it is typically prepaid by financing into the mortgage amount.

CATEGORIES OF CLOSING COSTS

Fixed	Variable	Prepaid
Appraisal	Adjusted Origination Charge	Hazard/Homeowners Insurance.
Credit Report	Lender's Title Insurance	Flood Insurance.
Survey	Lender's Title Insurance	Homeowners/Condominium Association Fees.
Pest Inspection	Owner's Title Insurance	Upfront Mortgage Insurance Premium.
Title Services	Transfer Tax	Taxes.
Lien Certification		Per Diem Interest.
Flood Certification		
Flood Determination		
Lender Inspection		

In the July 15, 2010, notice, HUD clarified the definition of Interested Third Party. HUD is not revising the definition of Interested Third Party but clarifying the definition where it was vague and possibly subject to varied interpretation.

Current interested third party definition	Clarification of interested third party definition
Seller or other interested parties such as real estate agents, builders, developers, etc., or combination of these parties.	Seller or other interested party such as a real estate agent, builder, developer, mortgage broker, lender, and/or settlement company.

C. Statutory Authority

FHA has determined that maintaining the amount of eligible seller concessions at 6 percent of the sales price of the property increases the risk of default and claim payment by FHA from the insurance fund. FHA's determination is solidly based on statutory grounds in both the National Housing Act and the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*) There are five specific statutory areas that support the action by FHA to reduce the amount of allowable seller concessions for FHA purposes: (1) The mortgagor's ability to pay the mortgage; (2) the amount of funds the mortgagor must have available to close; (3) the Secretary's fiduciary duty to the MMIF; (4) the capital ratio of the MMIF; and (5) FHA risk management. Each one of these five statutory grounds is explained in more detail below.

1. *Ability to pay mortgage payment.* Section 203(b)(4) of the National Housing Act provides that the mortgage, in order to be eligible for insurance, must contain complete amortization provisions satisfactory to the Secretary requiring periodic payments by the mortgagor *not in excess of his reasonable ability to pay* as determined by the Secretary. FHA has found that seller concessions can, in some instances, affect the borrower's ability to make monthly mortgage payments some time after the mortgage loan is closed. An example is when certain reoccurring homeownership costs are prepaid on a temporary basis, but then, after the prepayment period ends, become the financial burden of the mortgagor. FHA has found that the seller concessions such as prepayment of taxes or homeowner association fees, which then become due a year or two later, can result in mortgagors experiencing mortgage payment shock and subsequent default. This example of an impact on a mortgagor's reasonable ability to pay illustrates a clear statutory basis under section 203(b)(4) of the National Housing Act for issuing this notice.

2. *Money to close.* Section 203(b)(9)(A) of the National Housing Act, as amended by the Housing and Economic Reform Act of 2008 (Pub. L. 110–289, approved July 30, 2008), addresses the need for a mortgagor to make a minimum investment in the purchase of the mortgaged property. Under section 203(b)(9)(A) of the National Housing Act, the mortgagor shall have paid on account of the property an amount equal to not less than 3.5 percent of the appraised value of the property *or such larger amount as the Secretary may determine.* The reduction in seller concessions impacts on the funding that the homebuyer has to bring to the table to close. Indirectly, by reducing the amount of seller concessions, the Secretary is determining that the mortgagor must pay on account of the property an amount that can be greater than the minimum 3.5 percent. Requiring, directly or indirectly, that the mortgagor must come to the closing table with more of his own funds is clearly rooted in this statutory provision of the National Housing Act.

3. *Fiduciary Duty to the MMIF.* The determination to decrease the allowable amount of seller concessions is part of FHA's ongoing risk management practices. FHA is a large government insurance corporation, and has statutorily mandated requirements placed upon it to manage its financial affairs prudently. One of the statutes with such a mandate is found at section 202(a)(3) of the National Housing Act. Under that section, the Secretary has a fiduciary duty to ensure that the MMIF remains financially sound. Taking action such as issuing this Notice regarding seller concessions furthers the Secretary's obligation to meet the requirements of this section of the National Housing Act. Reducing defaults and subsequent claims for insurance benefits payments from the MMIF logically should financially help the MMIF.

4. *Capital Ratio of the MMIF.* Coupled with the fiduciary duty to preserve the MMIF is the statutory requirement to maintain an adequate MMIF capital ratio. Under section 205(f)(2) of the National Housing Act, the Secretary shall ensure that the capital ratio of the MMIF is maintained at not less than 2 percent. The ratio has fallen below this threshold, and this is one action of many that FHA is taking to address this statutory requirement.

5. *FHA Risk Management.* Under section 4(b) of the Department of Housing and Urban Development Act,

the Secretary shall ensure that managers of the FHA are held accountable for program operations and risk management along with other duties. Because the action proposed by this Notice addresses risk management directly, reducing the amount of eligible seller concessions is authorized under this statutory provision. As is more fully addressed in Section III of this Notice, which discusses the public comments received on the July 15, 2010, notice, some program participants have expressed concerns that reducing the amount of seller concessions may impact the housing market at a time when the market is depressed. However, FHA also has obligations to manage the MMIF soundly and prudently. The reduction in the amount of seller concessions is specifically being implemented to directly meet these statutory mandates, and is being done in accordance with specific statutory authority governing required funds to close and the mortgagor's ability to make the monthly mortgage payments. FHA officials would be remiss in their fiscal responsibilities if this action, after thoughtful study and analysis of program data and careful review of and taking into account the public comments, was not implemented.

D. Reducing Seller Concessions

Many of the commenters on the July 15, 2010, notice suggested that the primary illustration of credit risk for loans with high rates of seller concessions was not appropriate because it focused on loans insured from 2005 to 2008, and those insurance endorsements had large shares with seller-funded downpayment assistance and with lower borrower credit scores than are acceptable to HUD today. In response, HUD has completed an analysis of 2009 and 2010 loans. These latter loans were originated after the use of seller-funded downpayments was made illegal, and after lenders tightened their own internal credit guidelines to eliminate the low credit score loans that made up a sizable portion of FHA insurance activity in the 2005-to-2008 period. Loans outside of current HUD policy on minimum borrower credit scores also were excluded from the analysis, though they comprised only a small number of the 2009 and 2010 loan originations.[6]

In this new analysis, HUD addresses four key areas: (1) The distribution of closing costs and concessions in dollar amounts and in percent of property value, for different sized loans; (2) the introduction into the FHA portfolio of loans for much larger amounts than had been insured in previous years; (3) the juxtaposition of closing costs and concessions, by percent of property value; and (4) the credit risk associated with different levels of seller concessions.

To prepare this revised proposal, HUD updated its data analysis to use more recent loan originations. While this does not provide the type of loan seasoning that demonstrates long-run performance and credit risk, as was shown in Table C of the July 15, 2010, notice, it does permit differentiation between low- and high-balanced loans to a degree not possible with earlier loan originations. Prior to passage of the Economic Stimulus Act of 2008, the FHA national loan limit ceiling was $369,720; after that, it rose to $729,750, where it remains today, which causes HUD to be concerned about credit risk from high dollar concession amounts on high balanced loans with high loan-to-value ratios.

For this analysis, HUD developed a data set of borrower-required closing costs and seller concessions that covers 74 percent of the two million FHA insured home purchase loans originated in 2009 and 2010.[7] To measure credit risk on these loans, HUD focused only on 2009 loan originations, which now have as much as 26 months of seasoning. Patterns of credit risk already seen in this population are likely to persist over the life of the loans.

Table A shows the distribution of borrower-required closing costs as a percentage of home value. That information highlights how fixed-cost factors tend to create percentage amounts that are greatest for small balance loans. More than 70 percent of loans of up to $180,000 have closing costs in excess of 3 percent of property value, while among loans above $240,000, the share is just 26 percent.

TABLE A—BORROWER CLOSING COSTS—BY LOAN AMOUNT AND PERCENT OF PROPERTY VALUE

[2009–2010 FHA-insured loan originations]

Loan amt. ($000)	Percent of property value (rows sum to 100%) [a]						
	<=1	2	3	4	5	6	>6
<=180	1.35	8.42	19.12	25.51	19.37	11.36	14.88
181–240	4.50	20.23	35.59	22.50	9.55	4.25	3.39
241–360	8.63	29.80	35.40	15.35	6.26	2.88	1.68
>360	11.81	33.51	29.13	14.02	6.95	3.14	1.44
All	4.45	18.57	30.22	22.03	11.97	6.18	6.57

[a] Property value is measured as the lesser of the purchase price and the appraisal amount. Each category here, except for the final one, represents amounts up to the percentage shown in the column heading.

Concessions are present in 65 percent of FHA-insured home purchase loans. That rate appears to have been fairly constant over time; data samples taken by HUD on FY 2000 to 2002 home purchase loans insured by FHA show a similar rate of concessions. Table B provides a companion to Table A, highlighting the distribution of seller concessions, by size, in percent of home value. The greatest rate of use of concessions is for loan amounts up to $240,000, and the greatest share of concessions for amounts above 3 percent of property value are for the lowest loan amount categories shown there, and especially for loan amounts up to $180,000.

[6] These are loans for which borrower credit scores are below 500, or for which the credit scores are below 580 if the loan-to-value ratio is above 90 percent.

[7] Loans were excluded from this analysis primarily because HUD was not able to discern from the various data submitted by lenders the amounts of total borrower required closing costs and/or the presence of seller concessions. A small number of loans were excluded because borrower credit scores were below current limits for FHA eligibility.

TABLE B—SELLER CONTRIBUTIONS AS A PERCENT OF PROPERTY VALUE

[2009–2010 FHA-insured loan originations]

Loan amt. ($000)	Percent of property value [a] (rows sum to 100%)							
	0 [a]	1	2	3	4	5	6	>6 [b]
<=180	34.02	2.55	8.29	21.25	16.43	8.95	8.03	0.48
181–240	32.74	6.04	16.43	27.59	11.98	3.47	1.65	0.09
241–360	38.79	9.52	21.51	21.38	6.18	1.58	0.99	0.05
>360	47.28	12.54	18.96	13.93	3.73	1.91	1.61	0.04
All	34.66	5.76	14.76	24.15	12.15	4.81	3.50	0.20

[a] Property value is measured as the lesser of the purchase price and the appraisal amount. Each category here, except for the final one, represents amounts up to the percentage shown in the column heading.

[b] Shares of loans with rates of closing costs and concessions above 6 percent rose in 2010 in conjunction with a higher share of loans on properties with purchase prices below $50,000.

Table C juxtaposes information from Tables A and B to show how concession rates align with closing-cost rates. Shaded cells represent loans for which concessions are generally larger than the closing costs. Those account for 7 percent of all loans and 10 percent of loans with concessions. Table C also shows that the largest single concentration of loans (13.77 percent) is found where both closing costs and concessions are between 2 and 3 percent of home value. As seen in Table A, closing costs occur in this range for more than 30 percent of all home-purchase loans insured by FHA. Table B shows that concessions in this range represent 24 percent of all subject loans, and 37 percent of loans with concessions. The next largest concentrations seen in Table C (for loans with positive concessions) are for loans where closing costs and concessions are both between 1 and 2 percent of property value (7.62 percent), and those where each measure is between 3 and 4 percent of property value (7.21 percent). The next highest concentrations also are adjacent to the most populated group.

TABLE C—BORROWER CLOSING COSTS AND CONCESSIONS, IN PERCENTAGE OF PROPERTY VALUE [a]

[2009–2010 FHA-insured loan originations]

Closing cost rate (% of value)	Concessions rates (% of value)								All
	0 [b]	<=1	2	3	4	5	6	>6	
1	2.21	1.10	0.33	0.50	0.21	0.06	0.04	0.00	4.45
2	7.03	1.57	7.62	1.52	0.57	0.15	0.10	0.01	18.57
3	8.99	1.66	4.00	13.77	1.23	0.35	0.20	0.01	30.22
4	6.74	0.81	1.66	4.72	7.21	0.49	0.37	0.02	22.03
5	4.06	0.35	0.65	1.98	1.67	2.84	0.41	0.02	11.97
6	2.38	0.15	0.27	0.88	0.72	0.53	1.23	0.02	6.18
9	3.25	0.12	0.23	0.77	0.54	0.39	1.15	0.13	6.57
All	34.66	5.76	14.76	24.15	12.15	4.81	3.50	0.20	100.00

[a] Property value is the lesser of purchase price and appraisal amount.

[b] Any amount up to $500 is considered zero.

Table D provides summary statistics on the dollar amounts of closing costs and concessions, by the same four loan-amount classes shown in Tables A and B.

TABLE D—BORROWER CLOSING COSTS AND SELLER CONCESSIONS DESCRIPTIVE STATISTICS BY LOAN AMOUNT

Loan amt. ($000)	Cost or concession	Loans	Percentiles				
			5th	25th	50th	75th	95th
Dollar Amounts							
<=180	Cost	449,548	1,489	2,561	3,435	4,476	6,904
	Concession	449,548	0	0	2,049	3,251	4,900
181–240	Cost	748,048	1,789	3,385	4,571	6,054	9,594
	Concession	748,048	0	0	3,000	4,703	7,012
241–360	Cost	203,623	2,335	4,759	6,586	8,933	14,610
	Concession	203,623	0	0	3,150	6,468	10,062
>360	Cost	69,346	3,209	6,794	9,795	14,253	23,702
	Concession	69,346	0	0	1,527	8,155	16,453
Percentage of Home Value							
<=180	Cost	449,548	1.60	2.84	3.82	5.09	8.01
	Concession	449,548	0.00	0.00	2.44	3.50	5.71

TABLE D—BORROWER CLOSING COSTS AND SELLER CONCESSIONS DESCRIPTIVE STATISTICS BY LOAN AMOUNT—Continued

Loan amt. ($000)	Cost or concession	Loans	Percentiles				
			5th	25th	50th	75th	95th
181–240	Cost	748,048	1.04	2.01	2.71	3.56	5.53
	Concession	748,048	0.00	0.00	1.75	2.87	4.04
241–360	Cost	203,623	0.81	1.66	2.27	3.05	4.90
	Concession	203,623	0.00	0.00	1.11	2.23	3.49
>360	Cost	69,346	0.70	1.51	2.12	3.03	4.92
	Concession	69,346	0.00	0.00	0.33	1.83	3.54

Tables E–G parallel Tables A–C and provide performance information for loans originated in 2009.[8] The defining metric is a ''failure'' rate, which includes all loans that have either resulted in an insurance claim (as of March 31, 2011), are presently in foreclosure processing, or else have gone through the foreclosure process but the insurance claim has not yet been filed or processed. HUD adopted this metric because present economic circumstances are resulting in delays both in foreclosure completions and in claim filings. In addition, focusing on such ''failures'' is more directly associated with losses to the FHA insurance operations than are delinquency rate measures.[9]

These tables show that, within each loan amount category, credit risk is highest for loans with larger closing costs and with larger concessions. For loan amounts above $240,000, credit risk rises faster and higher than it does for lower loan amounts, as closing cost and concessions each exceed 3 percent of property value. Table F shows that while the lowest risk loans are those in the highest loan amount category (above $360,000), when no concessions are present, the highest risk is for the same category of loans when concessions are above 4 percent of property value, and especially when they are above 5 percent. In Table E, the highest loan-amount group also shows the highest credit risk of all is when closing costs exceed 4 percent.

TABLE E—TO-DATE FAILURE RATES [a] BY LOAN AMOUNT AND BORROWER CLOSING COST RATES

[2009 Loan originations]

Loan amt ($000)	Borrower closing cost (percent of property value [b])							All
	<=1	2	3	4	5	6	>6	
<=180	0.92	0.81	0.99	1.11	1.11	1.19	0.99	1.04
181–240	0.65	0.70	0.79	0.91	0.74	1.04	0.98	0.79
241–360	0.61	0.79	0.92	1.03	1.12	1.24	1.48	0.88
>360	0.63	0.62	0.86	1.22	1.70	3.73	2.32	0.93
All	0.66	0.73	0.85	1.00	0.98	1.20	1.02	0.89

[a] Failure is defined as a loan having either resulted in an insurance claim, or in foreclosure processing today, or else a foreclosure action has been completed and a claim filing is pending. Data as of March 31, 2011.

[b] Property value is measured as the lesser of the purchase price and the appraisal amount. Each category here, except for the final one, represents amounts up to the percentage shown in the column heading.

TABLE F—TO-DATE FAILURE RATES [a] BY LOAN AMOUNT AND SELLER CONCESSIONS RATES

[2009 Loan originations]

Loan amt. ($000)	Seller concessions (percent of property value [b])								All
	0 [b]	<=1	2	3	4	5	6	>6	
<=180	0.72	1.12	1.01	1.03	1.18	1.41	1.58	2.15	1.04
181–240	0.62	0.67	0.73	0.87	1.04	1.09	1.45	1.71	0.79
241–360	0.70	0.79	0.82	1.03	1.48	1.85	1.51	2.27	0.88
>360	0.58	0.91	0.76	1.15	1.53	2.24	6.70	[c] 0.00	0.93
All	0.66	0.77	0.80	0.94	1.14	1.32	1.66	2.02	0.89

[a] Failure is defined as a loan having either resulted in an insurance claim, or in foreclosure processing today, or else a foreclosure action has been completed and a claim filing is pending. Data is as of March 31, 2011.

[b] Any amount up to $500 is considered zero; other categories represent amounts greater than the next lower limit, and up to the percentage listed; rows add to 100 percent.

[c] There are just 19 loans in this cell.

[8] Loans originated in 2010 are still too new for there to be defined performance patterns. The 2009 loans comprise 51.6 percent of the cases in this analysis.

[9] HUD recognizes that not all loans for which a foreclosure process is started will result in loss of a home to the borrower and claim payment from FHA. However, the various rates at which foreclosure actions have been initiated do provide a valid measure for differentiating credit risk across groups of loans.

TABLE G—TO-DATE FAILURE RATES [a] BY CLOSING COST (CC) AND SELLER CONCESSIONS (SC) RATES [b]

[2009 Loan originations]

Closing costs (%)	Seller concessions (%)								by CC rate
	0 [c]	<=1	2	3	4	5	6	>6	
<= 1	0.55	0.69	0.57	0.80	1.05	1.36	1.28	4.35	0.66
2	0.63	0.70	0.80	0.73	0.79	1.32	1.11	0.00	0.73
3	0.65	0.84	0.70	0.99	1.06	1.08	1.40	1.11	0.85
4	0.73	0.85	1.00	0.89	1.25	1.02	1.88	2.68	1.00
5	0.61	1.00	0.90	0.80	0.90	1.44	1.64	2.74	0.98
6	0.80	0.87	1.22	1.07	1.09	1.18	1.86	3.25	1.20
>6	0.73	1.41	1.26	0.85	0.75	1.38	1.48	1.70	1.02
by SC rate	0.66	0.13	0.39	0.73	0.43	0.20	0.19	0.01	0.89

[a] Failure is defined as a loan having either resulted in an insurance claim, or in foreclosure processing today, or else a foreclosure action has been completed and a claim filing is pending. Shaded cells represent loans for which concessions are larger than closing costs. Data is as of March 31, 2011.

[b] Rates are in percent of property value (lesser of purchase price and appraisal amount).

[c] Any amount up to $500 is considered zero; other categories represent amounts greater than the next lower limit, and up to the percentage listed; rows add to 100 percent.

E. Establishing the Seller Concession Percentage Cap and Dollar Limitation

The Department recognizes that an across-the-board reduction in concession allowances could have a large negative impact on the ability of low- and moderate-income households to purchase moderate-priced homes. Thus, HUD is revising its proposed limitation on seller concessions to address comments to that effect that were provided in response to the July 15, 2010, notice. Many comments recommended that HUD combine a percentage cap with a dollar limitation. Such a two-part proposal could directly address the higher credit risk of high-balance loans with large seller concessions, while maintaining a sufficiently high allowance for the reasonable range of closing costs found on moderate-priced homes. Such a two-part approach would:

(1) Reduce the amount of concessions a seller (or other interested third party) could provide that would be considered in excess of actual closing costs or inducements to sale, and

(2) Minimize the impact that such a reduction might have on affordability and access to homeownership for first-time homebuyers needing the low downpayments permitted by FHA in what is still a fragile housing market.

To determine a reasonable percentage cap and dollar limitation, HUD compared the range of actual closing costs for homebuyers with FHA-insured mortgages, as seen in Table D, with the credit risk characteristics of loans with high concessions found in Tables F and G. The result is a new proposal permitting concessions as offsets to actual closing costs on individual loans up to the greater of 3 percent or $6,000 of the lesser of the sales price or appraised value. In mathematical terms, this limitation can be described as:

Minimum [closing_cost, maximum ($6,000, 0.03* property_value)] where property_value = min (sale price, appraised value) except for 203k where property_value = appraised_value.

Under this proposal, the limiting factor on the allowable dollar amount of concessions will be:

- Closing costs, when the amount is less than $6,000;
- Closing costs, when they are above $6,000 but less than 3 percent of property value;
- $6,000, when that is more than 3 percent of property value and less than total closing costs; or
- 3 percent of property value, when that amount is both greater than $6,000 and less than closing costs.

Table H provides some benchmark values for understanding how this proposal would affect homebuyers with minimum downpayments, at different loan amounts. For the homebuyer with a $120,000 mortgage (buying a $126,000 home), concessions would be considered offsets to actual closing costs where closing costs are as high as $6,000, or 4.78 percent of the home value. The loan amount after which the 3 percent of property value is greater than $6,000 is $194,930 (buying a $200,000 home). For all larger loan amounts, a borrower may use concessions as offsets to actual closing costs up to 3 percent of property value. At $360,000, concessions may be used to offset actual closing costs, up to $11,304. For a very high loan amount of $600,000, the 3 percent concessions allowance is $18,000.

TABLE H—COMPONENTS OF THE PROPOSED LIMIT ON SELLER CONCESSIONS

[Examples at various loan amounts]

Loan Amount [a]	$120,000	$180,000	$194,930	$240,000	$360,000
Property Value [b]	$125,596	$188,394	$200,000	$251,192	$376,788
$6,000 as a % of Value	4.78%	3.18%	3.00%	2.39%	1.59%
3.0% of Value	$3,768	$5,652	$6000	$7,536	$11,304

[a] Presumed to include the FHA Upfront Mortgage Insurance Premium of 1 percent.

[b] Based upon borrower making the minimum downpayment of 3.5 percent. (Calculated as loan_amount/(0.965/1.01), to also account for the typical financing of the 1 percent upfront insurance premium.)

Referring again to Table D, the $6,000 limitation is generous to borrowers with loan amounts up to $180,000. In that range, $6,000 is beyond the 90th percentile of all borrower closing costs. Thus, less than 10 percent of borrowers with loan amounts under $180,000 would have concession allowances that are less than their actual closing costs. For borrowers in the next loan amount category ($180,000–240,000), $6,000 nearly reaches the 75th percentile of

closing costs. However, $6,000 is not the binding limit for borrowers with loan amounts of $195,000 or greater (see Table H). In that range, 3 percent of the property value is greater than $6,000 and becomes the amount that is compared with actual closing costs to determine maximum allowable concessions.

Table I illustrates the impact of this revised proposal to the existing concessions limitation and at different sales prices under the proposed reduction. Concessions are more generous than the existing 6 percent limitation for sales prices below $100,000. For sales prices between $100,000 and $200,000, the dollar cap allows for seller concessions greater than 3 percent. Any sales price above $200,000 is limited to the 3 percent cap.

TABLE I—COMPARISON OF LIMITATIONS ON SELLER CONCESSIONS

Sales price	Existing seller concessions limitation	Proposed reduction of seller concessions is the greater of		Proposed percentage cap
	6 percent	3.0 percent	$6,000	%
$100,000	$6,000	$3,000	$6,000	6.0
$120,000	7,200	3,600	6,000	5.0
$140,000	8,400	4,200	6,000	4.3
$160,000	9,600	4,800	6,000	3.75
$180,000	10,800	5,400	6,000	3.3
$200,000	12,000	6,000	6,000	3.0
$220,000	13,200	6,600	6,000	3.0
$240,000	14,400	7,200	6,000	3.0
$260,000	15,600	7,800	6,000	3.0
$280,000	16,800	8,400	6,000	3.0
$300,000	18,000	9,000	6,000	3.0

The actual effects of the proposed limitation, when applied to the 2009 and 2010 loan originations used in this analysis, are shown in Tables J and K. Overall, the limitation would have affected just 13.4 percent of those home purchase loans. The dollar size of the resulting excess contributions is shown in Table J. For the lowest loan amount group, the median effect is under $1,000; for the highest loan amount group, it is above $4,000. However, as seen in Table K, among the 9.7 percent of borrowers with loan amounts up to $180,000 that are affected, the binding constraint that creates excess concessions is the actual amount of closing costs in nearly all of those situations (93.4 percent). For the fewer than 7 percent of the affected borrowers in this group, the $6,000 dollar limitation is greater than their closing costs. For loan amounts above $240,000, the share of affected loans constrained by closing costs is more closely balanced with the share that is constrained by 3 percent of property value (56 and 44 percent, respectively).

TABLE J—PROPOSED CONCESSIONS LIMITATION, AFFECTS BY LOAN SIZE CATEGORY

[2009–2010 FHA-insured loans]

Loan amt. ($000)	Number of loans affected	Share of loans affected %	Dollar reductions—at various percentiles (affected loans only)				
			5th	25th	50th	75th	95th
<=180	43,592	9.7	$86	$480	$988	$1,670	$3,018
181–240	114,726	15.3	116	664	1,434	2,562	4,900
241–360	30,499	15.0	150	1,001	2,247	4,106	8,160
>360	8,819	12.7	327	1,850	4,138	7,541	14,635

TABLE K—PROPOSED CONCESSIONS LIMITATION SOURCE OF CONSTRAINT ON AFFECTED LOANS, BY LOAN SIZE CATEGORY

Loan amt. ($000)	Binding constraint		
	Closing cost %	Property value %	Dollar limit %
<=180	93.4	0.11	6.5
181–240	61.9	12.7	25.5
241–360	57.0	43.0	0.04
>360	54.2	45.7	0.05
All	67.7	16.0	16.2

Note: Rows sum to 100%.

F. Considering Alternative Approaches

There were a variety of alternative approaches suggested by commenters. Some commenters recommended that HUD defer instituting a cap in favor of monitoring the performance of loans with seller concessions for a period of 2 years. Others suggested adopting the cap used by other federal programs such as the Department of Veterans Affairs Home Loan Program or capping seller concessions based on the buyer's credit score. While these alternatives to the proposed reduction all had merit, HUD believes that they do not sufficiently address the risk to the MMIF and/or they do not adequately mitigate the impact that a reduction in seller concessions may have had on the housing market. In considering all of the alternative approaches, HUD sought to achieve both of these goals. The comments that recommended combining a percentage cap with a dollar limitation met these goals and provided HUD the opportunity to revise this proposal in a manner that would both benefit the housing market and FHA's Mutual Mortgage Insurance Fund.

Section III of this notice discusses all of the significant issues raised by the public comments regarding the July 15, 2010, notice's proposed reduction in the allowable amount of seller concessions, and HUD's responses to these issues.

III. Discussion of the Public Comments Regarding Proposed Reduction in Sellers Concessions

A. Support for Proposed Limit on Seller Concessions

A minority of the comments expressed support for reducing seller concessions. The commenters wrote that the cap would require a more serious commitment from borrowers and should also help reduce risks to the FHA insurance funds.

HUD Response. HUD appreciates the support for reducing seller concessions. It believes that this reduction will reduce risk to the MMIF, while at the same time preserving FHA's mission of helping underserved borrowers obtain affordable home financing.

B. Proposed Cap Will Be Ineffective and Harmful

Comment: HUD failed to provide adequate justification for the proposed reduction, and reducing seller concessions will not result in reduced risk to FHA. Several commenters questioned HUD's stated rationale for limiting seller concessions. The commenters wrote that the data provided in the July 15, 2010, notice regarding the seller concession cap failed to demonstrate a significant risk to the FHA portfolio to justify the change. Further, commenters questioned the accuracy of the statistical data illustrating the correlation between higher seller concessions and an increased rate of default.

HUD Response. HUD has amended its proposal in response to these comments. The Department conducted a more complex analysis of portfolio performance involving seller concessions, which revealed that the risk to the MMIF increased for loans with larger closing costs and concessions. Table E demonstrates that for loan amounts in excess of $240,000 for FY 2009, credit risk rises faster and higher than it does for lower loan amounts when closing costs and concessions exceed 3 percent. Table F shows that the highest risk exists with loans greater than $360,000 and concessions are above 4 percent.

Comment: Proposed cap does not address true problems in the housing market. Several commenters wrote that the proposed cap will be ineffective because it fails to address the true causes of increased defaults. Some of these commenters wrote that unscrupulous lending practices were primarily responsible for the increased mortgage defaults, while other commenters pointed at artificially inflated appraisals and sales prices.

HUD Response. HUD has amended its proposal in response to these comments. The Department agrees that reducing seller concessions alone will not address the true problems associated with increased defaults and the volatility in the housing market. However, this revised proposal, in conjunction with other efforts to strengthen enforcement actions and reduce risk, will help ensure that borrowers relying on FHA-insured financing have sufficient investment in their home purchases and are therefore less likely to default. This revised proposal will also help curtail a practice where seller concessions are offered an amount above the borrower's actual costs as an offset to a higher sales price.

Comment: Proposed cap will harm the housing market. Several commenters wrote that the proposed cap could have a chilling effect on the origination of new mortgages. Commenters wrote that reducing seller concessions from 6 percent to 3 percent would reduce the qualified borrower pool and remove a large portion of borrowers who would otherwise be approved under stringent underwriting requirements. The commenters wrote that many FHA buyers require the seller's contribution in order to proceed with the purchase of the home. Additionally the reduction in sellers concessions, some commenters argued, could result in less money available for post-purchase incidentals including home improvements and emergencies.

HUD Response. HUD amended its proposal in response to these comments. HUD recognizes that borrowers with lower loan amounts were more negatively impacted by the initial proposal from the July 15, 2010, notice than borrowers with high loan amounts. However, as evidenced in Tables A, B, C, and D, the impact of any change to seller concessions would not be as great as indicated by the commenters. As shown in Table C, the largest single concentration of loans (13.77 percent) is where both closing costs and concessions are between 2 and 3 percent of home value. In Table A, closing costs occur in this range for more than 30 percent of all home purchase loans insured by FHA. Table B shows that concessions in this range represents 37 percent of loans with concessions. The next largest concentration is for loans where closing costs and concessions are between 1 and 2 percent of property value (7.62 percent). Table A highlights how fixed cost factors tend to create percentage amounts that are greatest for small balance loans. Over 70 percent of loans of up to $180,000 have closing costs in excess of 3 percent of property value. This difference is attributed to the fact that many closing costs are fixed (e.g., appraisals, title services, inspections, and flood and lien certifications), and not a percentage of loan amount (e.g., origination charge, title insurance). Therefore, the revised proposal allows for greater than 6 percent seller concessions on loans with a sales price of less than $100,000 and allows for seller concessions greater than 3 percent for loans with a sales price up to $200,000. It is anticipated that this revised proposal will minimize, if not eliminate, the concerns that a reduction in seller concessions would have a negative impact on the housing market. Also, this proposal will assist borrowers who are less able to absorb the post-purchase financial costs of home improvements and emergency repairs, by not requiring them to devote all available funds to the acquisition of the home.

Comment: Reduction in seller's cap will disproportionately impact low-income and first-time homebuyers. Several commenters suggested that the proposed seller concession cap will unfairly impact low-income and first-time homebuyers. The reduction from 6 percent to 3 percent will impact less

expensive properties and have a disparate impact on lower income borrowers and potential homeowners purchasing homes worth less than $150,000. The cap will burden low income buyers and require a higher percentage of cash relative to buyers purchasing more expensive homes. Additionally, commenters wrote that first-time homebuyers are less likely to have cash available to meet closing costs. The commenters wrote that these buyers rely heavily on the 6 percent seller's concessions and will experience a greater decrease in buying power than second- or third-time buyers.

HUD Response. HUD has amended its proposal in response to these comments and agrees that an across-the-board reduction in seller concessions had a disproportionately negative impact on low- and moderate-income borrowers purchasing lower priced homes. As noted in previous responses, this revised proposal allows for greater than 6 percent seller concessions on loans with sales prices less than $100,000 and allows for seller concessions greater than 3 percent for loans with sales prices up to $200,000 (See Table I).

Comment: Proposed cap fails to consider regional differences in housing markets. Several commenters wrote that the reduction in seller concessions to 3 percent should be reevaluated to account for varying home prices regionally. Commenters wrote that closing costs, taxes, and insurance vary greatly by state. The commenters wrote that the 3 percent cap will have a variable impact on buyers depending on the regional market and that HUD should consider a more flexible market-driven approach.

HUD Response. HUD does not engage in regional eligibility and underwriting standards based on local market conditions. FHA's role in stabilizing the current housing market is due to the fact that its programs are available under the same terms and conditions regardless of the borrower's and subject property's location. However, HUD does recognize that there are regional differences in the housing market and, therefore, it crafts its policies by taking these differences into consideration. HUD analyzed FHA loans from both high-cost and low-cost states and used a reasonable range (25th percentile to 75th percentile) to determine the appropriate cutpoints. HUD also reviewed various external closing cost studies such as by Bankrate.com and analyzed additional external data provided by an FHA-approved lender. HUD is confident that its own analysis is consistent with other reliable closing costs studies.

C. Alternative Approaches

Comment: HUD should defer instituting a cap. Several commenters wrote that the analysis provided in the July 15, 2010, notice was conducted prior to the implementation of other recently enacted FHA risk management initiatives and, therefore, does not take the beneficial impact of such changes into account. The commenters questioned whether the increase in average default rates was caused by the difference in seller concessions or by some other factor such as lower borrower credit scores. The commenters proposed that HUD delay implementing the 3 percent cap until the results and impacts of the other recently implemented FHA risk change can be tracked. Commenters suggested that HUD analyze the performance of loans left at a 6 percent cap for 2 years prior to instituting the change.

HUD Response. HUD has amended its proposal in response to these comments. HUD believes that it has completed the necessary due diligence in proposing a reduction in seller concessions, from analyzing the impact on its portfolio to the impact a reduction would have on the housing market. As part of the analysis for this revised proposal, which includes performance data from FYs 2009 and 2010, HUD did not include loans it no longer insures, such as those with credit scores below 580 and LTVs greater than 90 percent, as well as those with seller-funded downpayment assistance. By eliminating these loans from the analysis, HUD was able to analyze seller concessions and their impact on the portfolio without skewing the data with known factors that more likely contributed to the default and claim. Readers are referred to the discussion in Section II that illustrates the need to make these reductions while at the same time preserving the 6 percent cap for those borrowers who need it the most; i.e., low- and moderate-income borrowers purchasing lower priced homes.

Comment: HUD should allow for gradual reduction of seller concessions. Commenters recommended that if HUD plans to implement the reduction in seller concessions, that a gradual approach be used. Commenters argued that the 3 percent reduction would result in many buyers being priced out of the market. Commenters argued that a gradual approach would protect potential buyers and would allow HUD to study the impact of each change.

HUD Response. HUD believes that its revised proposal has essentially the same effect the commenters are seeking, ensuring that a reduction to seller concessions has minimal impact on the housing market and that borrowers who need additional assistance in purchasing a home may receive it. As stated previously, this revised proposal allows for seller concessions greater than 6 percent on loans with sales prices less than $100,000 and permits seller concessions greater than 3 percent for loans with sales prices up to $200,000 (See Table I).

Comment: Cap seller concessions by dollar amount in addition to percentage. Several commenters wrote that providing a dollar range in addition to a percentage would resolve regional and economic disparity issues posed by the proposed 3 percent cap.

HUD Response. HUD has amended its proposal based on these comments and has proposed that seller concessions be reduced to 3 percent or $6,000, whichever is the greater (but not to exceed the borrower's actual costs). Like the commenters, the Department believes that combining a cap based on percentage with a cap based on a dollar amount addresses the regional and economic disparities that may have occurred with an across-the-board reduction. Readers are directed to the discussion in Section II regarding this revised proposal.

Comment: Base seller concessions on buyer credit score. Several commenters suggested that FHA adopt a graduated system for determining the allowable amount of seller concessions. Commenters suggested basing this graduated system either on income level or credit score. Commenters suggested that a graduated approach will more directly speak to the correlation between poor credit and default. Rather than reduce the seller contribution of FHA transactions to 3 percent universally, commenters suggested that FHA adjust the cap using other risk identifiers such as correlating the seller concession with credit scores.

HUD Response. HUD believes that limiting seller concessions based on the borrower's income level and credit score would not achieve its mission of assisting low-income borrowers overcome a chief obstacle to purchasing a home: having sufficient funds for a downpayment, as well as for paying all of their closing costs. With this revised proposal, HUD is striking the appropriate balance between its historic role of making it easier for families to purchase their homes, while at the same time ensuring that they have sufficient investment in their home purchases and are therefore less likely to default.

Comment: HUD should align the seller concession cap with other federal programs. Several commenters

suggested that if HUD implements a reduction in the allowable amount of seller concessions, that it should be reduced to 4 percent. This reduction would align it with the Department of Veterans Affairs Veterans' Home Loan Program.

HUD Response. HUD did consider aligning itself with the Department of Veterans Affairs Veterans' Home Loan Program but found in its analysis that doing so would have resulted in a disproportionately negative impact on borrowers purchasing lower priced homes. By combining a percent cap with a dollar amount cap, HUD believes that it has addressed such disparities and minimizes the impact a reduction in seller concessions may have on the market.

IV. Findings and Certification

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this notice under Executive Order 12866 (entitled ''Regulatory Planning and Review''). The notice was determined to be a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order).

As discussed in this preamble, this notice proposes to reduce the amount of closing costs a seller may pay on behalf of a homebuyer purchasing a home with financing insured by FHA. The increased role of FHA in the mortgage lending marketplace, combined with the economic difficulties faced by many FHA borrowers, has increased the risk to the FHA insurance funds. While HUD has undertaken several steps to mitigate this risk and strengthen the financial soundness of the FHA programs, a reduced cap on seller concessions remains a vitally needed reform.

As provided in the economic analysis that accompanies this notice, the combined compliance cost for borrowers and sellers under HUD's proposal to reduce seller concessions ranges from $21 million to $97 million. The actual cost of compliance depends greatly on the state of the housing mortgage market. Where the mortgage market is healthier and private lending is available, the cost of compliance will be at the lower end of the range, and concomitantly at the higher end of the range in a slowed market in which private lending is substantially reduced. With respect to benefits, HUD expects its proposal to help prevent foreclosures in the amount of approximately $25 million, and prevention of foreclosures means sustainable homeownership. Another highly important benefit will be to reduce the net losses to the FHA insurance fund resulting from high rates of insurance claims. The total gain to FHA from the implementation of HUD's proposal as presented in this notice is expected to range from $60 million to $70 million. As the current housing market has shown, the importance of maintaining FHA as a source of credit for homeownership is a highly important benefit, which cannot be overstated.

Because of the downturn in the housing market, FHA loans are now in higher demand as a result of the absence of sufficient private lending in the mortgage market. The volume of FHA insurance increased rapidly as private sources of mortgage finance retreated from the market. As noted earlier in this preamble, FHA's share of the single-family mortgage market today is approximately 33 percent—up from 3 percent in 2007, and the dollar volume of insurance written has jumped from the $77 billion issued in that year to $319 billion in 2010. Accordingly, over the last several years, FHA's primary contribution to the public is to provide a financing source for affordable and sustained homeownership when the market is not achieving this goal on its own. FHA cannot, however, contribute to sustained homeownership if FHA itself is not sustained.

As has been reported, FHA's capital reserve ratio has fallen below the statutorily mandated minimum capital reserve ratio of 2 percent. A primary reason why is that the recent demands placed on FHA have resulted in increased losses to the FHA insurance fund. FHA has a fiduciary duty, imposed by statute, to preserve the MMIF and to maintain the capital ratio of the MMIF at not less than 2 percent. In brief, FHA must take action to reduce risks and eliminate losses. FHA has already taken several steps to reduce risks, and this proposal on reduced seller concessions is another such measure to do so and restore the MMIF to the statutory minimum capital reserve ratio.

The full economic analysis is available for review at *www.regulations.gov*. The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The notice reduces the seller concessions cap. The benefit of this action will be to reduce the net losses due to mortgage defaults. As noted in the economic analysis for the notice, few borrowers are served in the categories that would be excluded under the new policies, relative to the total FHA portfolio. Further, as noted by many of the public commenters on the July 15, 2010, notice, the policy changes being made by FHA aligns the seller concession cap with that found in the conventional mortgage market. The impact of the policy changes will, therefore, largely be limited to conforming FHA standards to widespread industry practice.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was prepared for the July 15, 2010, notice, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable to this notice and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any document that has federalism implications if the document either imposes substantial direct

compliance costs on state and local governments and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This document would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This document would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Dated: January 30, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 2012–3934 Filed 2–22–12; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket No. USCG–2012–0024]

RIN 1625–AA00

Safety Zone; NOBLE DISCOVERER, Outer Continental Shelf Drillship, Chukchi and Beaufort Seas, Alaska

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a 500-meter safety zone around the DRILLSHIP NOBLE DISCOVERER, while anchored or deploying and recovering moorings on location in order to drill exploratory wells at various prospects located in the Chukchi and Beaufort Seas Outer Continental Shelf, Alaska, from 12:01 a.m. on July 1, 2012 through 11:59 p.m. on October 31, 2012. See TABLE 1. The purpose of the temporary safety zone is to protect the drillship from vessels operating outside the normal shipping channels and fairways. Placing a safety zone around the drillship will significantly reduce the threat of allisions, which could result in oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment. Lawful demonstrations may be conducted outside of the safety zone.

DATES: Comments and related material must be received by the Coast Guard on or before March 26, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0024 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email LT Jason Smilie, Seventeenth Coast Guard District (dpi); telephone 907–463–2809, *Jason.A.Smilie@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0024), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2012–0024'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box, insert USCG–2012–0024 and click ''Search.'' Click the ''open Docket Folder'' in the ''Actions'' column.

You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets

in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

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

Basis and Purpose

The Coast Guard proposes the establishment of a temporary safety zone around the DRILLSHIP NOBLE DISCOVERER while anchored or deploying and recovering moorings on location in order to drill exploratory wells in several prospects located in the Chukchi and Beaufort Seas during the 2012 drilling season.

The request for the temporary safety zone was made by Shell Exploration & Production Company due to safety concerns for both the personnel aboard the NOBLE DISCOVERER and the environment. Shell Exploration & Production Company indicated that it is highly likely that any allision or inability to identify, monitor or mitigate any risks or threats, including ice-related hazards that might be encountered, would result in a catastrophic event. Incursions into the safety zone by unapproved vessels could degrade the ability to monitor and mitigate such risks. In evaluating this request, the Coast Guard explored relevant safety factors and considered several criteria, including but not limited to: (1) The level of shipping activity around the operation; (2) safety concerns for personnel aboard the vessel; (3) concerns for the environment given the sensitivity of the environmental and subsistence importance to the indigenous population; (4) the lack of any established shipping fairways, fueling and supply storage/operations, and size of the crew increase the likelihood that an allision would result in a catastrophic event; (5) the recent and potential future maritime traffic in the vicinity of the proposed areas; (6) the types of vessels navigating in the vicinity of the proposed area; (7) the structural configuration of the vessel, and (8) the need to allow for lawful demonstrations without endangering the safe operation of the rig. For any group intending to conduct lawful demonstrations in the vicinity of the rig, these demonstrations must be conducted outside the safety zone.

Results from a thorough and comprehensive examination of the criteria, IMO guidelines, and existing regulations warrant the establishment of the proposed temporary safety zone. The proposed regulation would significantly reduce the threat of allisions that could result in oil spills, and releases. Furthermore, the proposed regulation would increase the safety of life, property, and the environment in the Chukchi and Beaufort Seas by prohibiting entry into the zone unless specifically authorized by the Commander, Seventeenth Coast Guard District, or a designated representative. Due to the remote location and the need to protect the environment, the Coast Guard may use criminal sanctions to enforce the safety zone as appropriate.

The proposed temporary safety zone will be around the NOBLE DISCOVERER while anchored or deploying and recovering moorings on location in order to drill exploratory wells in various locations in the Chukchi and Beaufort Seas Outer Continental Shelf, Alaska during the 2012 timeframe.

Shell Exploration & Production Company has ten proposed drill sites within the Burger, Suvulliq and Torpedo prospects, Beaufort Sea, Alaska (See Table 1).

TABLE 1—PROSPECT LOCATIONS

Prospect	Well	Area	Block	Lease No.	Latitude	Longitude
Burger	A	Posey	6764	OCS–Y–2280	N71°18′30.92″	W163°12′43.17″
Burger	F	Posey	6714	OCS–Y–2267	N71°20′13.96″	W163°12′21.75″
Burger	J	Posey	6912	OCS–Y–2321	N71°10′24.03″	W163°28′18.52″
Burger	R	Posey	6812	OCS–Y–2294	N71°16′06.57″	W163°30′39.44″
Burger	S	Posey	6762	OCS–Y–2278	N71°19′25.79″	W163°28′40.84″
Burger	V	Posey	6915	OCS–Y–2324	N71°10′33.39″	W163°04′21.23″
Sivulliq	G	Flaxman Is	6658	OCS–Y 1805	N70°23′46.82″	W146°01′03.46″
Sivulliq	N	Flaxman Is	6658	OCS–Y 1805	N70°23′29.58″	W145°58′52.53″
Torpedo	H	Flaxman Is	6610	OCS–Y 1941	N70°27′01.62″	W145°49′32.07″
Torpedo	J	Flaxman Is	6559	OCS–Y 1936	N70°28′56.94″	W145°53′47.15″

During the 2012 timeframe, Shell Exploration & Production Company has proposed drilling up to two exploration wells at the identified Chukchi and Beaufort Sea prospects depending on favorable ice conditions, weather, sea state, and any other pertinent factors. Each of these drill sites will be permitted for drilling in 2012 to allow for operational flexibility in the event sea ice conditions prevent access to one of the locations. The number of actual wells that will be drilled will depend on ice conditions and the length of time available for the 2012 drilling season. The predicted ''average'' drilling season, constrained by prevailing ice conditions and regulatory restrictions, is long enough for two to three typical exploration wells to be drilled.

The actual order of drilling activities will be controlled by an interplay between actual ice conditions immediately prior to a rig move, ice forecasts, any regulatory restrictions with respect to the dates of allowed operating windows, whether the planned drilling activity involves only drilling the shallow non-objective section or penetrating potential hydrocarbon zones, the availability of permitted sites having approved shallow hazards clearance, the anticipated duration of each contemplated drilling activity, the results of preceding wells and Marine Mammal Monitoring and Mitigation plan requirements.

All planned exploration drilling in the identified lease blocks will be conducted with the NOBLE DISCOVERER. The NOBLE DISCOVERER is a true drillship, and is a large self-contained drilling vessel that offers full accommodations for up to 124 persons. The hull has been reinforced for ice resistance.

The NOBLE DISCOVERER has a ''persons on board'' capacity of 124, and it is expected to be at capacity for most of its operating period. The NOBLE DISCOVERER's personnel will include its crew, as well as Shell employees, third party contractors, Alaska Native

Marine Mammal Observers and possibly Bureau of Ocean Energy Management (BOEM) or Bureau of Safety and Environmental Enforcement (BSEE) personnel.

While conducting exploration drilling operations, the NOBLE DISCOVERER will be anchored. The NOBLE DISCOVERER uses an anchoring system consisting of an 8-point anchored mooring spread attached to the onboard turret and could have a maximum anchor radius of 3,600 ft (1,100 m). The anchor spread, which radiates from the center of the NOBLE DISCOVERER, may pose a fouling hazard to any vessel attempting to anchor within the anchor spread. Fouling of the NOBLE DISCOVERER anchor lines may endanger the drillship, its 124 persons onboard the third party vessel, persons onboard the third party vessel and the environment.

The center point of the NOBLE DISCOVERER will be positioned within the prospect location in the Beaufort Sea at the coordinates listed below (See Table 1).

The NOBLE DISCOVERER will move into the Chukchi or Beaufort Sea on or about July 1, 2012 and onto a prospect location when ice allows. Drilling will be curtailed on or before October 31, 2012. The drillship and support vessels will depart the Beaufort Sea at the conclusion of the 2012 drilling season.

Discussion of Proposed Rule

The proposed temporary safety zone would encompass the area within 500 meters from each point on the outer edge of the NOBLE DISCOVERER while anchored on location in order to drill exploratory wells or deploying and recovering moorings on location in order to drill exploratory well. No vessel would be allowed to enter or remain in this proposed safety zone except the following: An attending vessel or a vessel authorized by the Commander, Seventeenth Coast Guard District or a designated representative. They may be contacted on VHF–FM Channel 13 or 16 or by telephone at 907–463–2000.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule is not a significant regulatory action due to the location of the DRILLSHIP NOBLE DISCOVERER on the Outer Continental Shelf and its distance from both land and safety fairways. Vessels traversing waters near the proposed safety zone will be able to safely travel around the zone without incurring additional costs.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the Sivulliq and Torpedo Prospect of the Beaufort Sea, including Flaxman Island blocks 6610, 6658 and 6659, and Posey Blocks 6714, 6762, 6764, 6812, 6912, 6915 (See Table 1).

This safety zone will not have a significant economic impact or a substantial number of small entities for the following reasons: This rule will enforce a safety zone around a drillship facility that is in an area of the Flaxman Island of the Beaufort Sea not frequented by vessel traffic and is not in close proximity to a safety fairway. Further, vessel traffic can pass safely around the safety zone without incurring additional costs.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Jason Smilie, Coast Guard Seventeenth District, Office of Prevention; telephone 907–463–2809, *Jason.A.Smilie@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from

Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

2. Add § 147.T17–0024 to read as follows:

§ 147.T17–0024 Safety Zone; NOBLE DISCOVERER, Outer Continental Shelf Drillship, Chukchi and Beaufort Seas, Alaska.

(a) *Description.* The NOBLE DISCOVERER will be engaged in exploratory drilling operations at various locations in the Chukchi and Beaufort Seas from July 1, 2012 through October 31, 2012. The DRILLSHIP will be anchored while conducting exploratory drilling operations with the center point of the vessel located at the coordinates listed in Table 1. These coordinates are based upon [NAD 83] UTM Zone 3. The area within 500 meters (1,640.4 feet) from each point on the outer edge of the vessel while anchored on location is a safety zone. Lawful demonstrations may be conducted outside of the safety zone.

TABLE 1—PROSPECT LOCATIONS

Prospect	Well	Area	Block	Lease No.	Latitude	Longitude
Burger	A	Posey	6764	OCS–Y–2280	N71°18′30.92″	W163°12′43.17″
Burger	F	Posey	6714	OCS–Y–2267	N71°20′13.96″	W163°12′21.75″
Burger	J	Posey	6912	OCS–Y–2321	N71°10′24.03″	W163°28′18.52″
Burger	R	Posey	6812	OCS–Y–2294	N71°16′06.57″	W163°30′39.44″
Burger	S	Posey	6762	OCS–Y–2278	N71°19′25.79″	W163°28′40.84″
Burger	V	Posey	6915	OCS–Y–2324	N71°10′33.39″	W163°04′21.23″
Sivulliq	G	Flaxman Is	6658	OCS–Y–1805	N70°23′46.82″	W146°01′03.46″
Sivulliq	N	Flaxman Is	6658	OCS–Y–1805	N70°23′29.58″	W145°58′52.53″
Torpedo	H	Flaxman Is	6610	OCS–Y–1941	N70°27′01.62″	W145°49′32.07″
Torpedo	J	Flaxman Is	6559	OCS–Y–1936	N70°28′56.94″	W145°53′47.15″

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel; or

(2) A vessel authorized by the Commander, Seventeenth Coast Guard District, or a designated representative.

(c) *Penalties.* Violation of this regulation may result in criminal or civil penalties, or both.

Dated: February 2, 2012.

Thomas P. Ostebo,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 2012–3998 Filed 2–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket No. USCG–2011–1143]

RIN 1625–AA00

Safety Zone; KULLUK, Outer Continental Shelf Mobile Offshore Drilling Unit (MODU), Beaufort Sea, AK

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a 500-meter safety zone around the MODU KULLUK, while anchored or deploying and recovering moorings on location in order to drill exploratory wells at various prospects located in the Beaufort Sea Outer Continental Shelf, Alaska, from 12:01 a.m. on July 1, 2012 through 11:59 p.m. on October 31, 2012. See TABLE 1. The purpose of the temporary safety zones is to protect the MODU from vessels operating outside the normal shipping channels and fairways. Placing a safety zone around the MODU will significantly reduce the threat of allisions that could result in oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment. Lawful demonstrations may be conducted outside of the safety zone.

DATES: Comments and related material must be received by the Coast Guard on or before March 26, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1143 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email LT Jason Smilie, Seventeenth Coast Guard District (dpi); telephone 907–463–2809, *Jason.A.Smilie@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–1143), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–1143'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box, insert USCG–2011–1143 and click ''Search.'' Click the ''open Docket Folder'' in the ''Actions'' column.

You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

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

Basis and Purpose

The Coast Guard proposes the establishment of a temporary safety zone around the MODU KULLUK while anchored or deploying and recovering moorings on location in order to drill exploratory wells in several prospects located in the Beaufort Sea during the 2012 drilling season.

The request for the temporary safety zone was made by Shell Exploration & Production Company due to safety concerns for both the personnel aboard the KULLUK and the environment. Shell Exploration & Production Company indicated that it is highly likely that any allision or inability to identify, monitor or mitigate any risks or threats, including ice-related hazards that might be encountered, would result in a catastrophic event. Incursions into the safety zone by unapproved vessels could degrade the ability to monitor and mitigate such risks. In evaluating this request, the Coast Guard explored relevant safety factors and considered several criteria, including but not limited to: (1) The level of shipping activity around the operation; (2) safety concerns for personnel aboard the vessel; (3) concerns for the environment given the sensitivity of the environmental and subsistence importance to the indigenous population; (4) the lack of any established shipping fairways, fueling and supply storage/operations, and size of the crew increase the likelihood that an allision would result in a catastrophic event; (5) the recent and potential future maritime traffic in the vicinity of the proposed areas; (6) the types of vessels navigating in the vicinity of the proposed area; (7) the structural configuration of the vessel, and (8) the need to allow for lawful demonstrations without endangering the safe operation of the rig. Navigation in the vicinity of the safety zone could consist of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. For any group intending to conduct lawful demonstrations in the vicinity of the rig, these demonstrations must be conducted outside the safety zone.

Results from a thorough and comprehensive examination of the criteria, IMO guidelines, and existing regulations warrant the establishment of the proposed temporary safety zone. The proposed regulation would significantly reduce the threat of allisions that could result in oil spills, and releases. Furthermore, the proposed regulation would increase the safety of life, property, and the environment in the Beaufort Sea by prohibiting entry into the zone unless specifically authorized by the Commander, Seventeenth Coast Guard District, or a designated representative. Due to the remote location and the need to protect the environment, the Coast Guard may use criminal sanctions to enforce the safety zone as appropriate.

The proposed temporary safety zone will be around the KULLUK while anchored or deploying and recovering moorings on location in order to drill exploratory wells in various locations in the Beaufort Sea Outer Continental Shelf, Alaska during the 2012 timeframe.

Shell Exploration & Production Company has four proposed drill sites within the Suvulliq and Torpedo prospects, Beaufort Sea, Alaska (See Table 1).

TABLE 1—PROSPECT LOCATIONS

Drill site	Lease File No.	NR06–04 Flaxman Island Lease Block No.	Surface location (NAD 83) *		Distance to mainland shore mi (km)
			Latitude (N)	Longitude (W)	
Sivulliq G	OCS–Y 1805	6658	70°23′46.82″	146°01′03.46″	16.6 (26.7)
Sivulliq N	OCS–Y 1805	6658	70°23′29.58″	145°58′52.53″	16.2 (26.1)
Torpedo H	OCS–Y 1941	6610	70°27′01.62″	145°49′32.07″	20.8 (33.5)
Torpedo J	OCS–Y 1936	6559	70°28′56.94″	145°53′47.15″	23.1 (37.2)

During the 2012 timeframe, Shell Exploration & Production Company has proposed drilling up to two exploration wells at the identified Beaufort Sea prospects depending on favorable ice conditions, weather, sea state, and any other pertinent factors. Each of these drill sites will be permitted for drilling in 2012 to allow for operational flexibility in the event sea ice conditions prevent access to one of the locations. The number of actual wells that will be drilled will depend on ice conditions and the length of time available for the 2012 drilling season. The predicted ''average'' drilling season, constrained by prevailing ice conditions and regulatory restrictions, is long enough for two to three typical exploration wells to be drilled.

The actual order of drilling activities will be controlled by an interplay between actual ice conditions immediately prior to a rig move, ice forecasts, any regulatory restrictions with respect to the dates of allowed operating windows, whether the planned drilling activity involves only drilling the shallow non-objective section or penetrating potential hydrocarbon zones, the availability of permitted sites having approved shallow hazards clearance, the anticipated duration of each contemplated drilling activity, the results of preceding wells and Marine Mammal Monitoring and Mitigation plan requirements.

All planned exploration drilling in the identified lease blocks will be conducted with the KULLUK. The KULLUK is a true Mobile Offshore Drilling Unit, and is a large self-contained drilling vessel that offers full accommodations for up to 108 persons. The hull has been reinforced for ice resistance.

The KULLUK has a ''persons on board'' capacity of 108, and it is expected to be at capacity for most of its operating period. The KULLUK's personnel will include its crew, as well as Shell employees, third party contractors, Alaska Native Marine Mammal Observers and possibly Bureau of Ocean Energy Management (BOEM) or Bureau of Safety and Environmental Enforcement (BSEE) personnel.

While conducting exploration drilling operations, the KULLUK will be anchored. The KULLUK has an Arctic Class IV hull design, is capable of drilling in up to 600 feet (ft) [182.9 meters (m)]) of water and is moored using a 12-point anchor system. The KULLUK's mooring system consists of 12 Hepburn winches located on the outboard side of the main deck, Anchor wires lead off the bottom of each winch drum inboard for approximately 55 ft (16.8 m). The wire is then redirected by a sheave, down through a hawse pipe to an underwater, ice protected, swivel fairlead. The wire travels from the fairlead directly under the hull to the

anchor system on the seafloor. The KULLUK will have an anchor radius of 3,117 ft (950 m) for the Sivulliq drill sites and 2,995 ft (913 m) for the Torpedo drill sites. Anchor marker buoys will delineate the outer edge of the anchor spread. The anchor spread, which radiates from the center of the KULLUK, may pose a fouling hazard to any vessel attempting to anchor within the anchor spread. Fouling of the KULLUK anchor lines may endanger the drillship, its 108 persons onboard, the third party vessel, persons onboard the third party vessel and the environment.

The center point of the KULLUK will be positioned within the prospect location in the Beaufort Sea at the coordinates listed below (See Table 1).

The KULLUK will move into the Beaufort Sea on or about July 1, 2012 and onto a prospect location when ice allows. Drilling will be curtailed on or before October 31, 2012. The MODU and support vessels will depart the Beaufort Sea at the conclusion of the 2012 drilling season.

Discussion of Proposed Rule

The proposed temporary safety zone would encompass the area within 500 meters from each point on the outer edge of the KULLUK while anchored on location in order to drill exploratory wells or deploying and recovering moorings on location in order to drill exploratory wells. No vessel would be allowed to enter or remain in this proposed safety zone except the following: An attending vessel or a vessel authorized by the Commander, Seventeenth Coast Guard District or a designated representative. They may be contacted on VHF–FM Channel 13 or 16 or by telephone at 907–463–2000.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule is not a significant regulatory action due to the location of the MODU KULLUK on the Outer Continental Shelf and its distance from both land and safety fairways. Vessels traversing waters near the proposed safety zone will be able to safely travel around the zone without incurring additional costs.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the Sivulliq and Torpedo Prospect of the Beaufort Sea, including Flaxman Island blocks 6610, 6658 and 6659 (See Table 1).

This safety zone will not have a significant economic impact or a substantial number of small entities for the following reasons: This rule will enforce a safety zone around a drillship facility that is in an area of the Flaxman Island of the Beaufort Sea not frequented by vessel traffic and is not in close proximity to a safety fairway. Further, vessel traffic can pass safely around the safety zone without incurring additional costs.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Jason Smilie, Coast Guard Seventeenth District, Office of Prevention; telephone 907–463–2809, *Jason.A.Smilie@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

2. Add § 147.T17–1143 to read as follows: § 147.T17–1143 Safety Zone; KULLUK, Outer Continental Shelf Mobile Offshore Drilling Unit (MODU), Beaufort Sea, Alaska.

(a) Description. The KULLUK will be engaged in exploratory drilling operations at various locations in the Beaufort Sea from July 1, 2012 through October 31, 2012. The MODU will be anchored while conducting exploratory drilling operations with the center point of the vessel located at the coordinates listed in Table 1. These coordinates are based upon [NAD 83] UTM Zone 3.

TABLE 1—PROSPECT LOCATIONS

Drill site	Lease File No.	NR06–04 Flaxman Island Lease Block No.	Surface location (NAD 83) *		Distance to mainland shore mi (km)
			Latitude (N)	Longitude (W)	
Sivulliq G	OCS–Y 1805	6658	70°23′46.82″	146°01′03.46″	16.6 (26.7)
Sivulliq N	OCS–Y 1805	6658	70°23′29.58″	145°58′52.53″	16.2 (26.1)
Torpedo H	OCS–Y 1941	6610	70°27′01.62″	145°49′32.07″	20.8 (33.5)
Torpedo J	OCS–Y 1936	6559	70°28′56.94″	145°53′47.15″	23.1 (37.2)

The area within 500 meters (1,640.4 feet) from each point on the outer edge of the vessel while anchored on location is a safety zone. Lawful demonstrations may be conducted outside of the safety zone.

(b) Regulation. No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel; or

(2) A vessel authorized by the Commander, Seventeenth Coast Guard District, or a designated representative.

(c) Penalties. Violation of this regulation may result in criminal or civil penalties, or both.

Dated: February 2, 2012.

Thomas P. Ostebo,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 2012–4025 Filed 2–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE TREASURY

48 CFR Chapter 10

RIN 1505–AC41

Department of the Treasury Acquisition Regulation; Internet Payment Platform

AGENCY: Office of the Procurement Executive, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury is proposing to amend the Department of the Treasury Acquisition Regulation (DTAR) to implement use of the Internet Payment Platform, a centralized electronic invoicing and payment information system, and to change the definition of bureau to reflect the consolidation on July 21, 2011 of the Office of Thrift Supervision with the Office of the Comptroller of the Currency.

DATES: *Comment due date:* April 23, 2012.

ADDRESSES: Treasury invites comments on the topics addressed in this proposed rule. Comments may be submitted to Treasury by any of the following methods: By submitting electronic comments through the federal

government e-rulemaking portal, *www.regulations.gov*, by email to *ronald.backes@treasury.gov;* or by sending paper comments to Department of the Treasury, Office of the Procurement Executive, Attn: Ronald Backes, 1500 Pennsylvania Avenue NW., Metropolitan Square Room 6N501, Washington, DC 20220.

In general, Treasury will post all comments to *www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. Treasury will also make such comments available for public inspection and copying in Treasury's Library, Room 1428, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Ronald Backes, Director, Acquisition Management, Office of the Procurement Executive, at (202) 622–5930.

SUPPLEMENTARY INFORMATION: The Federal Acquisition Regulation (FAR) sets forth the uniform regulation for the procurement of supplies and services by federal departments and agencies (title 48, chapter 1, of the Code of Federal Regulations (CFR)). The Department of the Treasury Acquisition Regulations, which supplement the FAR, are codified at 48 CFR Chapter 10.

On July 5, 2011, the Department announced that it will implement the Internet Payment Platform (IPP) no later than the end of fiscal year 2012; with all new payment requests in FY2013 processed using the IPP. The Internet Payment Platform (IPP) is a secure web-based electronic invoicing and payment system that processes vendor payment data electronically, either through a web-based portal or electronic submission, and automates the routing and approval workflow within an agency.

The IPP is provided by the Department of the Treasury's Financial Management Service through its fiscal agent, the Federal Reserve Bank of Boston at no cost to vendors or government departments and agencies adopting the platform. The IPP benefits agencies by eliminating the need to file and store paper payment documentation; reducing the time of agency personnel researching and answering payment status questions by providing vendor and department-wide visibility into contract payments.

IPP benefits vendors by reducing time to payment, creating a standard set of electronic data to submit payment requests to the Federal government; reducing costs from having multiple processes and requirements; reducing paper and postage costs, improving cash management by eliminating the time delays associates with submitting and routing paper; and increasing transparency in the payment processes.

The US Treasury will support vendor transition from paper-based payment processes to IPP through a series of Webinar and video training on various aspects of the application, including how to view purchase orders, submit invoices, retrieve payment information, set notification preferences, and add users to IPP accounts. The IPP application includes a ''Collector User Guide'' on vendor landing page. Treasury also operates customer support services email and toll free numbers during business hours, Monday through Friday 8 a.m.–6:30 p.m. Eastern Time.

In this proposed rule, the Department would add a new subpart 1032.70—Electronic Submission and Processing of Payment Requests to establish the IPP. This subpart prescribes policies and procedures for electronic submission and processing of payment requests. First, the new subpart sets forth the scope, a definition of ''payment request,'' and a description of the IPP policy. With limited exceptions, the new provisions would establish that after October 1, 2012, Treasury will require and contractors will submit payment requests electronically. The rule also proposes a waiver of its provisions. Finally, the rule proposes the text of the IPP contract clause.

This proposed rule would also make nonsubstantive, technical changes to update the DTAR definition of ''bureau'' and would add ''IPP'' to the DTAR list of abbreviations.

Regulatory Planning and Review

This rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866. Therefore a regulatory assessment is not required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) generally requires agencies to conduct an initial regulatory flexibility analysis and a final regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

It is hereby certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. The IPP will benefit vendors by reducing time to payment, creating a standard set of electronic data to submit payment requests to the Federal government; reducing costs associated with adhering to multiple processes and requirements for different federal agencies; reducing paper and postage costs, improving cash management by eliminating the time delays associates with submitting and routing paper; and increasing transparency in the payment processes. The rule is intended to support the implementation of the IPP to streamline the payment processes associated with government contracts and agreements.

Treasury contracts with more than 4,000 small businesses annually. This rule is expected to impact all small businesses that contract with Treasury. While Treasury anticipates that a significant number of small businesses will be impacted, the economic impact is minimal, and outweighed by the economic benefits of IPP. An initial cost to small businesses in terms of changes to manual, paper-based invoicing processes is expected to be recouped by small businesses within a short-term through more efficient submission and reporting of invoices and payments and more timely payments. No additional reporting or record-keeping requirements for small businesses result from this rule. Staff experienced with the submission of paper-based payment requests will need to learn the process for submitting electronic payment requests. New compliance and reporting requirements are not anticipated, as Government and vendor staff will be able to access data and reports directly through the IPP.

This rule is related to, but not in conflict with, following federal rules:

- 31 CFR Part 208 requires that most federal payments be made electronically, subject to certain waivers established in the rule.
- The Prompt Payment rule at 5 CFR Part 1315 requires vendors to submit Electronic Funds Transfer (EFT) information and a Taxpayer Identification Number (TIN) as part of a proper invoice, unless agency procedures provide otherwise. Late interest penalties do not apply if the vendor has failed to submit this information.
- 48 CFR Parts 13, 15, 32 and 52, addresses the use of EFT for federal

contract payments and also provides for the collection of banking information from vendors. In particular, the FAR EFT rule provides EFT contract clauses that agencies should use in their contracts with government vendors requiring them to receive payments electronically

This rule would be implemented in such a manner to complement these rules. Accordingly, the undersigned hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Department invites comments from small businesses to concerning the impact of this proposal on small entities.

Paperwork Reduction Act

The information collections contained in this proposed rule have been previously approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and assigned OMB control numbers 1505–0081; 1505–0080; and 1505–0107. Under the Paperwork Reduction Act, an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

List of Subjects in 48 CFR Chapter 10

Government procurement.

Accordingly, the Department of the Treasury proposes to revise 48 CFR Chapter 10 to read as follows:

CHAPTER 10—DEPARTMENT OF THE TREASURY

1. The authority citation for part 1002 continues to read as follows:

Authority: 41 U.S.C. 418b.

2. Section 1002.101 is revised to read as follows:

1002.101 Definitions.

Bureau means any one of the following Treasury organizations:

(1) Alcohol and Tobacco Tax and Trade Bureau (TTB);

(2) Bureau of Engraving & Printing (BEP);

(3) Bureau of Public Debt (BPD);

(4) Departmental Offices (DO);

(5) Financial Crimes Enforcement Network (FinCEN);

(6) Financial Management Service (FMS);

(7) Office of the Inspector General (OIG);

(8) Internal Revenue Service (IRS);

(9) Office of the Comptroller of the Currency (OCC);

(10) Special Inspector General for the Troubled Asset Relief Program (SIGTARP);

(11) Treasury Inspector General for Tax Administration (TIGTA); or

(12) United States Mint.

3. Section 1002.70 is revised by adding the following abbreviation in alphabetical order to read as follows:

1002.70 Abbreviations.

* * * * *

IPP Internet Payment Platform

* * * * *

4. Add subpart 1032.70 to read as follows:

Subpart 1032.70—Electronic Submission and Processing of Payment Requests

1032.7000 Scope of subpart.

1032.7001 Definitions.

1032.7002 Policy.

1032.7003 Contract clause.

1032.7000 Scope of subpart.

This subpart prescribes policies and procedures for electronic submission and processing of payment requests.

1032.7001 Definitions.

''Payment request,'' as used in this subpart, is defined in the clause at 1052.232–7003, Electronic Submission of Payment Requests.

1032.7002 Policy.

(a) Contracts awarded after October 1, 2012, shall require the electronic submission of payment requests, except for—

(1) Purchases paid for with a Government-wide commercial purchase card;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise classified information or national security;

(b) Where a contract otherwise requires the electronic submission of invoices, the Contracting Officer may authorize alternate procedures only if the Contracting Officer makes a written determination that:

(1) The Department of the Treasury is unable to receive electronic payment requests or provide acceptance electronically;

(2) The contractor has demonstrated that electronic submission would be unduly burdensome; or

(3) The contractor is in the process of transitioning to electronic submission of payment requests, but needs additional time to complete such transition. Authorizations granted on this basis must specify a date by which the contractor will transition to electronic submission

(c) Except as provided in paragraphs (a) and (b), Treasury officials shall process electronic payment submissions through the Treasury Internet Payment Platform or successor system.

(d) If the requirement for electronic submission of payment requests is waived under paragraph (a)(2) or paragraph (b), the contract or alternate payment authorization, as applicable, shall specify the form and method of payment request submission.

1032.7003 Contract clause.

Except as provided in 1032.7002(a), use the clause at 1052.232–7003, Electronic Submission of Payment Requests—Internet Payment Platform, in solicitations issued and contracts awarded after October 1, 2011.

5. Add section 1052.232–7003 to read as follows:

1052.232–7003 Electronic Submission of Payment Requests.

As prescribed in 1032.7003, use the following clause:

Electronic Submission of Payment Requests (Date TBD)

(a) Definitions. As used in this clause—

(1) ''Payment request'' means a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), ''Payment documentation and process'' and the applicable Payment clause included in this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests electronically using the Internet Payment Platform (IPP). Information regarding IPP is available on the Internet at *www.ipp.gov.* Assistance with enrollment can be obtained by contacting the IPP Production Helpdesk via email *ippgroup@bos.frb.org* or phone (866) 973–3131.

(c) The Contractor may submit payment requests using other than IPP only when the Contracting Officer authorizes alternate procedures in writing.

(d) If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer's written authorization with each payment request.

(End of clause)

Dated: February 15, 2012

Thomas A. Sharpe, Jr.,

Senior Procurement Executive, Office of the Procurement Executive.

[FR Doc. 2012–4216 Filed 2–22–12; 8:45 am]

BILLING CODE 4810–25–P

Notices

Federal Register

Vol. 77, No. 36

Thursday, February 23, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Custer, South Dakota—Mountain Pine Beetle Response Project

AGENCY: Forest Service, USDA.

ACTION: Corrected notice of intent to prepare an environmental impact statement.

SUMMARY: This project proposes to treat areas newly infested by mountain pine beetles on approximately 250,000 acres of the Black Hills National Forest. Treatments would occur in both South Dakota and Wyoming, and on all four Ranger Districts. Treatments would be carried out within the scope of direction provided in the Revised Land and Resource Management Plan for the Black Hills National Forest, as amended (Forest Plan). The original notice of intent for this project was published in the **Federal Register** on Monday, August 8, 2011 (76 FR 48120). This corrected notice of intent is being published now because the treatment area acreage has changed from 325,000 to 250,000, and because an additional alternative has been developed. Were it to be selected, a Forest Plan amendment would be needed to implement that alternative. The original NOI did not identify the need for a Forest Plan amendment as part of the Decision to be Made.

DATES: The draft environmental impact statement (DEIS) is expected in March 2012, and the final environmental impact statement is expected in August 2012.

FOR FURTHER INFORMATION CONTACT: Katie Van-Alstyne, project team leader, Black Hills National Forest, Mystic Ranger District, Rapid City, SD 57701, phone (605) 343–1567. 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 Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purposes of the project are to reduce the threat to ecosystem components including forest resources on National Forest System (NFS) lands from the ongoing mountain pine beetle epidemic, and to help protect local communities and resources on adjacent lands of other ownerships from large-scale wildfire by reducing hazardous fuel levels.

Proposed Action

Background The Black Hills National Forest (the Forest) lies in the Black Hills of western South Dakota and eastern Wyoming. Of the roughly 1.5 million acres in the Black Hills, about 1.2 million acres are National Forest System (NFS) lands, with lands of other ownership comprising another 300,000 acres. The predominant tree species on lands of all ownerships in the Black Hills is ponderosa pine *(Pinus ponderosae).* Since 1997 the Black Hills area has experienced a significant increase in pine tree mortality from an outbreak of mountain pine beetle *(Dendroctonus ponderosae).* In many parts of the Forest beetle populations are at or approaching epidemic levels. The outbreak in the Black Hills is part of a larger bark beetle epidemic which has recently affected more than 40 million acres of forest land in the western United States.

In the Black Hills mountain pine beetles (MPB) typically prefer stands of dense, mature pine trees. Tree stands in this condition are frequent and continuous throughout the area. Once attacked by beetles, most trees typically die, and eventually fall to the ground, adding dead and dry fuels within an area already rated as having high wildfire hazard. Since 1980, due to several factors including drought the Forest has seen a dramatic increase in acreage burned by wildfires. In that period over 250,000 acres have burned, consuming forest resources and posing threats to lands of other ownership intermingled with NFS lands.

Proposal The primary management tools for reducing beetle-caused tree mortality are removing infested trees, and reducing the density of remaining trees to lessen the susceptibility to attack. The Forest Service is working to manage persistent and increasing populations of the mountain pine beetle across the Forest. As part of that larger effort the Forest is proposing the Mountain Pine Beetle Response Project (MPBRP—the project). The project would be conducted as an authorized hazardous fuels reduction project under the authority of the Healthy Forests Restoration Act of 2003 (HFRA). The proposed action would treat newly detected infestations that may occur on about 250,000 acres of NFS lands to reduce and slow the spread of MPB. Specifically, newly infested trees would be removed, or made unsuitable for occupancy by beetles, before beetles can mature and further disperse to other trees. Some surrounding mature trees at risk of infestation may also be removed. A variety of treatment options would be available for use depending on conditions encountered on infested sites. Actual treatments used at any specific location would be determined at the time of implementation. Treatment options would include commercial tree removal using ground-based or cable logging equipment, or helicopter; non-commercial methods such as chipping trees or cutting them into short sections; and spraying small areas of trees to prevent infestation. Some temporary road construction is proposed, although generally road access would use existing road templates where available. Roads would be closed after use.

Possible Alternatives

The No Action alternative would not authorize any actions on the project area at this time. One other alternative was developed for detailed consideration based on scoping comments.

Lead and Cooperating Agencies

No cooperating agencies have been identified.

Responsible Official

The Responsible Official for this project is the Forest Supervisor, Black Hills National Forest, 1019 North 5th Avenue, Custer, South Dakota, 57730.

Nature of Decision To Be Made

After considering the proposed action and any alternatives, the environmental analysis, and public comment, the Forest Supervisor will decide whether to conduct treatments to reduce and

slow the progress of the beetle epidemic. If an action alternative is selected, the Supervisor will decide where treatments may occur, and what actions are appropriate and may be taken. The Supervisor will also decide whether to amend the Forest Plan as part of the decision, and if so, the nature of that amendment. Finally, the decision will include the scope of monitoring that should occur.

Scoping Process

The original notice of intent initiated the scoping process, which guides the development of the environmental impact statement. The Forest Service sought to involve interested parties in identifying issues related to responding to and managing the ongoing insect outbreak. Public comment has helped the planning team identify key issues and opportunities to develop appropriate responses and alternatives, and monitoring strategies, and to evaluate the effects of the proposal.

Three public meetings were held at the scoping stage of project analysis, on August 23, 2011, in Sundance, Wyoming, at the Crook County Courthouse; August 25 in Hill City, South Dakota, at the high school; and August 30 in Spearfish, SD, at the Holiday Inn. In addition, three public meetings will be held during the comment period on the DEIS.

The Forest Service recognizes the broad public interest in the communities and counties lying in or adjacent to the Black Hills, as well as the States of South Dakota and Wyoming. The initial mailing list for this project includes counties and municipalities lying wholly or partially within the Forest boundary.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: February 15, 2012.

Dennis Jaeger,

Deputy Forest Supervisor, Black Hills National Forest.

[FR Doc. 2012–4174 Filed 2–22–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Request for Proposals: 2012 Hazardous Fuels Woody Biomass Utilization Grant Program

AGENCY: Forest Service, USDA.

ACTION: Notice; Correction.

SUMMARY: The Department of Agriculture (USDA), Forest Service, State and Private Forestry (S&PF), Technology Marketing Unit, located at the Forest Products Laboratory, published a document in the **Federal Register** of February 6, 2011, concerning requests for grant applications for wood energy projects that require engineering services. The document contained incorrect dates.

ADDRESSES: All applications must be sent to the respective Forest Service Regional Office listed below for initial review. These offices will be the point of contact for final awards.

Forest Service Region 1 (MT, ND, Northern ID & Northwestern SD), ATT: Angela Farr, USDA Forest Service, Northern Region (R1), Federal Building, 200 East Broadway, Missoula, MT 59807, *afarr@fs.fed.us,* (406) 329–3521.	Forest Service Region 2 (CO, KS, NE, SD, & WY), ATT: Susan Ford, USDA Forest Service, Rocky Mountain Region (R2), 740 Simms St., Golden, CO 80401–4702, *sbford@fs.fed.us,* (303) 275–5742.
Forest Service Region 3 (AZ & NM), ATT: Jerry Payne, USDA Forest Service, Southwestern Region (R3), 333 Broadway Blvd., SE., Albuquerque, NM 87102, *jpayne01@fs.fed.us,* (505) 842–3391.	Forest Service Region 4 (Southern ID, NV, UT, & Western WY), ATT: Scott Bell, USDA Forest Service, Intermountain Region (R4), Federal Building, 324 25th St., Ogden, UT 84401, *sbell@fs.fed.us,* (801) 625–5259.
Forest Service Region 5 (CA, HI, Guam and Trust Territories of the Pacific Islands), ATT: Larry Swan, USDA Forest Service, Pacific Southwest Region (R5), 1323 Club Drive, Vallejo, CA 95492–1110, *lswan01@fs.fed.us,* (707) 562–8917.	Forest Service Region 6 (OR & WA), ATT: Ron Saranich, USDA Forest Service, Pacific Northwest Region (R6), 333 SW 1st Ave., Portland, OR 97204, *rsaranich@fs.fed.us,* (503) 808–2346.
Forest Service Region 8 (AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX, VA, Virgin Islands & Puerto Rico), ATT: Dan Len, USDA Forest Service, Southern Region (R8), 1720 Peachtree Rd NW., Atlanta, GA 30309, *dlen@fs.fed.us,* (404) 347–4034.	Forest Service Region 9 (CT, DL, IL, IN, IA, ME, MD, MA, MI, MN, MO, NH, NJ, NY, OH, PA, RI, VT, WV, WI), ATT: Lew McCreery, Northeastern Area—S&PF, 180 Canfield St., Morgantown, WV 26505, *lmccreery@fs.fed.us,* (304) 285–1538.
Forest Service Region 10 (Alaska), ATT: Daniel Parrent, USDA Forest Service, Alaska Region (R10), 3301 C Street, Suite 202, Anchorage, AK 99503–3956, *djparrent@fs.fed.us,* (907) 743–9467.	*Region 10 address after February 15, 2012:* Forest Service Region 10 (Alaska), ATT: Daniel Parrent, USDA Forest Service, Alaska Region (R10), 161 East 1st Avenue, Door 8, Anchorage, AK 99501, *djparrent@fs.fed.us,* (907) 743–9467.

Detailed information regarding what to include in the application, definitions of terms, eligibility, and necessary prerequisites for consideration are available at *www.fpl.fs.fed.us/tmu,* and at *www.grants.gov.* Paper copies of the information are also available by contacting the Forest Service, S&PF Technology Marketing Unit, One Gifford Pinchot Dr., Madison, Wisconsin 53726–2398, 608–231–9504.

FOR FURTHER INFORMATION CONTACT: For questions regarding the grant application or administrative regulations, contact your appropriate Forest Service Regional Biomass Coordinator as listed in the addresses above or contact Susan LeVan-Green, Program Manager of the Technology Marketing Unit, Madison, WI (608) 231–9504, *slevan@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

Correction

In the **Federal Register** of February 6, 2012, in FR DOC #2012–2545 on page 5756 in the third column, correct the **DATES** caption to read:

DATES: Monday April 2, 2012, Application Deadline.

Dated: February 16, 2012.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2012–4128 Filed 2–22–12; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine 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 a briefing and planning meeting of the Maine Advisory Committee to the Commission will convene at 9 a.m. (EST) on Monday, April 2, 2012. The meetings will be held at the Wishcamper Auditorium, University of Southern Maine, 34 Bedford Street, Portland, ME 04101. The purpose of the briefing meeting is to gather information from law enforcement, government officials, human service providers, advocates and community members on the issue of human trafficking in Maine. The purpose of the planning meeting is to plan future activities.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Wednesday, May 2, 2012. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 624 9th Street NW., Suite 740, Washington, DC 20425, faxed to (202) 376–7548, or emailed to *ero@usccr.gov.*

Persons needing accessibility services should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

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, *www.usccr.gov,* or to contact the Eastern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, February 16, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–4152 Filed 2–22–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Order Temporarily Denying Export Privileges

Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran;

Zarand Aviation, a/k/a GIE Zarand Aviation, 42 Avenue Montaigne, 75008 Paris, France;

and

112 Avenue Kleber, 75116 Paris, France;

Gatewick LLC, a/k/a Gatewick Freight & Cargo Services, a/k/a/Gatewick Aviation Services, G#22 Dubai Airport Free Zone, P.O Box 393754, Dubai, United Arab Emirates;

and

P.O. Box 52404, Dubai, United Arab Emirates;

and

Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates;

Pejman Mahmood Kosarayanifard, a/k/a Kosarian Fard, P.O. Box 52404, Dubai, United Arab Emirates;

Mahmoud Amini, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates;

and

P.O. Box 52404, Dubai, United Arab Emirates;

and

Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates;

Kerman Aviation, a/k/a GIE Kerman Aviation, 42 Avenue Montaigne 75008, Paris, France;

Sirjanco Trading, P.O. Box 8709, Dubai, United Arab Emirates;

Ali Eslamian, 4th Floor, 33 Cavendish Square, London, W1G0PW, United Kingdom;

and

2 Bentinck Close, Prince Albert Road St., Johns Wood, London NW87RY, United Kingdom

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR Parts 730–774 (2011) (''EAR'' or the ''Regulations''), I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the August 24, 2011 Order Temporarily Denying the Export Privileges of Mahan Airways, Zarand Aviation, Gatewick LLC, Pejman Mahmood Kosarayanifard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, and Ali Eslamian, as I find that renewal of the Temporary Denial Order (''TDO'') is necessary in the public interest to prevent an imminent violation of the EAR.[1]

I. Procedural History

On March 17, 2008, Darryl W. Jackson, the then-Assistant Secretary of Commerce for Export Enforcement (''Assistant Secretary''), signed a TDO denying Mahan Airways' export privileges for a period of 180 days on the grounds that its issuance was necessary in the public interest to prevent an imminent violation of the Regulations. The TDO also named as denied persons Blue Airways, of Yerevan, Armenia (''Blue Airways of Armenia''), as well as the ''Balli Group Respondents,'' namely, Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd., all of the United Kingdom. The TDO was issued *ex parte* pursuant to Section 766.24(a), and went into effect on March 21, 2008, the date it was published in the **Federal Register**.

The TDO subsequently has been renewed in accordance with Section 766.24(d), including most recently on August 24, 2011, with modifications and the additions of related persons having been made to the TDO during 2010 and 2011.[2] As of March 9, 2010, the Balli Group Respondents and Blue Airways were no longer subject to the TDO. As part of the February 25, 2011 TDO renewal, Gatwick LLC, Mahmoud Amini, and Pejman Mahmood Kasarayanifard (''Kosarian Fard'') were added as related persons in accordance with Section 766.23 of the Regulations. On July 1, 2011, the TDO was modified by adding Zarand Aviation as a respondent in order to prevent an imminent violation. Specifically, Zarand Aviation owned an Airbus A310, an aircraft subject to the Regulations, that was being operated for the benefit of Mahan Airways in violation of both the TDO and the

[1] The August 24, 2011 Order was published in the **Federal Register** on August 31, 2011. *See* 76 FR 54198.

[2] The TDO was renewed on September 17, 2008, March 16, 2009, September 11, 2009, March 9, 2010, September 3, 2010, February 24, 2011, and August 24, 2011. The August 24, 2011 renewal followed the modification of the TDO on July 1, 2011, which, as discussed above, added Zarand Aviation as a respondent. Each renewal or modification order was published in the **Federal Register**.

Regulations. As part of the August 24, 2011 renewal, Kerman Aviation, Sirjanco Trading LLC, and Ali Eslamian were added to the TDO as related persons.

On January 27, 2012, BIS, through its Office of Export Enforcement (''OEE''), filed a written request for renewal of the TDO. The current TDO dated August 24, 2011, will expire, unless renewed, on February 19, 2012. Notice of the renewal request was provided to Mahan Airways and Zarand Aviation by delivery of a copy of the request in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to any aspect of renewal of the TDO has been received from either Mahan Airways or Zarand Aviation. Further, no appeal of the related person determinations I made as part of the September 3, 2010, February 25, 2011 and August 24, 2011 Renewal Orders has been made by Gatewick LLC, Kosarian Fard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC or Ali Eslamian.[3]

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue or renew an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1) and 776.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that ''the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent [.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. The TDO and BIS's Request for Renewal

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO and the TDO renewals in this matter and the evidence developed over the course of this investigation indicating a blatant disregard of U.S. export controls and the TDO. The initial TDO was issued as a result of evidence that showed that Mahan Airways and other parties engaged in conduct prohibited by the EAR by knowingly re-exporting to Iran three U.S.-origin aircraft, specifically Boeing 747s (''Aircraft 1–3''), items subject to the EAR and classified under Export Control Classification Number (''ECCN'') 9A991.b, without the required U.S. Government authorization. Further evidence submitted by BIS indicated that Mahan Airways was involved in the attempted re-export of three additional U.S.-origin Boeing 747s (''Aircraft 4–6'') to Iran.

As discussed in the September 17, 2008 TDO Renewal Order, evidence presented by BIS indicated that Aircraft 1–3 continued to be flown on Mahan Airways' routes after issuance of the TDO, in violation of the Regulations and the TDO itself.[4] It also showed that Aircraft 1–3 had been flown in further violation of the Regulations and the TDO on the routes of Iran Air, an Iranian Government airline. Moreover, as discussed in the March 16, 2009, September 11, 2009 and March 9, 2010 Renewal Orders, Mahan Airways registered Aircraft 1–3 in Iran, obtained Iranian tail numbers for them (including EP–MNA and EP–MNB), and continued to operate at least two of them in violation of the Regulations and the TDO,[5] while also committing an additional knowing and willful violation of the Regulations and the TDO when it negotiated for and acquired an additional U.S.-origin aircraft. The additional acquired aircraft was an MD–82 aircraft, which subsequently was painted in Mahan Airways' livery and flown on multiple Mahan Airways' routes under tail number TC–TUA.

The March 9, 2010 Renewal Order also noted that a court in the United Kingdom (''U.K.'') had found Mahan Airways in contempt of court on February 1, 2010, for failing to comply with that court's December 21, 2009 and January 12, 2010 orders compelling Mahan Airways to remove the Boeing 747s from Iran and ground them in the Netherlands. Mahan Airways and the Balli Group Respondents had been litigating before the U.K. court concerning ownership and control of Aircraft 1–3. In a letter to the U.K. court dated January 12, 2010, Mahan Airways' Chairman indicated, inter alia, that Mahan Airways opposes U.S. Government actions against Iran, that it continued to operate the aircraft on its routes in and out of Tehran (and had 158,000 ''forward bookings'' for these aircraft), and that it wished to continue to do so and would pay damages if required by that court, rather than ground the aircraft.

The September 3, 2010 Renewal Order pointed out that Mahan Airways' violations of the TDO extended beyond operating U.S.-origin aircraft in violation of the TDO and attempting to acquire additional U.S.-origin aircraft. In February 2009, while subject to the TDO, Mahan Airways participated in the export of computer motherboards, items subject to the Regulations and designated as EAR99, from the United States to Iran, via the UAE, in violation of both the TDO and the Regulations, by transporting and/or forwarding the computer motherboards from the UAE to Iran. Mahan Airways' violations were facilitated by Gatewick LLC, which not only participated in the transaction, but also has stated to BIS that it is Mahan Airways' sole booking agent for cargo and freight forwarding services in the UAE.

Moreover, in a January 24, 2011 filing in the U.K. Court, Mahan Airways asserted that Aircraft 1–3 were not being used, but stated in pertinent part that the aircraft were being maintained in Iran especially ''in an airworthy condition'' and that, depending on the outcome of its U.K. Court appeal, the aircraft ''could immediately go back into service * * * on international routes into and out of Iran.'' Mahan Airways' January 24, 2011 submission to U.K. Court of Appeal, at p. 25, paragraphs 108, 110. This clearly stated intent, both on its own and in conjunction with Mahan Airways' prior misconduct and statements, demonstrated the need to renew the TDO in order to prevent imminent future violations.

More recently, as noted in the July 1, 2011 and August 24, 2011 Orders, Mahan Airways has continued to evade U.S. export control laws by operating two Airbus A310 aircraft[6] bearing Mahan Airways' livery, colors and logo on flights into and out of Iran. The

[3] A party named or added as a related person may not oppose the issuance or renewal of the underlying temporary denial order, but may file an appeal of the related person determination in accordance with Section 766.23(c).

[4] Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

[5] The third Boeing 747 appeared to have undergone significant service maintenance and may not have been operational at the time of the March 9, 2010 Renewal Order.

[6] The Airbus A310s are powered with U.S.-origin engines. The engines are subject to the EAR and classified under Export Control Classification (''ECCN'') 9A991.d. The Airbus A310s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR. They are classified under ECCN 9A991.b. The reexport of these aircraft to Iran requires U.S. Government authorization pursuant to Section 746.7 of the Regulations.

aircraft are owned, respectively, by Zarand Aviation and Kerman Aviation, entities whose corporate registrations both list Mahan Air General Trading as a member of their Groupement D'interet Economique (''Economic Interest Group'').[7]

At the time of the July 1, 2011 and August 24, 2011 Orders, these Airbus A310s were registered in France (with tail numbers F–OJHH and F–OJHI, respectively). OEE's current renewal request provides further evidence that Mahan Airways and Zarand Aviation continue their efforts to circumvent the TDO and the Regulations. After the August 24, 2011 renewal, Mahan Airways and Zarand Aviation worked in concert, along with Kerman Aviation, to de-register the two Airbus A310 aircraft in France and subsequently register both aircraft in Iran (with, respectively, Iranian tail numbers EP–MHH and EP–MHI). Both aircraft are active in Mahan Airways' fleet on flights in and out of Iran. These actions, taken after Zarand's addition to the TDO, have made it more likely that the aircraft will continue to operate in a manner contrary to U.S. export control laws.

OEE's renewal request includes other evidence of continued or additional violations. As referenced *supra,* Ali Eslamian was added as a related person on August 24, 2011, in order to help prevent evasion of the TDO by Mahan Airways or other denied persons. Additionally, Eslamian has admitted to OEE that he formed Skyco (U.K.) Ltd., a company that buys and sells aircraft, aircraft engines and other aviation related services, with Mahan Airways' managing director and its vice president for business development. BIS has also obtained evidence that Eslamian has negotiated, including through his company Equipco, with a Brazilian airline for the purchase of two Airbus A–320 aircraft and one aircraft engine, all items that are subject to the Regulations and require U.S. Government authorization for reexport to Iran.[8] Eslamian signed a letter of intent with the Brazilian airline on November 20, 2009, and subsequently signed a sales and purchase agreement for the engine in April 2010. In spite of being added to the TDO on August 24, 2011, Eslamian signed a second letter of intent with the Brazilian airline regarding these two A–320 aircraft on September 28, 2011, and at least as recently as December 2011, his efforts to acquire both the aircraft and the engine continued.

C. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the record here, I find that the evidence presented by BIS convincingly demonstrates that Mahan Airways has continually violated the EAR and the TDO, that such knowing violations have been significant, deliberate and covert, and that there is a likelihood of future violations. Additionally, since the August 24, 2011 renewal Order, Zarand Aviation's Airbus A310 continues to be operated on routes into and out of Iran in violation of the Regulations and the TDO itself, and Zarand Aviation has acted in concert with Mahan Airways in an effort to evade the TDO and U.S. export control laws. Therefore, renewal of the TDO is necessary to prevent imminent violation of the EAR and to give notice to companies and individuals in the United States and abroad that they should continue to cease dealing with Mahan Airways, Zarand Aviation, and the other denied persons under the TDO in export transactions involving items subject to the EAR. The conduct of Mahan Airways, Zarand Aviation, and those related to them or acting in concert with them, such as Kerman Aviation and Ali Eslamian, raise significant ongoing concerns relating to the acquisition and use of aircraft, aircraft engines or other parts, and aircraft services in violation of the Regulations and the TDO.

IV. Order

It Is Therefore Ordered:

First, that MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran; ZARAND AVIATION A/K/A GIE ZARAND AVIATION, 42 Avenue Montaigne, 75008 Paris, France, and 112 Avenue Kleber, 75116 Paris, France; GATEWICK LLC, A/K/A GATEWICK FREIGHT & CARGO SERVICES, A/K/A GATEWICK AVIATION SERVICE, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; PEJMAN MAHMOOD KOSARAYANIFARD A/K/A KOSARIAN FARD, P.O. Box 52404, Dubai, United Arab Emirates; MAHMOUD AMINI, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; KERMAN AVIATION A/K/A GIE KERMAN AVIATION, 42 Avenue Montaigne 75008, Paris, France; SIRJANCO TRADING LLC, P.O. Box 8709, Dubai, United Arab Emirates; and ALI ESLAMIAN, 4th Floor, 33 Cavendish Square, London W1G0PW, United Kingdom, and 2 Bentinck Close, Prince Albert Road, St. Johns Wood, London NW87RY, United Kingdom and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any

[7] Kerman Aviation's corporate registration also lists Mahan Aviation Services Company as an additional member of its Economic Interest Group.

[8] The Airbus A320s are powered with U.S.-origin engines. The engines are subject to the EAR and classified under ECCN 9A991.d. The Airbus A320s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR. They are classified as ECCN 9A991.b. The reexport of these aircraft to Iran would require U.S. Government authorization pursuant to Section 746.7 of the Regulations, as would the reexport of the aircraft engine.

item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Sections 766.24(e) and 766.23(c)(2) of the EAR, Mahan Airways, Zarand Aviation, Gatewick LLC, Mahmoud Amini, Kosarian Fard, Kerman Aviation, Sirjanco Trading LLC and/or Ali Eslamian may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Mahan Airways and/or Zarand Aviation as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Mahan Airways, Zarand Aviation and each related person and shall be published in the **Federal Register**. This Order is effective immediately and shall remain in effect for 180 days.

Dated: February 15, 2012.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2012–4207 Filed 2–22–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–965; C–570–966]

Drill Pipe From the People's Republic of China: Termination of Anti-Circumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 12, 2011, in response to a request from VAM Drilling U.S.A., Texas Steel Conversion Inc. and Rotary Drilling Tools (collectively the ''Petitioners''), the Department of Commerce (the ''Department'') initiated an anti-circumvention inquiry [1] to determine whether certain imports of drill pipe from the People's Republic of China (''PRC'') are circumventing the *Drill Pipe Orders.*[2] Because the Petitioners have withdrawn this request, the Department is terminating this anti-circumvention inquiry.

DATES: *Effective Date:* February 23, 2012.

FOR FURTHER INFORMATION CONTACT: Paul Walker, 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 202.482.0413.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 2011, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the ''Act''), and section 351.225(h) of the Department's regulations, the Petitioners submitted a request for the Department to initiate an anti-circumvention inquiry of the Hilong Group of Companies Co., Ltd. (''Hilong'') [3] to determine whether pipe [4] and tool joints produced in the PRC, and friction welded together in the UAE, which are allegedly products of the PRC exported from the UAE, are circumventing the *Drill Pipe Orders.*[5] On August 12, 2011, the Department initiated an anti-circumvention inquiry to determine whether certain imports of drill pipe from the PRC are circumventing the *Drill Pipe Orders.* Between August 18, 2011, and October 28, 2011, the Department issued questionnaires to Hilong, to which Hilong responded.

Scope of the Orders

The products covered by the orders are steel drill pipe, and steel drill collars, whether or not conforming to American Petroleum Institute (''API'') or non-API specifications. Included are finished drill pipe and drill collars without regard to the specific chemistry of the steel (*i.e.,* carbon, stainless steel, or other alloy steel), and without regard to length or outer diameter. Also included are unfinished drill collars (including all drill collar green tubes) and unfinished drill pipe (including drill pipe green tubes, which are tubes meeting the following description: Seamless tubes with an outer diameter of less than or equal to 6⅝ inches (168.28 millimeters), containing between 0.16 and 0.75 percent molybdenum, and containing between 0.75 and 1.45 percent chromium). The scope does not include tool joints not attached to the drill pipe, nor does it include unfinished tubes for casing or tubing covered by any other antidumping or countervailing duty order.

The subject products are currently classified in the following Harmonized Tariff Schedule of the United States (''HTSUS'') categories: 7304.22.0030, 7304.22.0045, 7304.22.0060, 7304.23.3000, 7304.23.6030, 7304.23.6045, 7304.23.6060, 8431.43.8040 and may also enter under 8431.43.8060, 8431.43.4000, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040,

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[1] *See Drill Pipe from the People's Republic of China: Initiation of Anti-circumvention Inquiry,* 76 FR 50173 (August 12, 2011).

[2] *See Drill Pipe from the People's Republic of China: Antidumping Duty Order,* 76 FR 11757 (March 3, 2011); *Drill Pipe from the People's Republic of China: Countervailing Duty Order,* 76 FR 11758 (March 3, 2011) (collectively the ''*Drill Pipe Orders*'').

[3] This includes Hilong's U.S. affiliate, Hilong USA LLC (''Hilong USA'') and its joint venture affiliate Almansoori/Hilong Petroleum Pipe Company (''Almansoori/Hilong'') located in the United Arab Emirates (the ''UAE'').

[4] ''Pipe'' is heat treated and upset green tube, minus the tool joint. *See* the Petitioners' request at 3.

[5] Specifically, the Petitioners asserted that Hilong's PRC drill pipe facility exports PRC-produced pipe and tool joints to Almansoori/Hilong in the UAE, which friction welds the pipe to the tools joints, and then exports them to Hilong USA, which enters and sells the drill pipe as UAE-origin merchandise, which is of the same class or kind as the merchandise covered by the *Drill Pipe Orders.*

7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.49.0015, 7304.49.0060, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050 and 7304.59.8055.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Termination of the Anti-Circumvention Inquiry

On January 19, 2012, Petitioners withdrew their request for an anti-circumvention proceeding.[6] Accordingly, we are terminating this anti-circumvention inquiry.

This notice is published in accordance with section 777(i)(1) of the Act.

Dated: February 13, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–4238 Filed 2–22–12; 8:45 am]

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[6] *See* Petitioners' letter dated January 18, 2012.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Advisory Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of solicitation for nominations for potential National Sea Grant Advisory Board members and notice of public meeting.

SUMMARY: This notice responds to Section 209 of the Sea Grant Program Improvement Act of 1976 (Public Law 94–461, 33 U.S.C. 1128), which requires the Secretary of Commerce to solicit nominations at least once a year for membership on the National Sea Grant Advisory Board, a Federal Advisory Committee that provides advice on the implementation of the National Sea Grant College Program. This notice also sets forth the schedule and proposed agenda of a forthcoming meeting of the National Sea Grant Advisory Board.

DATES: Solicitation of nominations is open ended. Resumes may be sent to the address specified at any time. The announced meeting is scheduled for Monday, March 5, 2012 from 8:00 a.m. to 5:00 p.m. EST and Tuesday, March 6, 2012, from 8:30 a.m. to 3:00 p.m. EST.

ADDRESSES: Nominations should be sent to Ms. Elizabeth Ban, Designated Federal Officer, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11843, Silver Spring, Maryland 20910, (301) 734–1082.

The March meeting will be held at The Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Status: The meeting will be open to public participation with a 15-minute public comment period on March 5 at 4:30 p.m. EST (check Web site to confirm time.) The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Officer by February 27, 2012 to provide sufficient time for Board review. Written comments received after February 27, 2012, will be distributed to the Board, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-serve basis.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Ban, Designated Federal Officer, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11843, Silver Spring, Maryland 20910, (301) 734–1082.

SUPPLEMENTARY INFORMATION: Established by Section 209 of the Act and as amended the National Sea Grant College Program Amendments Act of 2008 (Public Law 110–394), the duties of the Board are as follows:

(1) In general. The Board shall advise the Secretary and the Director concerning:

(A) Strategies for utilizing the sea grant college program to address the Nation's highest priorities regarding the understanding, assessment, development, management, utilization, and conservation of ocean, coastal, and Great Lakes resources.

(B) The designation of sea grant colleges and sea grant institutes.

(C) Such other matters as the Secretary refers to the Board for review and advice.

(2) Biennial Report. The Board shall report to the Congress every two years on the state of the national sea grant college program. The Board shall indicate in each such report the progress made toward meeting the priorities identified in the strategic plan in effect under section 204 (c). The Secretary shall make available to the Board such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties under this title. The Secretary shall make available to the Board such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties.

The Board shall consist of 15 voting members who shall be appointed by the Secretary. The Director and a director of a sea grant program who is elected by the various directors of sea grant programs shall serve as nonvoting members of the Board. Not less than 8 of the voting members of the Board shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, marine affairs and resource management, coastal management, extension services, State government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, management, utilization, or conservation of ocean, coastal, and Great Lakes resources. No individual is eligible to be a voting member of the Board if the individual is (A) the director of a sea grant college or sea grant institute; (B) an applicant for, or beneficiary (as determined by the Secretary) of, any grant or contract under section 205 [33 USCS § 1124]; or (C) a full-time officer or employee of the United States.

The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Board members are appointed for a 4-year term.

The agenda for the meeting can be found at: *http://www.seagrant.noaa.gov/leadership/advisory_board.html.*

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Elizabeth Ban, Designated Federal Officer at 301–734–1082 by February 22, 2012.

Dated: February 17, 2012.

Mark E. Brown,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

National Sea Grant Advisory Board (NSGAB) Spring Meeting

March 5–6, 2012

Agenda

The Melrose Hotel, Potomac II, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Monday, March 5

8:00 a.m.–5:00 p.m.—Open to Public

8:00 Introductions, review agenda, approval of minutes, etc. (Nancy Rabalais, Chair, NSGAB)
8:15 Chair's update (N. Rabalais, NSGAB)
8:30 NSGO report (Leon Cammen, National Sea Grant Office—NSGO)
9:15 SGA report (Jonathan Pennock, President, Sea Grant Association)
9:45 Break—15 minutes
10:00 Sea Grant Reauthorization Planning (Rollie Schmitten, NSGAB)
10:45 Sea Grant Charter Renewal (N. Rabalais, NSGAB)
11:15 Discussion of morning topics and review of Board Assignments
12:00 Lunch
1:00 Biennial Report Discussion (Dick West, NSGAB)
2:30 Break—15 minutes
2:45 SAB Meeting notes (D. West, NSGAB)
3:00 Focus Team liaison reports
—Hazard Resilience in Coastal Communities (Mike Liffman, NSGO)
—Healthy Coastal Ecosystems (Dorn Carlson, NSGO)
—Safe and Sustainable Seafood Supply (Amy Scaroni, NSGO)
—Sustainable Coastal Development (Joshua Brown, NSGAB)
3:30 Sea Grant Week update (Harry Simmons, NSGAB)
4:00 Discussion of afternoon topics
4:30 Public Comment Period (15 minutes)
4:45 Wrap-up (N. Rabalais, NSGAB)
5:00 Adjourn

6:00 Sea Grant Knauss Fellowship Reception Rayburn House Office Building Rooms B338/B339

Tuesday, March 6

8:30 a.m.–3:00 p.m.—Open to Public

8:30 Call to Order, review agenda and previous day's discussions (N. Rabalais, NSGAB)
8:45 NOAA, Department of Commerce and Department of the Interior (N. Rabalais, NSGAB and L. Cammen, NSGO)
9:30 NOAA Research Portfolio (N. Rabalais, NSGAB)
10:00 Break—15 minutes
10:15 Performance Review Panel (PRP) (Sami Grimes, NSGO)
10:45 Strategic Plan update (D. Vortmann, NSGAB, Kola Garber, NSGO)
11:00 Dr. Robert Detrick, Assistant Administrator for NOAA Research and Craig McLean, Deputy Assistant Administrator for NOAA Research (Joint Session with SGA in Potomac III)
12:00 Lunch
1:00 Stuart Levenbach, Office of Management and Budget, NOAA Program Examiner (Joint Session with SGA in Potomac III)
2:00 Virginia Tippie, Coastal America (Joint Session with SGA in Potomac III)
2:30 Sea Grant and the Draft Implementation Action Plan of the National Ocean Policy follow-up (N. Rabalais, NSGAB)
2:45 Discussion of meeting topics and next steps
3:00 Adjourn

[FR Doc. 2012–4219 Filed 2–22–12; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648—XB009

Western Pacific Pelagic Fisheries; American Samoa Longline Limited Entry Program

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

ACTION: Notice; availability of permits.

SUMMARY: NMFS announces the availability of at least six permits for the American Samoa pelagic longline fishery.

DATES: NMFS must receive completed permit applications by June 22, 2012.

ADDRESSES: Request a blank application form from NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd. Suite 1110, Honolulu, HI 96814–4733, or the PIR Web site *www.fpir.noaa.gov.* Mail your completed application and payment to NMFS PIR, ATTN: ASLE Permits, 1601 Kapiolani Blvd. Suite 1110, Honolulu, HI 96814–4733.

FOR FURTHER INFORMATION CONTACT: Walter Ikehara, Sustainable Fisheries, NMFS PIR, tel 808–944–2275, fax 808–973–2940, or email *PIRO-permits@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS may issue new permits for the American Samoa pelagic longline limited entry program if the number of permits in a vessel size class falls below the maximum allowed. Six permits are available, as follows:

- Four in Class A (vessels less than or equal to 40 ft in overall length); and
- Two in Class D (over 70 ft in overall length).

The number of available permits may increase before the application period closes.

NMFS will assign the highest priority to the applicant (for any vessel size class) with the earliest documented participation in the fishery on a Class A vessel. Applicants with earliest documented participation in Classes B, C, and D, in that order, will get lower priority. If there is a tie in priority, the person with the documented earliest following participation will receive higher priority.

NMFS (see **ADDRESSES**) will not accept applications received after June 22, 2012. You must provide a completed and signed application form, legible copies of documents supporting historical participation in the American Samoa pelagic longline fishery, and payment (non-refundable) for the application-processing fee.

You may find the regulations governing the American Samoa pelagic longline limited entry program at Title 50 of the Code of Federal Regulations, Part 665.

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

Dated: February 17, 2012.

Carrie Selberg,

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

[FR Doc. 2012–4251 Filed 2–22–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB027

Endangered Species; File No. 16253

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the NMFS Southeast Fisheries Science Center (SEFSC; Responsible Party:

Bonnie Ponwith, Ph.D.), has been issued a permit to take green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), olive ridley (*L. olivacea*), and loggerhead (*Caretta caretta*) sea turtles for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Kristy Beard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On June 27, 2011, notice was published in the **Federal Register** (76 FR 37327) that a request for a scientific research permit to take loggerhead, green, Kemp's ridley, olive ridley, leatherback, and hawksbill sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The SEFSC is authorized to conduct research on leatherback, loggerhead, green, hawksbill, olive ridley, and Kemp's ridley sea turtles in the Atlantic Ocean, Gulf of Mexico, Caribbean Sea and their estuarine and coastal environments. The purpose of the research is to evaluate modifications to commercial fishing gear to mitigate sea turtle interactions and capture. The permit authorizes animals to be captured during trawl surveys and to handle and sample turtles captured within fisheries managed by another Federal authority. All animals would be handled, measured, weighed, photographed, flipper tagged, passive integrated transponder tagged, and skin biopsied prior to release. A limited number of mortalities may occur due to trawling. The permit is valid for five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 17, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–4250 Filed 2–22–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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. 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: National Medal of Technology and Innovation Nomination Application.

Form Number(s): None.

Agency Approval Number: 0651–0060.

Type of Request: Extension of a currently approved collection.

Burden: 1,600 hours annually.

Number of Respondents: 40 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public approximately 40 hours to download the information from the USPTO Web site, prepare the nomination form, complete the contact information for the letters of recommendation or support, and submit the information to the USPTO via electronic mail or, alternatively, by fax or overnight delivery.

Needs and Uses: The public uses the National Medal of Technology and Innovation Nomination Application to recognize through nomination an individual's or company's extraordinary leadership and innovation in technological achievement. The application must be accompanied by six letters of recommendation or support from individuals who have first-hand knowledge of the cited achievement(s).

The USPTO uses the information to assist in the administration of the nomination process.

Affected Public: Individuals or households, businesses or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *www.reginfo.gov.*

Paper copies can be obtained by:

- *Email:* *InformationCollection@uspto.gov.* Include ''0651–0060 copy request'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before March 26, 2012 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: February 16, 2012.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2012–4116 Filed 2–22–12; 8:45 am]

BILLING CODE 3510–16–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Establishment of the Consumer Advisory Board and Solicitation of Nominations for Membership

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice.

SUMMARY: The Bureau of Consumer Financial Protection (the ''Bureau'') announces the establishment of the Consumer Advisory Board (the ''Board''), which will advise and consult with the Bureau in the exercise of the Bureau's functions under the Federal consumer financial protection laws, and which will provide information to the Bureau concerning emerging trends and practices in the financial services and products industry. This Notice seeks nominations for members to serve on the Board.

DATES: Nominations received on or before March 30, 2012 will be given consideration for membership on the Board.

ADDRESSES: All nominations for membership on the Board should be sent:

• *Electronically: CABnominations@cfpb.gov.* We strongly encourage electronic submissions.

• *Mail:* Monica Jackson/CAB Nominations, Consumer Financial Protection Bureau, 1500 Pennsylvania Avenue NW., (Attn: 1801 L Street), Washington, DC 20220.

• *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson/CAB Nominations, Consumer Financial Protection Bureau, 1801 L Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kimberly Miller, Consumer Financial Protection Bureau, (202) 435–7451.

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau is charged with regulating ''the offering and provision of consumer financial products or services under the Federal consumer financial laws,'' so as to ensure that ''all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.'' Pursuant to Section 1021(c) of the Wall Street Reform and Consumer Protection Act, Public Law 111–203 (the ''Dodd-Frank Act''), the Bureau's primary functions are:

1. Conducting financial education programs;

2. Collecting, investigating, and responding to consumer complaints;

3. Collecting, researching, monitoring, and publishing information relevant to the function of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;

4. Supervising persons covered under the Dodd-Frank Act for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;

5. Issuing rules, orders, and guidance implementing Federal consumer financial law; and

6. Performing such support activities as may be needed or useful to facilitate the other functions of the Bureau.

Section 1014 of the Dodd-Frank Act calls for the Director of the Bureau to establish a Consumer Advisory Board to advise and consult with the Bureau regarding its functions, and to provide information on emerging trends and practices in the consumer financial markets.

II. Establishment and Functions of the Consumer Advisory Board

The Board will be established when the Bureau approves a charter. The charter will be filed with the Director of the Bureau, furnished to the Library of Congress, and posted on the Bureau's Web site at *www.consumerfinance.gov.* The Bureau will send a copy of the charter to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and the Committee on Financial Services of the United States House of Representatives.

As set forth in Section 1014(a) of the Dodd-Frank Act, the Board's objectives are to ''advise and consult with the Bureau in the Bureau's exercise of its functions under the Federal consumer financial protection laws,'' and to ''provide information on emerging practices in the consumer financial products and services industry, including regional trends, concerns, and other relevant information.'' The Board's charter will provide that the function of the Board is to be solely advisory. The Bureau alone will decide what action it will take and policy it will express with respect to the Federal consumer financial laws.

The Board will meet at such intervals as are necessary to carry out its functions, but not less than twice per year. Meetings of subgroups or subcommittees of the full Board established according to the terms of the charter may occur more frequently.

The Director will make appointments to the Board without regard to political affiliation. To achieve the Board's goals, not fewer than sixteen members will be appointed who can represent effectively the varied interests affected by the range of issues to be considered. The Board's membership will be balanced in terms of points of view represented and the functions to be performed. Section 1014(b) of the Dodd-Frank Act provides that ''[n]ot fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.''

Of the members appointed by the Director,

1. One-third shall be appointed to an initial one-year term;

2. One-third shall be appointed to an initial two-year term; and

3. One-third shall be appointed to an initial three-year term.

The length of a member's initial term will be determined by lottery. Each member appointed may seek to renew his or her appointment to the Board for a single, second term of three years, pursuant to the procedures outlined in the Board's charter. The members will serve at the pleasure of the Director from the date of appointment to the Board, not to exceed two terms. The Director will designate the Board Chair and Vice Chair. The Chair and Vice Chair will serve in those positions at the pleasure of the Director.

In accord with Section 1014(d) of the Dodd-Frank Act, members of the Board who are not full-time employees of the United States will receive compensation at a rate fixed by the Director while attending meetings of the Board, including reasonable travel and subsistence expenses while away from their homes or regular places of business. Wherever practical in terms of cost and logistics, the Bureau may hold meetings outside of the Washington, DC metropolitan area.

III. Qualifications

Pursuant to Section 1014(b) of the Dodd-Frank Act, in appointing members to the Board, ''the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation.'' The determinants of ''expertise'' shall depend, in part, on the constituency, interests, or industry sector the nominee seeks to represent, and where appropriate, shall include significant experience as a direct service provider to consumers.

The Bureau wishes to ensure adequate representation on the Board by women, minority groups, and individuals with disabilities and, therefore, encourages nominations of qualified candidates from these groups. The Bureau also wishes to establish a Board that is represented by a diversity of viewpoints and constituencies and, therefore, encourages nominations for qualified candidates who:

1. Represent the United States' geographic diversity; and

2. Represent the interests of special populations identified in the Dodd-Frank Act, including service members, older Americans, students, and traditionally underserved consumers and communities.

The Bureau will not entertain nominations of Federally registered lobbyists and individuals who have been convicted of a felony for a position on the Board.

IV. Nomination Procedures

Any interested person or organization may nominate a qualified candidate for membership on the Board. Nominations must include:

1. A letter describing the nominee's interests and qualifications to serve on the Board and including an indication that the nominee is willing to be considered for Board membership; and
2. A complete resume or curriculum vitae for the nominee.

CFPB does not request letters of recommendation and will not consider them. To evaluate potential sources of conflicts of interest, the Bureau may ask potential candidates to provide information related to financial holdings and/or professional affiliations, and to allow the Bureau to perform a background check.

The Bureau will not review nominations and will not answer questions from internal or external parties regarding nominations until the nominations period has closed.

Dated: February 17, 2012.

Meredith Fuchs,

Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2012–4240 Filed 2–22–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Acting Deputy Director, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before March 26, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street N.W., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (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.

Dated: February 17, 2012.

Ellen Campbell,

Acting Deputy Director Privacy, Information and Records Management Services Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title of Collection: Individuals with Disabilities Education Act (IDEA) Part B State Performance Plan (SPP) and Annual Performance Report (APR).

OMB Control Number: 1820–0624.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Federal Government.

Total Estimated Number of Annual Responses: 60.

Total Estimated Annual Burden Hours: 330,600.

Abstract: In accordance with 20 U.S.C. 1416(b)(1), not later than one year after the date of enactment of the Individuals with Disabilities Education Act, as revised in 2004, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B and describe how the State will improve such implementation. This plan is called the Part B State Performance Plan (Part B—SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) the State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State also shall report annually to the Secretary on the performance of the State under the State's performance plan. This report is called the Part B Annual Performance Report (Part B—APR). Information Collection 1820–0624 corresponds to 34 CFR 300.600–300.602.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04736. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2012–4221 Filed 2–22–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Fulbright-Hays Group Projects Abroad Program—Short-Term Projects and Advanced Overseas Intensive Language Training Projects

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information: Fulbright-Hays Group Projects Abroad Program—Short-Term Projects and Advanced Overseas Intensive Language Training Projects; Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.021A and 84.021B.

Dates: Applications Available: February 23, 2012. Deadline for Transmittal of Applications: April 23, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Group Projects Abroad (GPA) Program supports overseas projects in training, research, and curriculum development in modern foreign languages and area studies for groups of teachers, students, and faculty engaged

in a common endeavor. Short-term projects may include seminars, curriculum development, or group research or study. Long-term projects support advanced overseas intensive language projects, which give advanced language students the opportunity to study languages overseas.

Priorities: This notice contains one absolute priority, three competitive preference priorities, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority is from the regulations for this program (34 CFR 664.32). Competitive Preference Priorities I (applicable to both the short-term (84.021A) and long-term (84.021B) competitions) and III (applicable only to the long-term (84.021B) competition) are from the regulations for this program (34 CFR 664.32), and Competitive Preference Priority II (applicable only to the short-term (84.021A) competition) is from the notice of final priorities published in the **Federal Register** on September 24, 2010 (75 FR 59050).

Absolute Priority: For FY 2012 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:

Specific geographic regions of the world: A group project funded under this priority must focus on one or more of the following geographic regions of the world: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), East Central Europe and Eurasia, and the Near East.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address the following priorities. The competitive preference priorities announced in this notice correspond to the separate short-term and long-term competitions as follows:

Competition	Competition CFDA No.	Competitive preference priorities
GPA Short-Term Projects	84.021A	• Competitive Preference Priority I—Training and focus on priority languages. • Competitive Preference Priority II—Inclusion of K–12 educators.
GPA Advanced Overseas Intensive Language Training Projects.	84.021B	• Competitive Preference Priority I—Training and focus on priority languages. • Competitive Preference Priority III—U.S. participant travel to Brazil, China, India, or Russia.

Under 34 CFR 75.105(c)(2)(i), depending on how well the application meets these priorities, we award up to an additional five points to an application that meets Competitive Preference Priority I, up to an additional five points to an application that meets Competitive Preference Priority II, and up to an additional five points to an application that meets Competitive Preference Priority III. The maximum amount of competitive preference priority points an application can receive under either the short-term or long-term competition is 10 points.

Note: In order to receive preference under these competitive preference priorities, the applicant must identify the priority or priorities that it believes it meets and provide documentation supporting its claims.

These priorities are:

Competitive Preference Priority I—Training and focus on priority languages. (5 points)

Projects that provide substantive training and thematic focus on any of the 78 priority languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs) found below.

This list includes the following: Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Competitive Preference Priority II—Inclusion of K–12 educators. (5 points)

Applications that propose short-term projects abroad that develop and improve foreign language studies, area studies, or both at elementary and secondary schools by including K–12 teachers or K–12 administrators as at least 50 percent of the project participants.

Competitive Preference Priority III—U.S. participant travel to Brazil, China, India or Russia (5 points): Applications that propose long-term projects abroad that plan to send U.S. educators and other eligible participants to Brazil, China, India, or Russia.

Invitational Priority: For FY 2012 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this priority a competitive or absolute preference over other applications.

The invitational priority is:

Invitational Priority I:

Applications from any one of the following:

(a) Minority-Serving Institutions (MSIs), including those that are eligible to receive assistance under Part A or B of Title III or under Title V of the Higher Education Act of 1965, as amended (HEA).

(b) Community colleges, including those that are eligible to receive assistance under Part A or B of Title III or under Title V of the HEA.

(c) Novice applicants (as defined in this notice).

Definitions: This definition is from the Education Department General Administrative Regulations (EDGAR) 34 CFR 75.225. *Novice applicant* means any applicant for a grant from the Department that: Has never received a grant or subgrant under the program from which it seeks funding; has never been a member of a group application, submitted in accordance with 34 CFR 75.127–75.129, that received a grant under the program from which it seeks funding; and has not had an active discretionary grant from the Federal Government in the five years before the

deadline date for applications under the program.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) EDGAR in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 664. (c) The notice of final priorities for this program, published in the **Federal Register** on September 24, 2010 (75 FR 59050).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,990,000.

Note: The Consolidated Appropriations Act, 2012 allows funds to be used in this program to support the participation of individuals who plan to apply their language skills and knowledge of countries vital to the United States' national security in fields outside teaching, including government, the professions, or international development (See The Consolidated Appropriations Act, 2012, Division F, Title III, Pub. L. 112–74). Therefore, applicants may also propose projects for visits and study in foreign countries by individuals in these fields.

Estimated Range of Awards:

Short-term projects: $50,000–$125,000.

Long-term projects: $50,000–$375,000.

Estimated Average Size of Awards:

Short-term projects: $82,500.

Long-term projects: $125,000.

Maximum Award: We will reject any short-term GPA application that proposes a budget exceeding $125,000 for a single budget period of 18 months. We will reject any advanced overseas intensive language training long-term application that proposes a budget exceeding $375,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum award through a notice published in the **Federal Register**.

Estimated Number of Awards:

Short-term projects: 12.

Long-term projects: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period:

Short-term projects: Up to 18 months.

Long-term projects: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) Institutions of higher education, (2) State educational agencies (SEAs), (3) Private nonprofit educational organizations, and (4) Consortia of these entities.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs).

To obtain a copy via the Internet, use the following address: *http://grants.gov.*

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) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify the competition as follows: CFDA number 84.021A or 84.021B.

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 contact person listed under *For Further Information Contact* in section VII 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 program.

Page Limit: The application narrative 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 no more than 40 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, except titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12 point or larger; or, no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.
- The 40-page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget summary form (ED Form 524); Part IV, assurances, certifications, and the response to section 427 of the General Education Provisions Act (GEPA); the table of contents; the one-page project abstract; the appendices; or the line item budget. If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative [Part III] for purposes of the page limit requirement.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: February 23, 2012.

Deadline for Transmittal of Applications: April 23, 2012.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (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 program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* See 34 CFR 664.33. We reference additional 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 GPA Program, CFDA numbers 84.021A and 84.021B, 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 email 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 Fulbright-Hays GPA Programs at *http://Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.021, not 84.021A or B).

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 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 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) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable 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 email. 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:

For GPA short-term projects (84.021A): Loveen Bains, Fulbright-Hays Group Projects Abroad Program, U.S. Department of Education, 1990 K Street NW., Room 6091, Washington, DC 20006–8521. FAX: (202) 502–7860.

For GPA advanced overseas intensive language training long-term projects (84.021B): Michelle Guilfoil, Fulbright-Hays Group Projects Abroad Program, U.S. Department of Education, 1990 K Street NW., Room 6098, Washington, DC 20006–8521. FAX: (202) 502–7860.

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 84.021A or 84.021B) 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 84.021A or 84.021B) 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 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. *General:* For FY 2012, short-term project applications will be reviewed by separate panels according to world area. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other world area panels. However, all applications will be ranked against each other from the highest to the lowest score for funding purposes. Advanced overseas intensive language training long-term projects will be reviewed by one panel across world areas. A rank order from highest to lowest score will be developed for each of the two types of projects and will be used for funding purposes.

2. *Selection Criteria:* The selection criteria for this program are from 34 CFR 664.31 and are as follows: (a) Plan of operation (20 points); (b) Quality of key personnel (10 points); (c) Budget and cost effectiveness (10 points); (d) Evaluation plan (20 points); (e) Adequacy of resources (5 points); (f) Potential impact of the project on the development of the study of modern foreign languages and area studies in American education (15 points); (g) The project's relevance to the applicant's educational goals and its relationship to its program development in modern foreign languages and area studies (5 points); and (h) The extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host

country resources will be utilized (10 points). Additional information about these criteria is in the application package for this competition.

3. *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).

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 in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in 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. Grantees are required to use the electronic data instrument *International Resource Information System* (IRIS) to complete the final report. 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, the following measures will be used by the Department to evaluate the success of the program:

a. The percentage of Fulbright-Hays Group Projects Abroad advanced overseas intensive language training long-term participants who demonstrate a significant increase in their pre-post scores on a standardized measure of language competency. (84.021B only)

b. Percentage of all GPA projects judged to be successful by the program officer, based on a review of information provided in annual performance reports. (84.021A and 84.021B)

The information provided by grantees in their performance reports submitted via IRIS will be the source of data for this measure. Reporting screens for institutions can be viewed at:

For GPA short-term projects: *http://iris.ed.gov/iris/pdfs/gpa_director.pdf* and *http://iris.ed.gov/iris/pdfs/gpa_participant.pdf.*

For GPA advanced overseas intensive language training projects: *http://iris.ed.gov/iris/pdfs/gpa_lang_director.pdf* and *http://iris.ed.gov/iris/pdfs/gpa_lang_participant.pdf.*

VII. Agency Contact

For Further Information Contact:

For GPA short-term projects (84.021A): Loveen Bains, Fulbright-Hays Group Projects Abroad Program, U.S. Department of Education, 1990 K Street NW., Room 6091, Washington, DC 20006–8521. Telephone: (202) 502–7709 or by email: *loveen.bains@ed.gov.*

For GPA advanced overseas intensive language training long-term projects (84.021B): Michelle Guilfoil, Fulbright-Hays Group Projects Abroad Program, U.S. Department of Education, 1990 K Street NW., Room 6098, Washington, DC 20006–8521. Telephone: (202) 502–7625 or by email: *michelle.guilfoil@ed.gov.* The agency contact person does not mail application materials and does not accept applications.

If you use a TDD or a TTY, call the FRS, toll-free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disk) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site, you can view this document, as well as all other documents of the 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 this site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 17, 2012.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–4239 Filed 2–22–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 11–162–LNG]

Cameron LNG, LLC; Application for Long-Term Authorization To Export Domestically Produced Liquefied Natural Gas to Non-Free Trade Agreement Countries for 20 Years

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on December 21, 2011, by Cameron LNG, LLC (Cameron),

requesting long-term, multi-contract authorization to export up to 12 million metric tons per annum (mtpa) of domestically produced liquefied natural gas (LNG) (equivalent to approximately 620 billion cubic feet [Bcf] per year of natural gas) for a 20-year period, commencing on the earlier of the date of first export or seven years from the date of issuance of the requested authorization. Cameron seeks authorization to export LNG from the Cameron LNG Terminal, owned by Cameron, in Cameron Parish, Louisiana, to any country (1) with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, (2) which has or in the future develops the capacity to import LNG via ocean-going carrier, and (3) with which trade is not prohibited by U.S. law or policy. Cameron is requesting this authorization both on its own behalf and as agent for other parties who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, April 23, 2012.

ADDRESSES:

Electronic Filing on the Federal eRulemaking Portal under FE Docket No. 11–162–LNG: http://www.regulations.gov.

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Lisa Tracy, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–4523.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

Cameron is a Delaware limited liability company with executive offices in San Diego, California. Cameron LNG is a wholly-owned indirect subsidiary of Sempra Energy, a publicly-traded corporation. Cameron owns and operates the Cameron LNG Terminal (Terminal) in Cameron Parish Louisiana.

In 2003, the Federal Energy Regulatory Commission (FERC) approved the construction and operation of the Terminal, authorizing a maximum send-out of 1.5 Bcf/d of regasified LNG from the facility to domestic markets. In a subsequent order, issued in 2007, the FERC authorized Cameron to construct and operate additional facilities expanding the maximum send-out capacity to 1.8 Bcf/d.

Cameron LNG completed construction of the Terminal and placed it into service in July 2009. Initially, the Terminal was used for the sole purpose of receiving and storing foreign-sourced LNG, regasifying it, and sending to out for delivery to domestic markets. In January 2011, the FERC authorized Cameron to operate the Terminal for the additional purpose of exporting LNG, which had been previously imported.

The Terminal has an existing interconnection with Cameron Interstate Pipeline LLC (Cameron Interstate), an affiliate of Cameron LNG. Cameron Interstate, an interstate pipeline regulated by the FERC, consists of a 36.2 mile pipeline connecting the Terminal with five other interstate pipelines. These interstate pipelines provide Cameron, directly or indirectly, with access to all of the major gas producing basins in the Gulf Coast and Midcontinent regions of the United States, including areas with recent discoveries of shale gas and other unconventional reserves.

Cameron currently is finalizing the design for natural gas processing and liquefaction facilities to receive and liquefy domestically produced natural gas at the Terminal for export to foreign markets (the ''Project''). Cameron states that its liquefaction Project will be integrated with existing facilities at its Terminal. Existing facilities at the Terminal presently consist of two marine berths, three full containment LNG storage tanks, LNG vaporization systems, and associated utilities. Cameron notes that the new facilities proposed as part of the Project will include natural gas pre-treatment, liquefaction, and export facilities with a capacity of up to 12 mtpa of LNG [1], plus upgrades to the existing equipment and additional utilities.

Cameron states that its proposed facilities will permit gas to be received by pipeline at the Terminal, where it will be liquefied and then loaded from the Terminal's storage tanks onto vessels berthed at its existing marine facility. Cameron states that, once operational, the terminal will have the capability to (i) liquefy domestically produced gas for export, or (ii) import LNG and either re-gasify it for delivery to domestic markets or export it to foreign markets. Cameron states that the Project will not result in an increase in the number of ship transits currently authorized for the Terminal, and that the total amount of LNG processed would not exceed the current maximum authorized send-out rate of 1.8 Bcf/d.

Cameron acknowledges that any modifications to the Terminal are subject to review and approval by the FERC. Cameron states that it will initiate the FERC mandatory pre-filing review process for Phase I of the project upon completion of Cameron's initial facility planning and design. Cameron anticipates the pre-filing request to FERC will be made no later than the second quarter of 2012.

Related Applications and Authorizations

This Application is the second part of a two-phased authorization sought by Cameron to export domestically produced natural gas as LNG from the Cameron Terminal. On November 10, 2011, in Docket No. 11–145–LNG, Cameron submitted an application to DOE/FE requesting authority to export domestically produced LNG to those countries with which the United States has an FTA or subsequently enters into an FTA requiring national treatment for trade in natural gas, provided that the destination country has the capacity to import LNG via ocean going vessels.[2] The requested export volume in that application is identical to the export

[1] Cameron states that 12 mtpa of LNG is equivalent to approximately 1.7 Bcf per day of natural gas.

[2] The United States currently has free trade agreements requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, and Singapore. FTAs with Costa Rica and Israel do not require national treatment for trade in natural gas. FTAs with Colombia, Panama, and South Korea have been ratified by Congress but have not yet taken effect.

volume in the current Application of 12 million metric tons of LNG per year, equivalent to 620 Bcf/year, or 1.7 Bcf/day of natural gas. The Cameron liquefaction facilities would be limited to exports of up to the equivalent of 620 Bcf/year of natural gas, including both exports to FTA and non-FTA countries. On January 17, 2012, in DOE/FE Order No. 3059 (FE Docket No. 11–145–LNG), DOE/FE granted Cameron authority to export domestically produced LNG from the Terminal to those countries with which the United States has an FTA.

On December 3, 2010, in DOE/FE Order No. 2885 (Docket No. 10–110–LNG), FE granted Sempra LNG Marketing, LLC (SLNG), an affiliate of Cameron, blanket authorization to export from the Terminal LNG that had been previously imported into the United States from foreign sources in an amount up to the equivalent of 250 Bcf of natural gas. The Order authorizes Cameron to export this LNG to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. The authorization in FE Docket No. 10–110–LNG, which does not permit the export of domestically produced LNG, extends from February 1, 2011, through January 31, 2013. On June 22, 2010, in DOE/FE Order No. 2806 (FE Docket No. 10–66–LNG), FE granted SLNG blanket authorization to import to the Terminal LNG from various international sources. DOE/FE Order No. 2806 extends from September 1, 2010, through August 31, 2012.

Cameron notes that nothing in its current application to export LNG to non-FTA nations is intended to supersede or otherwise modify the authorizations granted by DOE to SLNG.

Current Application

In the instant Application, Cameron seeks long-term, multi-contract authorization to export up to 12 mtpa of domestically produced LNG from the Terminal, equivalent to approximately 620 Bcf/year of natural gas for a 20-year period, commencing on the earlier of the date of first export or seven years from the date the authorization is issued. Cameron seeks authorization to export domestically produced LNG to countries with which the United States does not have an FTA and with which trade is not prohibited by U.S. law or policy.

Cameron requests authorization to export LNG on its own behalf (i.e., holding title to the LNG at the time of export) or by acting as agent for others. In the instances where Cameron will act as agent for other customers, Cameron states that it will comply with all DOE/FE requirements for an exporter or agent. In this regard, Cameron referenced DOE/FE Order No. 2913 (Order 2913), issued February 10, 2011, to Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC, in FE Docket No. 10–160–LNG, which approved a proposal by the applicant and established procedures to register entities for which the authorization holder will act as agent. Cameron also states that it will file with DOE/FE any relevant long-term commercial agreements reached with LNG title holders on whose behalf the LNG would be exported.

Cameron states that the long-term authorization requested in this Application is necessary in order to permit Cameron to incur the substantial costs of developing the Project and secure customer contracts. Cameron notes that the contract terms between Cameron and its customers will be set forth in one or more long-term service or agency agreements. These agreements are expected to run for terms of up to 20 years and will run concurrently with Cameron's export authorization. Cameron states that is has not yet entered into any of these long-term arrangements, but that once executed, Cameron will file with DOE/FE any commercial agreements reached with title holders on whose behalf Cameron intends to export the LNG.

Cameron states that the sources of natural gas for the Project will include supplies available from the Texas and Louisiana producing regions, as well as various unconventional supply areas, such as the Barnett, Haynesville, and Eagle Ford shale gas formations. Cameron states that their customers will be able to deliver natural gas supplies to the Terminal from five interstate pipelines: Florida Gas Transmission Company, Transcontinental Gas Pipeline Company, LLC, Texas Eastern Transmission Corporation, Tennessee Gas Pipeline Company, and Trunkline Gas Company. In addition, Cameron notes that the Terminal is in close proximity to the Henry Hub and to 11 other market centers in Louisiana and Texas, which will give customers additional options for purchasing supplies.

Cameron notes that in recent orders granting long-term authorizations to export LNG, DOE/FE did not require that applicants submit transaction-specific contract information with their applications, pursuant to Section 590.202(b) of the DOE's regulations. Cameron requests that the DOE maintain this same position in the review of its Application. Cameron maintains that the submittal of the transaction-specific information is only appropriate after a long-term contract has been executed.

Lastly, Cameron requests that DOE/FE issue a conditional order authorizing the long-term export of LNG subject to completion of a satisfactory environmental review by FERC.

Public Interest Considerations

In support of its Application, Cameron states that section 3(a) of the NGA sets forth the statutory standard for review of this Application and creates a rebuttable presumption that proposed exports of natural gas are in the public interest. Cameron acknowledges that DOE has explained that opponents of an export application must make an affirmative showing of inconsistency with the public interest in order to overcome the rebuttable presumption favoring export applications. Cameron also notes that DOE has repeatedly reaffirmed the continued applicability of its policy guidelines and has held that they apply equally to export applications though originally written to apply to imports. In addition, Cameron highlights that the DOE, guided by its Policy Guidelines and DOE Delegation Order No. 0204–111, presumes that competitive markets largely free of governmentally-imposed restrictions will benefit the public. Cameron also states that DOE has applied additional considerations in determining whether proposed exports are in the public interest such as: whether the exports will be beneficial for regional economies, the extent to which the export will foster competition and mitigate trade imbalances with foreign nations, and the degree to which the export of LNG would encourage efficient management of U.S. domestic natural resources. Cameron contends that the export of LNG as proposed in the Application satisfies each of these considerations.

In support of its Application, Cameron submitted the following studies: a study on natural gas prices commissioned by Cameron from the independent consulting firm of Black & Veatch, and an in-house economic impact study prepared by Cameron. In addition, in support of its Application, Cameron references numerous studies and reports published by the Energy Information Administration (EIA.) Based on these studies, Cameron contends that the export of domestically produced LNG, as proposed in the Application, is in the public interest for the following reasons:

First, Cameron contends that sufficient reserves now exist to satisfy domestic demand as well as the

proposed LNG exports. Cameron points to the gains in drilling productivity and extraction technology enhancements that have enabled rapid growth in supplies from unconventional shale formations in the United States. In addition, Cameron states that, based on numerous studies and reports, the United States has an approximate 90- to 100-year inventory of recoverable natural gas resources.

Second, Cameron contends that over the past decade, there has been minimal growth in the demand for natural gas in the United States. Based on a comparison of actual demand and prices in 2010, along with forecasted demand and prices in the year 2025, Cameron contends that U.S. natural gas resources are more than sufficient to accommodate both domestic demand and the exports proposed in the Application.

Third, based on the Black & Veatch analysis of the proposed LNG export impact on U.S. natural gas prices, Cameron concludes that the exports proposed in this Application will have a minimal impact on domestic natural gas prices. In addition, Cameron contends that any upward pressure on prices due to increased demand for export would likely be offset by a reduction in domestic price volatility.

Fourth, Cameron states that the export of domestically produced LNG will provide the following economic benefits, as detailed by its own Economic Impact Assessment of the Project:

A. There will be substantial benefits to the national, regional and local economies, including an improvement in the U.S. balance of trade of $2.8 billion to nearly $7.1 billion per year, equal to 0.6 to 1.4 percent of the trade deficit, based on the expected value of the exports.

B. There will be increased exports and international trade based on Cameron's estimate that its customers will export an average of approximately $8.6 billion of LNG per year. Cameron contends that this will have a positive impact on the balance of trade between the United States and its international trading partners, and will promote liberalization of the global gas market by fostering increased liquidity and trade at prices established by market forces.

C. There will be environmental benefits associated with LNG exports. Specifically, the United States will be in a position to provide countries with low-carbon natural gas as an alternative to higher CO_2–emitting fossil fuels such as coal and fuel oil. LNG exports from the United States would serve as an interim fuel for countries that are in the process of developing their own unconventional natural gas resources.

Further details can be found in the Application, which has been posted at *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Environmental Impact

Cameron states that in the next several months, it will initiate the pre-filing review process at FERC for the proposed Project facilities. Cameron anticipates that, consistent with the requirements of the National Environment Policy Act (NEPA), FERC will act as the lead agency for environmental review, with DOE/FE acting as a cooperating agency. Cameron acknowledges that the requested authorization to be issued by DOE/FE would not take effect until FERC has completed its NEPA review and has granted Cameron authorization for the export of domestic LNG from the Cameron facility. Cameron requests that DOE/FE issue a conditional order authorizing the export of domestic LNG from the Terminal conditioned on completion of a satisfactory environmental review and subsequent authorization by FERC.

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant or appropriate, these issues will include the impact of LNG exports associated with this Application, and the cumulative impact of any other application(s) previously approved, on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and any other issues, including the impact on the U.S. economy (GDP), consumers, and industry, job creation, U.S. balance of trade, international considerations, and whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should comment in their responses on these issues, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Due to the complexity of the issues raised by the Applicants, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

Public Comment Procedures

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Submitting comments in electronic form on the Federal eRulemaking Portal at *http://www.regulations.gov,* by following the on-line instructions and submitting such comments under FE Docket No. 11–162–LNG. DOE/FE suggests that electronic filers carefully review information provided in their submissions and include only information that is intended to be publicly disclosed; (2) emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 11–162–LNG in the title line; (3) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in **ADDRESSES**; or (4) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why

they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by Cameron is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.* In addition, any electronic comments filed will also be available at: *http://www.regulations.gov.*

Issued in Washington, DC, on February 16, 2012.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2012–4205 Filed 2–22–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology (PCAST)

AGENCY: Department of Energy, DOE.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App.

DATES: Friday, March 9, 2012, 10:00 a.m. to 5:00 p.m. (EST).

ADDRESSES: The meeting will be held at the Carnegie Endowment for International Peace, (in the Root Room) at 1779 Massachusetts Avenue NW., Washington, DC, .

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Deborah D. Stine, PCAST Executive Director, by email at: *dstine@ostp.eop.gov,* or by telephone at (202) 456–6006. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. *See* the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on March 9, 2012, from 10 a.m. to 5 p.m.

Open Portion of Meeting: During this open meeting, PCAST is tentatively scheduled to hear from speakers who will provide an overview of the Department of Agriculture's science, technology, and innovation activities, and China and U.S. competitiveness. PCAST will also receive an update on the status of several of its studies including those on nanotechnology research and development, the future of the U.S. science and technology research enterprise, and advancing innovation in drug development and evaluation. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately one hour with the President on March 9, 2012, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on March 9, 2012, at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast,* no later than 12:00 p.m. Eastern Standard Time on March 1, 2012. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 12:00 p.m.

Eastern Standard Time on March 1, 2012, so that the comments may be made available to the PCAST members prior to this meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Stine at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on February 16, 2012.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2012–4223 Filed 2–22–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–21–003.
Applicants: Agua Caliente Solar, LLC.
Description: Notice of Change in Status of Agua Caliente Solar, LLC.
Filed Date: 2/14/12.
Accession Number: 20120214–5156.
Comments Due: 5 p.m. ET 3/6/12.

Docket Numbers: ER12–351–002.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 2–14–12 MRES Attachment MM compliance to be effective 1/1/2012.
Filed Date: 2/14/12.
Accession Number: 20120214–5126.
Comments Due: 5 p.m. ET 3/6/12.

Docket Numbers: ER12–458–002.
Applicants: Quantum Choctaw Power, LLC.
Description: Quantum Choctaw Power Compliance Filing to be effective 2/14/2012.
Filed Date: 2/14/12.
Accession Number: 20120214–5134.
Comments Due: 5 p.m. ET 3/6/12.

Docket Numbers: ER12–855–002.
Applicants: Nevada Power Company.
Description: Rate Schedule No. 95 Errata to Original filing to be effective 3/20/2012.
Filed Date: 2/14/12.
Accession Number: 20120214–5139.
Comments Due: 5 p.m. ET 2/28/12.

Docket Numbers: ER12–856–002.
Applicants: Nevada Power Company.
Description: Rate Schedule No. 96 Errata to Original Filing to be effective 3/20/2012.
Filed Date: 2/14/12.
Accession Number: 20120214–5138.
Comments Due: 5 p.m. ET 2/28/12.

Docket Numbers: ER12–1085–000.
Applicants: Florida Power & Light Company.
Description: FPL Compliance filing regarding the Offer of Settlement and Settlement Agreement to be effective 10/1/2011.
Filed Date: 2/14/12.
Accession Number: 20120214–5123.
Comments Due: 5 p.m. ET 3/6/12.

Docket Numbers: ER12–1086–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: 1829 SGIA NYISO & RG&E Browns Race Facility to be effective 1/27/2012.
Filed Date: 2/14/12.
Accession Number: 20120214–5132.
Comments Due: 5 p.m. ET 3/6/12.

Docket Numbers: ER12–1087–000.
Applicants: Discount Power, Inc.
Description: Market-Based Rate Baseline to be effective 2/15/2012.
Filed Date: 2/14/12.
Accession Number: 20120214–5133.
Comments Due: 5 p.m. ET 3/6/12.

Docket Numbers: ER12–1088–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Original Service Agreement No. 3204; Queue No. W3–149 to be effective 1/20/2012.
Filed Date: 2/14/12.
Accession Number: 20120214–5136.
Comments Due: 5 p.m. ET 3/6/12.

Docket Numbers: ER12–1089–000.
Applicants: ITC Midwest LLC.
Description: ITC Midwest—Storm Lake Power Partners Notice of Succession Filing to be effective 4/16/2012.
Filed Date: 2/14/12.
Accession Number: 20120214–5137.
Comments Due: 5 p.m. ET 3/6/12.

Docket Numbers: ER12–1090–000.
Applicants: Liberty Power Maryland LLC.
Description: Market-Based Rate Tariff Baseline to be effective 2/14/2012.
Filed Date: 2/14/12.
Accession Number: 20120214–5140.
Comments Due: 5 p.m. ET 3/6/12.

Docket Numbers: ER12–1091–000.
Applicants: Liberty Power Holdings LLC.
Description: Market-Based Rate Tariff Baseline to be effective 2/14/2012.
Filed Date: 2/14/12.
Accession Number: 20120214–5141.
Comments Due: 5 p.m. ET 3/6/12.

Docket Numbers: ER12–1092–000.
Applicants: Liberty Power Delaware LLC.
Description: Market-Based Rate Tariff Baseline to be effective 2/14/2012.
Filed Date: 2/14/12.
Accession Number: 20120214–5142.
Comments Due: 5 p.m. ET 3/6/12.

Docket Numbers: ER12–1093–000.
Applicants: Liberty Power District of Columbia LLC.
Description: Market-Based Rate Tariff Baseline to be effective 2/14/2012.
Filed Date: 2/14/12.
Accession Number: 20120214–5143.
Comments Due: 5 p.m. ET 3/6/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 15, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4186 Filed 2–22–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1075–000
Applicants: Xcel Energy Services Inc.
Description: Notice of Termination of Service Schedule A to the Municipal Interconnection and Interchange

Agreement between Northern States Power Company, a Minnesota Corporation and the City of Buffalo.

Filed Date: 2/14/12.

Accession Number: 20120214–5059.

Comments Due: 5 pm ET 3/6/12.

Docket Numbers: ER12–922–000.

Applicants: Phillips 66 Company.

Description: Supplemental Information of Market Based Rate for Phillips 66 Company.

Filed Date: 2/14/12.

Accession Number: 20120214–5074.

Comments Due: 5 pm ET 2/28/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 pm Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 14, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4185 Filed 2–22–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–72–000.

Applicants: Gratiot County Wind LLC, EFS Gratiot Wind, LLC.

Description: Application for Authorization under section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Gratiot County Wind LLC and EFS Gratiot Wind, LLC.

Filed Date: 2/13/12.

Accession Number: 20120213–5097.

Comments Due: 5 p.m. ET 3/5/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4402–002.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing in ER11–4402–001 per Order dated Jan 13 2012 to be effective 11/1/2011.

Filed Date: 2/13/12.

Accession Number: 20120213–5035.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: ER12–41–002.

Applicants: ITC Midwest LLC.

Description: Compliance Filing of ITC Midwest to be effective 12/7/2011.

Filed Date: 2/13/12.

Accession Number: 20120213–5075.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: ER12–427–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 02–13–12 CMMPA Reg. Asset Compliance to be effective 1/16/2012.

Filed Date: 2/13/12.

Accession Number: 20120213–5158.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: ER12–818–001.

Applicants: El Paso Electric Company.

Description: Refiling of Arlington Valley Solar II IA to be effective 1/13/2012.

Filed Date: 2/13/12.

Accession Number: 20120213–5145.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: ER12–1067–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. 2011 4th Quarter Capital Budget Report.

Filed Date: 2/13/12.

Accession Number: 20120213–5085.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: ER12–1068–000.

Applicants: PJM Interconnection, L.L.C.

Description: Second Revised Service Agreement Nos. 2960 & 2972; Amended ISA and ICSA to be effective 7/28/2011.

Filed Date: 2/13/12.

Accession Number: 20120213–5090.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: ER12–1069–000.

Applicants: AEP Texas North Company.

Description: 20120213 TNC—Blue Summit Wind SUA to be effective 2/9/2012.

Filed Date: 2/13/12.

Accession Number: 20120213–5123.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: ER12–1070–000.

Applicants: MidAmerican Energy Company.

Description: LGIA between MidAmerican and Clipper to be effective 1/19/2012.

Filed Date: 2/13/12.

Accession Number: 20120213–5154.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: ER12–1071–000.

Applicants: Entergy Arkansas, Inc.

Description: Compliance Filing for ER05–1065 and OA07–32 to be effective 2/13/2012.

Filed Date: 2/13/12.

Accession Number: 20120213–5156.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: ER12–1072–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 02–13–12 ARR Load Shifts to be effective 4/14/2012.

Filed Date: 2/13/12.

Accession Number: 20120213–5159.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: ER12–1073–000.

Applicants: Southwest Power Pool, Inc.

Description: Submission of Cancellation of 2058 SWPA Loss Compensation to be effective 1/1/2012.

Filed Date: 2/13/12.

Accession Number: 20120213–5179.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: ER12–1074–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to Financial Assurance Policy to be effective 4/13/2012.

Filed Date: 2/13/12.

Accession Number: 20120213–5212.

Comments Due: 5 p.m. ET 3/5/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 14, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4184 Filed 2–22–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–757–000.
Applicants: ISO New England Inc.
Description: Response to Commission Information Request of ISO New England Inc.
Filed Date: 2/13/12.
Accession Number: 20120213–5199.
Comments Due: 5 p.m. ET 2/22/12.

Docket Numbers: ER12–1089–001.
Applicants: ITC Midwest LLC.
Description: Amendment to ITC Midwest—Storm Lake Power Partners Notice of Succession Filing to be effective 4/16/2012.
Filed Date: 2/15/12.
Accession Number: 20120215–5034.
Comments Due: 5 p.m. ET 3/7/12.

Docket Numbers: ER12–1094–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to the OATT, OA & TOA re Direct Billing of TOs re Late Outages to be effective 4/16/2012.
Filed Date: 2/15/12.
Accession Number: 20120215–5039.
Comments Due: 5 p.m. ET 3/7/12.

Docket Numbers: ER12–1095–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to the OATT, OA & TOA re Direct Billing of TOs re Late Outages to be effective 4/16/2012.
Filed Date: 2/15/12.
Accession Number: 20120215–5040.
Comments Due: 5 p.m. ET 3/7/12.

Docket Numbers: ER12–1096–000.
Applicants: Liberty Power Corp, LLC.
Description: Notice of Cancellation of Market-Based Rate Authority.
Filed Date: 2/15/12.
Accession Number: 20120215–5061.
Comments Due: 5 p.m. ET 3/7/12.

Docket Numbers: ER12–1097–000.
Applicants: Liberty Power New York LLC.
Description: Liberty Power New York, LLC Notice of Cancellation of Market-Based Rate Authority.
Filed Date: 2/15/12.
Accession Number: 20120215–5062.
Comments Due: 5 p.m. ET 3/7/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 15, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4187 Filed 2–22–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

	Project No.
FFP Project 91, LLC	14275–000
Riverbank Hydro No. 23, LLC	14279–000
Lock+ Hydro Friends Fund III	14282–000

The Commission has received three preliminary permit applications deemed filed on September 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located at the U.S. Army Corps of Engineers' Kentucky River Lock & Dam No. 10 on the Kentucky River, in Clark and Madison counties, Kentucky. The applications were filed by FFP Project 91, LLC for Project No. 14275–000, Riverbank Hydro No. 23, LLC for Project No. 14279–000, and Lock+ Hydro Friends Fund III for Project No. 14282–000.

On February 28, 2012, at 9:00 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: February 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4180 Filed 2–22–12; 8:45 am]

BILLING CODE 6717–01–P

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14298–000, Project No. 14299–000, Project No. 14301–000]

SV Hydro, LLC, Coffeeville, LLC, FFP Project 99, LLC; Notice Announcing Preliminary Permit Drawing

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The Commission has received three preliminary permit applications deemed filed on October 3, 2011, at 8:30 a.m.,[1] for proposed projects to be located at the U.S. Army Corps of Engineers' Coffeeville Lock and Dam on the Tombigbee River, in Choctaw and Clarke counties, Alabama. The applications were filed by SV Hydro, LLC for Project No. 14298–000, Coffeeville, LLC for Project No. 14299–000, and FFP Project 99, LLC for Project No. 14301–000.[2]

On February 28, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[3] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] Lock+ Hydro Friends Fund XIV, also filed a permit application to study the same site for Project No. 14302, which is deemed filed October 3, 2011, at 3:32 p.m.

[3] 18 CFR 4.37 (2011).

20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: February 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4182 Filed 2–22–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14269–000; 14270–000]

Riverbank Hydro No. 22, LLC; FFP Project 93, LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on September 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located at the U.S. Army Corps of Engineers' Green River Lock and Dam No. 5, on the Green River in Butler and Warren Counties, Kentucky. The applications were filed by Riverbank Hydro No. 22, LLC for Project No. 14269–000, and FFP Project 93, LLC for Project No. 14270–000.

On February 28, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: February 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4191 Filed 2–22–12; 8:45 am]

BILLING CODE 6717–01–P

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14262–000, 14276–000, 14280–000]

Lock+ Hydro Friends Fund VIII, FFP Project 92, LLC, Riverbank Hydro No. 24, LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received three preliminary permit applications deemed filed on September 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located at the U.S. Army Corps of Engineers' Kentucky River Lock and Dam No. 11, on the Kentucky River in Estill and Madison Counties, Kentucky. The applications were filed by Lock+ Hydro Friends Fund VIII for Project No. 14262–000, FFP Project 92, LLC for Project No. 14276–000, and Riverbank Hydro No. 24, LLC for Project No. 14280–000.

On February 28, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: February 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4190 Filed 2–22–12; 8:45 am]

BILLING CODE 6717–01–P

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14261–000, 14268–000, 14277–000, 14281–000]

Lock+ Hydro Friends Fund XVIII, Upper Hydroelectric, LLC, FFP Project 95, LLC, Riverbank Hydro No. 25, LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received four preliminary permit applications deemed filed on September 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located at the U.S. Army Corps of Engineers' John C. Stennis Lock and Dam on the Tennessee-Tombigbee Waterway in Lowndes County, Mississippi. The applications were filed by Lock+ Hydro Friends Fund XVIII for Project No. 14261–000, Upper Hydroelectric, LLC for Project No. 14268–000, FFP Project 95, LLC for Project No. 14277–000, and Riverbank Hydro No. 25, LLC for Project No. 14281–000.

On February 28, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: February 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4189 Filed 2–22–12; 8:45 am]

BILLING CODE 6717–01–P

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14260–000, 14264–000, 14267–000, 14273–000]

Lock+ Hydro Friends Fund XII, BOST2, LLC, Riverbank Hydro No. 21, LLC, FFP Project 96, LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received four preliminary permit applications deemed filed on September 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located at the U.S. Army Corps of Engineers' A.I. Selden Lock and Dam on the Black Warrior River, in Greene and Hale counties, Alabama. The applications were filed by Lock+ Hydro Friends Fund XII for Project No. 14260–000, BOST2, LLC for Project No. 14264–000, Riverbank Hydro No. 21, LLC for Project No. 14267–000, and FFP Project 96, LLC for Project No. 14273–000.

On February 28, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: February 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4188 Filed 2–22–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Communication date	Presenter or requester
PROHIBITED		
1. P–13226 & P–13368	1–31–12	Lori Barg.
2. CP07–444–000	2–2–12	CitizenLetter.[1]
3. P–12790–000	2–6–12	Karen Reddington-Hughes.
EXEMPT		
1. CP11–56–000	1–26–12	Commission Staff.[2]
2. P–12632–000	1–27–12	Members of Congress.[3]
3. CP11–72–00	1–31–12	Hon. Mary L. Landrieu.
4. P–13226–003 & P–13368–002	2–1–12	Commission Staff.[4]
5. P–459–000	2–1–12	Hon. Blaine Luetkemeyer.
6. P–2662–000	2–3–12	Commission Staff.[5]
7. P–2790–055	2–6–12	Hon. Niki Tsongas.
8. CP11–56–000	2–8–12	Hon. Albio Sires.
9. CP09–444–000	2–8–12	Hon. Scott Garrett.
10. P–1267–000	2–9–12	Hon. Jim DeMint.
11. ER12–188–000	2–9–12	Hon. Al Franken.
12. P–13226–000	2–10–12	Members of Congress.[6]

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

Docket No.	Communication date	Presenter or requester
13. CP12–29–000	2–10–12	Hon. Ron Paul.

[1] A two form letters were received on February 2 & 14, 2012.
[2] Email record.
[3] Ten members of Congress signed this letter.
[4] Telephone record.
[5] Email record.
[6] Three members of Congress signed this letter.

Dated: February 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4183 Filed 2–22–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9636–3]

Local Government Advisory Committee; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its Local Government Advisory Committee (LGAC). The LGAC was chartered to provide advice to the EPA Administrator on a broad range of environmental issues affecting local governments. This notice solicits nominations to fill twenty three (23) vacancies through August 2014. To maintain the representation outlined by the charter, nominees will be selected to represent: large cities; moderate-sized cities; small communities and townships (under 10,000); county-elected officials-urban, suburban and rural; city elected and appointed officials (city council members, city managers); state elected and appointed officials (state representatives, state environmental commissioners); and tribal elected and appointed officials (chair, president, natural resources directors). Vacancies are anticipated to be filled by September 2012. Sources in addition to this **Federal Register** Notice may be utilized in the solicitation of nominees.

DATES: Nominations should be submitted in time to arrive no later than March 26, 2012.

ADDRESSES: Submit nominations electronically with the subject line ''LGAC Membership 2012'' to *eargle.frances@epa.gov.* You also may submit nominations by mail to: M. Frances Eargle, LGAC Designated Federal Officer, Office of Congressional and Intergovernmental Relations (OCIR), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW. (MC1301A), Washington, DC 20460. Non-electronic submissions must follow the same format and contain the same information.

FOR FURTHER INFORMATION CONTACT: M. Frances Eargle, Designated Federal Officer for the LGAC, U.S. EPA; telephone (202) 564–3115; email: *eargle.frances@epa.gov.*

SUPPLEMENTARY INFORMATION: The LGAC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the LGAC in 1993 to provide independent consensus advice to the EPA Administrator about a broad range of environmental issues affecting local governments. The LGAC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations.

The Committee consists of approximately 30 members (including a Chairperson) appointed by EPA's Administrator. Members serve as non-federal stakeholders representing: large cities, moderate-size cities; small communities and townships; county elected officials (county commissioners, councilors, county judges); county appointed officials (public health directors, environmental departments); state elected and appointed officials (state representatives, state environmental commissioners); tribal elected and appointed officials (chair, president, natural resource directors). Members are appointed for one or two (1–2)-year terms, and eligible for reappointment.

The LGAC usually meets two or three times a year. Additionally, members may be asked to participate in teleconference meetings or serve on Subcommittees and Work Groups to develop recommendations, advice letters, and reports to address specific policy issues. The average workload for members is approximately 5 to 8 hours per month. We are unable to provide honoraria or compensation for your services. However, you may receive travel and per diem allowances where appropriate and according to applicable federal travel regulations.

Nominations: The EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, the agency encourages nominations of women and men of all racial and ethnic groups. All nominations will be fully considered, but applicants need to be aware of the specific representation sought as outlined in the Summary above. In addition, EPA is seeking nominees with demonstrated local leadership in community sustainability and sustainable development, public health and health disparities, air and water quality issues, green jobs and economic initiatives, energy, and environmental financing.

Other criteria used to evaluate nominees will include:

- The background and experience that would help members contribute to the diversity of perspectives on the committee (e.g., geographic, economic, social, cultural, educational background, professional affiliations, and other considerations);
- Demonstrated experience as elected and/or appointed official for a local, state or tribal government;
- Demonstrated experience working with officials from other governments or other levels of government (e.g., other local governments, federal agencies);
- Excellent interpersonal and consensus-building skills;
- Ability to volunteer time to attend meetings 2–3 times a year, participate in teleconference meetings, attend listening sessions with the Administrator or other senior-level EPA officials, develop policy recommendations to the Administrator, and prepare reports and advice letters; and
- Willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees.

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to this

advisory committee. Individuals may self-nominate. Nominations can be submitted in electronic format (preferred) or in hard copy format (see **ADRESSESES** section above) following the template available at *http://www.epa.gov/ocir/scas_lgac/lgac_index.htm*. To be considered, all nominations should include:

- Current contact information for the nominee, including the nominee's name, organization (and position within that organization), current business address, email address, and daytime telephone number;
- Brief Statement describing the nominee's interest in serving on the LGAC;
- Résumé and a short biography (no more than 2 paragraphs) describing the professional and educational qualifications of the nominee, including a list of relevant activities, and any current or previous service on advisory committees; and
- Letter[s] of recommendation from a third party supporting the nomination. Letter[s] should describe how the nominee's experience and knowledge will bring value to the work of the LGAC.

Other sources, in addition to this **Federal Register** notice, may be utilized in the solicitation of nominees. To help the EPA in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity.

Dated: February 8, 2012.

M. Frances Eargle,

Designated Federal Officer, LGAC.

[FR Doc. 2012–4220 Filed 2–22–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal of the information collection described below.

DATES: Comments must be submitted on or before April 23, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1084, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: *Proposal to renew the following currently approved collection of information:*

Title: Asset Purchaser Eligibility Certification.

OMB Number: 3064–0135.

Form Number: FDIC 7300/06.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 2,500.

Estimated Time per Response: 0.5 hours.

Total Annual Burden: 1,250 hours.

General Description of Collection: The FDIC will use the Asset Purchaser Eligibility Certification to assure compliance with statutory restrictions on who may purchase assets held by the FDIC.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 16th day of February 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–4108 Filed 2–22–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, February 28, 2012 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Items To Be Discussed

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2012–4386 Filed 2–21–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011353–036.

Title: The Credit Agreement.

Parties: Crowley Latin America Services, LLC; Dole Ocean Cargo Express; King Ocean Services Limited; Seaboard Marine of Florida, Inc.; and Seaboard Marine Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment deletes Crowley Latin American Services, LLC and a King Ocean entity as a party to the Agreement.

Agreement No.: 012155.

Title: MSC/Zim South America East Coast Vessel Sharing Agreement.

Parties: MSC Mediterranean Shipping Company, S.A. and Zim Integrated Shipping Services Ltd.

Filing Party: Wayne R. Rohde, Esquire; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement would authorize MSC and Zim to share vessels in the trade between the U.S. Gulf Coast and ports in Dominican Republic, Jamaica, Brazil, and Panama. It would also authorize MSC to charter space to Zim in the trade between the U.S. East Coast and ports in the Bahamas, Dominican Republic, Brazil, Argentina, and Uruguay.

Agreement No.: 012156.

Title: Slot Purchase Agreement Between UASC and YMUK.

Parties: United Arab Shipping Co., S.A.G. and Yang Ming (UK) Ltd.

Filing Party: Robert B. Yoshitomi, Esq., Nixon Peabody LLP, Gas Company Tower, 555 West Fifth Street 46th Floor, Los Angeles, CA 90013.

Synopsis: The agreement authorizes UASC to sell and Yang Ming to purchase slots in the trade between countries in the Mediterranean Sea and the Atlantic Coast of the United States and Canada.

Agreement No.: 200860–005.

Title: Fourth Amendment to Lease and Operating Agreement between PRPA and Dependable Distribution Services Inc. for Pier 84 South.

Parties: Philadelphia Regional Port Authority and Dependable Distribution Services Inc.

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue NW., Tenth Floor; Washington, DC 20036.

Synopsis: The amendment extends the lease for an additional renewal period through April 30, 2018, provides for the level of Base Rent during the new period, replaces the dockage fee provision, and establishes the prevailing wage on the facility.

Agreement No.: 201160–003.

Title: Marine Terminal Lease and Operating Agreement Between Broward County and Mediterranean Shipping Company S.A.

Parties: Broward County and Mediterranean Shipping Company S.A.

Filing Party: Candace J. Running; Broward County Board of County Commissioners; Office of the County Attorney; 1850 Eller Drive, Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The amendment revises language in the agreement regarding the calculation of rates for containers and minimum guarantee payments.

Agreement No.: 201212.

Title: Marine Terminal Lease and Operating Agreement Between Broward County and King Ocean Services Limited (Cayman Islands) Incorporated.

Parties: Broward County and King Ocean Services Limited (Cayman Islands) Incorporated.

Filing Party: Candace J. Running; Broward County Board of County Commissioners; Office of the County Attorney; 1850 Eller Drive, Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The agreement provides for the lease and operation of terminal facilities at Port Everglades in Broward County, Florida.

Dated: February 17, 2012.

By Order of the Federal Maritime Commission.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–4241 Filed 2–22–12; 8:45 am]

BILLING CODE 6730–01–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 March 20, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *CapGen Capital Group VI LP and CapGen Capital Group VI LLC, both of New York, New York,* to increase their investment up to 49.9 percent of the voting shares of Hampton Roads Bankshares, Inc., Norfolk, Virginia, and thereby indirectly increase their investment in Bank of Hampton Roads, Norfolk, Virginia, and Shore Bank, Onley, Virginia.

Board of Governors of the Federal Reserve System, February 17, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–4179 Filed 2–22–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to OMB for a three-year extension of the current PRA clearance for the information collection requirements contained in four product labeling rules enforced by the Commission. Those clearances expire on March 31, 2012.

DATES: Comments must be received by March 26, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Robert M. Frisby, 202–326–2098, or Lemuel Dowdy, 202–326–2981, Attorneys, Division of Enforcement, Bureau of Consumer Protection, 600

Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: Rules and regulations under Fur Products Labeling Act (''Fur Rules''), 16 CFR part 301.

OMB Control Number: 3084–0099.

Type of Review: Extension of a currently approved collection.

Abstract: The Fur Products Labeling Act (''Fur Act'') [1] prohibits the misbranding and false advertising of fur products. The Fur Rules establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the Rules. The Rules also provide a procedure for exemption from certain disclosure provisions under the Fur Act.

On December 12, 2011, the Commission sought comment on the information collection requirements in the Fur Rules. 76 FR 77230. No comments were received. As required by OMB regulations, 5 CFR Part 1320, the FTC is providing this second opportunity for public comment.

Likely Respondents: Manufacturers, importers, processors and marketers of fur products.

Frequency of Response: Third party disclosure; recordkeeping requirement.

Estimated Annual Hours Burden: 168,098 hours (51,870 hours for recordkeeping + 116,228 hours for disclosure).

Recordkeeping: 51,870 hours [1,230 retailers incur an average recordkeeping burden of about 13 hours per year (15,990 hours total); 90 manufacturers incur an average recordkeeping burden of about 52 hours per year (4,680 hours total); and 1,200 importers of furs and fur products incur an average recordkeeping burden of 26 hours per year (31,200 hours total)].

Disclosure: 116,228 hours [(89,021 hours for labeling + 23,517 hours for invoices + 3,690 hours for advertising).].

Estimated annual cost burden: $2,807,000, rounded to the nearest thousand (solely relating to labor costs).

Title: Rules and regulations under the Wool Products Labeling Act of 1939 (''Wool Rules''), 16 CFR part 300.

OMB Control Number: 3084–0100.

Type of Review: Extension of a currently approved collection.

Abstract: The Wool Products Labeling Act of 1939 (''Wool Act'') [2] prohibits the misbranding of wool products. The Wool Rules establish disclosure requirements that assist consumers in making informed purchasing decisions and recordkeeping requirements that assist the Commission in enforcing the Rules.

On December 12, 2011, the Commission sought comment on the information collection requirements in the Wool Rules. 76 FR 77230. No comments were received. As required by OMB regulations, 5 CFR Part 1320, the FTC is providing this second opportunity for public comment.

Likely Respondents: Manufacturers, importers, processors and marketers of wool. products.

Frequency of Response: Third party disclosure; recordkeeping requirement.

Estimated annual hours burden: 440,000 hours (80,000 recordkeeping hours + 360,000 disclosure hours).

Recordkeeping: 80,000 hours [4,000 wool firms incur an average 20 hours per firm (80,000 hours).

Disclosure: 360,000 hours [120,000 hours for determining label content + 40,000 hours to draft and order labels + 200,000 hours to attach labels].

Estimated annual cost burden: $5,920,000 (solely relating to labor costs).

Title: Rules and regulations under the Textile Fiber Products Identification Act (''Textile Rules''), 16 CFR part 303.

OMB Control Number: 3084–0101.

Type of Review: Extension of a currently approved collection.

Abstract: The Textile Fiber Products Identification Act (''Textile Act'') [3] prohibits the misbranding and false advertising of textile fiber products. The Textile Rules establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the Rules. The Rules also contain a petition procedure for requesting the establishment of generic names for textile fibers.

On December 12, 2011, the Commission sought comment on the information collection requirements in the Textile Rules. 76 FR 77230. No comments were received. As required by OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment.

Likely Respondents: Manufacturers, importers, processors and marketers of textile fiber products.

Frequency of Response: Third party disclosure; recordkeeping requirement.

Estimated annual hours burden: 7,528,142 hours (506,025 recordkeeping hours + 7,022,117 disclosure hours).

Recordkeeping: 506,025 hours [Approximately 20,241 textile firms incur average burden of 25 hours per firm (506,025 hours)].

Disclosure: 7,022,117 hours [444,360 hours to determine label content + 111,090 hours to draft and order labels + 6,466,667 hours to attach labels].

Estimated annual cost burden: $53,662,000, rounded to the nearest thousand (solely relating to labor costs).

Title: The Care Labeling of Textile Wearing Apparel and Certain Piece Goods As Amended (''Care Labeling Rule''), 16 CFR 423.

OMB Control Number: 3084–0103.

Type of Review: Extension of a currently approved collection.

Abstract: The Care Labeling Rule requires manufacturers and importers to attach a permanent care label to all covered textile clothing in order to assist consumers in making purchase decisions and in determining what method to use to clean their apparel. Also, manufacturers and importers of piece goods used to make textile clothing must provide the same care information on the end of each bolt or roll of fabric.

On December 12, 2011, the Commission sought comment on the information collection requirements in the Care Labeling Rule. 76 FR 77230. No comments were received. As required by OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment.

Estimated annual hours burden: 6,666,477 hours (solely relating to disclosure [4]) (955,374 hours to determine care instructions + 44,436 hours to draft and order labels + 5,666,667 hours to attach labels).

Likely Respondents: Manufacturers or importers of textile apparel.

Frequency of Response: Third party disclosure.

Estimated Annual Cost Burden: $51,107,000, rounded to the nearest thousand (solely related to labor costs).

Request for Comment:

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 26, 2012. Write ''Apparel Rules: FTC File No. P074201'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm*. As a matter of

[1] 15 U.S.C. 69 *et seq.*

[2] 15 U.S.C. 68 *et seq.*

[3] 15 U.S.C. 70 *et seq.*

[4] The Care Labeling Rule imposes no specific recordkeeping requirements. Although the Rule requires manufacturers and importers to have reliable evidence to support the recommended care instructions, companies may provide as support current technical literature or rely on past experience.

discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/apparelrulespra2*, by following the instructions on the web based form. If this Notice appears at *http://www.regulations.gov*, you also may file a comment through that Web site.

If you file your comment on paper, write ''Apparel Rules: FTC File No. P074201'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 26, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

Willard K. Tom,

General Counsel.

[FR Doc. 2012–4141 Filed 2–22–12; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Population Health Meeting.

Time and Date:

March 8, 2012: 9 a.m.–5:30 p.m. EST;
March 9, 2012: 9 a.m.–3 p.m. EST.

Place: National Center for Health Statistics, 3311 Toledo Road, Auditorium, Hyattsville, MD 20782, Tel: 301–458–4200.

Status: Open.

Purpose: The purpose of this meeting is to gain input about the collection of socioeconomic (SES) data in federal surveys, including innovative uses of information. The intention is to describe SES measures, review SES data collection in federal surveys and provide recommendations for SES data collection within HHS.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: February 14, 2012.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2012–4118 Filed 2–22–12; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''American Recovery and Reinvestment Act 'Developing a Registry of Registries'.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by April 23, 2012.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

American Recovery and Reinvestment Act ''Developing a Registry of Registries''

The Food and Drug Administration Modernization Act of 1997, Public Law 105–115, provided for the creation of a Clinical Trials Data Bank, known as ClinicalTrials.gov. Since its launch in 2000, the ClinicalTrials.gov system has registered over 90,500 trials. The large volume of studies currently listed in ClinicalTrials.gov and the high usage numbers suggest that the system has been successful at improving access to information about clinical studies. However, while ClinicalTrials.gov supports the listing of observational studies, such listing is not required.

Patient registries are a distinct type of observational study. Patient registries may be designed for many purposes, such as to observe the natural history of disease, examine comparative effectiveness, or fulfill post-approval commitments. Patient registries have specific characteristics that are not currently captured on ClinicalTrials.gov. To date, some registry sponsors have attempted to leverage the observational study model to post patient registry-type records on ClinicalTrials.gov; however, stakeholders have noted that the system does not fully meet their needs.

Patient registries have received significant attention and funding in recent years. Similar to controlled interventional studies, patient registries represent some burden to patients (e.g., time to complete patient reported outcome measures, risk of loss of privacy), who often participate voluntarily in hopes of improving knowledge about a disease or condition. Patient registries also represent a substantial investment of health research resources. Despite these factors, registration of patient registries in ClinicalTrials.gov is not currently required, presenting the potential for duplication of efforts and insufficient dissemination of findings that are not published in the peer-reviewed literature. To ensure that resources are used in the most efficient manner, registries need to be listed in a manner similar to that of trials in ClinicalTrials.gov.

By creating a central point of collection for information about all patient registries in the United States, the Registry of Patient Registries (RoPR) helps to further AHRQ's goals by making information regarding quality, appropriateness, and effectiveness of health services and patient registries in particular) more readily available and centralized.

The primary goal of this project is to engage stakeholders in the design and development of a RoPR database system that is compatible with ClinicalTrials.gov and meets the following objectives:

(1) Provides a searchable database of patient registries in the United States (to promote collaboration, reduce redundancy, and improve transparency);

(2) Facilitates the use of common data fields and definitions in similar health conditions (to improve opportunities for sharing, comparing, and linkage);

(3) Provides a public repository of searchable summary results (including results from registries that have not yet been published in the peer-reviewed literature);

(4) Offers a search tool to locate existing data that researchers can request for use in new studies; and serves as a recruitment tool for researchers and patients interested in participating in patient registries.

This study is being conducted by AHRQ through its contractor, the Outcome DEcIDE Center, pursuant to the American Recovery and Reinvestment Act, Public Law 111–5, and pursuant to AHRQ's statutory authority to conduct and support research and disseminate information on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to database development. 42 U.S.C. 299a(a)(1) and (8).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) Collect information from registry holders, defining a patient registry profile via a web-based interface, to populate the RoPR database system.

The purpose of the RoPR is to create a readily available public resource in the model of ClinicalTrials.gov to share information on existing patient registries to promote collaboration, reduce redundancy, and improve transparency in registry research. Patient registry research has become more prevalent and, based on stakeholder feedback, is not adequately served by ClinicalTrials.gov at present. The information being collected in the RoPR record will be visible to the public visiting the RoPR Web site and will be available for public use in this capacity.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden for the respondents' time to participate in the RoPR. Because the RoPR is a voluntary system available to any entity conducting a patient registry, it is not possible to determine the number of potential respondents. We do know that over 3,800 newly registered records designated as ''observational studies'' were entered into ClinicalTrials.gov in 2010. Only a subset of this number (which we will estimate at a maximum of 40%) would qualify as patient registries and would likely be registered in the RoPR. Therefore, we use 1,520 (3,800*0.40) in Exhibits 1 and 2 below as a very rough, but high, estimation of the potential number of respondents who will enter registries into the RoPR annually. The actual number of respondents will depend on a variety of factors and could vary widely. It should be remembered that mandates could evolve making registration in the RoPR mandatory. Our estimates therefore attempt to factor an upper threshold for volume.

Each respondent will enter a new RoPR record only once and is estimated to take 45 minutes. An estimated 50% (760 records) of RoPR records will be updated once a year and will take about 15 minutes. This estimate is based on a query of ClinicalTrials.gov which showed that about 50% of observational studies registered in ClinicalTrials.gov had been updated in the past year. The total respondent burden is estimated to be 1,330 hours annually.

Exhibit 2 shows the estimated cost burden associated with the respondent's time to participate in the RoPR. The total cost burden is estimated to be $45,579 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
New RoPR Record	1,520	1	45/60	1,140

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Review/update RoPR Record	760	1	15/60	190
Total	2,280	na	na	1,330

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate †	Total cost burden
New RoPR Record	1,520	1,140	$34.27	$39,068
Review/update RoPR Record	760	190	34.27	6,511
Total	2,280	1,330	na	45,579

† Based upon the mean average wage for Healthcare Practitioners and Technical Occupations, May National Occupational Employment and Wage Estimates, U.S. Department of Labor, Bureau of Labor Statistics. Available at: *http://www.bls.gov/oes/current/oes_nat.htm#29–0000.*

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to the government to create and maintain the RoPR for 3 years. The total cost is estimated to be $3,184,333.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$2,318,509	$772,836
Project Management	409,149	136,383
Overhead	456,675	152,225
Total	3,184,333	1,061,444

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 6, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–3911 Filed 2–22–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Mechanical Prophylaxis of Venous Thromboembolism (VTE)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Scientific Information Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from manufacturers of antithrombotic medical devices. Scientific information is being solicited to inform our Comparative Effectiveness of Pharmacologic and Mechanical Prophylaxis of Venous Thromboembolism Among Special Populations Review, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information on this device will improve the quality of this comparative effectiveness review. AHRQ is requesting this scientific information and conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173.

DATES: Submission Deadline on or before March 26, 2012.

ADDRESSES: *Online submissions: http://effectivehealthcare.AHRQ.gov/index.cfm/submitscientific-information-packets/.* Please select the study for which you are submitting information from the list of current studies and complete the form to upload your documents.

Email submissions: ehcsrc@ohsu.edu (please do not send zipped files—they

are automatically deleted for security reasons).

Print submissions: Robin Paynter, Oregon Health and Science University, Oregon Evidence-based Practice Center, 3181 SW Sam Jackson Park Road, Mail Code: BICC, Portland, OR 97239–3098.

FOR FURTHER INFORMATION CONTACT: Robin Paynter, Research Librarian, Telephone: 503–494–0147 or Email: *ehcsrc@aohsu.edu.*

SUPPLEMENTARY INFORMATION: In accordance with Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, the Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a comparative effectiveness review of the evidence for pharmacologic and mechanical prophylaxis of venous thromboembolism (VTE) among special populations.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by systematically requesting information (e.g., details of studies conducted) from medical device industry stakeholders through public information requests, including via the **Federal Register** and direct postal and/or online solicitations. We are looking for studies that report on mechanical prophylaxis of venous thromboembolism among special populations, including those that describe adverse events, as specified in the key questions detailed below. The entire research protocol, including the key questions, is also available online at: *http://effectivehealthcare.ahrq.gov/index.cfm/search-for-guides-reviews-andreports/?pageaction=displayproduct&productid=928#4370.*

This notice is a request for industry stakeholders to submit the following:

- A current product label, if applicable (preferably an electronic PDF file).
- Information identifying published randomized controlled trials and observational studies relevant to the clinical outcomes. Please provide both a list of citations and reprints if possible.
- Information identifying unpublished randomized controlled trials and observational studies relevant to the clinical outcomes. If possible, please provide a summary that includes the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to withdrawn/follow-up/analyzed, and effectiveness/efficacy and safety results.
- Registered ClinicalTrials.gov studies. Please provide a list including the ClinicalTrials.gov identifier, condition, and intervention.

Your contribution is very beneficial to this program. AHRQ is not requesting and will not consider marketing material, health economics information, or information on other indications. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

In addition to your scientific information please submit an index document outlining the relevant information in each file along with a statement regarding whether or not the submission comprises all of the complete information available.

Please Note: The contents of all submissions, regardless of format, will be available to the public upon request unless prohibited by law.

The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/.*

The Key Questions

Question 1

What is the comparative effectiveness and safety of Inferior Vena Cava filters to prevent Pulmonary Emboli in hospitalized patients with trauma?

Question 2

1. What is the comparative effectiveness and safety of pharmacologic and mechanical strategies to prevent VTE in hospitalized patients with traumatic brain injury?

2. What is the optimal timing of initiation and duration of pharmacologic prophylaxis to prevent VTE in hospitalized patients with traumatic brain injury?

Question 3

What is the comparative effectiveness and safety of pharmacologic and mechanical strategies to prevent VTE in hospitalized patients with burns?

Question 4

What is the comparative effectiveness and safety of pharmacologic and mechanical strategies to prevent VTE in hospitalized patients with liver disease?

Question 5

What is the comparative effectiveness and safety of pharmacologic and mechanical strategies to prevent VIE in hospitalized patients receiving antiplatelet therapy?

Question 6

What is the comparative effectiveness and safety of pharmacologic and mechanical strategies to prevent VTE in patients having bariatric surgery?

Question 7

What is the comparative effectiveness and safety of pharmacologic prophylaxis for prevention of VTE during hospitalization of obese and underweight patients?

Question 8

What is the comparative effectiveness and safety of pharmacologic prophylaxis for prevention of VTE during hospitalization of patients with acute kidney injury, moderate renal impairment, or severe renal impairment not undergoing dialysis and patients receiving dialysis?

Dated: February 7, 2012.

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. 2012–3937 Filed 2–21–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day—12–0213]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Vital Statistics Report Forms (0920–0213, Expiration 04/30/2012)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The compilation of national vital statistics dates back to the beginning of the 20th century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. This submission requests approval to collect the monthly and annually summary statistics for three years.

The Monthly Vital Statistics Report forms provide counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces. Similar data have been published since 1937 and are the sole source of these data at the National level. The data are used by the Department of Health and Human Services and by other government, academic, and private research and commercial organizations in tracking changes in trends of vital events. The respondents are the registration officials in the 50 States, the District of Columbia, New York City, Puerto Rico, Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. In addition, 33 local (county) officials in New Mexico who record marriages occurring and divorces and annulments granted in each county of New Mexico will use this form. This form, which takes about 10 minutes to complete, is designed to collect counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces immediately following the month of occurrence.

The Annual Vital Statistics Occurrence Report Form collects final annual counts of marriages and divorces by month for the United States and for each State. The statistical counts requested on this form differ from provisional estimates obtained on the Monthly Vital Statistics Report Form in that they represent complete counts of marriages, divorces, and annulments occurring during the months of the prior year. These final counts are usually available from State or county officials about eight months after the end of the data year. The data are widely used by government, academic, private research, and commercial organizations in tracking changes in trends of family formation and dissolution. The 58 Respondents for the Annual Vital Statistics Occurrence Report Form, which takes about 30 minutes to complete, are registration officials in each State and Territory, the District of Columbia, and New York City.

There are no costs to respondents other than their time to participate; the data are routinely available in each reporting office as a by-product of ongoing activities. The total estimated annualized burden hours are 211.

TABLE 1—ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondent	Number of responses per respondents	Average burden per response (in hours)
State, Territory and New Mexico County officials.	Monthly Vital Statistics Report	91	12	10/60
State, Territory and Other officials	Annual Vital Statistics Occurrence Report	58	1	30/60

Kimberly S. Lane,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–4173 Filed 2–22–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day-12–0010]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly Lane, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The National Birth Defects Prevention Study (NBDPS), (OMB 0920–0010)—Reinstatement Without Change—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC has been monitoring the occurrence of serious birth defects and genetic diseases in Atlanta since 1967 through the Metropolitan Atlanta Congenital Defects Program (MACDP). The MACDP is a population-based surveillance system for birth defects in the 5 counties of Metropolitan Atlanta. Its primary purpose is to describe the spatial and temporal patterns of birth defects occurrence and serves as an early warning system for new Teratogens.

The National Birth Defects Prevention Study (NBDPS) formerly the Birth Defects Risk Factor Surveillance Study (BDRFS) began in 1997. The NBDPS is a case-control study of major birth defects that includes cases identified from existing birth defect surveillance registries in nine states, including metropolitan Atlanta. NBDPS control infants are randomly selected from birth certificates or birth hospital records. Mothers of case and control infants are interviewed using a computer-assisted telephone interview. The interview takes approximately one hour to complete. A maximum of four hundred interviews are planned per year per center, 300 cases and 100 controls resulting in a maximum interview burden of 400 hours for each of the centers each year.

Parents are also asked to collect cheek cells from themselves and their infant for DNA. The collection of cheek cells by the mother, father, and infant takes about 10 minutes per person. Each person rubs 1 brush inside the left cheek and 1 brush inside the right cheek for a total of 2 brushes per person. Collection of the cheek cells takes approximately 1–2 minutes, but the estimate of burden is 10 minutes to account for reading and understanding the consent form and specimen collection instructions and mailing back the completed kits. The anticipated maximum burden for collection of the cheek cells is 200 hours per center per year.

Information gathered from both the interviews and the DNA specimens have been and will continue to be used to study independent genetic and environmental factors as well as gene-environment interactions for a broad range of carefully classified birth defects.

This request is submitted to obtain OMB clearance for three additional years.

There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS PER CENTER

Respondents	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours
NBDPS case/control interview	400	1	1	400
Biologic Specimen Collection	1,200	1	10/60	200
Total				600

Kimberly S. Lane,

Acting Reports Clearance Officer.

[FR Doc. 2012–4170 Filed 2–22–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects: Data Collection for some of the Children's Bureau Funded Discretionary Programs.

Title: Performance Measurement On-Line Tool (PMOTOOL).

OMB No.: New Collection.

Description: The Performance Measurement On-Line Tool (PMOTOOL) was designed by the Children's Bureau to collect data, in an automated format, from specified discretionary grants funded by the Children's Bureau. The data collected by this instrument will be submitted by individual discretionary grantees funded under the following programs: Abandoned Infants Assistance Program, Infant Adoption Awareness Program, Adoption Opportunities Program, Child Abuse and Neglect Program and the Child Welfare Training Program. Grantees will submit this information on a semi-annual basis in conjunction with their semi-annual program progress report.

The purpose of this data collection is to assist the Children's Bureau in using the aggregated data to examine the social impact or public benefit under each funded federal program. These measurable outcomes will serve as evidence that the federally funded programs are making progress toward achieving broad, legislated program goals.

Respondents: Selected clusters of competitive grant programs funded by the Children's Bureau.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance Measurement On-Line Tool.	Abandoned Infants Assistance Program Range 20–30.	2 per fiscal year	One hour per response field	Range 40–60
Performance Measurement On-Line Tool.	Infant Adoption Awareness Program Range 6.	2 per fiscal year	One hour per response field	Range 12
Performance Measurement On-Line Tool.	Adoption Opportunities Program Range 45–55.	2 per fiscal year	One hour per response field	Range 90–110
Performance Measurement On-Line Tool.	Child Abuse and Neglect Program Range 30–40.	2 per fiscal year	One hour per response field	Range 60–80
Performance Measurement On-Line Tool.	Child Welfare Training Program Range 40–50.	2 per fiscal year	One hour per response field	Range 80–100

Estimated Total Annual Burden Hours: 282–350.

In compliance with the requirements of Section 506(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 Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email 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. 2012–4143 Filed 2–22–12; 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: Assets for Independence (AFI) Program Evaluation.

OMB No.: New Collection.

Description: The U.S. Department of Health and Human Services, Administration for Children and Families (ACF) is proposing a data collection activity as part of an experimental evaluation of the Assets for Independence (AFI) Program. The purpose of this study is to assess the impact of participation in AFI-funded individual development account (IDA) projects on the savings, asset purchases, and economic well-being of low-income individuals and families. The two primary research questions are:

- What is the impact of AFI project participation on short-term outcomes such as savings, asset purchases, and material hardship?
- How do specific API project design features affect short-term participant outcomes?

While some evaluations suggest that IDAs help low-income families save, rigorous experimental research is limited. Few studies have focused on API-funded IDAs, and few have tested alternative design features.

This evaluation—the first experimental evaluation of IDA projects operating under the Assets for Independence Act—will contribute importantly to understanding the effects of IDA project participation on project participants, particularly effects that occur within the first 12 months of participation, and how these short-term effects differ under alternative project designs. The evaluation will be conducted in two sites, with the random assignment of API-eligible cases to program and control groups. The evaluation consists of both an impact study and an implementation study. Data collection activities will span a three-year period.

Respondents: Respondent groups will include: (1) API-eligible participants and (2) API project administrators and staff members of the participating API grantees and their partnering organizations.

ANNUAL RESPONSE BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Estimated burden hours
Baseline survey: AFI-eligible participants	567	1	.50	284
Follow-up survey: AFI-eligible participants	482	1	.50	241
Implementation interview: Administrators and staff	10	1	1.00	10

Estimated Annual Response Burden Hours: 535.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families (ACF), Department of Health and Human Services, 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 in writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@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.

Dated: February 14, 2012.

Steven M. Hanmer,

Office of Planning Research and Evaluation; ACF, Reports Clearance Officer.

[FR Doc. 2012–3946 Filed 2–22–12; 8:45 am]

BILLING CODE 4184–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0129]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Licensing Provisions; Section 351(k) Biosimilar Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of February 15, 2012 (77 FR 8880). The document announced an opportunity for public comment on the proposed collection of certain information by the Agency. The document was published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3208,

Silver Spring, MD 20993–0002, 301–796–9148.

SUPPLEMENTARY INFORMATION: In FR Doc. 2012–3548, appearing on page 8880, in the **Federal Register** of Wednesday, February 15, 2012, the following correction is made:

On page 8880, in the second column, in the Docket No. heading, ''[Docket No. FDA–2012–N–1029]'' is corrected to read ''[Docket No. FDA–2012–N–0129]''.

Dated: February 16, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4168 Filed 2–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0674]

Draft Guidance for Industry: Food and Drug Administration Records Access Authority Under the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''FDA Records Access Authority Under Sections 414 and 704 of the Federal Food, Drug, & Cosmetic Act.'' This draft guidance provides updated information pertaining to FDA's authority to access and copy records relating to food. It is a revision of FDA's November 2005 guidance entitled ''Guidance for Industry and FDA Staff: Guidance for Records Access Authority Provided in Title III, Subtitle A, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Final Guidance.''

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 May 23, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Outreach and Information Center (HFS–009), Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: William A. Correll, Jr., Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1611.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''FDA Records Access Authority Under Sections 414 and 704 of the Federal Food, Drug, & Cosmetic Act.'' The draft guidance is intended for persons who manufacture, process, pack, hold, or import human or animal foods intended for distribution to consumers, institutions, or food processors. This draft guidance provides updated information pertaining to FDA's authority to access and copy records relating to food under sections 414(a) and 704(a)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 350c(a) and 21 U.S.C. 374(a)(1)(B), respectively), as amended by section 101 of the FDA Food Safety and Modernization Act (FSMA) (Pub. L. 111–353) of January 4, 2011.

Section 414 was originally added to the FD&C Act by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188). FSMA, signed into law on January 4, 2011, expanded FDA's access to records under section 414. Prior to the passage of FSMA, section 414(a) of the FD&C Act provided the Secretary (by delegation FDA) with authority to access records relating to food that was reasonably believed to be adulterated and to present a threat of serious adverse health consequences or death to humans or animals. Now under section 414(a)(1), as amended by FSMA, FDA's records access extends beyond records relating to the specific suspect article of food to records relating to any other article of food that FDA reasonably believes is likely to be affected in a similar manner. In addition, under section 414(a)(2), FDA can access records if it believes that there is a reasonable probability that the use of or exposure to an article of food, and any other article of food that FDA reasonably believes is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animals. Furthermore, FSMA revised section 704(a)(1)(B), which pertains to factory inspections, to refer to the amended version of section 414(a).

This updated draft guidance is intended to provide individuals in the human and animal food industries with an overview of FDA's authority to access and copy records. It provides practical information by answering common questions that cover a range of topics, including when FDA has the authority to access and copy records, the circumstances under which FDA is likely to request records, the types of records FDA may request and copy, and the consequences of refusing to provide records access. The Agency has adopted good guidance practices (GGPs) that set forth the Agency's policies and procedures for the development, issuance, and use of guidance documents (21 CFR 10.115). This draft guidance is being issued as level 1 guidance consistent with GGPs.

The draft guidance, when finalized, will represent the Agency's current thinking on its authority to access and copy records. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to information collection provisions 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). We conclude that these information collection provisions are exempt from OMB review under 44 U.S.C. 3518(c)(1)(B)(ii) and 5 CFR 1320.4(a)(2) as collections of information obtained during the conduct of a civil action to which the United States or any official or Agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an Agency against specific individuals or entities. The regulations in 5 CFR 1320.3(c) provide that the exception in 5 CFR 1320.4(a)(2) applies during the entire course of the investigation, audit or action, but only after a case file or equivalent is opened with respect to a particular party. Such a case file would be opened as part of the request to access records.

III. 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. 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.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/FoodGuidance*s or *http://www.regulations.gov.* Always access an FDA guidance document by using the Web sites listed previously to find the most current version of the guidance.

Dated: February 17, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4166 Filed 2–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0327]

International Conference on Harmonisation; Final Recommendation for the Revision of the Permitted Daily Exposure for the Solvent Cumene According to the Maintenance Procedures for the Guidance Q3C Impurities: Residual Solvents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final recommendation for the revision of the permitted daily exposure (PDE) for the solvent cumene according to the maintenance procedures for the guidance for industry entitled ''Q3C Impurities: Residual Solvents.'' The recommendation was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH).

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the recommendation to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002, or 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 the office in processing your requests. The draft recommendation may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft recommendation.

Submit electronic comments on the recommendation 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.

FOR FURTHER INFORMATION CONTACT:

Regarding the Q3C Guidance

David Jacobson-Kram, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6488, Silver Spring, MD 20993, 301–796–0175.

Regarding the ICH

Michelle Limoli, Office of International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3506, Silver Spring, MD 20993–0002, 301–796–4600.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory Agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In 1999, ICH instituted a Q3C maintenance agreement and formed a maintenance Expert Working Group (Q3C EWG). The agreement provided for the reconsideration of solvent PDEs and allowed for minor changes to the tables and list that include the existing PDEs. The agreement also provided that new solvents and PDEs could be added to the tables and list based on adequate toxicity data. In the **Federal Register** of February 12, 2002 (67 FR 6542), FDA briefly described the process for proposing future revisions to the PDEs. In the same notice, the Agency announced its decision to delink the tables and list from the Q3C guidance and create a stand alone document entitled ''Q3C—Tables and List'' to facilitate making changes recommended by ICH.

II. Revised PDE for Cumene

In the **Federal Register** of July 20, 2010 (75 FR 42098), FDA published a notice announcing the availability of a draft recommendation for the revision of the PDE for cumene according to the ICH maintenance procedures. The notice gave interested persons an opportunity to submit comments by September 20, 2010.

After consideration of the comments received and revisions to the guidance, a final draft of the recommendation was submitted to the ICH Steering Committee and endorsed by the three participating regulatory Agencies in February 2011.

The final recommendation addresses the safety classification of cumene. When the Q3C guidance was published in 1997 (62 FR 67377, December 24, 1997), cumene was listed as a class 3

solvent (i.e., a solvent with low toxicity). The Q3C EWG reviewed new toxicity data derived from a carcinogenicity study performed by the National Toxicology Program. The new data suggest a positive systemic carcinogenic effect, and this observation raises the toxicity associated with this solvent. The final recommendation is that cumene be placed into class 2. A PDE of 0.7 milligrams per day and a concentration limit of 70 parts per million are being declared for this solvent. The analysis and recommendation are available for review on the Internet (see section V of this document on electronic access). The final recommendation is also available from the Division of Drug Information (see **ADDRESSES**). The Agency will revise the tables in the guidance ''Q3C—Tables and List'' to reflect the ICH final recommendation for cumene.

The final recommendation for the solvent cumene is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The revised PDE for the solvent cumene contained in the revised guidance ''Q3C—Tables and List'' represents the Agency's current thinking on this topic. 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 statutes and regulations.

III. 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. Identify comments with the docket number found in brackets in the heading of this document. The recommendation and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the Q3C guidance documents at *http://www.regulations.gov, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.fda.gov/;BiologicsBlood;Vaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Information on the Q3C maintenance process as well as proposals, data analysis, and draft and final recommendations for revisions to the tables and list are available at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm125820.htm.*

Dated: February 16, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4164 Filed 2–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Request for Nominations for Voting Members on a Public Advisory Committee; Risk Communication Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Risk Communication Advisory Committee, Office of Planning, Office of Policy and Planning, Office of the Commissioner.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Nominations received on or before April 23, 2012 will be given first consideration for membership on the Risk Communication Advisory Committee. Nominations received after April 23, 2012 will be considered for nomination to the committee as later vacancies occur.

ADDRESSES: All nominations for membership should be sent electronically to *cv@oc.fda.gov* or by mail to the Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5103, Silver Spring, MD 20993–0002.

FOR FURTHER INFORMATION CONTACT: Regarding all nomination questions for membership, the primary contact is: Lee L. Zwanziger, Risk Communication Staff, Office of Planning, Office of Policy and Planning, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–9151, Fax: 301–847–8611, *RCAC@FDA.HHS.GOV.*

Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's Web site by using the following link: *http://www.fda.gov/AdvisoryCommittees/default.htm.*

SUPPLEMENTARY INFORMATION: FDA is requesting nomination for voting members on the Risk Communication Advisory Committee.

I. General Description of the Committee Duties

The Risk Communication Advisory Committee advises the Commissioner of Food and Drugs or designee on methods to effectively communicate risks associated with products regulated by the Food and Drug Administration and in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and any other product for which the Food and Drug Administration has regulatory responsibility.

The Committee reviews and evaluates strategies and programs designed to communicate with the public about the risks and benefits of FDA-regulated products so as to facilitate optimal use of these products. The Committee also reviews and evaluates research relevant to such communication to the public by both FDA and other entities. It also facilitates interactively sharing risk and benefit information with the public to enable people to make informed independent judgments about use of FDA-regulated products.

II. Criteria for Voting Members

The Committee consists of a core of 15 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in fields such as social marketing, health literacy, and other relevant areas. Members will include experts on risk communication, experts on emerging postmarket drug risks and individuals knowledgeable about and experienced in the work of patient, consumer, and health professional organizations. Almost all non-Federal members of this committee serve as Special Government Employees. Some members will be selected to provide experiential insight on the communication needs of the various groups who use FDA-regulated products. The latter may include patients and patients' family members, health professionals, communicators in health, medicine and science, and persons affiliated with consumer, specific disease, or patient safety advocacy groups. Members will be invited to serve for terms of up to 4 years.

III. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on the advisory committee. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business address and/or home address, telephone number, and email address if available. Nominations must also specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: February 16, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–4139 Filed 2–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Dates and Times: March 8, 2012, 9 a.m. to 5 p.m. EST. March 9, 2012, 9 a.m. to 12:30 p.m. EST.

Place: Parklawn Building (and via audio conference call), Conference Room 10–65, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Thursday, March 8, from 9 a.m. to 5 p.m. (EST) and on Friday, March 9, from 9 a.m. to 12:30 p.m. (EST). The public can join the meeting via audio conference call by dialing 1–800–369–3104 (on March 8 & 9) and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the March meeting will include, but are not limited to: Updates from the Division of Vaccine Injury Compensation (DVIC), the Department of Justice, the National Vaccine Program Office, the Immunization Safety Office (Centers for Disease Control and Prevention), the National Institute of Allergy and Infectious Diseases (National Institutes of Health), and the Center for Biologics, Evaluation, and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV Web site (*http://www.hrsa.gov/vaccinecompensation/accv.htm*) prior to the meeting. Agenda items are subject to change as priorities dictate.

Public Comment: Persons interested in attending the meeting in person or providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or email: *aherzog@hrsa.gov*. Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by email, mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the public comment period. Public participation and ability to comment will be limited to space and time as it permits.

FOR FURTHER INFORMATION CONTACT: Anyone requiring additional information regarding the ACCV should contact Annie Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593; email: *aherzog@hrsa.gov*.

Dated: February 15, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–4225 Filed 2–22–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Opinions and Perspectives About the Current Blood Donation Policy for Men Who Have Sex With Men

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Opinions and Perspectives about the Current Blood Donation Policy for Men Who Have Sex with Men. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The current policy for blood donation in the U.S. with respect to men who have sex with men (MSM) is that any man who discloses having had sex with another man since 1977 is deferred indefinitely from donating. However, data from donors who have tested disease marker positive and were interviewed regarding potential risk factors suggest that some individuals continue to donate blood without disclosing MSM activity in contravention of the policy. In the 1980s there were surveillance studies of risk factors among donors who were determined to be HIV positive in pre-donation testing: Results indicated MSM behavior to be a risk factor for 56% of male donors. In addition, as part of the Retrovirus Epidemiology Donor Study (REDS), when anonymously surveyed by paper and pencil mailed surveys, 1.2% of male blood donors reported MSM behavior.

In a 2007 study conducted in Sweden, 19% of 334 MSM who responded to a survey that was included in a monthly publication targeted to the Lesbian, Gay, Bisexual and Transgender (LGBT) community reported donating blood at least one-time since 1985. The authors suggested that MSM donors may be motivated by perceived discrimination, particularly younger MSM.

Recent publications from the United Kingdom have reported what are likely the only population-based assessment of non-compliance with a similar restriction on blood donation for the MSM population as in the U.S.; this

study was conducted in 2009 and 2010 and also estimated opinions about and self-reported intended compliance with the MSM deferral policy in place in the United Kingdom at that time. Note, the policy in the United Kingdom was modified in November 2011 and MSM in the United Kingdom are now allowed to donate if they have not been sexually active for a one-year period before donation.

Data similar to those collected in Sweden and the United Kingdom are not available for the U.S. Potential changes to the current MSM policy for blood donation requires additional data, including information about motivating factors and compliance with the current MSM policy or a modified policy in the MSM population and in current blood donors. Speculative analyses have been conducted but do not directly address important considerations related to this policy such as the current level of compliance (in the MSM population) and non-compliance (in the blood donor population). While many scientists and ethicists have expressed opinions in support or against modification of the current MSM policy for blood donation, there is a lack of data that directly addresses important aspects of this policy debate. The proposed study will build off the studies conducted in Sweden and the United Kingdom and will collect directly relevant information on this topic by estimating the prevalence of compliance and non-compliance with the current MSM policy and assessing motivations for blood donation in the U.S. MSM population. Three research aims drive this study's protocols to provide valuable evidence on the motivations and compliance behaviors in the MSM and blood donor populations. The four geographic areas where the study will be conducted include the State of Connecticut, Western Pennsylvania, Southern Wisconsin, and the Bay Area of California.

The first aim seeks to assess opinions about and common themes within the MSM population with respect to blood donation and the current MSM policy. Specifically, within a population of self-identified MSM in the U.S., what common themes can be identified regarding knowledge and opinions of current blood donation eligibility, and would opinions, including self-reported intended compliance, improve if the current MSM policy were changed to a deferral of a defined shorter duration? Another objective is to use what is learned in the focus groups to help select proper venues for identifying MSM who might be interested in participating in a comprehensive survey to assess compliance and non-compliance with the current MSM policy (see second aim).

The second aim seeks to assess compliance and non-compliance in the MSM population with the current MSM blood donation policy by confidentially surveying two populations. One survey will be conducted in the MSM community to provide better estimates of compliance and non-compliance with the current policy and a second survey will be conducted in male blood donors to evaluate how frequently men who have had sex with another man since 1977 are donating blood. The surveys will be conducted using an instrument that includes common content to maximize the comparability of the responses. Both surveys will be conducted using Internet-based techniques and currently available software (SurveyGizmo, *www.surveygizmo.com*).

The third aim seeks to assess motivations for donating in the group of self-identified MSM who are active blood donors in the U.S. Participants from the four geographic areas who report donating blood or the intention to donate will be asked to participate in confidential qualitative telephone interviews to identify their reasons for donating or wanting to donate blood.

Frequency of Response: Once. *Affected Public:* Individuals. *Type of Respondents:* Males 18 years old or older. The annual reporting burden is as follows: *Estimated Number of Respondents:* 4864; *Estimated Number of Responses per Respondent:* 1 per respondent for 4844 respondents and 2 per respondent for 20 respondents; *Average Burden of Hours per Response:* 1.5 hours for Aim 1, 0.33 hour for Aim 2, and 1.0 hour for Aim 3; and *Estimated Total Annual Burden Hours Requested:* 1,700. The annualized total cost to all respondents is estimated at: $13,600 (based on $8.00 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Study Aims	Estimated Annual Number of Respondents	Estimated Number of Responses per Respondent	Average Burden Hours per Response	Estimated Total Annual Burden Hours Requested
Aim 1—Focus Groups	64	1	1.5	96
Aim 2.1—Web interview	1,600	1	0.33	528
Aim 2.2—Web interview	3,200	1	0.33	1056
Aim 3	*20	1	1	20

*Aim 3 respondents are a subset of the respondents included in Aim 2.

Request For Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) 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 or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Simone Glynn, MD, Project Officer/ICD Contact, Two Rockledge Center, Suite 9142, 6701 Rockledge Drive, Bethesda, MD 20892, or call 301– 435–0065, or Email your request to: *glynnsa@nhlbi.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: February 9, 2012.

Keith Hoots,

Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH.

Dated: February 13, 2012.

Lynn Susulske,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2012–4211 Filed 2–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Application for Collaboration With the NIH Center for Translational Therapeutics (NCTT)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Center for Advancing Translational Sciences (NCATS), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 11, 2011, page 69743–69744 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Application for collaboration with the NIH Center for Translational Therapeutics (NCTT) . *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Programs at the NCTT provide opportunities to partner with and gain access to both common and specifically rare and neglected disease through a variety of programs delivering assay development, screening, hit to lead chemistry, lead optimization, chemical biology studies, drug development capabilities, expertise, and clinical/regulatory resources in a collaborative environment with the goal of moving promising therapeutics into human clinical trials. NCTT uses an application and evaluation process to select collaborators. Selected investigators provide the drug project starting points and ongoing biological/disease expertise throughout the project. *Frequency of Response:* Once per year. *Affected Public:* Research scientists. *Type of Respondents:* not-for-profits, for-profit, governmental. The annual reporting burden is as follows: *Estimated Number of Respondents:* 170. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours Per Response:* 1. *Estimated Total Annual Burden Hours Requested:* 510.

ESTIMATES OF HOUR BURDEN

Forms	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Online Collaborator Solicitation	170	1	1	170
NCTT Project Information Template	170	1	1	170
Solicitation Instructions (TRND)	100	1	1	100
Solicitation Instructions (BrIDGs)	70	1	1	70
Total				510

The annualized cost to respondents is estimated at: $21,261. Capital Costs are $0. Operating Cost is roughly $14,333 for the database to accept and coordinate responses.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Helen Gift, Chief, Disease Prevention and Health Promotion Branch, DEODP, NIDCR, NIH, Natcher Building, Room 3AN–44D, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number 301–594–5579 or Email your request, including your address to: *GiftH@de45.nidr.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: February 15, 2012.

John McKew,

Chief, Preclinical Development Branch, NIH Center for Translational Therapeutics, National Center for Advancing Translational Sciences, National Institutes of Health.

[FR Doc. 2012–4212 Filed 2–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development Proposed Collection; Comment Request; NEXT Generation Health Study

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Child Health and

Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection:

Title: NEXT Generation Health Study.

Type of Information Collection Request: Reinstatement.

Need and Use of Information Collection:

The goal of this research is to continue to obtain data on adolescent health and health behaviors annually for seven years beginning in the 2009–2010 school year from a national probability sample of adolescents. The transition from high school to post high school years is a critical period for changes in adolescent health risk behaviors. This information will enable the improvement of health services and programs for youth. The study will provide needed information about the health of U.S. adolescents and influences on their health.

The study has collected information on adolescent health behaviors and social and environmental contexts for these behaviors annually for three years beginning in the 2009–2010 school year. This study will continue to collect this information for an additional four years beginning in 2013. Self-report of health status, health behaviors, and health attitudes will be collected by online surveys.

TABLE 1—ANNUAL BURDEN FOR AFFECTED PUBLIC: SCHOOL-AGE CHILDREN, PARENTS AND SCHOOL ADMINISTRATORS

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Adolescents	2,600	1	1.0	2,600

The estimated annualized cost to respondents is $22,807 (Table 2). These costs were estimated for the 2013 survey year only, not the entire duration of the project. These estimates were calculated using 2008 Department of Labor figures for wages of average wage and salaried employees and assuming an annual increase of 1.25%, 50-week contract, and 40-hour week and that 60% of the cohort will be attending school or unemployed during the first year after high school, thereby reducing the average hourly earnings from $21.93 to $8.77.

TABLE 2—ANNUAL COST TO RESPONDENTS—2013 SURVEY YEAR ONLY

Type of respondents	Estimated total annual burden hours requested	Estimated annual earnings during survey	Average hourly earnings (with rounding)	Estimated cost during survey year
Adolescents	2,600	$16,908	$8.77	$22,807

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

No direct costs to the respondents themselves or to participating schools are anticipated.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) 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 or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Ronald Iannotti, Prevention Research Branch, Division of Epidemiology, Statistics, and Prevention Research, Eunice Kennedy Shriver National Institute of Child Health and Human Development, Building 6100, 7B05, 9000 Rockville Pike, Bethesda, Maryland, 20892–7510, or call non-toll free number (301) 435–6951 or Email your request, including your address to <*ri25j@nih.gov*>.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: February 15, 2012.

Sarah Glavin,

Deputy Director, Office of Science Policy, Analysis and Communications, National Institute of Child Health and Human Development.

[FR Doc. 2012–4222 Filed 2–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD); Notice of Meeting

Pursuant to the NIH Reform Act of 2006 (42 U.S.C. Sec. 281 (d)(4)), notice is hereby given that the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD) will host a meeting to enable public discussion of the Institute's proposal to reorganize its extramural program. The proposal seeks to capitalize on emerging scientific opportunities, while reducing barriers to scientific and interdisciplinary collaboration.

This public meeting will take place on March 7, 2012. Information is available on the Institute's Web site, *http://www.nichd.nih.gov/about/meetings/2012/030712.cfm,* where an agenda and any additional information for the meeting will be posted when available.

Organizing Institute: Eunice Kennedy Shriver National Institute of Child Health and Human Development.

Dates and Times: March 7, 2012, at 3 p.m.

Place: American Psychological Association, 750 First Street NE., 6th Floor Conference Room, Washington, DC 20002.

Agenda: A public discussion on the proposed reorganization plans for NICHD.

Contact Person: Lisa Kaeser, J.D., Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, Office of Program and Public Liaison, 31 Center Drive, MSC 2425, Building 31, Room 2A03, Bethesda, MD 20892, 301–496–0536, *kaeserl@mail.nih.gov.*

Members of the public wishing to attend must RSVP to the contact person on this notice by March 5, 2012 and bring a photo ID to facilitate security check-in at the building entrance.

Any interested person may file written comments by sending an email to *NICHDDirectorsOffice@mail.nih.gov,* by March 16, 2012. The statement should include the individual's name and, when applicable, professional affiliation.

Dated: February 14, 2012.

Alan E. Guttmacher,

Director, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health.

[FR Doc. 2012–4224 Filed 2–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Chairpersons, Boards of Scientific Counselors for Institutes and Centers at the National Institutes of Health, Notice of Meeting

Notice is hereby given of a meeting scheduled by the Deputy Director for Intramural Research at the National Institutes of Health (NIH) with the Chairpersons of the Boards of Scientific Counselors. The Boards of Scientific Counselors are advisory groups to the Scientific Directors of the Intramural Research Programs at the NIH. This meeting will take place on March 2, 2012, from 10 am to 2 pm, at the NIH, 1 Center Drive, Bethesda, MD, Building 1, Room 151. The meeting will include a discussion of policies and procedures that apply to the regular review of NIH intramural scientists and their work.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Joe Kleinman at the Office of Intramural Research, NIH, Building 1, Room 160, Tel. (301) 496–1921, Fax (301) 402–4273, or email *kleinmanj@mail.nih.gov* in advance of the meeting.

Dated: February 16, 2012.

Lawrence Tabak,

Deputy Director, NIH.

[FR Doc. 2012–4210 Filed 2–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information (RFI): Input Into the Deliberations of the Council of Councils Working Group on the Use of Chimpanzees in NIH-Supported Research

SUMMARY: The National Institutes of Health Council of Councils has established a working group to provide recommendations to the Council on: (1) Implementing the guiding principles and criteria contained within the Institute of Medicine report, ''Chimpanzees in Biomedical and Behavioral Research: Assessing the Necessity'', and (2) the size and placement of the research active and inactive populations of NIH-owned or -supported chimpanzees. See *http://dpcpsi.nih.gov/council/working_group.asp*x for the working group's charge and roster. The NIH is seeking public input to inform the working group's deliberations.

Background: The use of animals in research has enabled scientists to identify new ways to treat illness, extend life, and improve health and well-being. Chimpanzees are our closest relatives in the animal kingdom, providing exceptional insights into human biology and the need for special consideration and respect. While used very selectively and in limited numbers for medical research, chimpanzees have served an important role in advancing human health in the past. However, new methods and technologies developed by the biomedical community have provided alternatives to the use of chimpanzees in several areas of research.

In December 2010, the National Institutes of Health commissioned a study by the Institute of Medicine (IOM) to assess whether chimpanzees are or will be necessary for biomedical and behavioral research. The IOM issued its findings on December 15, 2011, with a primary recommendation that the use of chimpanzees in research be guided by a set of principles and criteria. The committee proposed three principles which must all be applied to analyze current and potential future research using chimpanzees.

1. That the knowledge gained must be necessary to advance the public's health;

2. There must be no other research model by which the knowledge could be obtained, and the research cannot be ethically performed on human subjects; and

3. The animals used in the proposed research must be maintained either in ethologically appropriate physical and social environments (i.e., as would occur in their natural environment) or in natural habitats.

Based on its deliberations, the IOM committee concluded that ''while the chimpanzee has been a valuable animal model in past research, most current use of chimpanzees for biomedical research is unnecessary.'' The committee also concluded, however, that the following areas may continue to require the use of chimpanzees: a limited number of ongoing studies on monoclonal antibody therapies, research on comparative genomics, and non-invasive studies of social and behavioral factors that affect the development, prevention, or treatment of disease. The committee was unable to reach consensus on the necessity of the chimpanzee for the development of prophylactic hepatitis C virus vaccine. While the committee encouraged NIH to continue development of non-chimpanzee models and technologies, it acknowledged that new, emerging, or re-emerging diseases may present challenges that may require the use of chimpanzees.

The Working Group is gathering input from various sources, including researchers, academic institutions, foundations, scientific societies, government and regulatory agencies, industry, and the public, to help inform the development of its recommendations to the Council of Councils on actions the NIH can take to implement the IOM recommendations and to consider the size and placement of the active and inactive populations of NIH-owned or -supported chimpanzees. The following are areas of their charge and examples of questions within each which might need to be considered when developing recommendations.

- Developing a plan for implementation of the IOM's guiding principles and criteria.
- Factors to consider in reviewing currently active NIH-supported research using chimpanzees to advise on which studies currently meet the principles and criteria defined by the IOM report

and advising on the process for closing studies if any do not comply with the IOM recommendations. For example: Criteria to assess ''minimally invasive'' procedures for comparative genomics and behavioral research and ''ethologically appropriate'' physical and social environments; Criteria to balance phasing out of the existing research without causing ''unacceptable losses to research programs'' or an unacceptable ''impact on the animals''.

• Factors to consider when advising on the size and placement of active and inactive populations of NIH-owned or-supported chimpanzees as a result of implementing the IOM recommendations. For example: Ways to address capacity issues that would accompany an increase in 'inactive' animals; Factors to consider in transitioning the animals that are newly inactive; How many and what would be the characteristics of animals held in reserve for future research, if any; The number of animals needed to maintain a viable number of research naïve animals but also genetic and social stability and sufficient diversity for unanticipated research needs.

• A review process for considering whether potential future use of the chimpanzee in NIH-supported research is scientifically necessary and consistent with the IOM principles. For example: Factors to consider in determining whether other models (e.g., in vitro, other in vivo) would be a ''suitable model'' for answering the research question; Research areas where alternative model development is recommended; Whether NIH should have a plan to maintain a minimal population of federally-owned chimpanzees and input on the design of the plan; Circumstances under which chimpanzees should be considered as a model for ''a new, emerging, or reemerging disease or disorder that may present challenges to treatment, prevention, and/or control that defy non-chimpanzee models and available technologies''; Characteristics of the oversight committee responsible for reviewing future research proposals and determining whether they are consistent with the IOM criteria and whether they can be conducted.

Information Requested: To ensure a thorough and comprehensive evaluation of the issues underlying the implementation of the IOM Report's guiding principles and criteria and the size and placement of NIH-owned or -supported animals, input is being sought from the biomedical research community, including:

• Foundations
• Scientific societies
• Government and regulatory agencies
• Industry
• NIH grantee institutions, and
• The public

Input is sought for each of the areas identified above. For any of the areas identified above and any other specific areas you believe are worthy of consideration by the working group, please identify the critical issues(s) and impact(s) on institutions, scientists, and the mission of NIH to perform research to improve human health.

Response to this RFI is voluntary. Responders are free to address any or all of the above items. Please note that the Government will not pay for response preparation or for the use of any information contained in the response. The NIH may make all responses available, including name of the responder. In addition, NIH will prepare and make available a summary of all input received which is responsive to this RFI.

How To Submit a Response: All comments must be submitted electronically to *http://grants.nih.gov/grants/guide/rfi_files/nih_chimp/add.cfm.* Comments must pertain to the category for which feedback is requested and must conform to the word limit indicated. Responses to this RFI will be accepted through April 10, 2012. You will see an electronic confirmation acknowledging receipt of your response, but will not receive individualized feedback on any suggestions. No basis for claims against the U.S. Government shall arise as a result of a response to this request for information or from the Government's use of such information.

FOR FURTHER INFORMATION CONTACT: Specific questions about this RFI should be directed to the following email address: *dpcpsi@od.nih.gov.*

Dated: February 13, 2012.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2012–4269 Filed 2–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Agency Information Collection Activities: Screening Requirements for Carriers

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.

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: Screening Requirements for Carriers. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 80375) on December 23, 2011, allowing for a 60-day comment period. One comment was received. 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 March 26, 2012.

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: Screening Requirements for Carriers.

OMB Number: 1651–0122.

Form Number: None.

Abstract: Section 273(e) of the Immigration and Nationality Act (8 U.S.C. 1323(e) the Act) authorizes the Department of Homeland Security to establish procedures which carriers must undertake for the proper screening of their alien passengers prior to embarkation at the port from which they are to depart for the United States, in order to become eligible for an automatic reduction, refund, or waiver of a fine imposed under section 273(a)(1) of the Act. To be eligible to obtain such an automatic reduction, refund, or waiver of a fine, the carrier must provide evidence to CBP that it screened all passengers on the conveyance in accordance with the procedures listed in 8 CFR 273.3.

Some examples of the evidence the carrier may provide to CBP include: A description of the carrier's document screening training program; the number of employees trained; information regarding the date and number of improperly documented aliens intercepted by the carrier at the port(s) of embarkation; and any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Carriers.

Estimated Number of Respondents: 65.

Estimated Time per Respondent: 100 hours.

Estimated Total Annual Burden Hours: 6,500.

Dated: February 17, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–4237 Filed 2–22–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Declaration of Person Who Performed Repairs

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the: Declaration of a Person Who Performed Repairs. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before April 23, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

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). 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 cost burden to respondents or record keepers from the collection of information (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: Declaration of Person Who Performed Repairs.

OMB Number: 1651–0048.

Form Number: None.

Abstract: The ''Declaration of Persons Who Performed Repairs or Alterations,'' as required by 19 CFR 10.8, is used in connection with the entry of articles entered under subheadings 9802.00.40 and 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS). Articles entered under these HTSUS provisions are articles that were in the U.S. and were exported temporarily for repairs. Upon their return, duty is only assessed on the value of the repairs performed abroad and not on the full value of the article. The declaration under 19 CFR 10.8 includes information such as a description of the article and the repairs, the value of the article and the repairs, and a declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts. The information in this declaration is used by CBP to determine the value of the repairs and assess duty only on the value of those repairs.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 10,236.

Estimated Number of Total Annual Responses: 20,472.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 10,236.

Dated: February 17, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–4236 Filed 2–22–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–14]

Notice of Submission of Proposed Information Collection to OMB; Manufactured Housing Dispute Resolution

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD collects this information to establish a manufactured housing dispute resolution program for states that choose not to operate their own dispute resolution programs. Form HUD–310–DRSC allows a state to certify that its state dispute resolution program meets the program requirements. Form HUD–311–DR allows persons who have initiated their participation in the federal dispute resolution program to submit the necessary information regarding their request to the federal program for further action there are two groups of respondents. The first group is the 50 states; the second group consists of individual purchasers, manufacturers, retailers, and installers of manufactured housing. HUD has engaged dispute resolution professionals from various federal agencies to review the submissions and then possibly contact the submitting party or agency, and to act as neutrals, mediators, and arbitrators.

DATES: *Comments Due Date: March 26, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0562) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at Colette. *Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Manufactured Housing Dispute Resolution.

OMB Approval Number: 2502–0562.

Form Numbers: HUD 310–DRSC, HUD–311–DR.

Description of the Need for the Information and its Proposed Use: HUD collects this information to establish a manufactured housing dispute resolution program for states that choose not to operate their own dispute resolution programs. Form HUD–310–DRSC allows a state to certify that its state dispute resolution program meets the program requirements. Form HUD–311–DR allows persons who have initiated their participation in the federal dispute resolution program to submit the necessary information regarding their request to the federal program for further action there are two groups of respondents. The first group is the 50 states; the second group consists of individual purchasers, manufacturers, retailers, and installers of manufactured housing. HUD has engaged dispute resolution professionals from various federal agencies to review the submissions and then possibly contact the submitting party or agency, and to act as neutrals, mediators, and arbitrators.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	228	1		2.241		511

Total Estimated Burden Hours: 511.

Status: Extension without change of a curtly approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 15, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–4142 Filed 2–22–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–16]

Notice of Submission of Proposed Information Collection to OMB Application for the Resident Opportunities and Self Sufficiency (ROSS) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Application for the ROSS grant program: Service Coordinators Program and Family Self-Sufficiency for Public Housing. Eligible applicants are PHAs, Tribes/TDHEs, Non-Profits and Resident Associations. Information collected will be used to evaluate applications and award grants through the HUD SuperNOFA process.

DATES: *Comments Due Date: March 26, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0229) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at Colette. *Pollard@hud.gov*. or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title Of Proposal: Application for the Resident Opportunities and Self Sufficiency (ROSS) Program.

OMB Approval Number: 2577–0229.

Form Numbers: HUD–2994–A, HUD–2991, HUD 52753, HUD 52755, SF424, SF424 Supplement, HUD 52752, HUD 52754, HUD 2880, HuD 2990, HUD 96010, SF LLL, HUD–52769, HUD–52768, HUD–2993, HUD 52651.

Description of the Need for the Information and Its Proposed Use:

Application for the ROSS grant program: Service Coordinators Program and Family Self-Sufficiency for Public Housing. Eligible applicants are PHAs, Tribes/TDHEs, Non-Profits and Resident Associations. Information collected will be used to evaluate applications and award grants through the HUD SuperNOFA process.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	700	1		3.464		2,425

Total Estimated Burden Hours: 2,425.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 16, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–4206 Filed 2–22–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–12]

Notice of Submission of Proposed Information Collection to OMB; Procedures for Appealing Section 8 Rent Adjustments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

When a rent increase for certain Section 8 subsidized projects is denied, in full or in part, owners may submit to HUD an appeal letter outlining the basis for the appeal. The appeal letter must be submitted to the Contract Administrator or the HUD Director for review. HUD uses the information to determine whether to deny or allow Section 8 rent increases.

DATES: *Comments Due Date:* March 26, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0446) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov*, or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Procedures for Appealing Section 8 Rent Adjustments.

OMB Approval Number: 2502–0446.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: When a rent increase for certain Section

8 subsidized projects is denied, in full or in part, owners may submit to HUD an appeal letter outlining the basis for the appeal. The appeal letter must be submitted to the Contract Administrator or the HUD Director for review. HUD uses the information to determine whether to deny or allow Section 8 rent increases.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	400	1		2		800

Total Estimated Burden Hours: 800.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 15, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–4154 Filed 2–22–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–13]

Notice of Submission of Proposed Information Collection to OMB; Multifamily Financial Management Template

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Uniform Financial Reporting Standards (UFRS) regulation requires HUD's multifamily housing program participants to submit financial data electronically, using generally accepted accounting principles, in a prescribed format. Electronic submissions of this data require use of a template. HUD uses this information to monitor the owners' compliance with regulatory requirements and to assess fiscal performance.

DATES: *Comments Due Date:* March 26, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0551) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; email Colette Pollard at Colette. *Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Multifamily Financial Management Template.

OMB Approval Number: 2502–0551.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The Uniform Financial Reporting Standards (UFRS) regulation requires HUD's multifamily housing program participants to submit financial data electronically, using generally accepted accounting principles, in a prescribed format. Electronic submissions of this data require use of a template. HUD uses this information to monitor the owners' compliance with regulatory requirements and to assess fiscal performance.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	20,774	1		2.589		53,784

Total Estimated Burden Hours: 53,784.

Status: Extension without change of a curtly approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 15, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–4145 Filed 2–22–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5500–FA–29]

Announcement of Funding Awards for the McKinney-Vento HMIS Technical Assistance (HMIS TA) Fiscal Year 2011

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards for HUD'S Fiscal Year 2011 McKinney-Vento HMIS Technical Assistance (HMIS–TA).

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the McKinney-Vento HMIS Technical Assistance program. This announcement contains the names of the awardees and amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Julie Hovden, Director, Technical Assistance Division, Office of Community Planning and Development, 451 Seventh Street SW., Room 7218, Washington, DC 20410–7000; telephone (202) 402–4496 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339. For general information on this and other HUD programs, visit HUD's Homelessness Resource Exchange at *www.hudhre.info,* HUD's Web site at *www.hud.gov,* or call Community Connections at 1–800–998–9999.

SUPPLEMENTARY INFORMATION: The Fiscal Year 2011 McKinney-Vento HMIS Technical Assistance program was designed to provide technical assistance to communities on the implementation and operation of homeless management information systems, including data collection and analysis and performance reporting through the selection of technical assistance (TA) providers for this program.

The competition was announced in the HMIS–TA NOFA published October 17, 2011 (FR–5500–N–29) and closed on November 15, 2011. The NOFA allowed for up to $7 million for Homeless Management Information System (HMIS) data collection, reporting and research, including the Annual Homeless Assessment Report (AHAR) TA activities. Applications were rated and selected for funding on the basis of selection criteria contained in the Notice. For the Fiscal Year 2011 competition, 4 awards totaling $6,809,000 were awarded to 4 distinct technical assistance providers nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and the amounts of the awards in Appendix A to this document.

Dated: February 15, 2012.

Clifford D. Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

Appendix A

Recipient	State	Amount
Abt Associates	MA	$2,436,500
Cloudburst Consulting Group	MD	1,584,000
ICF International	VA	1,644,500
National Center on Family Homelessness	MA	1,144,000
Total		6,809,000

[FR Doc. 2012–4201 Filed 2–22–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2012–N039; FXFR1334088TWG0W4–123–FF08EACT00]

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight. This notice announces a TAMWG meeting, which is open to the public.

DATES: TAMWG will meet from 10 a.m. to 4 p.m. on Thursday, March 22, 2012.

ADDRESSES: The meeting will be held at the Weaverville Victorian Inn, 2051 Main Street, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: *Meeting Information:* Nancy J. Finley, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; telephone: (707) 822–7201. *Trinity River Restoration Program (TRRP) Information:* Robin Schrock, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093; telephone: (530) 623–1800; email: *rschrock@usbr.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the TAMWG. The meeting will include discussion of the following topics:

- Designated Federal Officer (DFO) updates,
- Election new chair and vice chair,
- FACA 101,
- Executive Director's report,
- TMC chair report,
- Flow scheduling.

Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed.

Dated: February 16, 2012.

Nancy Finley,

Field Supervisor, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. 2012–4169 Filed 2–22–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of rate adjustments.

SUMMARY: The Bureau of Indian Affairs (BIA) owns, or has an interest in, irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We are notifying you that we have adjusted the irrigation assessment rates at several of our irrigation projects and facilities to reflect current costs of administration, operation, maintenance, and rehabilitation.

DATES: *Effective Date:* The irrigation assessment rates shown in the tables as final are effective as of January 1, 2012.

FOR FURTHER INFORMATION CONTACT: For details about a particular BIA irrigation project or facility, please use the tables in the **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project or facility is located.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rate Adjustment was published in the **Federal Register** on September 20, 2011 (76 FR 58293) to propose adjustments to the irrigation assessment rates at several BIA irrigation projects. The public and interested parties were provided an opportunity to submit written comments during the 60-day period that ended November 21, 2011.

Did the BIA defer or change any proposed rate increases?

No.

Did the BIA receive any comments on the proposed irrigation assessment rate adjustments?

Written comments were received related to the proposed rate adjustment for the San Carlos Irrigation Project for 2013.

What issues were of concern to the commenter?

The commenter raised concerns specific to the San Carlos Irrigation Project on the proposed rates about the following issues: (1) The methodology for O&M rate setting; and (2) the appropriateness of specific O&M budget items relating to obligated cash, staffing levels, encroachment permit fees, re-survey of the reservoir area/capacity table, emergency reserves, cylinder gate replacement at Coolidge Dam, and periodic adjustments in Project budgets.

The Following Comments Are Specific to the San Carlos Irrigation Project

Written comments relating to the proposed rate adjustment for the San Carlos Irrigation Project-Joint Works (Project) were received by letters dated July 15, 2011, August 26, 2011, and November 21, 2011, from the San Carlos Irrigation and Drainage District (District). The District raised several issues in its letters. The BIA's summary of the District's issues and the BIA's responses are provided below.

Comment: The BIA's methodology for setting the 2013 O&M assessment rate was unreasonable.

Response: The methodology used by the BIA to determine the 2013 O&M assessment rate was reasonable. Based on a review of historical income and expenditures, a budget of projected income and expenditures is developed approximately two years before the O&M assessments are collected and expenses incurred. The BIA relies on financial reports generated by the Federal Financial System for reviewing past expenditures and projecting a future budget and expenditures. Procurement files and records maintained by the Project are also reviewed and considered. For example, with regard to development of the 2013 budget, the BIA reviewed: (1) The year-end reconciled income and expenditure information for 2010; (2) available income and expenditure information for 2011; (3) previous budget projections for 2013; and (4) other information relevant to potential future Project expenses, such as cost information for replacement of Coolidge Dam cylinder gates.

The BIA provided the District with draft budget and supporting information and held budget fact-finding meetings on November 22, 2010, January 14, 2011, February 22, 2011, and March 23, 2011. The Project received feedback from the District and other water users during these meetings, and the Project finalized its recommendation to the Western Regional Director for the 2013 O&M assessment rate on May 5, 2011. In addition, in accordance with BIA policy, the BIA held meetings with Project water users (including the District) to discuss O&M rates and maintenance needs.

Issue: The BIA does not manage obligated cash properly, specifically with regard to the Transcon Contract.

Response: The Transcon Contract ended on September 30, 2011, and the Project de-obligated $56,335.15 of unexpended funds in the contract. These funds will be carried over as available cash for Project use in FY 2012.

Issue: The District objects to current and future staffing levels for the Project's Irrigation System Operators.

Response: The Project has been discussing the Irrigation System Operator (ISO) staffing levels with the water users, including the District, in recent years in response to the accidental deaths of two Project ISOs in 2006 and 2010. At the end of the Project fact finding process for 2010, the Project re-evaluated the ISO staffing levels, reduced the number of positions from four to three, and established the positions at GS 04/05 levels. The discussion with the water users on this matter, including the District, helped the Project to re-evaluate and implement appropriate measures for ISO staffing. The Project is in the process of recruiting the vacant ISO positions. The Project anticipates an annual savings of approximately $80,000 from this change in ISO staffing levels. The proposed O&M budget for 2013 reflects three ISO positions at the Project. The BIA understands that the ISO staffing levels may need to be re-evaluated in 3–5 years when rehabilitation of the Project Joint Works is completed by the District and the Gila River Indian Community pursuant to section 203(d) of the Arizona Water Settlements Act (Pub. L. 108–451).

Issue: The BIA should not use O&M collections to defray the Project costs for reviewing encroachment permit requests.

Response: Environmental compliance activities associated with the Project O&M responsibilities, such as encroachment permit requests, are funded through O&M assessments and collections from the District and from Federal appropriations on behalf of the Indian Works. The BIA is legally obligated to perform these compliance activities and they benefit Project water users by ensuring that the environmental effects of Project activities, are understood. The Project will continue to use either contracts or staff for Federal environmental

compliance duties in furtherance of its O&M activities. The Project recently proposed a fee for encroachment permits and is in the process of finalizing a decision on the proposed fee. The Project notes that, historically, encroachment permits involve lands within the District. At the request of the water users, including the District, the Project is considering permit fees for encroachment permits which would help defray the Project costs for the permits.

Issue: The BIA should not use O&M collections to pay for the updated area/capacity table for San Carlos Reservoir.

Response: Coolidge Dam (Dam) and San Carlos Reservoir (Reservoir) are essential features of the Project. The Project's water delivery obligations from the Dam and Reservoir, pursuant to the Gila Decree and the Project's authorizing documents, require an accurate and up-to-date area/capacity table for the Reservoir. Therefore, the Project's use of O&M collections to update the Reservoir's area/capacity table is an appropriate use of O&M collections.

Issue: The Project's emergency reserve fund should be reduced.

Response: The Project's emergency reserve fund is within the range specified in the Emergency Reserve Fund Determination Guidelines in the August 2008 BIA National Irrigation Handbook. The BIA previously reduced the reserve fund from $800,000 to $400,000 following the transfer of certain maintenance responsibilities to the Joint Control Board. The BIA continues to be responsible for maintenance of Project wells and Coolidge Dam. Replacement of a single well is projected to cost between $250,000 and $300,000, and well replacement locations are being evaluated now based on technical assessments prepared by the Project and shared with the water users. The contract for well maintenance and repair services, which was awarded recently for the Project, involves routine annual well maintenance and repair and not well replacement costs. The BIA believes the reserve funds should be maintained as proposed, consistent with the Guidelines.

Issue: The amount budgeted for replacement of the Coolidge Dam cylinder gate should be reduced.

Response: Replacing the cylinder gates at Coolidge Dam with a single bulkhead gate is not appropriate. Replacing inoperable gates with a bulkhead gate for each tower provides the greatest security to Project water users. Using a single bulkhead gate to close both cylinder gates is inadvisable for several reasons: (1) The bulkhead gate may not fit in both gate towers because the towers likely do not have the same dimensions; (2) a crane capable of lifting the bulkhead gate may not be available locally or within a reasonable timeframe; (3) the single bulkhead gate could close only one conduit at a time; and (4) the road crossing the crest of the dam would need to be closed when the bulkhead gate is removed or installed.

The Project completed a technical review process with the water users, including the District, whereby all available technical and cost information related to the cylinder gates was reviewed and discussed. The Project's next step in the planning process is to update and finalize the detailed technical specifications and a government cost estimate. These documents will be used by the Project for construction solicitation pursuant to the Federal procurement process.

Issue: The Project makes material deviations from approved budgets without providing documentation and consultation with the District.

Response: The budget shared by the BIA during the Fact Finding process is not binding on the BIA. The BIA must update its O&M budget regularly to reflect actual expenditures and unplanned contingencies. The initial O&M budget cannot be expected to remain unchanged because it is prepared two years in advance of the fiscal year in which the Project performs the actual O&M work. The BIA provides the District with an update on the Project's budget at nearly every monthly District Board meeting, at regularly scheduled water user meetings, and upon specific request from the District. For the 2012 and 2013 O&M budgets, the BIA used templates proposed by the District to display the budget information.

Does this notice affect me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects, or if you have a carriage agreement with one of our irrigation projects.

Where can I get information on the regulatory and legal citations in this notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the Internet site for the Government Printing Office at *www.gpo.gov.*

What authorizes you to issue this notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

Whom can I contact for further information?

The following tables are the regional and project/agency contacts for our irrigation projects and facilities:

Project name	Project/Agency contacts
Northwest Region Contacts	
Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, Telephone: (503) 231–6702	
Fort Hall Irrigation Project	Dean Fox, Superintendent, Fort Hall Agency, P.O. Box 220, Fort Hall, ID 83203–0220, Telephone: (208) 238–2301.
Wapato Irrigation Project	Edwin Lewis, Project Administrator, Wapato Irrigation Project, P.O. Box 220, Wapato, WA 98951–0220, Telephone: (509) 877–3155.

Project name	Project/Agency c6ontacts
Rocky Mountain Region Contacts	
Ed Parisian, Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 316 North 26th Street, Billings, Montana 59101, Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Stephen Pollock, Superintendent, Greg Tatsey, Irrigation Project Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544, Superintendent, (406) 338–7519, Irrigation Project Manager.
Crow Irrigation Project	Vianna Stewart, Superintendent, Vacant, Irrigation Project Manager, P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672, Superintendent, (406) 638–2863, Irrigation Project Manager.
Fort Belknap Irrigation Project	Cliff Hall, Superintendent, Vacant, Irrigation Project Manager, (Project operations and management contracted to Tribes), R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901, Superintendent, (406) 353–8454, Irrigation Project Manager (Tribal Office).
Fort Peck Irrigation Project	Rhonda Knudsen, Superintendent, P.O. Box 637, Poplar, MT 59255, Huber Wright, Acting Irrigation Project Manager, 602 6th Avenue North, Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent, (406) 653–1752, Irrigation Project Manager.
Wind River Irrigation Project	Ed Lone Fight, Superintendent, Vacant, Irrigation Project Manager, P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810, Superintendent, (307) 332–2596, Irrigation Project Manager.
Southwest Region Contacts	
William T. Walker, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road, Albuquerque, New Mexico 87104, Telephone: (505) 563–3100.	
Pine River Irrigation Project	John Waconda, Superintendent, Reginald Howe, Irrigation Systems Operator, Irrigation Engineer, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent, (970) 563–9484, Irrigation Engineer.
Western Region Contacts	
Bryan Bowker, Regional Director, Bureau of Indian Affairs, Western Regional Office, 2600 N. Central Ave., 4th Floor Mailroom, Phoenix, Arizona 85004, Telephone: (602) 379–6600.	
Colorado River Irrigation Project	Janice Staudte, Superintendent, Gary Colvin, Acting Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Joseph McDade, Superintendent, 1555 Shoshone Circle, Elko, NV 89801, Telephone: (775) 738–0569.
Fort Yuma Irrigation Project	Irene Herder, Superintendent, 256 South Second Avenue, Suite D, Yuma, AZ 85364, Telephone: (928) 782–1202.
San Carlos Irrigation Project Joint Works	Ferris Begay, Acting Project Manager, Clarence Begay, Irrigation Manager, P.O. Box 250, Coolidge, AZ 85228, Telephone: (520) 723–6203.
San Carlos Irrigation Project Indian Works.	Cecilia Martinez, Superintendent, Joe Revak, Supervisory General Engineer, Pima Agency, Land Operations, P.O. Box 8, Sacaton, AZ 85247, Telephone: (520) 562–3326, Telephone: (520) 562–3372.
Uintah Irrigation Project	Dinah Peltier, Acting Superintendent, Dale Thomas, Irrigation Manager, P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4300, Telephone: (435) 722–4341.
Walker River Irrigation Project	Athena Brown, Superintendent, 311 E. Washington Street, Carson City, NV 89701, Telephone: (775) 887–3500.

What irrigation assessments or charges are adjusted by this notice?

The rate table below contains the current rates for all irrigation projects where we recover costs of administering, operating, maintaining, and rehabilitating them. The table also contains the final rates for the 2012 season and subsequent years where applicable. An asterisk immediately following the name of the project notes where the 2012 rates are different from the 2011 rates.

Project name	Rate category	Final 2011 rate	Final 2012 rate
Fort Hall Irrigation Project *	Basic per acre	$42.00	$45.50
	Minimum Charge per tract	31.50	32.50
Fort Hall Irrigation Project—Minor Units *	Basic per acre	22.50	23.50
	Minimum Charge per tract	31.50	32.50
Fort Hall Irrigation Project—Michaud *	Basic per acre	43.00	45.00
	Pressure per acre	59.50	62.00
	Minimum Charge per tract	31.50	32.50
Wapato Irrigation Project—Toppenish/Simcoe Units *	Minimum Charge for per bill	17.00	20.00
	Basic per acre	17.00	20.00
Wapato Irrigation Project—Ahtanum Units *	Minimum Charge per bill	17.00	20.00
	Basic per acre	17.00	20.00
Wapato Irrigation Project—Satus Unit *	Minimum Charge for per bill	63.00	65.00
	"A" Basic per acre	63.00	65.00
	"B" Basic per acre	70.00	70.00

Project name	Rate category	Final 2011 rate	Final 2012 rate
Wapato Irrigation Project—Additional Works	Minimum Charge per bill	67.00	67.00
	Basic per acre	67.00	67.00
Wapato Irrigation Project—Water Rental	Minimum Charge	72.00	72.00
	Basic per acre	72.00	72.00
Rocky Mountain Region Rate Table			
Blackfeet Irrigation Project	Basic-per acre	19.00	19.00
Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units)*.	Basic-per acre	22.80	23.30
Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units)*.	Basic-per acre	22.50	23.00
Crow Irrigation Two Leggins Drainage District	Basic-per acre	2.00	2.00
Fort Belknap Irrigation Project	Basic-per acre	14.75	14.75
Fort Peck Irrigation Project	Basic-per acre	24.70	24.70
Wind River Irrigation Project	Basic-per acre	20.00	20.00
Wind River Irrigation Project—LeClair District* (see Note #1)	Basic-per acre	21.00	20.00
Wind River Irrigation Project—Crow Heart Unit	Basic-per acre	14.00	14.00
Wind River Irrigation Project—Riverton Valley Irrigation District	Basic-per acre	16.00	16.00
Southwest Region Rate Table			
Pine River Irrigation Project	Minimum Charge per tract	50.00	50.00
	Basic-per acre	15.00	15.00

Project name	Rate category	Final 2011 rate	Final 2012 rate	Final 2013 rate
Western Region Rate Table				
Colorado River Irrigation Project.	Basic per acre up to 5.75 acre-feet.	$54.00	$54.00	To be determined.
	Excess Water per acre-foot over 5.75 acre-feet.	$17.00	$17.00.	
Duck Valley Irrigation Project.	Basic per acre	$5.30	$5.30.	
Fort Yuma Irrigation Project (See Note #2).	Basic per acre up to 5.0 acre-feet.	$86.00	$86.00—BIA rate is final, Reclamation rate to be determined, see Note #2.	
	Excess Water per acre-foot over 5.0 acre-feet.	$14.00	$14.00—BIA rate is final, Reclamation rate to be determined, see Note #2.	
	Basic per acre up to 5.0 acre-feet (Ranch 5).	$86.00	$86.00—BIA rate is final, Reclamation rate to be determined, see Note #2.	
San Carlos Irrigation Project (Joint Works)* (See Note #3).	Basic per acre	$25.00	$30.00	$30.00.
	Proposed 2012—2013 Construction Water Rate Schedule:			
		Off Project Construction	On Project Construction—Gravity Water.	On Project Construction—Pump Water
	Administrative Fee	$300.00	$300.00	$300.00
	Usage Fee	$250.00 per month	No Fee	$100.00 per acre-foot.
	Excess Water Rate†	$5 per 1000 gal	No charge	No charge.
	† The excess water rate applies to all water used in excess of 50,000 gallons in any one month.			
San Carlos Irrigation Project (Indian Works)* (See Note #4).	Basic per acre	$68.00	$73.00	To be determined.
Uintah Irrigation Project*	Basic per acre	$15.00	$16.00.	
	Minimum Bill	$25.00	$25.00.	
Walker River Irrigation Project*.	Indian per acre	$22.00	$25.00.	
	non-Indian per acre	$22.00	$25.00.	

* Notes irrigation projects where rates are proposed for adjustment.

Note #1—The O&M rate varies yearly based upon the budget submitted by the LeClair District.

Note #2—The O&M rate for the Fort Yuma Irrigation Project has two components. The first component is the O&M rate established by the Bureau of Reclamation (BOR), the owner and operator of the Project. The BOR rate for 2012 is yet to be determined. The second component is for the O&M rate established by BIA to cover administrative costs including billing and collections for the Project. The 2012 BIA rate has been reduced to $1.50/acre. The rates shown include the 2011 Reclamation rate and the 2012 BIA rate.

Note #3—The 2012 rate was established by final notice in the FEDERAL REGISTER on May 9, 2011 (76 FR 26759). In addition, a Construction Water Rate Schedule for the San Carlos Irrigation Project—Joint Works is now being formally established. The rate schedule establishes the fees assessed for use of irrigation water for non-irrigation purposes.

Note #4—The 2012 O&M rate for the San Carlos Irrigation Project—Indian Works has three components. The first component is the O&M rate established by the San Carlos Irrigation Project—Indian Works, the owner and operator of the Project; this rate is proposed to be $35 per acre. The second component is for the O&M rate established by the San Carlos Irrigation Project—Joint Works and is determined to be $30 per acre. The third component is the O&M rate established by the San Carlos Irrigation Project Joint Control Board and is proposed to be $8 per acre.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

To fulfill its consultation responsibility to tribes and tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues related to water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by Project, Agency, and Regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to these entities when we adjust irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies) as this rate adjustment is implemented. This is a notice for rate adjustments at BIA-owned and operated irrigation projects, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

These rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Unfunded Mandates Reform Act of 1995

These rate adjustments do not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $130 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, the Department of the Interior (Department) is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Takings (Executive Order 12630)

The Department has determined that these rate adjustments do not have significant ''takings'' implications. The rate adjustments do not deprive the public, state, or local governments of rights or property.

Federalism (Executive Order 13132)

The Department has determined that these rate adjustments do not have significant Federalism effects because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

Civil Justice Reform (Executive Order 12988)

In issuing this rule, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires December 31, 2012.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

Data Quality Act

In developing this notice, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Dated: February 9, 2012.

Larry Echo Hawk,

Assistant Secretary, Indian Affairs.

[FR Doc. 2012–4200 Filed 2–22–12; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0212–9442; 2200–3200–665]

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 January 28, 2012. 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 March 9, 2012. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

COLORADO

Costilla County

Capilla de Viejo San Acacio, (Culebra River Villages of Costilla County MPS) 14152 Cty. Rd. 14.8, Viejo San Acacio, 12000091

Iglesia de San Pedro y San Pablo, (Culebra River Villages of Costilla County MPS) 11423 Cty. Rd. 21, San Pedro, 12000090

Iglesia de la Inmaculada Concepcion, (Culebra River Villages of Costilla County MPS) 21529 Cty. Rd. P.6, Charma, 12000089

FLORIDA

Monroe County

Sombrero Key Light, (Light Stations of the United States MPS) Offshore approx. 5.5 mi. SSW. of Marathon, 12000092

GEORGIA

Muscogee County

Mott—Fox—Huguley House, 2027 6th Ave., Columbus, 12000093

IOWA

Benton County

Iowa Canning Company Seed House Building, 201 1st Ave., Vinton, 12000094

Clayton County

Elkader Downtown Historic District, (Elkader Downtown MPS) Portions of 100 & 200 blks. of Main St. & side streets., Elkader, 12000095

Linn County

Bohemian Commercial Historic District, (Cedar Rapids, Iowa MPS) Roughly bounded by 9th Ave. SE., 4th St. SE., 14th Ave. SE., 15th Ave. SW., C St. SW., 17th Ave. SW. & A St. SW., Cedar Rapids, 12000096

MARYLAND

Baltimore County

Anneslie Historic District, Roughly bounded by York, Maplewood, & Windwood Rds., & Regester Ave., Towson, 12000097

MASSACHUSETTS

Essex County

American Woolen Company Townhouses, 1–14 Wood Way, 1–14 Washington Way, 1–14 Prospect Way, Lawrence, 12000098

Suffolk County

Terminal Storage Warehouse District, 267–281 Medford St., 40 & 50 Terminal St., Boston, 12000099

MISSOURI

Polk County

Dimmitt, George, Memorial Hospital, 102 S. Bolivar Rd., Humansville, 12000101

St. Louis Independent city

Reber Place Historic District, Roughly bounded by Arsenal St., Kingshighway Blvd., Southwest Ave. and alley E. of Hereford St., Saint Louis (Independent City), 12000100

NEBRASKA

Douglas County

Capitol Garage, 202 N. 19th St., Omaha, 12000102

St. Richard's Catholic School and Rectory, 4318 & 4320 Fort St., Omaha, 12000103

Lancaster County

Beatrice Creamery Company Lincoln Plant, 726 L St., Lincoln, 12000104

Madison County

Mathewson—Gerecke House, 1202 W. Norfolk Ave., Norfolk, 12000105

Morrill County

Greenwood Stage Station, Address Restricted, Bridgeport, 12000106

Nuckolls County

Superior City Hall and Auditorium, 450 N. Commercial, Superior, 12000107

NEW JERSEY

Camden County

Macedonia African Methodist Episcopal Church, 261–265 Spruce St., Camden City, 12000108

Morris County

Millington Schoolhouse, 1802 Long Hill Rd. (Long Hill Township), Millington, 12000109

OHIO

Ross County

Chillicothe Veterans Administration Hospital, (United States Second Generation Veterans Hospitals) 17273 OH 104, Chillicothe, 12000110

OKLAHOMA

Cleveland County

Downtown Norman Historic District (Boundary Increase), Roughly bounded by Webster, Gray, Porter, Eufaula, James Garner, & Comanche, Norman, 12000111

Custer County

Heerwald Site, Address Restricted, Clinton, 12000112

Kay County

Santa Fe Depot, Near jct. of S. 1st & W. Oklahoma, Ponca City, 12000113

Osage County

Drummond, Fred & Adeline, House, 305 N. Price Ave., Hominy, 12000114

TENNESSEE

Carroll County

Court Theatre, 155 Court Sq., Huntingdon, 12000115

Chester County

National Teacher's Normal and Business College Administration Building, 158 E. Main St., Henderson, 12000116

Gibson County

Gibson County Training School, 1041 S. Harris St., Milan, 12000117

Hamilton County

Highland Park Methodist Episcopal Church, South, 1918 Union Ave., Chattanooga, 12000118

Rutherford County

Murfreesboro Veterans Administration Hospital Historic District, (United States Second Generation Veterans Hospitals) 3400 Lebanon Pike, Murfreesboro, 12000119

Old First Presbyterian Church and Old City Cemetery, 390 E. Vine St., Murfreesboro, 12000120

Williamson County

Fewkes Group Archeological Site (Boundary Increase), (Mississippian Cultural Resources of the Central Basin (AD 900–1450) MPS) 8400 Moores Ln., Brentwood, 12000121

VIRGINIA

Amherst County

Clifford—New Glasgow Historic District, Patrick Henry Hwy. & Fletchers Level Rd., Clifford, 12000122

Fauquier County

Old Denton, 7064 Young Rd., The Plains, 12000123

[FR Doc. 2012–4130 Filed 2–22–12; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–302 and 731–TA–454 (Third Review)]

Fresh and Chilled Atlantic Salmon From Norway

Determination

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 and antidumping duty order on fresh and chilled Atlantic salmon from Norway 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.[2]

[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] Commissioner David S. Johanson did not participate in these five-year reviews.

Background

The Commission instituted these reviews on January 3, 2011 (76 FR 166) and determined on April 8, 2011 that it would conduct full reviews (76 FR 22422, April 21, 2011). 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 July 1, 2011 (76 FR 38698). The hearing was held in Washington, DC, on November 30, 2011, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these reviews to the Secretary of Commerce on February 16, 2011. The views of the Commission are contained in USITC Publication 4303 (February 2012), entitled *Fresh and Chilled Atlantic Salmon from Norway: Investigation Nos. 701–TA–302 and 731–TA–454 (Third Review*).

Issued: February 17, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–4199 Filed 2–22–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–865–867 (Second Review)]

Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* February 6, 2012.

FOR FURTHER INFORMATION CONTACT: Barbara Elkins (202–205–2253), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 6, 2012, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 67473, November 1, 2011) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of these reviews will be placed in the nonpublic record on March 12, 2012 and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before March 15, 2012 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by March 15, 2012. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E–Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response). The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 17, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–4196 Filed 2–22–12; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by Core Pipe Products, Inc.; Ezeflow USA Inc.-Flowline Division; Shaw Alloy Piping Products, Inc.; Taylor Forge Stainless, Inc.; and by Filmag Italia, srl to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–472 (Third Review)]

Silicon Metal From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on silicon metal from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* February 6, 2012.

FOR FURTHER INFORMATION CONTACT: Barbara Elkins (202–205–2250), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On February 6, 2012, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 67476, November 1, 2011) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.[2]

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on March 1, 2012, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before March 6, 2012 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by March 6, 2012. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E–Filing, available on the Commission's Web site at *http://edis.usitc.gov*.

Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response). The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 17, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–4197 Filed 2–22–12; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Chairman Deanna Tanner Okun is not participating in this review.

[3] The Commission has found the response submitted by Globe Metallurgical Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on February 14, 2012, the United States lodged a proposed Consent Decree with Defendants Bradley Mining Company (''BMC'') and Frederick Bradley, Trustee for the Worthen Bradley Family Trust (''Bradley Trust''), in *United States* v. *Bradley Mining Company, et al.,* Civil Action No. 3:08–CV–03968 TEH (N.D. Cal.), with respect to the Sulphur Bank Mercury Mine Superfund Site in Lake County, California (''Sulphur Bank Site''), and with Defendant BMC in a consolidated case, *United States* v. *Bradley Mining Company,* Civil Action No. 3:08–CV–05501 TEH (N.D. Cal.), with respect to the Stibnite Mine Site in Valley County, Idaho (''Stibnite Mine Site'').

The proposed Consent Decree resolves the following claims: (1) on August 19, 2008, the United States, on behalf of the United States Environmental Protection Agency (''EPA''), filed a complaint under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, against BMC and Bradley Trust, seeking recovery of response costs incurred by EPA related to releases of hazardous substances at the Sulphur Bank Site; and (2) on September 26, 2008, the United States, on behalf of EPA and the United States Department of Agriculture Forest Service (''Forest Service''), filed a complaint under CERCLA section 107 against BMC seeking recovery of response costs incurred by EPA and the Forest Service related to the releases of hazardous substances at the Stibnite Mine Site. The proposed Consent Decree also resolves claims in the Sulphur Bank case brought by the Elem Tribe against BMC, the Bradley Trust, and the United States for cost recovery

under CERCLA section 107(a) as well as damages for injury to, destruction of, or loss of natural resources related to the Sulphur Bank Site and the costs of any natural resource damage assessments under CERCLA section 107(a)(4)(c). Finally, the Consent Decree resolves counterclaims against the United States brought by BMC and Bradley Trust in the Sulphur Bank case and by BMC in the Stibnite Mine case.

Financial information provided by the Settling Defendants indicated an inability to pay. However, pursuant to the proposed Consent Decree, the United States will receive a payment of $505,000 from BMC's insurer, a percentage of future insurance recoveries and future income, and the proceeds from the future sale of parcels of land. In addition, Defendant Bradley Trust will transfer property to the Elem Tribe. In exchange, the proposed Consent Decree provides Bradley Trust with a covenant not to sue and contribution protection for the Sulphur Bank Site, and provides BMC with a covenant not to sue and contribution protection for the Sulphur Bank Site, the Stibnite Mine Site, and five additional mining sites: the Mt. Diablo Mercury Mine in Contra Costa County, California; the Springfield Scheelite Mine in Valley County, Idaho; the IMA Mine in Lemhi County, Idaho; the Bretz Mine in Malheur County, Oregon; and the Opalite Mine in Malheur County, Oregon. Finally, settling federal agencies will pay $7.2 million for EPA's response costs at the Sulphur Bank Site and will receive a covenant not to sue and contribution protection for the Sulphur Bank Site and the Stibnite Mine Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Bradley Mining Company, et al.,* D.J. Ref. 90–11–3–07593.

The Consent Decree may be examined at U.S. EPA Region IX at 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $17.75 (without appendices) or $32.50 (with appendices) (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–4114 Filed 2–22–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. SG Interests I LTD., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Colorado in *United States of America* v. *SG Interests I, Ltd. et al.,* Civil Action No. 12–CV–00395–RPM–MEH. On February 15, 2012, the United States filed a civil antitrust Complaint alleging that the SG Interests I Ltd. and SG Interests VII Ltd. (SGI) and Gunnison Energy Corporation (GEC) agreed to jointly bid for natural gas leases in the Ragged Mountain Area of Western Colorado, which were auctioned by the United States Department of the Interior's Bureau of Land Management in February and May 2005, thereby violating Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed the same day as the Complaint, requires SGI and GEC to each pay $275,000 to the United States to settle the antitrust action and a related *qui tam* case also filed in United States District Court for the District of Colorado, *United States of America ex rel. Anthony B. Gale* v. *Gunnison Energy Corporation,* Civil Action No. 09–CV–02471–RBJ–KLM.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Colorado. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to William H. Stallings, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20530, (telephone: 202–514–9323).

Patricia A. Brink,

Director of Civil Enforcement.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. No. 12–cv–00395–RPM–MEH

UNITED STATES OF AMERICA, U.S. Department of Justice, Antitrust Division, 450 5th Street NW., Suite 8000, Washington, DC 20530, Plaintiff, v. *SG INTERESTS I, LTD., SG INTERESTS VII, LTD., 2 Houston Center, 909 Fannin, Suite 2600, Houston, TX 77010,* and *GUNNISON ENERGY CORPORATION, 1801 Broadway, Suite 1200, Denver, CO 80202,* Defendants.

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, and Section 4A of the Clayton Act, as amended, 15 U.S.C. 15a, to obtain equitable and legal remedies against Defendants Gunnison Energy Corporation (''GEC''), and SG Interests I, Ltd. and SG Interests VII, Ltd. (collectively, ''SGI'') for their violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. 1.

Prior to 2005, GEC and SGI were separately engaged in exploration and development of natural gas resources in the Ragged Mountain Area (or ''RMA'') of Western Colorado.[1] Recognizing that they would be the primary competitors to acquire three natural gas leases for exploration and development on federal lands in the RMA that were to be auctioned by the Bureau of Land Management (''BLM'') in February 2005, GEC and SGI executed a Memorandum of Understanding (the ''MOU'') on the eve of the

[1] For purposes of this Complaint, we define the Ragged Mountain Area as covering roughly a region encompassed by the Townships 10S through 12S and Ranges 89W through 91W, as designated by the Public Land Survey System, comprising portions of Delta, Gunnison, Mesa and Pitkin Counties.

auction pursuant to which they agreed not to compete for the leases. Instead, under the MOU, SGI would bid at the auction and, if they won, assign a fifty percent interest in the acquired leases to GEC. The parties extended the MOU to include a fourth lease auctioned by the BLM in May 2005. As a result of the MOU, the United States received substantially less revenue from the sale of leases than it would have had SGI and GEC competed at the auctions.

I. DEFENDANTS

1. SG Interests I, Ltd. and SG Interests VII, Ltd. are Texas limited partnerships with their headquarters in Houston, Texas. The managing partner of both of the limited partnerships is Gordy Oil Company, a Texas corporation. SGI was formed for the purpose of developing natural gas resources in the Ragged Mountain Area. SGI holds, in whole or in part, interests in federal leases on approximately 40,000 acres within the Ragged Mountain Area. It also owns, in whole or in part, interests in and is the operator for natural gas pipelines in the Ragged Mountain Area.

2. GEC is a Delaware corporation with its principal place of business in Denver, Colorado. GEC holds, in whole or in part, interests in federal leases on approximately 52,000 acres within the Ragged Mountain Area. It also owns, in whole or in part, interests in and is the operator for natural gas pipelines in the Ragged Mountain Area.

II. JURISDICTION AND VENUE

3. The United States files this Complaint under Section 4 of the Sherman Act, 15 U.S.C. 4, and Section 4A of the Clayton Act, 15 U.S.C. 15a, seeking equitable relief and damages from Defendants' violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

4. The Court has jurisdiction over this matter pursuant to 15 U.S.C. 4 and 15a and 28 U.S.C. 1331 and 1337.

5. Defendants waive any objection to venue and personal jurisdiction in this judicial district for the purpose of this Complaint.

6. SGI's and GEC's activities are in the flow of and substantially affect interstate commerce.

III. FEDERAL OIL AND GAS LEASE AUCTIONS

7. The BLM manages natural resources on federal lands, including rights to subsurface oil and natural gas. The BLM sells onshore oil and gas leases to private parties, granting leaseholders the exclusive right to explore and develop oil and gas deposits on their leases. The initial term of a BLM onshore oil and gas lease is ten years.

8. Private parties, such as oil and gas companies, typically acquire onshore oil and gas leases on federal lands at auctions which each regional BLM office conducts as often as quarterly. Auctions are conducted orally and openly, with each lease starting at a minimum bid of two dollars per acre. Bidding on a lease ends when no other person attending the auction bids a higher price than the then outstanding offer. In addition to the amount of the bid, the winning bidder must make annual rental payments during the life of the lease and, if development is successful, pay a 12.5 percent royalty on the value of production from the leases. Revenues from BLM leases flow to the United States Treasury.

9. At the conclusion of the auction, each successful bidder must submit a lease bid form, which constitutes a legally binding lease offer for the amount of the winning bid. By signing the form, the bidder also certifies that it is qualified to bid and did not engage in collusion.

10. In advance of each auction, each regional BLM office publishes a Notice of Competitive Lease Sale identifying the lease parcels to be offered at the quarterly auction. Private parties may nominate lands for BLM to consider offering at auction by submitting an ''expression of interest.''

IV. THE UNLAWFUL AGREEMENT

11. In 2001, SGI and GEC began independently acquiring and developing gas leases in the Ragged Mountain Area. Prior to 2003, their activities generally focused on different parts of the Ragged Mountain Area, with SGI acquiring leases on the eastern side of the area (which is now designated by BLM as the Bull Mountain Unit Area) while GEC acquired leases along the southern boundary. However, over the course of 2003 and 2004, their interests began to overlap as each sought pipelines and leases held by BDS International, LLC and affiliated entities (collectively, ''BDS'') and as the BLM leased additional parcels.

12. Conflicting efforts by SGI and GEC to acquire assets held by BDS resulted in litigation between Defendants in 2004. In September 2004, SGI submitted expressions of interest to the BLM for additional lands within the Ragged Mountain Area, including parcels adjacent to leases held by GEC.

13. In October 2004, GEC and SGI met to discuss the prospect of settling the litigation and entering into a collaboration to develop the Ragged Mountain Area. The potential collaboration contemplated joint acquisition of the BDS assets, improvements to the existing BDS pipelines, and joint development of new pipelines to serve the area. These discussions, however, quickly foundered.

14. On or about December 23, 2004, the BLM announced a Notice of Competitive Lease Sale that included three tracts in the Ragged Mountain Area, COC068350 (comprising 320 acres), COC068351 (comprising 1280 acres) and COC068352 (comprising 1404 acres). The three leases covered areas contained in SGI's September 2004 expression of interest. The auction was set to occur on February 10, 2005.

15. Both SGI and GEC were independently interested in certain of the tracts that would be auctioned and both likely would have bid—and bid against each other—at the February auction. On or about February 2, 2005, SGI and GEC embarked on discussions to forestall competing against one another for the three BLM leases to be auctioned. These discussions resulted in the drafting of the written MOU by attorneys for SGI and GEC that was executed by the parties on February 8, 2005, just two days before the February 10, 2005 auction.

16. Under the MOU, only SGI would bid at the auction for the three leases in the Ragged Mountain Area offered by the BLM at the February auction. SGI and GEC would jointly set a maximum price for SGI to bid for the three leases. If SGI successfully acquired the leases, it would assign a fifty percent interest to GEC at cost.

17. At the February auction, SGI bid for and obtained the three BLM leases covered by the MOU. GEC attended the auction, but, honoring the terms of the MOU, did not bid. SGI obtained COC068350, COC068351 and COC068352 for $72 per acre, $30 per acre and $22 per acre, respectively.

18. On or about May 10, 2005, SGI and GEC amended the MOU to include an additional lease, COC068490 (comprising 643 acres), in the Ragged Mountain Area set to be auctioned by the BLM on May 12, 2005. The parties agreed to bid as high as $300 per acre for this parcel. Though the defendants had recommenced their discussions regarding litigation settlement and a development collaboration in March 2005, they had not yet been able to reach terms of an agreement.

19. On May 12, 2005, SGI bid for and obtained COC068490 pursuant to the terms of the MOU. Again, GEC attended the auction but did not bid. SGI won the lease with a bid of only $2 per acre.

20. The MOU was not part of a procompetitive or efficiency enhancing collaboration. The defendants did not reach an agreement to engage in a broad collaboration to jointly acquire and develop leases and pipelines in the Ragged Mountain Area until the summer of 2005. The MOU was not ancillary to the latter agreement.

21. As a result of the MOU, the United States, through the BLM, received less revenue that it would have received had SGI and GEC competed for leases in the Ragged Mountain Area at the February and May 2005 auctions. Pursuant to the MOU, SGI and GEC successfully avoided bidding against one another for leases covering approximately 3650 acres. If SGI and GEC had bid against each other, the winner would have paid BLM a higher price.

V. VIOLATION ALLEGED

22. The United States hereby incorporates paragraphs 1 through 21.

23. The MOU between SGI and GEC unreasonably restrained competition for the acquisition of BLM leases in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

24. The United States was injured as a result of the unlawful agreement in that it received lower bid payments for leases at the BLM's February and May 2005 auctions than it would have absent the illegal agreement.

VI. PRAYER FOR RELIEF

Wherefore, Plaintiff prays:

25. That the Court adjudge and decree that the MOU constitutes an illegal restraint of trade in violation of Section 1 of the Sherman Act;

26. That the Court award Plaintiff treble damages for the losses it incurred as a result of Defendants' conduct;

27. That Plaintiff shall have such other relief, including equitable monetary relief, as the nature of this case may require and is just and proper to prevent the recurrence of the alleged violation and to dissipate the anticompetitive effects of the violation; and

28. That Plaintiff recover the costs of this action.

DATED: February 15, 2012.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES

s/Sharis A. Pozen
Sharis A. Pozen,
Acting Assistant Attorney General.
s/Leslie C. Overton
Leslie C. Overton,
Deputy Assistant Attorney General.
s/Patricia A. Brink
Patricia A. Brink,
Director of Civil Enforcement.
s/William H. Stallings
William H. Stallings,
Chief, Transportation, Energy & Agriculture Section.
s/Kathleen S. O'Neill
Kathleen S. O'Neill,
Assistant Chief, Transportation, Energy & Agriculture Section.
s/Sarah L. Wagner
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J. Richard Doidge,
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Attorneys for Plaintiff United States.

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2012, I mailed or served a copy of the Complaint by certified mail to the following:
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s/Sarah L. Wagner
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Attorney for Plaintiff United States.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 12–cv–00395–RPM–MEH

UNITED STATES OF AMERICA, Plaintiff, v. *SG INTERESTS I, LTD., SG INTERESTS VII, LTD.,* and *GUNNISON ENERGY CORPORATION,* Defendants.

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On February 15, 2012, the United States filed a civil antitrust complaint against Defendant Gunnison Energy Corporation (''GEC'') and Defendants SG Interests I, Ltd. and SG Interests VII, Ltd. (''SGI'') alleging that GEC and SGI violated Section 1 of the Sherman Act, 15 U.S.C. 1.

Prior to 2005, GEC and SGI were separately engaged in exploration and development of natural gas resources in the Ragged Mountain Area (or ''RMA'') of Western Colorado.[2] Recognizing that they would be the primary competitors to acquire three natural gas leases for exploration and development on federal lands in the RMA that were to be auctioned by the Bureau of Land Management (''BLM'') in February 2005, GEC and SGI executed a Memorandum of Understanding (the ''MOU'') on the eve of the auction pursuant to which they agreed not to compete for the leases. Instead, under the MOU, SGI would bid at the auction and then assign a fifty percent interest in the acquired leases to GEC. The parties extended the MOU to include a fourth lease auctioned by the BLM in May 2005. As a result of the MOU, the United States received substantially less revenue from the sale of leases than it would have had SGI and GEC competed at the auctions.

At the same time the Complaint was filed, the United States also filed an agreed-upon proposed Final Judgment that would remedy the violation by having SGI and GEC each pay damages of $275,000 to the United States. The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. Defendants

SG Interests I, Ltd. and SG Interests VII, Ltd. are Texas limited partnerships with their headquarters in Houston, Texas. The managing partner both of the limited partnerships is Gordy Oil Company, a Texas corporation. SGI was formed for the purpose of developing natural gas resources in the Ragged Mountain Area. SGI holds, in whole or in part, interests in federal leases on approximately 40,000 acres within the Ragged Mountain Area. It also owns, in whole or in part, interests in and is the operator for natural gas pipelines in the Ragged Mountain Area.

GEC is a Delaware corporation with its principal place of business in Denver, Colorado. GEC holds, in whole or in part, interests in federal leases on approximately 52,000 acres within the Ragged Mountain Area. It also owns, in whole or in part, interests in and is the operator for natural gas pipelines in the Ragged Mountain Area.

B. Oil and Gas Interests on Federal Lands

The federal government owns hundreds of millions of acres of land in the United States. The BLM manages natural resources on federal lands, including rights to subsurface oil and natural gas. The BLM sells onshore oil and gas leases to private parties, granting leaseholders the exclusive right to explore and develop oil and gas deposits found on their leased land. The initial term of a BLM onshore oil and gas lease is ten years.

Private parties, such as oil and gas companies, typically acquire onshore oil and gas leases on federal lands at auctions which each regional BLM office conducts as often as quarterly. In advance of each auction, the regional BLM office publishes a Notice of Competitive Lease Sale identifying the lease parcels to be offered at the quarterly auction. Private parties may nominate lands for BLM to consider offering at auction by submitting an ''expression of interest.'' Auctions are conducted orally and openly, with each

[2] For purposes of this case, we define the Ragged Mountain Area as covering roughly a region encompassed by the Townships 10S thru 12S and Ranges 89W thru 91W, as designated by the Public Land Survey System, comprising portions of Delta, Gunnison, Mesa and Pitkin Counties.

lease starting at a minimum bid of two dollars per acre. Bidding on a lease ends when no other person attending the auction bids a higher price than the then outstanding offer. In addition to the amount of the bid, the winning bidder must make annual rental payments during the life of the lease and, if development is successful, pay a royalty on the value of production from the leases. Revenues from BLM leases flow to the United States Treasury.

At the conclusion of an auction, each successful bidder must submit a lease bid form, which constitutes a legally binding lease offer for the amount of the winning bid. By signing the form, the bidder also certifies that it is qualified to bid and that the bid was ''arrived at independently'' and ''tendered without collusion with any other bidder for the purpose of restricting competition.''

A lease grants the leaseholder the exclusive right for ten years to drill for, extract, remove and dispose of the oil and gas on the leased land. A lessee may assign a lease, or a portion of a lease, to another party with approval from the BLM. Oil and natural gas leases expire at the end of their ten-year term, but may be extended for as long as the lease has at least one well capable of producing oil or natural gas.

C. The Alleged Violation

In 2001, SGI and GEC began independently acquiring and developing gas leases in the Ragged Mountain Area. Prior to 2003, their activities generally focused on different parts of the Ragged Mountain Area, with SGI acquiring leases on the eastern side of the area (which BLM has designated as the Bull Mountain Unit Area) while GEC acquired leases along the southern boundary. However, over the course of 2003 and 2004, their interests began to overlap as each sought pipelines and leases held by BDS International, LLC and affiliated entities (collectively, ''BDS'') and as the BLM leased additional parcels. Conflicting efforts by SGI and GEC to acquire assets held by BDS resulted in litigation between Defendants in 2004.

In September 2004, SGI submitted expressions of interest to the BLM for additional lands within the Ragged Mountain Area, including parcels adjacent to leases held by GEC.

In October 2004, GEC and SGI met to discuss the prospect of settling the litigation and entering into a collaboration to develop the Ragged Mountain Area. The potential collaboration contemplated joint acquisition of the BDS assets, improvements to the existing BDS pipelines, and joint development of new pipelines to serve the area. These discussions, however, quickly foundered.

On or about December 23, 2004, BLM announced a Notice of Competitive Lease Sale that included three tracts in the Ragged Mountain Area, COC068350 (comprising 320 acres), COC068351 (comprising 1280 acres) and COC068352 (comprising 1404 acres). The three leases covered areas contained in SGI's September 2004 expression of interest. The auction was set to occur on February 10, 2005.

Both SGI and GEC were independently interested in certain of the tracts that would be auctioned and both likely would have bid—and bid against each other—at the February auction. On or about February 2, 2005, SGI and GEC embarked on discussions to forestall competing against one another for the three BLM leases to be auctioned. These discussions resulted in the drafting of the written MOU by attorneys for SGI and GEC that was executed by the parties on February 8, 2005, just two days before the February 10, 2005 auction. The MOU was not part of a procompetitive or efficiency enhancing collaboration. The Defendants did not reach an agreement to engage in a broad collaboration to jointly acquire and develop leases and pipelines in the Ragged Mountain Area until the summer of 2005. The MOU was not ancillary to the latter agreement.

Under the MOU, only SGI would bid at the auction for the three leases in the Ragged Mountain Area offered by the BLM at the February auction. SGI and GEC would jointly set a maximum price for SGI to bid for the three leases. If SGI successfully acquired the leases, it would assign a fifty percent interest to GEC at cost.

At the February auction, SGI bid for and obtained the three BLM leases covered by the MOU. GEC attended the auction, but, honoring the terms of the MOU, did not bid. SGI obtained COC068350, COC068351 and COC068352 for $72 per acre, $30 per acre and $22 per acre, respectively.

On or about May 10, 2005, SGI and GEC amended the MOU to include an additional lease, COC068490 (comprising 643 acres), in the Ragged Mountain Area set to be auctioned by the BLM on May 12, 2005. The parties agreed to bid as high as $300 per acre for this parcel. Though the Defendants had recommenced their discussions regarding litigation settlement and a development collaboration in March 2005, they had not yet been able to reach terms of an agreement.

On May 12, 2005, SGI bid for and obtained COC068490 pursuant to the terms of the MOU. Again, GEC attended the auction but did not bid. SGI won the lease with a bid of only $2 per acre.

As a result of the MOU, the United States, through the BLM, received less revenue that it would have received had SGI and GEC competed for leases in the Ragged Mountain Area at the February and May 2005 auctions. Pursuant to the MOU, SGI and GEC successfully avoided bidding against one another for leases covering approximately 3650 acres. If SGI and GEC had bid against each other, the winner would have paid BLM a higher price.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment relates to a *qui tam* action captioned *United States ex rel. Anthony B. Gale v. Gunnison Energy Corporation, et al.,* Civil Action No. 09–cv–02471–RBJ–KLM (D. Colo.), and settlements with the United States Attorney's Office for the District of Colorado. Both this action and the *qui tam* action arise from common facts related to BLM auctions in February 2005 and May 2005 and the anticompetitive MOU.

For violations of Section 1 of the Sherman Act, the United States may seek equitable relief, including equitable monetary remedies. *See United States v. KeySpan Corp.,* 763 F. Supp. 2d 633, 638–641 (S.D.N.Y. 2011). Further, where the United States is an injured party by a Section 1 violation, it may seek damages. 15 U.S.C. 15a.

The proposed Final Judgment requires GEC and SGI to each pay $275,000, for a total of $550,000, to the United States within 10 days of entry of the Final Judgment pursuant to instructions provided by the United States Attorney for the District of Colorado. These payments will satisfy claims that the United States has against GEC and SGI under Section 1 of the Sherman Act, as alleged in this action, and the False Claims Act, as set forth in the separate agreements reached between GEC and SGI and the United States Attorney's Office for the District of Colorado (which are Attachments 1 and 2 to the proposed Final Judgment).[3]

As a result of the unlawful agreement in restraint of trade between GEC and SGI, the BLM received lower bid payments. The payment of damages to the United States reflects the likely

[3] The proposed Final Judgment does not preclude the United States from bringing an action against GEC or SGI for any antitrust claims arising from their acquisition and operation of the Ragged Mountain pipeline, as agreed in the Stipulation at paragraph 4.

additional bid revenue that the BLM would have received had SGI and GEC acted as independent competitors at the February and May 2005 auctions. Requiring GEC and SGI to pay damages in these circumstances will protect the public interest by deterring them and other parties from entering into similar anticompetitive agreements in the future.[4]

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: William H. Stallings, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States is satisfied, however, that the relief contained in the proposed Final Judgment remedies the violation of the Sherman Act alleged in the Complaint. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court is directed to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B); *see generally KeySpan Corp.,* 763 F. Supp. 2d at 637–38 (discussing Tunney Act standards); *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing standards for public interest determination). In considering these statutory factors, the court's inquiry is necessarily a limited one as the United States is entitled to ''broad discretion to settle with the Defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995).

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, the court's function is ''not to determine whether the proposed [d]ecree results in the balance of rights and liabilities that is the one that will *best* serve society, but only to ensure that the resulting settlement is within the *reaches* of the public interest.'' *KeySpan,* 763 F. Supp. 2d at 637 (quoting *United States* v. *Alex Brown & Sons, Inc.,* 963 F. Supp. 235, 238 (S.D.N.Y. 1997) (internal quotations omitted)). In making this determination, ''[t]he [c]ourt is not permitted to reject the proposed remedies merely because the court believes other remedies are preferable. [Rather], the relevant inquiry is whether there is a factual foundation for the government's decision such that its conclusions regarding the proposed settlement are reasonable.'' *Id.* at 637–38 (quoting *United States* v. *Abitibi-Consolidated Inc.,* 584 F. Supp. 2d 162, 165 (D.D.C. 2008)).[5] The government's predictions about the efficacy of its remedies are entitled to deference.[6]

[4] In 2005, GEC and SGI paid bids totaling approximately $94,000 for the four leases they acquired pursuant to the MOU, resulting in an average per acre price of approximately $25. By paying an additional $550,000, GEC and SGI will have been required to pay approximately $175 per acre, seven times its initial bid amount.

[5] *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981) (''The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.''). *See generally Microsoft, 56* F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[6] *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of

Continued

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel.* & *Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *KeySpan,* 763 F. Supp. 2d at 638 (''A court must limit its review to the issues in the complaint * * *.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[7]

proposed remedies, its perception of the market structure, and its views of the nature of the case).

[7] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone'').

VIII. DETERMINATIVE DOCUMENTS

In formulating the term of the proposed Final Judgment that requires GEC and SGI to each pay $275,000 to the United States in satisfaction of claims that the United States has against each Defendant under this antitrust cause of action and the False Claims Act, the United States considered two documents to be determinative documents within the meaning of the APPA: (1) the Settlement Agreement dated December 9, 2011 between the United States Attorney's Office for the District of Colorado, SGI, and Anthony Gale. This agreement settled False Claims Act claims between the United States, SGI, and Anthony Gale in Civil Action 09–cv–02471–RBJ–KLM (D. Colo.). A copy of this document is attached hereto as Attachment 1. (2) The Settlement Agreement dated February 14, 2012 between the United States Attorney's Office for the District of Colorado, GEC, and Anthony Gale. This agreement settled False Claims Act claims between the United States, GEC, and Anthony Gale in Civil Action 09–cv–02471–RBJ–KLM (D. Colo.). A copy of this document is attached hereto as Attachment 2.

Dated: February 15, 2012

Respectfully submitted,

s/Sarah L. Wagner/
Sarah L. Wagner,
U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 450 Fifth Street NW., Suite 8000, Washington, DC 20530.
Telephone: (202) 305–8915.
FAX: (202) 616–2441.
Email: *sarah.wagner@usdoj.gov.*
Attorney for Plaintiff United States.

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses: L. Poe Leggette, *pleggette@fulbright.com;* Timothy R. Beyer, *tbeyer@bhfs.com.*

s/Sarah L. Wagner/
Sarah L. Wagner,
U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 450 Fifth Street NW., Suite 8000, Washington, DC 20530.
Telephone: (202) 305–8915.
FAX: (202) 616–2441.
Email: *sarah.wagner@usdoj.gov.*
Attorney for Plaintiff United States.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 12–cv–00395–RPM–MEH

UNITED STATES OF AMERICA, Plaintiff, v. *SG INTERESTS I, LTD., SG INTERESTS VII, LTD.,* and *GUNNISON ENERGY CORPORATION,* Defendants.

FINAL JUDGMENT

Whereas Plaintiff, United States of America, filed its Complaint alleging that Defendants Gunnison Energy Corporation (''GEC'') and SG Interests I, Ltd. and SG Interests VII, Ltd. (collectively ''SGI'') violated Section 1 of the Sherman Act, 15 U.S.C. 1, and Plaintiff and Defendants, through their respective attorneys, have consented to the entry of this Final Judgment without trial or final adjudication of any issue of fact or law, for settlement purposes only, and without this Final Judgment constituting any evidence against or an admission by GEC or SGI with respect to any allegation contained in the Complaint.

Now, therefore, before the taking of any testimony and without trial or final adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed:*

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action and each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted to the United States against GEC and SGI under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II. APPLICABILITY

This Final Judgment applies to GEC and SGI and to all other persons in active concert or participation with any of them who have received actual notice of this Final Judgment by personal service or otherwise.

III. PAYMENT

GEC and SGI shall each pay to the United States within ten (10) days of the entry of this Final Judgment the amount of two hundred seventy-five thousand

dollars ($275,000), as set forth in the settlement agreements attached hereto as Attachments 1 and 2, to satisfy claims that the United States has against each defendant under both the False Claims Act and the Sherman Act. No additional payments are called for under this Final Judgment.

IV. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

V. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and Plaintiff's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

DATED: _____

_____

UNITED STATES DISTRICT JUDGE

[FR Doc. 2012–4246 Filed 2–22–12; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-Grandfathered Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on the revision of the information collection provisions of its interim final rule at 29 CFR Part 2590.715–2719, Internal Claims and Appeals and External Review Processes for Non-grandfathered Plans, that was published in the **Federal Register** on June 24, 2011 (76 FR 37208). A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before April 23, 2012.

ADDRESSES: Direct all written comments regarding the information collection request and burden estimates to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet email address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act, Public Law 111–148, (the Affordable Care Act) was enacted by President Obama on March 23, 2010. As part of the Act, Congress added Public Health Service Act (PHS Act) section 2719, which provides rules relating to internal claims and appeals and external review processes. The Department, in conjunction with the Departments of the Treasury and Department of Health and Human Services (collectively, the Departments), issued interim final regulations on July 23, 2010 (75 FR 43330), which set forth rules implementing PHS Act section 2719 for internal claims and appeals and external review processes. With respect to internal claims and appeals processes for group health coverage, PHS Act section 2719 and paragraph (b)(2)(i) of the interim final regulations provide that group health plans and health insurance issuers offering group health insurance coverage must comply with the internal claims and appeals processes set forth in 29 CFR 2560.503–1 (the DOL claims procedure regulation) and update such processes in accordance with standards established by the Secretary of Labor in paragraph (b)(2)(ii) of the regulations.

Also, PHS Act section 2719 and the interim final regulations provide that group health plans and issuers offering group health insurance coverage must comply either with a State external review process or a Federal review process. The regulations provide a basis for determining when plans and issuers must comply with an applicable State external review process and when they must comply with the Federal external review process.

The claims procedure regulation imposes information collection requirements as part of the reasonable procedures that an employee benefit plan must establish regarding the handling of a benefit claim. These requirements include third-party notice and disclosure requirements that the plan must satisfy by providing information to participants and beneficiaries of the plan.

On June 24, 2011, the Department amended the interim final regulations. Two amendments revised the ICR. The first amendment provides that plans no longer are required to include diagnosis and treatment codes on notices of adverse benefit determination and final internal adverse benefit determination. Instead, they must notify claimants of the opportunity to receive the codes on request and plans and issuers must provide the codes upon request. The Departments expect that this change will lower costs, because plans and issuers no longer will have to provide the codes on the notices. Plans and issuers will incur a cost to establish procedures to receive, process, and mail the codes upon request.

The second amendment also changes the method plans and issuers must use to determine who is eligible to receive a notice in a culturally and linguistically appropriate manner, and the information that must be provided to such persons. The previous rule was based on the number of employees at a firm. The new rule is based on whether a participant or beneficiary resides in a county where ten percent or more of the population residing in the county is literate only in the same non-English language.

On December 15, 2011, the Office of Management and Budget (OMB) approved the amendments to the ICR under the emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13 under OMB

Control Number 1210–0144. OMB's approval of the revision currently is schedule to expire on June 30, 2012.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB's approval of its revision to OMB Control Number 1210–0144. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. The Department notes that an agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Affordable Care Act Internal Claims and Appeals and External Review Processes for Non-Grandfathered Plans.

Type of Review: Revision of a currently approved collection of information.

OMB Number: 1210–0144.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 1,020,374.

Frequency of Responses: On occasion.

Responses: 111,328.

Estimated Total Burden Hours: 466

Estimated Total Burden Cost (Operating and Maintenance): $1,257,726.

III. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: February 13, 2012.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2012–4202 Filed 2–22–12; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public Meeting To Solicit Comments in Response to the Presidential Memorandum, Managing Government Records

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: The National Archives and Records Administration (NARA) will hold an open meeting to solicit public comments in response to the Presidential Memorandum on *Managing Government Records,* dated November 28, 2011. The Memorandum directs the Archivist of the United States, in coordination with the Director of OMB, to consult with those inside and outside of the government interested in improving records management and open government. Comments and suggestions received by NARA and OMB will help inform the Records Management Directive that will be issued later this year. The Presidential Memorandum can be found at *http://www.whitehouse.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records* (see also 76 FR 75423, 12/1/11).

This meeting is primarily focused on gathering input from the public interest community, from the vendor/IT community, and from members of the public at large. (Federal agencies will separately be submitting reports to NARA that contain their suggestions for improving and reforming records management.) Additionally, NARA has an IdeaScale site established to receive comments at *http://govrecordmanagement.ideascale.com/.*

DATES: The meeting will be held on Tuesday, March 27, 2012, from 10 a.m. to 12 p.m.

ADDRESSES: National Archives Building, William G. McGowan Theater, 700 Pennsylvania Avenue NW., Washington, DC 20408. Please enter on the Constitution Avenue side of the building.

FOR FURTHER INFORMATION CONTACT: Laura McCarthy, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740, 301–837–3023.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public.

Dated: February 16, 2012.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2012–4213 Filed 2–22–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection; Comment Request

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) is soliciting public comments on the proposed information collection described below. The proposed information collection will be sent to the Office of Management and Budget (OMB) for review, as required by the provisions of the Paperwork Reduction Act of 1995.

DATES: Comments on this information collection must be submitted on or before April 23, 2012.

ADDRESSES: Send comments to Ms. Susan Daisey, Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Room 311, Washington, DC 20506, or by email to: *sdaisey@neh.gov.* Telephone: 202–606–8494.

SUPPLEMENTARY INFORMATION: The National Endowment for the Humanities will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This notice is soliciting comments from members of the public and affected agencies. NEH is particularly interested in comments which help the agency to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 electronic collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

This Notice also lists the following information:

Type of Review: Extension of a currently approved collection.

Agency: National Endowment for the Humanities.

Title of Proposal: Generic Clearance Authority for the National Endowment for the Humanities.

OMB Number: 3136–0134.

Affected Public: Applicants to NEH grant programs, reviewers of NEH grant applications, and NEH award recipients.

Total Respondents: 6,978.

Frequency of Collection: On occasion.

Total Responses: 6,978.

Average Time per Response: Varied according to type of information collection.

Estimated Total Burden Hours: 68,375 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Carole M. Watson,

Deputy Chairman, National Endowment for the Humanities.

[FR Doc. 2012–4255 Filed 2–22–12; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of National Council on the Humanities

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, as amended) notice is hereby given that the National Council on the Humanities will meet in Washington, DC on March 8–9, 2012.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. A portion of the morning and afternoon sessions on March 8–9, 2012, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person: and privileged or confidential information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on March 8, 2012 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9–10:30 a.m.
Digital Humanities Room 402
Education Programs Room M–07
Federal/State Partnership Room 507
Preservation and Access Room 415
Public Programs Room 421
Research Programs Room 315

(Closed to the Public)

Discussion of Specific Grant Applications and Programs Before the Council

10:30 a.m. until Adjourned
Digital Humanities Room 402
Education Programs Room M–07
Federal/State Partnership Room 507
Preservation and Access Room 415
Public Programs Room 421
Research Programs Room 315

The morning session of the meeting on March 9, 2012 will convene at 9 a.m., in the first floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting

B. Reports

1. Introductory Remarks
2. Presentation by Joan Houston Hall, editor of the Dictionary of American Regional English (DARE)
3. Staff Report
4. Congressional Report
5. Budget Report
6. Reports on Policy and General Matters
   a. Digital Humanities
   b. Education Programs
   c. Federal/State Partnership
   d. Preservation and Access
   e. Public Programs
   f. Research Programs

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Lisette Voyatzis, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Lisette Voyatzis,

Advisory Committee Management Officer.

[FR Doc. 2012–4253 Filed 2–22–12; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board

Sunshine Act Meetings; Notice

The National Science Board's Committee on Education and Human Resources (CEH), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Tuesday, February 28; 2:30–4 p.m. EST.

SUBJECT MATTER: (1) Overview and discussion of the recently issued National Science and Technology Council Committee on STEM (Co-STEM) Framework Report; (2) CEH Chairman wrap-up and closing remarks.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors must contact the Board Office [call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public room number and to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets

entrance on the day of the teleconference to receive a visitor's badge.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.* Point of contact for this meeting is: Matthew B. Wilson, National Science Board Office, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Ferrante,

Technical Writer-Editor.

[FR Doc. 2012–4384 Filed 2–21–12; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Finance, Budget & Program Committee of the Board of Directors;

Sunshine Act Meeting

DATES: Time and Date: 2 p.m., Thursday, February 23, 2012.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call to Order
II. Executive Session
III. Financial Report
IV. NFMC Interest Income Budget
V. Lease Update
VI. Corporate Scorecard & Dashboard
VII. NFMC & EHLP
VIII. Program Updates
IX. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2012–4274 Filed 2–21–12; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318; NRC–2012–0045]

Calvert Cliffs Nuclear Power Plant, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Calvert Cliffs Nuclear Power Plant, LLC, the licensee, to withdraw its application dated October 25, 2010, for a proposed amendment to Renewed Facility Operating License Nos. DPR–53 and DPR–69 for the Calvert Cliffs Nuclear Plant, Units 1 and 2, respectively, located in Calvert County, Maryland.

The proposed amendment would have modified Technical Specification Limiting Condition for Operation 3.0.5 pertaining to returning equipment to operation under administrative controls for the purpose of demonstrating equipment operability.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 19, 2011 (76 FR 21919). However, by letter dated January 27, 2012, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 25, 2010 (Agencywide Documents Access and Management System Accession No. ML103010170), and the licensee's letter dated January 27, 2012 (ML12031A125), which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of February 2012.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–4232 Filed 2–22–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on U.S. Advanced Pressurized Power Reactor; Notice of Meeting

The ACRS Subcommittee on U.S. Advanced Pressurized Power Reactor (US–APWR) will hold a meeting on March 22–23, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, March 22, 2012–8:30 a.m. Until 5 p.m.; Friday, March 23, 2012–8:30 a.m. Until 5 p.m.

The Subcommittee will review Chapter 9, ''Auxiliary Systems'' of the Safety Evaluation Report (SER) with open items associated with the US–APWR design certification. The Subcommittee will hear presentations by and hold discussions with the NRC staff, Mitsubishi Heavy Industries (MHI), and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Ilka Berrios (Telephone 301–415–3179 or Email: *Ilka.Berrios@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64127–64128).

Detailed meeting agendas and meeting transcripts are available on the NRC

Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: February 16, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–4227 Filed 2–22–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on March 8–10, 2012, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, October 17, 2011 (76 FR 64126–64127).

Thursday, March 8, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Selected Chapters of the Safety Evaluation Report (SER) with Open Items Associated with the US Evolutionary Power Reactor (EPR) Design Certification Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and AREVA Nuclear Power regarding selected chapters of the NRC staff's SER with open items associated with the EPR design certification application. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]

10:45 a.m.–12:15 p.m.: Source Terms for Small Modular Reactors (Open)—The Committee will hear presentations by and hold discussions with representatives of the Nuclear Energy Institute (NEI) regarding the development of source terms for small modular reactors.

1:15 p.m.–2:45 p.m.: Extremely Low Probability of Rupture (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the development of a technical basis for meeting the requirements of 10 CFR 50 Appendix A, General Design Criteria 4. The staff's approach involves developing a computer model that calculates failure probabilities due to various degradation mechanisms.

3 p.m.–4:30 p.m.: Turkey Point Units 3 and 4 Extended Power Uprate Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Florida Power & Light Company regarding the Turkey Point Units 3 and 4 Extended Power Uprate Application. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]

4:30 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. The Committee will also discuss a proposed report on the implementation of the Near-Term Task Force (NTTF) recommendations stemming from the Fukushima events. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]

Friday, March 9, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10:30 a.m.–11:30 a.m.: Draft Final Report on the Biennial ACRS Review of the NRC Safety Research Program (Open)—The Committee will hold a discussion on the draft final report on the biennial ACRS review of the NRC Safety Research Program.

12:30 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. The Committee will also discuss a proposed report on the implementation of the Near-Term Task Force (NTTF) recommendations stemming from the Fukushima events. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]

Saturday, March 10, 2012 Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Antonio Dias, Cognizant ACRS Staff (Telephone: 301–415–6805,

Email: *Antonio.Dias@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/*.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: February 15, 2012.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2012–4230 Filed 2–22–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Reliability and PRA; Notice of Meeting

The ACRS Subcommittee on Reliability and PRA will hold a meeting on March 21, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, March 21, 2012–1 p.m. until 5 p.m.

The Subcommittee will review NUREG–1934, ''Nuclear Power Plant Fire Modeling Application Guide.'' The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: February 13, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–4228 Filed 2–22–12; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Annual Financial and Actuarial Information Reporting

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of its collection of information for annual financial and actuarial information reporting under 29 CFR Part 4010 (OMB control number 1212–0049; expiring March 31, 2012). This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be submitted by March 26, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension

Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.*

Copies of the collection of information and comments may be obtained without charge by writing to the Disclosure Division, Office of General Counsel, at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Grace H. Kraemer, Attorney, or Catherine B. Klion, Manager Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 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: Section 4010 of the Employee Retirement Income Security Act of 1974 (ERISA) requires each member of a controlled group to submit financial and actuarial information to PBGC under certain circumstances. PBGC's regulation on Annual Financial and Actuarial Information (29 CFR Part 4010) specifies the items of identifying, financial, and actuarial information that filers must submit. PBGC reviews the information that is filed and enters it into an electronic database for more detailed analysis. Computer-assisted analysis of this information helps PBGC to anticipate possible major demands on the/pension insurance system and to focus PBGC resources on situations that pose the greatest risk to the system. Because other sources of information are usually not as current as the 4010 information and do not reflect a plan's termination liability, 4010 filings play a major role in PBGC's ability to protect participant and premium-payer interests.

ERISA section 4010 and PBGC's 4010 regulation specify that each controlled group member must provide PBGC with certain financial information, including audited (if available) or (if not) unaudited financial statements. They also specify that the controlled group must provide PBGC with certain actuarial information necessary to determine the liabilities and assets for all PBGC-covered plans. All non-public information submitted is protected from disclosure. Reporting is accomplished through PBGC's secure e-4010 web-based application.

OMB has approved the 4010 collection of information under control number 1212–0049 through March 31, 2012. PBGC is requesting that OMB extend approval of this collection of information for three years. 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.

PBGC estimates that approximately 300 controlled groups will be subject to 4010 reporting requirements. PBGC further estimates that the total annual burden of this collection of information will be 2,620 hours and $5,088,000.

PBGC is soliciting public comments to—

- 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 methodologies 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.

Issued in Washington, DC, this 16th day of February, 2012.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2012–4215 Filed 2–22–12; 8:45 am]

BILLING CODE 7709–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66407; File No. SR–Phlx–2012–21]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Correction of Exchange Rule 705 (Fidelity Bonds)

February 16, 2012.

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 February 13, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III, below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete certain extraneous language from Exchange Rule 705 to amend an inadvertent error in the rule text that arose in connection with a recent rule filing which replaces the current text of Exchange Rule 705.[3] The Exchange intends for this Rule to be operative on April 2, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* 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 the text of Exchange Rule 705, entitled ''Members Must Carry,'' by deleting certain text which was not deleted when the Exchange filed to replace Rule 705 [4] with a rule in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66362 (February 9, 2012) (SR–Phlx–2012–13).

[4] *See* Securities Exchange Act Release No. 66362 (February 9, 2012) (SR–Phlx–2012–13).

substantially the same form as the Financial Industry Regulatory Authority, Inc. (''FINRA'') Rule 4360.[5] The Supplementary Material to Exchange Rule 705 is being replaced, along with the remainder of Rule 705, by a new Rule 705, as of April 2, 2012. The title of Exchange Rule 705 will also be changed from ''Members Must Carry'' to ''Fidelity Bonds.'' The Exchange intended to delete the current Rule 705 in its entirety and rename the rule and add new text similar to that in FINRA Rule 4360. The Exchange inadvertently did not place the Supplementary Material section of the Rule in that filing to be deleted. The Exchange proposes to delete the current Supplementary Material to Exchange Rule 705 as of April 2, 2012, to correspond with the operative date of SR–Phlx–2012–13.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] 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, by correcting an error in the Exchange's Rules in order that the Rule properly reflect the correct text. The Exchange's proposal will correct the text of the Rule so that the new text will be properly reflected as of April 2, 2012.

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[8] and Rule 19b–4(f)(1)[9] thereunder, the Exchange has designated this proposal as one that constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization, and therefore has become effective.

The Exchange intends for Rule 705 to become operative on April 2, 2012. This operative delay will allow members or member organizations that are not exempt from the Rule to comply with the requirements set forth under the Rule.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2012–21 and should be submitted on or before March 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4148 Filed 2–22–12; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* FINRA Rule 4360 ''Fidelity Bonds.''

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66411; File No. SR–NYSE–2012–04]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Rule 319 and its Interpretation, Which Address Fidelity Bond Requirements, and Adopt New Rule Text That Is Substantially Similar to FINRA Rule 4360

February 16, 2012.

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 February 3, 2012, 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, II, and III 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete NYSE Rule 319 and its Interpretation, which address fidelity bond requirements, and adopt new rule text that is substantially similar to FINRA Rule 4360. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete NYSE Rule 319 and its Interpretation, which address fidelity bond requirements, and adopt new rule text that is substantially similar to FINRA Rule 4360.[4]

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, NYSE, NYSER and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules''). NYSE Amex LLC (''NYSE Amex'') became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Proposed Conforming Amendments to NYSE Rules

The Exchange proposes to delete NYSE Rule 319 and its Interpretation and adopt new Rule 4360 to conform to the changes adopted by FINRA for fidelity bonds.[7] FINRA adopted NASD Rule 3020 as FINRA Rule 4360, taking into account NYSE Rule 319 and its Interpretation. FINRA Rule 4360 updates and clarifies fidelity bond requirements for member firms and better reflects current industry practices. The Rule requires each FINRA member that is required to join Securities Investor Protection Corporation to maintain blanket fidelity bond coverage with specified amounts of coverage based on the member organization's net capital requirement, with certain exceptions, and to maintain fidelity bond coverage that provides for per loss coverage without an aggregate limit of liability.

Because it covers the same topic as the new FINRA rule, FINRA deleted FINRA Incorporated NYSE Rule 319 and its Interpretation. In particular, NYSE Rule 319 and its Interpretation generally require member organizations to maintain minimum amounts of fidelity bond coverage for officers and employees, and that such coverage address losses incurred due to certain specified events. To harmonize the NYSE Rules with the approved FINRA Rules, the Exchange correspondingly proposes to delete Rule 319 and its Interpretation and to adopt proposed NYSE Rule 4360. The text of proposed NYSE Rule 4360 would be the same as FINRA Rule 4360, except that the Exchange would substitute the term ''member organization'' for ''member'' and ''Exchange'' for ''FINRA.''

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5)[9] 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between NYSE Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, all NYSE member organizations that are subject to NYSE Rule 319 are also subject to FINRA Rule 4360 and harmonizing these two rules would promote just and equitable principles of trade by requiring a single standard for fidelity bonds. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Rules. The Exchange also believes that the proposed rule change will update and clarify the requirements governing fidelity bonds, which will promote just and equitable principles of trade and help to protect investors.

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.

[4] *See* Securities Exchange Act Release No. 63961 (February 24, 2011), 76 FR 11542 (March 2, 2011) (SR–FINRA–2010–059). FINRA's rule change became effective on January 1, 2012. *See* FINRA Regulatory Notice 11–21.

[5] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as ''Common Rules''); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, see FINRA Information Notice, March 12, 2008.

[7] The purpose of a fidelity bond is to protect a member organization against certain types of losses, including, but not limited to, those caused by the malfeasance of its officers and employees, and the effect of such losses on the member organization's capital.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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 and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the 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. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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 email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2012–04 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–2012–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com*. 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–2012–04 and should be submitted on or before March 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4194 Filed 2–22–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66408; File No. SR–CBOE–2011–126]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Relating to the CBOE Stock Exchange Request for Quote Rules

February 16, 2012.

On December 27, 2011, Chicago Board Options Exchange, Incorporated (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify its rules relating to requests for quotes (''RFQs'') on the CBOE Stock Exchange (''CBSX''). The proposal removes the rule provisions affording CBSX participants the ability to submit RFQs. The proposed rule change was published for comment in the **Federal Register** on January 13, 2012.[3] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of Section 6(b)(5) of the Act,[5] which requires that the Commission determine that the rules of the Exchange are designed to remove impediments to and perfect the mechanism for a free and open market. The proposal removes references pertaining to RFQs in the CBSX rules because the method of trading on CBSX obviates the need for an RFQ process. The Exchange represents that participants have not used, or inquired about using, RFQs on CBSX. Moreover, the systems of CBSX do not fully support transmitting RFQ messages. Given that the CBSX system for submitting RFQs is not currently functional, the Commission believes the removal of references to RFQs in the CBSX rules may prevent confusion among participants who may otherwise expect to be able to submit RFQs. For the foregoing reasons, the Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66119 (January 9, 2012), 77 FR 2112.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

believes that the proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CBOE–2011–126) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4193 Filed 2–22–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66412; File No. SR–NYSEAMEX–2012–08]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Amex Equities Rule 319, Which Addresses Fidelity Bond Requirements, and Adopt New Rule Text That Is Substantially Similar to FINRA Rule 4360

February 16, 2012.

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 February 3, 2012, 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, II, and III 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 delete NYSE Amex Equities Rule 319, which addresses fidelity bond requirements, and adopt new rule text that is substantially similar to FINRA Rule 4360. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete NYSE Amex Equities Rule 319, which addresses fidelity bond requirements, and adopt new rule text that is substantially similar to FINRA Rule 4360.[4]

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, NYSE, NYSER and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules''). NYSE Amex LLC (''NYSE Amex'') became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Proposed Conforming Amendments to NYSE Amex Equities Rules

The Exchange proposes to delete NYSE Amex Equities Rule 319 and adopt new NYSE Amex Equities Rule 4360 to conform to the changes adopted by FINRA for fidelity bonds.[7] FINRA adopted NASD Rule 3020 as FINRA Rule 4360, taking into account NYSE Rule 319 and its Interpretation. FINRA Rule 4360 updates and clarifies fidelity bond requirements for member firms and better reflects current industry practices. The Rule requires each FINRA member that is required to join Securities Investor Protection Corporation to maintain blanket fidelity bond coverage with specified amounts of coverage based on the member organization's net capital requirement, with certain exceptions, and to maintain fidelity bond coverage that provides for per loss coverage without an aggregate limit of liability.

Because it covers the same topic as the new FINRA rule, FINRA deleted FINRA Incorporated NYSE Rule 319 and its Interpretation. In particular, NYSE Rule 319 and its Interpretation generally require member organizations to maintain minimum amounts of fidelity bond coverage for officers and employees, and that such coverage address losses incurred due to certain specified events. To harmonize the NYSE Amex Equities Rules with the approved FINRA Rules, the Exchange correspondingly proposes to delete NYSE Amex Equities Rule 319 and to adopt proposed NYSE Amex Equities Rule 4360. The text of proposed NYSE Amex Equities Rule 4360 would be the same as FINRA Rule 4360, except that the Exchange would substitute the term ''member organization'' for ''member'' and ''Exchange'' for ''FINRA.''

[4] *See* Securities Exchange Act Release No. 63961 (February 24, 2011), 76 FR 11542 (March 2, 2011) (SR–FINRA–2010–059). FINRA's rule change became effective on January 1, 2012. *See* FINRA Regulatory Notice 11–21.

[5] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as ''Common Rules''); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[7] The purpose of a fidelity bond is to protect a member organization against certain types of losses, including, but not limited to, those caused by the malfeasance of its officers and employees, and the effect of such losses on the member organization's capital.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(5) [9] 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, all NYSE Amex member organizations that are subject to NYSE Amex Equities Rule 319 are also subject to FINRA Rule 4360 and harmonizing these two rules would promote just and equitable principles of trade by requiring a single standard for fidelity bonds. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Amex Equities Rules. The Exchange also believes that the proposed rule change will update and clarify the requirements governing fidelity bonds, which will promote just and equitable principles of trade and help to protect investors.

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 with respect to the proposed rule change.

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 and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the 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. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMEX–2012–08 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–2012–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEAMEX–2012–08 and should be submitted on or before March 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4151 Filed 2–22–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66410; File No. SR–CHX–2012–06]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its Fee Schedule To Provide for a New Cross Connection Charge and Waive Monthly Fees at its New Facility Until April 1, 2012

February 16, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 9, 2012, the Chicago Stock Exchange,

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal 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

CHX proposes to amend its Schedule of Fees and Assessments (the ''Fee Schedule''), to provide for certain new cross connection charges and to waive monthly port fees and cross connection charges otherwise applicable to any Participants connecting to CHX's new facilities in the Equinix NY4 data center (''NY4'') until April 1, 2012. CHX also proposes consolidating connection charges and modifying certain descriptions contained in the Fee Schedule for clarity. The text of this proposed rule change is available on the Exchange's Web site at (*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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange proposes to amend its Schedule of Fees and Assessments (the ''Fee Schedule'') to provide for certain new cross connection charges and to waive monthly port fees and cross connection charges otherwise applicable to any Participants connecting to CHX's new facilities in the Equinix NY4 data center (''NY4'') until April 1, 2012. CHX also proposes consolidating connection charges and modifying certain descriptions contained in the Fee Schedule for clarity.

Last year, CHX began an initiative to establish a presence at NY4 in order to improve latencies for its east coast customers and increase the use of its Matching System. The following proposed modifications to the CHX Fee Schedule are related to this initiative.

The Exchange proposes to consolidate all connection charges into section D. and rename this section ''Connection Charges.'' The Exchange also proposes dividing connection charges into two general categories: 1. ''Matching System Port Charges'', which are assessed for each logical connection into the Exchange's Matching System; and, 2. ''Cross Connection Charges'', which are assessed based upon the capacity of the line that physically connects equipment and the type of equipment that is being connected. Such connections are utilized to send market data to, and receive orders from, the customer's equipment.

Under new section D. 1. ''Matching System Port Charges'' the Exchange will further clarify, in both the heading and the following descriptive paragraph, that such charges are for ''logical'' (i.e. not physical) connectivity. The Exchange will also further specify that one port charge is assessed for each Participant give-up that has access through any Participant connection to the Matching System. Additionally, the Exchange proposes removing the parenthetical reference to the effective date from the rule text.

Under new section D. 2. ''Cross Connection Charges'' the Exchange will clarify in the heading that such charges are for ''physical'' connectivity. The Exchange also proposes subdividing new section D. 2. into cross connection charges that are available for: (a) Carrier equipment to customer equipment connections; and, (b) Customer equipment to CHX equipment connections. The Exchange notes that the various charges specified in new section D. 2. (a) are those charges that previously appeared as ''Data Connections'' under section G. ''Co-location Fees.'' The Exchange believes that moving these charges from section G. into section D. and thereby consolidating them with other types of connection charges will clarify the Fee Schedule. The Exchange also proposes deleting the subheading ''Space'' from Section G. ''Co-location Fees'' since it will no longer be needed to distinguish space rental charges from connectivity charges.

This proposal would also change the description for the ''CHX Network Connection'' charge, which previously appeared in Section G., to ''1G Connection'' and would also add a second, higher capacity, 10G cross connection charge under new section D. 2. (b); which are physical connections from customer equipment to CHX equipment. In the case of the 1G connection, the Exchange will continue to charge a one-time fee of $150 to establish the connection and a recurring monthly fee of $100. In the case of the new higher capacity 10G connection, the Exchange proposes charging a one-time fee of $1,000 to establish the connection and a recurring monthly fee of $500. As mentioned above, such connections are utilized to send market data to, and receive orders from, the customer's equipment

Finally, in order to encourage current and new customers to establish connections at the Exchange's new facility and to provide a transitional period for those current customers that would like to move their connections from Chicago to the new NY4 facility, CHX proposes waiving monthly port fees and monthly cross connection charges at the NY4 facility until April 1, 2012. The Exchange believes that waiving monthly charges at NY4 until this date certain will accomplish its two goals of encouraging the establishment of new connections while avoiding temporarily double charging those customers that would simply like to connect to the new facility and then subsequently disconnect from the Chicago facility. To communicate this policy to all Participants, the Exchange proposes adding language to its Fee Schedule indicating that no monthly charges will be assessed under section D. for CHX's Equinix NY4 data center location until April 1, 2012. The Exchange notes that it will waive only the monthly fees applicable under section D. and not one-time fees because such fees are associated with the establishment of a new physical connection.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(4) of the Act [6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

using any facility or system which the Exchange operates or controls.

Specifically, the Exchange believes that the addition of the 1G and 10G cross connection charges specified above is reasonable because these charges are similar to those in effect for equivalent services at other exchanges.[7] Furthermore, these charges are equitable and non-discriminatory in that they are only charged to those Participants that have exclusive use of the connection for which the Exchange is charging.

The Exchange also believes that the waiver of monthly fees otherwise applicable under section D. of its Fee Schedule for connections established at its new NY4 facility until April 1, 2012 is both reasonable and equitable in that it encourages all Participants to establish connections at the new facility but will ultimately impose new charges on those that have established additional connections after that date. Furthermore, the Exchange believes that the waiver of monthly fees until a date certain results in a non-discriminatory application of fees in that it will not temporarily double charge those Participants that are transitioning to the new facility, provided the new connection is made and the old connection discontinued prior to April 1, 2012.

Finally, the Exchange believes that the proposed consolidation of connection charges and

other clarifying modifications to its Fee Schedule are consistent with Section 6(b) of the Act[8] in general, and further the objectives of Section 6(b)(5) of the Act[9] in particular, in that they foster a better understanding of the various fees charged by the Exchange to all Participants and other persons using any facility or system which the Exchange operates or controls.

B. Self-Regulatory Organization's Statement of 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. The addition of fees similar to those charged by competing markets and the temporary waiver of monthly fees at a new facility during a brief transitional period will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is to take effect pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder[11] because it establishes or changes 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:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CHX–2012–06 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–2012–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2012–06 and should be submitted on or before March 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4150 Filed 2–22–12; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* BATS BZX Exchange Fee Schedule, ''Physical Connection Charges'', p.4, available on BATS' public Web site. *See also* DirectEdge EDGA Exchange Fee Schedule, Physical Connectivity Fees, p. 3, available on DirectEdge's public Web site.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66409; File No. SR–NASDAQ–2012–027]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

February 16, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to modify Chapter XV, Section 2, governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.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. 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 this rule filing is to recoup costs that the Exchange incurs for routing and executing Customer, Firm, Market Maker and Professional orders in equity and index options. The Exchange's Routing Fees are located at Chapter XV, Section 2, entitled ''NASDAQ Options Market-Fees,'' and are as follows:

(4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees shall be posted on the *NasdaqTrader.com* Web site.

Exchange	Customer	Firm	MM	Professional
BATS	$0.50	$0.55	$0.55	$0.50
BOX	0.06	0.55	0.55	0.06
CBOE	0.06	0.55	0.55	0.26
CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDRs	0.24	0.55	0.55	0.26
C2	0.50	0.55	0.55	0.51
ISE	0.06	0.55	0.55	0.24
ISE Select Symbols *	0.18	0.55	0.55	0.34
NYSE Arca Penny Pilot	0.50	0.55	0.55	0.50
NYSE Arca Non Penny Pilot	0.06	0.55	0.55	0.06
NYSE AMEX	0.06	0.55	0.55	0.26
PHLX (for all options other than PHLX Select Symbols)	0.06	0.55	0.55	0.26
PHLX Select Symbols **	0.30	0.55	0.55	0.46

* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

** These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.

The Exchange proposes to amend its Routing Fees as follows:

(4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees shall be posted on the *NasdaqTrader.com* Web site.

Exchange	Customer	Firm	MM	Professional
BATS	$0.55	$0.55	$0.55	$0.55
BOX	0.11	0.55	0.55	0.11
CBOE	0.11	0.55	0.55	0.31
CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDRs	0.29	0.55	0.55	0.31
C2	0.55	0.55	0.55	0.55
ISE	0.11	0.55	0.55	0.29
ISE Select Symbols *	0.23	0.55	0.55	0.39
NYSE Arca Penny Pilot	0.55	0.55	0.55	0.55
NYSE Arca Non Penny Pilot	0.11	0.55	0.55	0.11
NYSE AMEX	0.11	0.55	0.55	0.31
PHLX (for all options other than PHLX Select Symbols)	0.11	0.55	0.55	0.31
PHLX Select Symbols **	0.35	0.55	0.55	0.51

* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

** These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.

NASDAQ Options Services LLC (''NOS''), a member of the Exchange, is the Exchange's exclusive order router. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a

transaction fee is also charged in certain symbols, which are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange when Customer, Firm, Market Maker and Professional orders are routed to an away market. At this time, the Exchange is proposing to recoup certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, the Exchange's exclusive order router; the Exchange's membership fees at away markets; and technical costs associated with routing.[3] The Exchange is proposing to increase all Customer and Professional Routing Fees. The Exchange is increasing all Customer and Professional Routing Fees by $0.05 per contract with the exception of the C2 Professional Fee, which is being increased to $0.55 per contract (instead of $0.56 per contract).[4] The Exchange is not proposing to amend Firm and Market Maker Routing Fees at this time. The Exchange does not believe it is necessary to increase Firm and Market Maker Routing Fees beyond that which Firms and Market Makers are assessed today for routing away.[5]

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2012.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that the proposed Routing Fees are reasonable because the fees would allow the Exchange to recoup costs associated with routing both Customer and Professional orders to away markets. The Exchange believes that these fees will assist it in recouping costs the Exchange incurs by utilizing NOS, maintaining membership fees at away markets and technical expenses associated with the routing process.[8] The proposed fees also continue to recoup transaction fees assessed by the respective away market, which vary, and standard clearing charges for each transaction, which fees are incurred by the Exchange when routing to away markets. Firms may avoid routing charges by either routing orders themselves directly to the away market that is at the NBBO, or by marking the order with an instruction to not route the order.

The Exchange also believes that the proposed Routing Fees are equitable and not unfairly discriminatory because the fees would be uniformly applied to all Customers and Professionals. The Exchange's proposed fees are calculated to distribute the costs associated with routing among the various away markets. The Exchange determined not to amend the Firm and Market Maker Routing Fees, which are currently the highest Routing Fees ($0.55 per contract) for each away market. In addition, the Exchange determined to increase the C2 Professional Routing Fee to $0.55 per contract, instead of $0.56 per contract[9] in order that the Routing Fee would not exceed those fees currently assessed for Firm and Market Maker orders that are routed to an away market. The Exchange determined that in light of other fees, the current Firm and Market Maker Routing Fees for routing to all away markets are within the range of fees that are proposed for other away markets. The Exchange does not believe that it is necessary at this time to assess additional Routing Fees to Firms and Market Makers to route to an away market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2012–027on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[3] In addition to membership fees and transaction fees, the Exchange also incurs an Options Regulatory Fee when routing to an away market that assesses that fee.

[4] The Professional Routing Fee to C2 is currently $0.51 per contract.

[5] Today, Firms and Market Makers are assessed a Routing Fee of $0.55 per contract when routing to any away market.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] In addition to membership fees and transaction fees, the Exchange also incurs an Options Regulatory Fee when routing to an away market that assesses that fee.

[9] The Exchange is increasing all Customer and Professional Routing Fees by $0.05 per contract with the exception of the C2 Professional Fee, which is being increased to $0.55 per contract.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–027 and should be submitted on or before March 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4149 Filed 2–22–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7805]

Culturally Significant Objects Imported for Exhibition Determinations: ''Loans From the Tsolozidis Collection''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Loans from the Tsolozidis Collection'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about March 12, 2012, until on or about March 12, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 10, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–4231 Filed 2–22–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of withdrawal of task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA has withdrawn a task assigned to the Aviation Rulemaking Advisory Committee (ARAC) concerning commercial air tours. This notice is to inform the public of the FAA's decision to withdraw this task.

FOR FURTHER INFORMATION CONTACT: Katherine Haley, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–493–5708, facsimile: 202–267–5075; email: *Katherine.L.Haley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA established ARAC to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities. ARAC's objectives are to improve the development of the FAA's regulations by providing information, advice, and recommendations related to aviation issues.

On July 15, 2009, the FAA tasked ARAC (74 FR 34390) to provide advice and recommendations on a maintenance quality assurance system, a maintenance training program and a required inspection program for operators and air carriers that conduct air tours and operate under parts 91 and 135 (aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of 9 or fewer seats). That tasking was in response to two recommendations from the National Transportation Safety Board (NTSB) (A–08–32 and A–08–33) and an FAA recommendation on air tour accidents. The Commercial Air Tours Maintenance (CATM) working group formed and met between November 2009 and December 2010 to address the ARAC tasking. On December 16, 2010, the CATM working group presented the findings and recommendations to the ARAC Executive Committee. One of the recommendations was to develop an Advisory Circular (AC) to create a voluntary accreditation program modeled after the AC 00–56A, Voluntary Industry Distributor Accreditation Program. The FAA accepted the recommendations on February 1, 2011.

In December 2011, the FAA assigned ARAC a new task to develop a comprehensive program of voluntary accreditation for commercial air tour operators that are not required under parts 91 and 135 of Title 14 of the Code of Federal Regulations (14 CFR), to maintain their aircraft under a continuous airworthiness maintenance program (CAMP). This new task was the FAA's response to one of the CATM recommendations.

The notice informing the public of this new ARAC activity published in the **Federal Register** on December 27, 2011 (76 FR 81009), and included a request for volunteers for the Commercial Air Tour Voluntary Accreditation Program working group. The time period to volunteer expired on January 26, 2011. We received minimal interest from the public, and have decided to withdraw the task due to a lack of adequate representation on the working group.

This notice informs the public of the withdrawal of the ARAC task that would have been assigned to the Commercial Air Tour Voluntary Accreditation Program Working Group.

Issued in Washington, DC, on February 16, 2012.

Pamela Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 2012–4175 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of withdrawal of task assignment to the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA has withdrawn a task assigned to the Aviation Rulemaking Advisory Committee (ARAC) concerning all weather operations. This notice is to inform the public of the FAA's decision to withdraw this task.

FOR FURTHER INFORMATION CONTACT: Brenda D. Courtney, Manager, Aircraft and Airport Rules Division, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *brenda.courtney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA established ARAC to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities. This includes obtaining advice and recommendations on the FAA's commitments to harmonize Title 14 of the Code of Federal Regulations (14 CFR) with its partners in Europe and Canada.

On November 26, 2003, the FAA published a notice in the **Federal Register** (68 FR 66524) informing the public of ARAC's acceptance of a new task, and its decision to assign the task to the All Weather Operations Harmonization Working Group. Over the years since assigning this task to ARAC, the working group has provided support to the FAA, other civil aviation authorities and the International Civil Aviation Organization (ICAO). This collaborative effort has brought about standardized and harmonized systems and processes such as the Enhanced Flight Vision System and use of radar altimeters in Europe. The working group has also provided support to the ICAO Operations Panel and provided updates to the All Weather Operations Manual for ICAO. These efforts are important to the FAA and other civil aviation authorities; however, they are not tasks typically assigned to ARAC. As such, the FAA has decided to continue these efforts under a different venue. We anticipate establishing a separate committee charged to work collaboratively among the international aviation community, the FAA and other civil aviation authorities to ensure regulatory standards and policies related to all weather operations activities are standardized and harmonized in the interest of safety, and global economic efficiencies.

Withdrawal of the all weather operations task completes the activities that were assigned to ARAC's Air Carrier Operations Technical Subject Area. Because the FAA does not intend to assign any additional tasks to this technical area, the Air Carrier Operations Technical Subject Area is closed. The FAA has vetted the withdrawal of this task and our decision to close the Air Carrier Operations Technical Subject Area with the ARAC.

Issued in Washington, DC, on February 13, 2012.

Pamela Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 2012–3891 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2001–10237]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated February 1, 2012, the Port of Los Angeles, with the cooperation and input of Pacific Harbor Line (PHL), has petitioned the Federal Railroad Administration (FRA) for an extension of its waivers of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 217, Railroad Operating Rules; part 220, Railroad Communications; part 221, Rear End Marking Device—Passenger, Commuter and Freight Trains; part 223, Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses; part 225, Railroad Accidents/Incidents: Reports Classification, and Investigations; part 228, Hours of Service of Railroad Employees; Recordkeeping and Reporting; Sleeping Quarters; part 228, Subpart A—General, and Subpart B—Records and Reporting; part 229, Railroad Locomotive Safety Standards; part 231, Railroad Safety Appliance Standards; part 238, Passenger Equipment Safety Standards; and part 239, Passenger Train Emergency Preparedness. FRA assigned the petition Docket Number FRA–2001–10237.

The Port of Los Angeles explained that their request is consistent with the waiver process for shared use. *See* Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000); *see* also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42626 (July 10, 2000). The Port of Los Angeles received its initial waiver and permission from FRA on May 8, 2002. The Port of Los Angeles was granted a 5-year extension of the terms and conditions of the original waiver on April 24, 2007.

The Port of Los Angeles stated in its most recent petition that it desires to continue the operation of the Red Car Line under the same rules, procedures, and directives as originally prescribed and granted by FRA. The Port of Los Angeles operates the ''Waterfront Red Car Line'' over 1.5 miles of PHL track, located in the Port of Los Angeles. Freight and vintage trolley operations are temporally separated on this portion of track. PHL no longer services Westway Terminal's tank farm on this portion of track.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by April 9, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on February 16, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–4159 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Revised Guidance for Requesting One-Time Movement (OTM) Approvals

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Availability.

SUMMARY: FRA is notifying the public of the availability of revised guidance for requesting OTM approvals for the transportation by rail of nonconforming or leaking bulk hazardous material packages.

FOR FURTHER INFORMATION CONTACT: Karl Alexy, Acting Staff Director, Hazardous Materials Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, telephone: (202) 493–6245; or Lisa Matsinger, Railroad Safety Specialist, Hazardous Materials Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone: (202) 493–0324.

SUPPLEMENTARY INFORMATION: The Hazardous Materials Regulations (HMR) issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) govern the rail transportation of hazardous materials. Title 49 CFR 174.50 of the HMR forbids the transportation by rail of a bulk packaging that no longer conforms to HMR or that is leaking, unless otherwise approved by FRA's Associate Administrator for Railroad Safety/Chief Safety Officer. These approvals are generally referred to as one-time movement approvals (OTMA).

Recently, FRA revised its OTMA procedures to streamline the overall OTMA process and to minimize unnecessary administrative burdens. On January 31, 2012, FRA issued Guidance Document HMG–127, which explains these revised procedures and the criteria for issuance of OTMAs. Guidance Document HMG–127 is available for review on FRA's Web site at: *http://www.fra.dot.gov/Pages/789.shtml.* In addition, FRA has created a revised OTMA application information document that also reflects the revised OTMA procedures. The new OTMA application information document is also available on FRA's Web site at: *http://www.fra.dot.gov/rrs/pages/fp_1799.shtml.* FRA staff can provide copies of these documents for review upon request if contacted at the address and telephone numbers listed above.

Issued in Washington, DC, on February 14, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–3927 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0014]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel FLAMINGO; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 26, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0014. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FLAMINGO is:

Intended Commercial Use of Vessel: ''Charter work with the Boy Scouts at the Florida Sea Base in Islamorada, Florida. Teaching, sailing, snorkeling, fishing, etc.''

Geographic Region: ''Florida.''

The complete application is given in DOT docket MARAD–2012–0014 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may

review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 13, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4126 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012 0009]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LAURENE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 26, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0009. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LAURENE is:

Intended Commercial Use of Vessel: ''Charter, motor/sailing/snorkeling/scuba/diving and instruction, sport fishing site seeing, ferry, travel, etc.''

Geographic Region: ''U.S. East Coast: ME, NH, MA, RI, CT, NY, NJ, DE, MD, DC, VA, NC, SC, GA, FL, Puerto Rico.''

The complete application is given in DOT docket MARAD–2012–0009 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

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By Order of the Maritime Administrator.

Dated: February 13, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4136 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0008]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ALTERNATE LATITUDE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 26, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0008. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ALTERNATE LATITUDE is:

Intended Commercial Use of Vessel: ''Sailing charters, day sails and possibly some overnight trips as well.''

Geographic Region: ''Texas, Louisiana, Florida.''

The complete application is given in DOT docket MARAD–2012–0008 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver

criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 13, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4138 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0007]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel XIUMA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 26, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0007. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel XIUMA is:

Intended Commercial Use of Vessel: ''charter six pac.''

Geographic Region: ''Rhode Island, Florida, California.''

The complete application is given in DOT docket MARAD–2012–0007 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

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By Order of the Maritime Administrator.

Dated: February 13, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4137 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0010]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ZIA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 26, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0010. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ZIA is:

Intended Commercial Use of Vessel: ''Recreational registry and coastwise. Short & long term.''

Geographic Region: ''California, Oregon, Washington, Texas.''

The complete application is given in DOT docket MARAD–2012–0010 at *http://www.regulations.gov* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-

flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 13, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4135 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SELAH; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 26, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0011. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SELAH is:

Intended Commercial Use of Vessel: ''Skippered charters.''

Geographic Region: ''California.''

The complete application is given in DOT docket MARAD–2012–0011 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 13, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4132 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0012]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SILVER MOON; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 26, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0012. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SILVER MOON is:

Intended Commercial Use of Vessel: ''Catamaran Sailing Charters, both term and day charters with 6 or fewer

passengers. All charters to have captain aboard.''

Geographic Region: ''Most charters in Rhode Island and Massachusetts waters. Additionally in Connecticut, New Hampshire, and Maine.''

The complete application is given in DOT docket MARAD–2012–0012 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

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By Order of the Maritime Administrator.

Dated: February 13, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4133 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2012–0015]

Intent of Preparation of a Programmatic Environmental Assessment, To Open a Public Scoping Period, and To Conduct Public Scoping Meetings

AGENCY: U.S. Department of Transportation, Maritime Administration.

ACTION: Notice of Intent of Preparation of a Programmatic Environmental Assessment, to Open a Public Scoping Period, and to Conduct Public Scoping Meetings.

SUMMARY: Notice is hereby given that the Maritime Administration (MarAd), of the U.S. Department of Transportation (U.S. DOT), will prepare a Programmatic Environmental Assessment (PEA) in compliance with the National Environmental Policy Act of 1969 that will evaluate potential environmental effects associated with the performance of the America's Marine Highway Program. The PEA will identify and assess potential environmental impacts from the proposed actions and a range of reasonable alternatives so MarAd can determine, what if any, additional analysis may be required including, whether to prepare environmental impact statement(s) (EIS) or issuing finding(s) of no significant impact (FONSI). MarAd is initiating a scoping process to identify community concerns and local issues that will be addressed in the PEA. MarAd plans to hold public scoping meetings regionally to obtain input from the public. The meetings will be conducted using an open house format with informational displays and materials available for public review. There will be no formal presentations. MarAd staff will be present at this open house to answer general questions on the proposed action and the PEA process. If at any point during the preparation of the PEA, MarAd determines that it is necessary to prepare an EIS, this scoping process will serve as the scoping process that would normally follow a Notice of Intent to prepare an EIS.

Dates and Locations: The NEPA scoping period ends on April 16, 2012. Comments will only be accepted at the scoping meetings or on regulations.gov under the docket number 2012–0015. Comment forms will be provided at each public scoping meeting. Comments received at the meetings will be scanned and uploaded to the docket.

City/state	Date	Location	Time
East Coast/Gulf Coast			
Charleston, South Carolina (SC).	Tuesday, March 6, 2012	North Charleston High School: 1087 East Montague Avenue, North Charleston, SC 29405.	6–8 p.m.
New Orleans, Louisiana (LA)	Thursday, March 8, 2012	De La Salle High School: 5300 Saint Charles Ave, New Orleans, LA 70115.	6–8 p.m.
Miami, Florida (FL)	Tuesday, March 13, 2012	Florida Department of Transportation: District Six, 1000 NW 111 Avenue, Miami, FL 33172.	6–8 p.m.
Boston, Massachusetts (MA)	Thursday, March 15, 2012	Charlestown High School: 240 Medford Street, Charlestown, MA 02129.	6–8 p.m.
West Coast/Great Lakes/Mississippi			
San Diego, California (CA)	Tuesday, March 20, 2012	Coronado Public Library: 640 Orange Avenue, Coronado, CA 92118.	6–8 p.m.
Portland, Oregon (OR)	Thursday, March 22, 2012	Roosevelt High School: 6941 N Central Street, Portland, OR 97203.	6–8 p.m.
Chicago, Illinois (IL)	Monday, March 26, 2012	Jones College Prep School: 606 South State Street, Chicago, IL 60605.	6–8 p.m.
Cleveland, Ohio (OH)	Wednesday, March 28, 2012	Horizon Science Academy Cleveland High School: 6000 South Marginal Road, Cleveland, OH 44103.	6–8 p.m.
St. Louis, Missouri (MO)	Thursday, March 29, 2012	Jennings Junior High School: 8831 Cozens Avenue, St. Louis, MO 63136.	6–8 p.m.

FOR FURTHER INFORMATION CONTACT: Daniel Yuska, 1200 New Jersey Ave., SE., Washington, DC 20590; phone: (202) 366–0714; or email: *Daniel.yuska@dot.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above

individuals during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Background: On August 11, 2010, U.S. Transportation Secretary Ray LaHood identified 18 marine corridors, 8 projects, and 6 initiatives for further development as part of ''America's Marine Highway Program.'' In addition, MarAd made available $7 million for which projects competed through a Notice of Funding Availability.

The Marine Highway Program was fully implemented in April 2010 through publication of a Final Rule in the **Federal Register** (*http://edocket.access.gpo.gov/2010/pdf/2010-7899.pdf*). The Secretary's designations were made pursuant to the Final Rule, as required by the *Energy Independence and Security Act of 2007.*

Marine Highway Corridors: These all-water routes consist of 11 Corridors, 4 Connectors and 3 Crossings that can serve as extensions of the surface transportation system. These corridors identify routes where water transportation presents an opportunity to offer relief to landside corridors that suffer from traffic congestion, excessive air emissions or other environmental concerns and other challenges. Corridors are generally longer, multi-state routes whereas Connectors represent shorter routes that serve as feeders to the larger Corridors. Crossings are short routes that transit harbors or waterways and offer alternatives to much longer or less convenient land routes between points.

An information packet that explains more about the America's Marine Highway Program; categories of actions that will be examined in the environmental analysis; describes the corridors that have already been designated; map of the corridors; projects that have already been approved; initiatives that have been approved; explanation of scoping and what MarAd is seeking the public assistance with; and procedures that will used at the public meetings, is available at www.amhpea.com.

By Order of the Maritime Administrator.

Dated: February 15, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4158 Filed 2–22–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 16, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before March 26, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or on-line at *www.PRAComment.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov*.

Internal Revenue Service (IRS)

OMB Number: 1545–1467.

Type of Review: Extension without change of a currently approved collection.

Title: Electronic Federal Tax Payment System (EFTPS).

Forms: 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789, 9789(SP).

Abstract: Enrollment is vital to the implementation of the Electronic Federal Tax Payment System (EFTPS). EFTPS is an electronic remittance processing system that the Service will use to accept electronically transmitted federal tax payments. This system is a necessary outgrowth of advanced information and communication technologies.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 766,446.

OMB Number: 1545–1505.

Type of Review: Revision of a currently approved collection.

Title: Orphan Drug Credit.

Form: 8820.

Abstract: Filers use this form to elect to claim the orphan drug credit, which is 50% of the qualified clinical testing expenses paid or incurred with respect to low or unprofitable drugs for rare diseases and conditions, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 348.

OMB Number: 1545–2117.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9549 (Final)—Implementation of Form 990.

Abstract: The regulations revise the requirements for requesting a schedule of ruling amounts based on a formula or method.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 1.

OMB Number: 1545–2209.

Type of Review: Extension without change of a currently approved collection.

Title: REG–112805–10—Branded Prescription Drugs.

Abstract: Section 9008 of the Patient Protection and Affordable Care Act (ACA), Public Law 111–148 (124 Stat. 119 (2010)), as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010 (HCERA), Public Law 111–152 (124 Stat. 1029 (2010)) imposes an annual fee on manufacturers and importers of branded prescription drugs that have gross receipts of over $5 million from the sales of these drugs to certain government programs (covered entity/covered entities). The temporary regulations describe how the IRS will administer the branded prescription drug fee. Section 51.7T(b) of the temporary regulations provides that the IRS will send each covered entity notification of its preliminary fee calculation by May 15 of the fee year. If a covered entity chooses to dispute the IRS' preliminary fee calculation, the covered entity must follow the procedures for submitting an error report that are established in § 51.8T.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,800.

OMB Number: 1545–2216.

Type of Review: Extension without change of a currently approved collection.

Title: NOT–131190–11, Alabama Low-Income Housing Credit disaster Relief.

Abstract: The Internal Revenue Service is suspending certain

requirements under § 42 of the Internal Revenue Code for low-income housing credit projects in Alabama to provide emergency housing relief needed as a result of the devastation caused by severe storms, tornadoes, straight-line winds, and flooding in Alabama.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 150.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–4121 Filed 2–22–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau; Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before April 23, 2012.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–453–2686 (facsimile); or
- *formcomments@ttb.gov* (email).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–453–2265.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms and recordkeeping requirements:

Title: Excise Tax Return.

OMB Control Number: 1513–0083.

TTB Form Number: 5000.24.

Abstract: Businesses report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes on TTB F 5000.24. TTB needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.

Current Actions: We are submitting this information collection as a revision. Changes in the supporting statement reflect changes to section numbers as recodified in the final rule for the revision of 27 CFR part 19, Distilled Spirits Plants. The information collection instrument, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 30,000.

Estimated Total Annual Burden Hours: 22,500.

Title: Labeling and Advertising Requirements under the Federal Alcohol Administration Act.

OMB Control Number: 1513–0087.

TTB Recordkeeping Number: 5100/1.

Abstract: Bottlers and importers of alcohol beverages must adhere to numerous performance standards for statements made on labels and in advertisements of alcohol beverages. These performance standards include minimum mandatory labeling and advertising statements.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 6,060.

Estimated Total Annual Burden Hours: 6,060.

Title: Beer for Exportation.

OMB Number: 1513–0114.

TTB Form Number: 5130.12.

Abstract: Untaxpaid beer may be removed from a brewery for exportation without payment of the excise tax normally due on removal. In order to ensure that exportation took place as claimed and that untaxpaid beer does not reach the domestic market, TTB requires certification on TTB F 5130.12.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 60.

Estimated Total Annual Burden Hours: 5,940.

Title: Usual and Customary Business Records Relating to Wine.

OMB Number: 1513–0115.

TTB Recordkeeping Number: 5120/1.

Abstract: TTB routinely inspects wineries' usual and customary business records to ensure the proper payment of wine excise taxes due to the Federal

Government. TTB believes that regulated individuals cannot succeed in business without maintaining these records which control the manufacture and sale of wine.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4,676.

Estimated Total Annual Burden Hours: 468.

Title: Bond for Drawback under 26 U.S.C. 5131.

OMB Control Number: 1513–0116.

TTB Form Number: 5154.3.

Abstract: Businesses that use taxpaid alcohol to manufacture nonbeverage products may file a claim for drawback (refund or remittance). Claims may be filed monthly or quarterly. Monthly claimants must file a bond on TTB F 5154.3 to protect the Government's interest.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 52.

Estimated Total Annual Burden Hours: 10.

Title: Labeling of Major Food Allergens.

OMB Control Number: 1513–0121.

TTB Recordkeeping/Form Number: None.

Abstract: This collection of information requires labeling of major food allergens used in the production of alcohol beverages and corresponds to the amendments to the Food, Drug and Cosmetics Act (FD&C Act) in Title II of Public Law 108–282, 118 Stat. 905.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Total Annual Burden Hours: 3,700.

Title: Formula and Process for Alcohol Beverages.

OMB Control Number: 1513–0122.

TTB Form Number: 5100.51.

Abstract: TTB F 5100.51 is used to determine the classification of distilled spirits, wine, and malt beverages for labeling and for consumer protection. The form describes the person filing, the type of product to be made, and restrictions to the label and/or manufacturing process. The form will be used by TTB to ensure that a product is made and labeled properly and to audit distilled spirits, wine, and malt beverage operations. Records are kept indefinitely for this information collection. TTB uses this form in its Formulas ON Line (FONL) system. TTB only predicts a slight reduction in the burden, as a result of a reduction in the time it takes to complete and submit this form using FONL; however, as the popularity of the system increases, TTB expects an additional decrease in the burden hours.

Current Actions: We are submitting this information collection as a revision, as a result of the change in the burden.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden Hours: 7,640.

Dated: February 17, 2012.

Angela Jeffries,

Deputy Director, Regulations and Rulings Division.

[FR Doc. 2012–4242 Filed 2–22–12; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination; First Sealord Surety, Inc.

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 11 to the Treasury Department Circular 570; 2011 Revision, published July 1, 2011, at 76 FR 38892.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to First Sealord Surety, Inc. (NAIC #28519) under 31 U.S.C. 9305 to qualify as an acceptable surety on Federal bonds is terminated effective today. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2011 Revision, to reflect this change.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: February 10, 2012.

Laura Carrico,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 2012–4006 Filed 2–22–12; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One Entity Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one entity whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designation by the Director of OFAC of the entity in this notice, pursuant to Executive Order 13224, is effective on February 16, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of

Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On February 16, 2012, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one entity whose property and interests in property are blocked pursuant to Executive Order 13224.

The listing for the entity on OFAC's list of Specially Designated Nationals and Blocked Persons appears as follows:

Entity

IRANIAN MINISTRY OF INTELLIGENCE AND SECURITY (a.k.a. VEZARAT–E ETTELA'AT VA AMNIAT–E KESHVAR; a.k.a. ''MOIS''; a.k.a. ''VEVAK''), bounded roughly by Sanati Street on the west, 30th Street on the south, and Iraqi Street on the east, Tehran, Iran; Ministry of Intelligence, Second Negarestan Street, Pasdaran Avenue, Tehran, Iran [SDGT].

Dated: February 16, 2012.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2012–4124 Filed 2–22–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One Entity Pursuant to Executive Order 13553

SUB-AGENCY: Office of Foreign Assets Control.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one entity newly-designated as an entity whose property and interests in property are blocked pursuant to Executive Order 13553 of September 28, 2010, ''Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions.''

DATES: The designation by the Acting Director of OFAC of the entity identified in this notice, pursuant to Executive Order 13553 is effective February 16, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On September 28, 2010, the President issued Executive Order 13553, ''Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06) (''IEEPA'') and the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111–195). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State, to meet any of the criteria set forth in the Order.

The Annex to the Order listed eight individuals whose property and interests in property are blocked pursuant to the Order.

On February 16, 2012, the Acting Director of OFAC, in consultation with or at the recommendation of the Secretary of State, designated, pursuant to one or more of the criteria set forth in subparagraphs (a)(ii)(A) through

(a)(ii)(C) of Section 1 of the Order, one entity whose property and interests in property are blocked, pursuant to the Order.

The listing for this entity is as follows:

• IRANIAN MINISTRY OF INTELLIGENCE AND SECURITY (a.k.a. VEZARAT–E ETTELA'AT VA AMNIAT–E KESHVAR; a.k.a. ''MOIS''; a.k.a. ''VEVAK''), bounded roughly by Sanati Street on the west, 30th Street on the south, and Iraqi Street on the east, Tehran, Iran; Ministry of Intelligence, Second Negarestan Street, Pasdaran Avenue, Tehran, Iran [SDGT] [IRAN–HR] [SYRIA–HR]

Dated: February 16, 2012.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2012–4214 Filed 2–22–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One Entity Pursuant to Executive Order 13572 of April 29, 2011, ''Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of number of one entity whose property and interests in property are blocked pursuant to Executive Order 13572 of April 29, 2011, ''Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria.''

DATES: The designation by the Director of OFAC of the entity identified in this notice, pursuant to Executive Order 13572, is effective on February 16, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On April 29, 2011, the President issued Executive Order 13572, ''Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria,'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President expanded the scope of the national emergency declared in Executive Order 13338 of May 11, 2004.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State: (1) To be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of human rights abuses in Syria, including those related to repression; (2) to be a senior official of an entity whose property and interests in property are blocked pursuant to this Order; (3) to have materially assisted, sponsored or provided financial, material, or technological support for, or goods or services in support of, the activities in subsection (b)(i) of Section 1 of the Order or any person whose property and interests in property are blocked pursuant to Executive Order 13338, Executive Order 13460, or this Order; or (4) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to Executive Order 13460 or this Order.

On February 16, 2012, the Director of OFAC, in consultation with the Department of State, designated, pursuant to one or more of the criteria set forth in subsection 1(b) of the Order, one entity whose property and interests in property are blocked pursuant to Executive Order 13572.

The listing for the entity on OFAC's list of Specially Designated Nationals and Blocked Persons appears as follows:

Entity

IRANIAN MINISTRY OF INTELLIGENCE AND SECURITY (a.k.a. VEZARAT–E ETTELA'AT VA AMNIAT–E KESHVAR; a.k.a. ''MOIS''; a.k.a. ''VEVAK''), bounded roughly by Sanati Street on the west, 30th Street on the south, and Iraqi Street on the east, Tehran, Iran; Ministry of Intelligence, Second Negarestan Street, Pasdaran Avenue, Tehran, Iran [SYRIA].

Dated: February 16, 2012.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2012–4120 Filed 2–22–12; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 36 February 23, 2012

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status and Designations of Critical Habitat for Spikedace and Loach Minnow; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2010–0072; 4500030114]

RIN 1018–AX17

Endangered and Threatened Wildlife and Plants; Endangered Status and Designations of Critical Habitat for Spikedace and Loach Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), change the status of spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*) from threatened to endangered under the Endangered Species Act of 1973, as amended (Act). With this rule we are also revising the designated critical habitats for both species. These changes fulfill our obligations under a settlement agreement.

DATES: This rule becomes effective on March 26, 2012.

ADDRESSES: This final rule and the associated final economic analysis and environmental assessment are available on the Internet at *http://www.regulations.gov*. Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021; telephone 602–242–0210; facsimile 602–242–2513.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 W. Royal Palm Road, 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:

Executive Summary

In this final rule, we are changing the status of spikedace and loach minnow from threatened to endangered under the Act. We also are revising our designations of critical habitat for both species. We are under undertaking these actions pursuant to a settlement agreement and publication of this action will fulfill our obligations under that agreement. With the change in status for the species, the special rules for each species will be removed from the Code of Federal Regulations. In total, approximately 1,013 kilometers (630 miles) are designated as critical habitat for spikedace and 983 kilometers (610 miles) are designated as critical habitat for loach minnow in Apache, Cochise, Gila, Graham, Greenlee, Pinal, and Yavapai Counties, Arizona, and Catron, Grant, and Hidalgo Counties in New Mexico. Of this area, approximately 853 kilometers (529 miles) are designated for both species, with an additional 162 kilometers (100 miles) for spikedace only and an additional 130 kilometers (81 miles) for loach minnow only. We have excluded from this designation of critical habitat: portions of the upper San Pedro River in Arizona based on potential impacts to national security at Fort Huachuca; Tribal lands of the White Mountain Apache Tribe, San Carlos Apache Tribe, and the Yavapai-Apache Nation in Arizona; and private lands owned by Freeport-McMoRan in Arizona and New Mexico.

Background

It is our intent to discuss in this final rule only those topics directly relevant to the development and designations of critical habitat for the spikedace and the loach minnow under the Act (16 U.S.C. 1531 *et seq.*). For more information on the biology and ecology of the spikedace and the loach minnow, refer to the final listing rule published in the **Federal Register** on July 1, 1986, for spikedace (51 FR 23769), and October 28, 1986, for loach minnow (51 FR 39468); the previous critical habitat designations (72 FR 13356, March 21, 2007); and our 1991 final recovery plans, which are available from the Arizona Ecological Services Office (see **ADDRESSES** section). For information on spikedace and loach minnow critical habitat, refer to the proposed rule to designate critical habitat for the two species published in the **Federal Register** on October 28, 2010 (75 FR 66482). A notice of availability regarding changes to the proposed rule and information on the associated draft economic analysis and draft environmental assessment for the proposed rule to designate revised critical habitat was published in the **Federal Register** on October 4, 2011 (76 FR 61330).

Previous Federal Actions

Previous Federal actions prior to October 28, 2010, are outlined in our proposed rule (75 FR 66482), which was published on that date. Publication of the proposed rule opened a 60-day comment period which closed on December 27, 2010. On October 4, 2011 (76 FR 61330), we published a revised proposed rule, announced the availability of a draft economic analysis and environmental assessment of the proposed designations, and announced the scheduling of a public information session and public hearing. Our October 4, 2011, notice also reopened the comment period on the revised proposed rule and uplisting for an additional 30 days, until November 3, 2011.

Spikedace

The spikedace is a member of the minnow family Cyprinidae, and is the only species in the genus *Meda*. The spikedace was first collected from the San Pedro River in 1851. The spikedace is a small, slim fish less than 75 millimeters (mm) (3 inches (in)) in length (Sublette *et al.* 1990, p. 136). Spikedace have olive-gray to brownish skin, with silvery sides and vertically elongated black specks. Spikedace have spines in the dorsal fin (Minckley 1973, pp. 82, 112, 115).

Spikedace are found in moderate to large perennial streams, where they inhabit shallow riffles (those shallow portions of the stream with rougher, choppy water) with sand, gravel, and rubble substrates (Barber and Minckley 1966, p. 31; Propst *et al.* 1986, p. 12; Rinne and Kroeger 1988, p. 1; Rinne 1991, pp. 8–10). Specific habitat for this species consists of shear zones where rapid flow borders slower flow; areas of sheet flow at the upper ends of midchannel sand or gravel bars; and eddies at downstream riffle edges (Rinne 1991, p. 11; Rinne and Kroeger 1988, pp. 1, 4). Recurrent flooding and a natural flow regime are very important in maintaining the habitat of spikedace and in helping maintain a competitive edge over invading nonnative aquatic species (Propst *et al.* 1986, pp. 76–81; Minckley and Meffe 1987, pp. 97, 103–104).

The spikedace was once common throughout much of the Gila River basin, including the mainstem Gila River upstream of Phoenix, and the Verde, Agua Fria, Salt, San Pedro, and San Francisco subbasins. Habitat destruction and competition and predation by nonnative aquatic species reduced its range and abundance (Miller 1961, pp. 365, 377, 397–398; Lachner *et al.* 1970, p. 22; Ono *et al.* 1983, p. 90; Moyle 1986, pp. 28–34; Moyle *et al.* 1986, pp. 416–423; Propst *et al.* 1986, pp. 82–84). Spikedace are now restricted to portions of the upper Gila River (Grant, Catron, and Hidalgo Counties, New Mexico); Aravaipa Creek (Graham and Pinal Counties, Arizona);

Eagle Creek (Graham and Greenlee Counties, Arizona); and the Verde River (Yavapai County, Arizona) (Marsh *et al.* 1990, pp. 107–108, 111; Brouder, 2002, pers. comm.; Stefferud and Reinthal 2005, pp. 16–21; Paroz *et al.* 2006, pp. 62–67; Propst 2007, pp. 7–9, 11–14; Reinthal 2011, pp. 1–2).

In 2007, spikedace were translocated into Hot Springs and Redfield Canyons, in Cochise County, Arizona, and these streams were subsequently augmented (Robinson 2008a, pp. 2, 6; Robinson, 2008b, pers. comm.; Orabutt, 2009 pers. comm.; Robinson 2009a, pp. 2, 5–8). (We use the term ''translocate'' to describe stocking fish into an area where suitable habitat exists, but for which there are no documented collections.) Both Hot Springs and Redfield canyons are tributaries to the San Pedro River. Spikedace were also translocated into Fossil Creek, a tributary to the Verde River in Gila County, Arizona, in 2007, and were subsequently augmented in 2008 and 2011 (Carter 2007b, p. 1; Carter 2008a, p. 1; Robinson 2009b, p. 9; Boyarski *et al.* 2010, p. 3, Robinson 2011a, p. 1). In 2008, spikedace were translocated into Bonita Creek, a tributary to the Gila River in Graham County, Arizona (Blasius, 2008, pers. comm.; Orabutt, 2009,, pers. comm.; Robinson *et al.* 2009a, p. 209; Blasius and Conn 2011, p. 3), and were repatriated to the upper San Francisco River in Catron County, New Mexico (Propst, 2010, pers. comm.). (We use the term ''repatriate'' to describe stocking fish into an area where we have historical records of prior presence.) Augmentations with additional fish will occur for the next several years at all sites, if adequate numbers of fish are available. Monitoring at each of these sites is ongoing to determine if populations ultimately become self-sustaining.

The species is now common only in Aravaipa Creek in Arizona (AGFD 1994; Arizona State University (ASU) 2002; Reinthal 2011, pp. 1–2) and one section of the Gila River south of Cliff, New Mexico (NMDGF 2008; Propst *et al.* 2009, pp. 14–17). The Verde River is presumed occupied; however, the last captured fish from this river was from a 1999 survey (Brouder 2002, p. 1; AGFD 2004). Spikedace from the Eagle Creek population have not been seen for over a decade (Marsh 1996, p. 2), although they are still thought to exist in numbers too low for the sampling efforts to detect (Carter *et al.* 2007, p. 3; see Minckley and Marsh 2009). The Middle Fork Gila River population is thought to be very small and has not been seen since 1991 (Jakle 1992, p. 6), but sampling is localized and inadequate to detect a sparse population.

Population estimates have not been developed as a result of the difficulty in detecting the species, the sporadic nature of most surveys, and the difference in surveying techniques that have been applied over time. Based on the available maps and survey information, we estimate the present range for spikedace to be approximately 10 percent or less of its historical range, and the status of the species within occupied areas ranges from common to very rare. Data indicate that the population in New Mexico has declined in recent years (Paroz *et al.* 2006, p. 56). Historical and current records for spikedace are summarized in three databases (ASU 2002, AGFD 2004, NMDGF 2008), which are referenced throughout this document.

Loach Minnow

The loach minnow is a member of the minnow family Cyprinidae. The loach minnow was first collected in 1851 from the San Pedro River in Arizona and was described by those specimens in 1856 by Girard (pp. 191–192). The loach minnow is a small, slender fish less than 80 mm (3 in) in length. It is olive-colored overall, with black mottling or splotches. Breeding males have vivid red to red-orange markings on the bases of fins and adjacent body, on the mouth and lower head, and often on the abdomen (Minckley 1973, p. 134; Sublette *et al.* 1990, p. 186).

Loach minnow are found in small to large perennial streams and use shallow, turbulent riffles with primarily cobble substrate and swift currents (Minckley 1973, p. 134; Propst *et al.* 1988, pp. 36–43; Rinne 1989, pp. 113–115; Propst and Bestgen 1991, pp. 29, 32–33). The loach minnow uses the spaces between, and in the lee (sheltered) side of, rocks for resting and spawning. It is rare or absent from habitats where fine sediments fill these interstitial spaces (Propst and Bestgen 1991, p. 34).

Loach minnow are now restricted to:

- Portions of the Gila River and its tributaries, the West, Middle, and East Fork Gila River (Grant, Catron, and Hidalgo Counties, New Mexico) (Paroz and Propst 2007, p. 16; Propst 2007, pp. 7–8, 10–11, 13–14);
- The San Francisco and Tularosa rivers and their tributaries, Negrito and Whitewater Creeks (Catron County, New Mexico) (Propst *et al.* 1988, p. 15; ASU 2002; Paroz and Propst 2007, p. 16; Propst 2007, pp. 4–5);
- The Blue River and its tributaries, Dry Blue, Campbell Blue, Pace, and Frieborn Creeks (Greenlee County, Arizona, and Catron County, New Mexico) (Miller 1998, pp. 4–5; ASU 2002; Carter 2005, pp. 1–5; Carter, 2008b, pers. comm.; Clarkson *et al.* 2008, pp. 3–4; Robinson 2009c, p. 3);
- Aravaipa Creek and its tributaries, Turkey and Deer Creeks (Graham and Pinal Counties, Arizona) (Stefferud and Reinthal 2005, pp. 16–21);
- Eagle Creek (Graham and Greenlee Counties, Arizona), (Knowles 1994, pp. 1–2, 5; Bagley and Marsh 1997, pp. 1–2; Marsh *et al.* 2003, pp. 666–668; Carter *et al.* 2007, p. 3; Bahm and Robinson 2009a, p. 1);
- The North Fork East Fork Black River (Apache and Greenlee Counties, Arizona) (Leon 1989, pp. 1–2; Lopez, 2000, pers. comm.; Gurtin, 2004, pers. comm.; Carter 2007b, p. 2; Robinson *et al.* 2009b, p. 4); and
- Possibly the White River and its tributaries, the East and North Fork White River (Apache, Gila, and Navajo Counties, Arizona).

As described for spikedace above, population estimates for loach minnow have not been developed as a result of the difficulty in detecting the species, the sporadic nature of most surveys, and the difference in surveying techniques that have been applied over time. However, based on the available maps and survey information, we estimate the present range for loach minnow to be approximately 15 to 20 percent or less of its historical range, and the status of the species within occupied areas ranges from common to very rare. Data indicate that the population in New Mexico has declined in recent years (Paroz *et al.* 2006, p. 56). Historical and current records for spikedace are summarized in three databases (ASU 2002, AGFD 2004, NMDGF 2008), which are referenced throughout this document.

Summary of Factors Affecting the Species

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Both spikedace and loach minnow currently exist in a small portion of their historical range (10 percent, or less, for spikedace, and 15 to 20 percent for loach minnow), and the threats continue throughout its range. Accordingly, our assessment and determination applies to each species throughout its entire range. Section 4 of the Act (16 U.S.C. 1533), and implementing regulations (50 CFR part 424), set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants.

Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors: (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) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. In making this finding, information pertaining to spikedace and loach minnow, in relation to the five factors provided in section 4(a)(1) of the Act, is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act.

Throughout the document, we discuss areas in which spikedace or loach minnow have been reintroduced, translocated, or augmented. For purposes of this document, we consider the species to have been reintroduced when they have been placed back into an area in which they were formerly present, but no longer are. We consider the fish to have been translocated when they are placed into a location for which we have no previous records of occurrence. Augmentation occurs when we add additional individuals to a former reintroduction or translocation project, in an attempt to establish a stable population.

A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Water Withdrawals

Water resources are limited in the Southwestern United States and diversions and withdrawals have led to the conversion of portions of habitat to intermittent streams or reservoirs unsuitable for spikedace or loach minnow. Growing water demands reduce southern Arizona perennial surface water and threaten aquatic species. Historically, water withdrawals led to the conversion of large portions of flowing streams into intermittent streams, large reservoirs, or dewatered channels, thus eliminating suitable spikedace and loach minnow habitat in impacted areas (Propst *et al.* 1986, p. 3; Tellman *et al.* 1997, pp. 37, 50, 63–64, 66, 103). These habitat changes, together with the introduction of nonnative fish species (see factors C and E), have resulted in the extirpation of spikedace and loach minnow throughout an estimated 80 to 90 percent of their historical ranges.

Spikedace and loach minnow are stream-dwelling fish, and are associated only with flowing water. Spikedace are found in moderate to large perennial streams, and occur where the stream has flowing, rougher, choppy water (Barber and Minckley 1966, p. 31; Propst *et al.* 1986, p. 12; Rinne and Kroeger 1988, p. 1; Rinne 1991, pp. 8–10). Loach minnow occur in shallow, turbulent riffles where there are swift currents (Minckley 1973, p. 134; Propst *et al.* 1988, pp. 36–43; Rinne 1989, pp. 113–115; Propst and Bestgen 1991, pp. 29, 32–33). Water withdrawals that either dewater channels or reduce flows to low levels or pools within an active channel therefore eliminate the habitat used by the two species.

Many streams currently or formerly occupied by spikedace and loach minnow have been affected by water withdrawals. The Gila River downstream of the town of Cliff, New Mexico, flows through a broad valley where irrigated agriculture and livestock grazing are the predominant uses. Human settlement has increased since 1988 (Propst *et al.* 2008 (pp. 1237–1238). Agricultural practices have led to dewatering of the river in the Cliff-Gila valley at times during the dry season (Soles 2003, p. 71). For those portions of the Gila River downstream of the Arizona-New Mexico border, agricultural diversions and groundwater pumping have caused declines in the water table, and surface flows in the central portion of the river basin are diverted for agriculture (Leopold 1997, pp. 63–64; Tellman *et al.* 1997, pp. 101–104; Arizona Department of Water Resources 2000, pp. 16–17).

The San Francisco River has undergone sedimentation, riparian habitat degradation, and extensive water diversion and at present has an undependable water supply throughout portions of its length. The San Francisco River is seasonally dry in the Alma Valley, and two diversion structures fragment habitat in the upper Alma Valley and at Pleasanton (NMDGF 2006, p. 302). The San Francisco River in Arizona was classified as impaired due to excessive sediment from its headwaters downstream to the Arizona—New Mexico border (Arizona Department of Water Resources 2011a, p. 1).

Additional withdrawals of water from the Gila and San Francisco rivers may occur in the future. Implementation of Title II of the Arizona Water Settlements Act (AWSA) (Pub. L. 108–451) would facilitate the exchange of Central Arizona Project water within and between southwestern river basins in Arizona and New Mexico, and may result in the construction of new water development projects. For example, Section 212 of the AWSA pertains to the New Mexico Unit of the Central Arizona Project.

The AWSA provides for New Mexico water users to deplete 140,000 acre-feet of additional water from the Gila Basin in any ten-year period. The settlement also provides the ability to divert that water without complaint from downstream pre-1968 water rights in Arizona. New Mexico will receive $66 million to $128 million in non-reimbursable federal funding. The Interstate Stream Commission (ISC) funds may be used to cover costs of an actual water supply project, planning, environmental mitigation, or restoration activities associated with or necessary for the project, and may be used on one or more of 21 alternative projects ranging from Gila National Forest San Francisco River Diversion/Ditch improvements to a regional water supply project (the Deming Diversion Project). At this time, it is not known how the funds will be spent, or which potential alternative(s) may be chosen.

While multiple potential project proposals have been accepted by the New Mexico Office of the State Engineer (NMOSE) (NMOSE 2011a, p. 1), implementation of the AWSA is still in the planning stages on these streams. The AWSA mandates that the ISC make the final determination of contracts for water and allocation of funding and provide notice to the Secretary of the Interior by December 31, 2014. New Mexico ISC must make any final determination during an open, public meeting, and only after consultation with the Gila San Francisco Water Commission, the citizens of Southwest New Mexico, and other affected interests. Due to the timeline associated with this project, as well as the uncertainties in how funding will be spent, and which potential alternative or alternatives will be chosen, the Service is unable to determine the outcome of this process at this time. However, should water be diverted from the Gila or San Francisco rivers, flows would be diminished and direct and indirect losses and degradation of

habitat for aquatic and riparian species would result. The San Francisco River is currently occupied by loach minnow, and is the site of a 2008 reintroduction for spikedace. The Gila River is a stronghold for both species, currently supporting the largest remaining populations of each. For these reasons, impacts to either river is of particular concern for the persistence of these species.

Groundwater withdrawal in Eagle Creek, primarily for water supply for a large open-pit copper mine at Morenci, Arizona dries portions of the stream (Sublette *et al.* 1990, p. 19; Service 2005; Propst *et al.* 1986, p. 7). Mining is the largest industrial water user in southeastern Arizona. The Morenci mine on Eagle Creek is North America's largest producer of copper, covering approximately 24,281 hectares (ha) (60,000 acres (ac)). Water for the mine is imported from the Black River, diverted from Eagle Creek as surface flows, or withdrawn from the Upper Eagle Creek Well Field (Arizona Department of Water Resources 2009, p. 1).

Aravaipa Creek is relatively protected from further instream habitat loss due to water withdrawals because it is partially within a Bureau of Land Management (BLM) Wilderness area and partially within a Nature Conservancy preserve. However, Aravaipa Creek is affected by upstream uses in the watershed, primarily groundwater pumping for irrigation. Irrigation can reduce creek flows, as crop irrigation uses large amounts of water, especially during the summer months when the creek flows are already at their lowest. Increased groundwater pumping from wells is known to be linked to reduced creek flows (JE Fuller 2000, pp. 4–8).

On the mainstem Salt River, impoundments have permanently limited the flow regime and suitability for spikedace or loach minnow. Spikedace are extirpated from portions of the Salt and Gila Rivers that were once perennial and are now classified as regulated (ASU 2002, The Nature Conservancy 2006).

Water depletion is also a concern for the Verde River. In 2000, the Arizona Department of Water Resources (2000, p. 1–1) reported that the populations of major cities and towns within the Verde River watershed had more than doubled in the last 20 years, resulting in more than a 39 percent increase in municipal water usage. The Arizona Department of Water Resources (2000, p. 1–1) anticipated that human populations in the Verde River watershed are expected to double again before 2040, resulting in more than a 400 percent increase over the 2000 water usage. The middle and lower Verde River has limited or no flow during portions of the year due to agricultural diversion and upstream impoundments, and has several impoundments in its middle reaches, which could expand the area of impacted spikedace and loach minnow habitat. The Little Chino basin within the Verde River watershed has already experienced significant groundwater declines that have reduced flow in Del Rio Springs (Arizona Department of Water Resources 2000, pp. 1–1, 1–2). Blasch *et al.* (2006, p. 2) suggests that groundwater storage in the Verde River watershed has already declined due to groundwater pumping and reductions in natural channel recharge resulting from streamflow diversions.

Also impacting water in the Verde River, the City of Prescott, Arizona, experienced a 22 percent increase in population between 2000 and 2005 (U.S. Census Bureau 2010, p. 1), averaging around 4 percent growth per year (City of Prescott 2010, p. 1). In addition, the towns of Prescott Valley and Chino Valley experienced growth rates of 66 and 67 percent, respectively (Arizona Department of Commerce 2009a, p. 1; 2009b, p. 1). This growth is facilitated by groundwater pumping in the Verde River basin. In 2004, the cities of Prescott and Prescott Valley purchased a ranch in the Big Chino basin in the headwaters of the Verde River, with the intent of drilling new wells to supply up to approximately 4,933,927 cubic meters (4,000 acre-feet (AF)) of groundwater per year. If such drilling occurs, it could have serious adverse effects on the mainstem and tributaries of the Verde River.

Scientific studies have shown a link between the Big Chino aquifer and spring flows that form the headwaters of the Verde River. It is estimated that 80 to 86 percent of baseflow in the upper Verde River comes from the Big Chino aquifer (Wirt 2005, p. G8). However, while these withdrawals could potentially dewater the upper 42 km (26 mi) of the Verde River (Wirt and Hjalmarson 2000, p. 4), it is uncertain that this project will occur given the legal and administrative challenges it faces; however, an agreement in principle was signed between various factions associated with water rights and interests on the Verde River (Citizens Water Advocacy Group 2010; Verde Independent 2010, p. 1).

This upper portion of the Verde River is considered currently occupied by spikedace, and barrier construction and stream renovation plans are under way with the intention of using this historically occupied area for recovery of native fishes including loach minnow. Reductions of available water within this reach could preclude its use for recovery purposes. This area is currently considered occupied by spikedace that are considered genetically (Tibbets 1993, pp. 25–29) and morphologically (Anderson and Hendrickson 1994, pp. 148, 150–154) distinct from all other spikedace populations.

Portions of the San Pedro River are now classified as formerly perennial, including areas from which spikedace and loach minnow are now extirpated (The Nature Conservancy 2006). Water withdrawals are also a concern for the San Pedro River. The Cananea Mine in Sonora, Mexico, owns the land surrounding the headwaters of the San Pedro. There is disagreement on the exact amount of water withdrawn by the mine, Mexicana de Cananea, which is one of the largest open-pit copper mines in the world. However, there is agreement that it is the largest water user in the basin (Harris *et al.* 2001; Varady *et al.* 2000, p. 232).

Another primary groundwater user in the San Pedro watershed is Fort Huachuca. Fort Huachuca is a U.S. Army installation located near Sierra Vista, Arizona. Initially established in 1877 as a camp for the military, the water rights of the Fort are predated only by those of local Indian tribes (Varady *et al.* 2000, p. 230). Fort Huachuca has pursued a rigorous water use reduction plan, working over the past decade to reduce groundwater consumption in the Sierra Vista Subwatershed. Their efforts have focused primarily on reductions in groundwater demand both on-post and off-post and increased artificial and enhanced recharge of the groundwater system. Annual pumping from Fort Huachuca production wells has decreased from a high of approximately 3,200 AF in 1989 to a low of approximately 1,400 AF in 2005. In addition, Fort Huachuca and the City of Sierra Vista have increased the amount of water recharged to the regional aquifer through construction of effluent recharge facilities and detention basins that not only increase stormwater recharge but mitigate the negative effects of increased runoff from urbanization. The amount of effluent that was recharged by Fort Huachuca and the City of Sierra Vista in 2005 was 426 AF and 1,868 AF, respectively. During this same year, enhanced stormwater recharge at detention basins was estimated to be 129 AF. The total net effect of all the combined efforts initiated by Fort Huachuca has been to reduce the net groundwater

consumption by approximately 2,272 AF (71 percent) since 1989 (Service 2007, pp. 41–42).

In addition to impacts on water availability within streams, diversion structures can create barriers for fish movement. Larger dams may prevent movement of fish between populations and dramatically alter the flow regime of streams through the impoundment of water (Ligon *et al.* 1995, pp. 184–189). These diversions also require periodic maintenance and reconstruction, resulting in potential habitat damages and inputs of sediment into the active stream.

In summary, water withdrawals have occurred historically, and continue to occur, throughout the ranges of spikedace and loach minnow. Groundwater pumping and surface diversions used for agricultural, industrial, and municipal purposes can lead to declines in the water table and dewatering of active stream channels. Ongoing water withdrawals are known to occur on the Gila, San Francisco, and Verde rivers, and are occurring at limited levels, with the potential for increased withdrawals on Aravaipa Creek.

Stream Channel Alteration

Sections of many Gila Basin rivers and streams have been, and continue to be, channelized for flood control, which disrupts natural channel dynamics (sediment scouring and deposition) and promotes the loss of riparian plant communities. Channelization changes the stream gradient above and below the channelization. Water velocity increases in the channelized section, which results in increased rates of erosion of the stream and its tributaries, accompanied by gradual deposits of sediment in downstream reaches that may increase the risk of flooding (Emerson 1971, p. 326; Simpson 1982, p. 122). Historical and ongoing channelization will continue to contribute to riparian and aquatic habitat decline most notably eliminating cover and reducing nutrient input.

Stream channel alteration can affect spikedace and loach minnow habitat by reducing its complexity, eliminating cover, reducing nutrient input, improving habitat for nonnative species, changing sediment transport, altering substrate size, increasing flow velocities, and reducing the length of the stream (and therefore the amount of aquatic habitat available) (Gorman and Karr 1978, pp. 512–513; Simpson 1982, p. 122; Schmetterling *et al.* 2001, pp. 7–10). Loach minnow occupy interstitial spaces between cobble (Propst and Bestgen 1991, p. 34), and increases in sedimentation can fill these spaces in, removing shelter for loach minnow, and reducing available breeding habitat. Spikedace are typically found over sand, gravel, and rubble substrates (Barber and Minckley 1966, p. 31; Propst *et al.* 1986, p. 12; Rinne and Kroeger 1988, p. 1; Rinne 1991, pp. 8–10). Changes in sediment transport and alteration of substrate size can make an area unsuitable for spikedace. Both species occur in streams with specific water velocities, and increasing flow velocities as a result of channelization may also make an area unsuitable.

Water Quality

In the past, the threat from water pollution was due primarily to catastrophic pollution events (Rathbun 1969, pp. 1–5; Eberhardt 1981, pp. 3–6, 8–10) or chronic leakage from large mining operations (Eberhardt 1981, pp. 2, 16). Although this is not as large a problem today as it was historically, some damage to spikedace and loach minnow populations still occurs from occasional spills or chronic inability to meet water quality standards (*United States* v. *ASARCO,* No. 98–0137 PHX–ROS (D. Ariz. June 2, 1998)). Mine tailings from a number of past and present facilities throughout the Gila Basin would threaten spikedace populations if catastrophic spills occur (Arizona Department of Health Services 2010, p. 3). Spills or discharges have occurred in the Gila River and affected streams within the watersheds of spikedace and loach minnow, including the Gila River, San Francisco River, San Pedro River, and some of their tributaries (Environmental Protection Agency (EPA) 1997, pp. 24–67; Arizona Department of Environmental Quality 2000, p. 6; Church *et al.* 2005, p. 40; Arizona Department of Environmental Quality 2007, p. 1).

In January of 2006, the Arizona Department of Environmental Quality announced that it had been conducting a remedial investigation at the Klondyke tailings site on Aravaipa Creek, which currently supports one of the two remaining populations where spikedace and loach minnow are considered common. The Klondyke tailings site was a mill that processed ore to recover lead, zinc, copper, silver, and gold between the 1920s and the 1970s. There are eight contaminants in the tailings and soil at the Klondyke tailings site that are at levels above regulatory limits. These contaminants are: antimony; arsenic; beryllium; cadmium; copper; lead; manganese; and zinc. Samples of shallow groundwater collected at the site contained arsenic, beryllium, cadmium, chromium, lead, and nickel above regulatory limits (Arizona Department of Environmental Quality 2006, p. 2; Arizona Department of Water Resources 2011b, p. 1). A preliminary study in Aravaipa Creek has found high levels of lead in two other native fish species, Sonora sucker (*Catostomus insignis*) and roundtail chub (*Gila robusta*), as well as in the sediment and in some of the invertebrates. These lead levels are high enough that they could negatively impact reproduction (Reinthal, 2010, pers. comm.). We do not know with certainty whether these levels of lead would affect spikedace or loach minnow, but we assume similar impacts would occur as they are collocated with Sonora sucker and roundtail chub in Aravaipa Creek.

The Service completed contaminant studies on the San Francisco River and Gila River in the 1990s. Two sites on the San Francisco River exceeded the International Joint Commission (IJC) background level standards for arsenic, cadmium, copper, mercury, and zinc. Cadmium levels at site 2 were approximately 16.5 times the background level, while copper was nearly 25 times greater than the background level. The two San Francisco River sites did not exceed domestic water source water quality standards for trace element concentrations, where those standards are provided for Arizona. The study site closest to, but downstream of, the portion of the Gila River included in the designation exceeded IJC background level standards for trace element concentrations for arsenic, cadmium, and copper. DDE was recovered in all whole body and edible fish samples, as were aluminum, arsenic, barium, chromium, selenium, and strontium. Cadmium, mercury, and selenium concentrations were determined to potentially pose a threat to fish-eating birds in the Gila River basin (Baker and King 1994, pp. 6–14, 17, 19, 22).

Organochlorine contaminants detected included heptachlor, chlordane, and DDE. The concentrations of these pesticides were below concentrations known to affect survival and reproduction of most fish species.

The study recommended continued monitoring, due to the high cadmium and mercury concentrations that approach the critical reproductive effect threshold level in more than one-half of the samples. In addition, the study recommended monitoring for selenium as selenium levels exceeded dietary levels for protection of avian predators. Such monitoring has not occurred.

The Arizona Department of Water Resources notes that 67 sites on the San Pedro River have parameter

concentrations that have equaled or exceeded their drinking water standards. The most frequently equaled or exceeded parameters included arsenic and fluoride, but other parameters equaled or exceeded in the sites measured in the San Pedro Basin were cadmium, lead, nitrates, beryllium, mercury, and total dissolved solids (Arizona Department of Water Resources 2011c, p. 1). The Verde River has three different reaches that exceed standards for turbidity, totaling 37.5 miles between Oak Creek and West Clear Creek. Additionally, Oak Creek exceeds the standards for *E. coli* (Arizona Department of Water Resources 2011d, p. 1).

There are few studies, with the exception of the study at Aravaipa Creek, which discuss contaminants on spikedace and loach minnow. Generally, contaminants can have both sublethal and lethal effects. Sublethal effects are those, such as the lead contamination at Aravaipa Creek, which may reduce a species' ability to reproduce. Lethal are those effects that result in death for the species. Large fish kills are more rare now than in the past.

Pollution is increasingly more widespread and more often from nonpoint sources. Urban and suburban development is one source of nonpoint-source pollution. Increasing the amount of runoff from roads, golf courses, and other sources of petroleum products, pesticides, and other toxic materials can cause changes in fish communities (Wang *et al.* 1997, pp. 6, 9, 11). Nutrient and sediment loads are increasing in urban areas (King *et al.* 1997, pp. 7–24, 38, 39) and, combined with depleted stream flows, can be serious threats to aquatic ecosystems during some periods of the year. Sewage effluent can contain lead, especially where the treatment plant receives industrial discharges or highway runoff (Hoffman *et al.* 1995, p. 361). The number of bridges and roads increases with expanding rural and urban populations in Arizona (Arizona Department of Transportation 2000, pp. 1–3), and pose significant risks to the fish from increases in toxic materials along roadways (Trombulak and Frissell 2000, pp. 22–24). Some metals, like lead and cadmium, are associated with fuel combustion. Lead can be found in vehicle emissions (Hoffman *et al.* 1995, pp. 369, 405).

As noted previously, human populations within the ranges of spikedace and loach minnow are expected to increase over the next 20 years. Therefore, we expect a corresponding increase in nonpoint-source pollution.

Exposure to pesticides can result in a variety of behaviors. Sublethal behaviors are those that do not result in death. Sublethal responses of fish to pesticide exposure can include central nervous system disorders, increased ventilation rates, loss of equilibrium, rapid, jerky movements, dark discoloration or hemorrhaging in muscles and beneath the dorsal fin, erratic, uncoordinated swimming movements with spasms and convulsions, and spinal abnormalities (Meyer and Barclay 1990, p. 21).

Exposure to metals at toxic levels can have varying effects. Low levels of some metals, such as selenium, are essential for good health. However, excess levels of selenium can be toxic, and selenium is considered one of the most toxic elements to fish (Sorensen 1991, pp. 17–22). For other metals such as lead, all known effects on biological systems are negative (Hoffman *et al.* 1995, p. 356).

Exposure to metals causes a variety of impacts, including disruption to feeding behaviors, altered respiratory rates, growth inhibition, and delayed sexual maturation; damage to body structure including skin, nervous system, and musculature, gills, fins, and spines; damage to organs including the liver, kidneys, intestines, heart, and chemoreceptors (used in migration); alterations to blood and blood chemistry, including red blood cells, hemoglobin levels, protein concentrations, glucose concentrations, and antibody titers; and damage to the nervous system leading to muscle spasms, paralysis, hyperactivity, and a loss of equilibrium (Sorensen 1991, pp. 17–22, 34–48 (selenium), 74–78 (arsenic); 104–107 (lead); 153–164 (zinc); 199–219 (cadmium); 253–275 (copper); and 312–323 (mercury)).

The impacts of a toxin in a system vary by species, as well as by age level of the organism. For some metals, such as copper or mercury, fish are more severely affected at the embryonic and reproductive stages of the life cycle (Sorensen 1991, p. 269; Hoffman *et al.* 1995, p. 398). It is also important to note that, for some metals, such as cadmium, copper, lead, and mercury, increased temperatures or changes in water chemistry, such as pH or organic matter, can affect the toxicity of the metal (Sorensen 1991, p. 184; Hoffman *et al.* 1995, pp. 395–396). Therefore, there can be an increased threat from exposure to toxins in streams that have also undergone alterations such as vegetation removal due to fire or construction and maintenance activities, or improper livestock grazing.

An additional, increasing source of contamination for streams is caused by wildfires and their suppression. Based on historical records and long term tree-ring records, wildfires have increased in the ponderosa pine forests of the Southwest, including the range of the spikedace and loach minnow (Swetnam and Betancourt 1990, pp. 1017, 1019; Swetnam and Betancourt 1998, pp. 3131–3135). This is due to a combination of decades of fire suppression, increases in biomass due to increased precipitation after 1976, and warming temperatures coupled with recent drought conditions (University of Arizona 2006, pp. 1, 3). As wildfires increase, so does the use of fire-retardant chemical applications. Some fire-retardant chemicals are ammonia-based, which is toxic to aquatic wildlife; however, many formulations also contain yellow prussiate of soda (sodium ferrocyanide), which is added as an anticorrosive agent. Such formulations are toxic for fish, aquatic invertebrates, and algae (Angeler *et al.* 2006, pp. 171–172; Calfee and Little 2003, pp. 1527–1530; Little and Calfee 2002, p. 5; Buhl and Hamilton 1998, p. 1598; Hamilton *et al.* 1998, p. 3; Gaikwokski *et al.* 1996, pp. 1372–1373). Toxicity of these formulations is enhanced by sunlight (Calfee and Little 2003, pp. 1529–1533).

In a 2008 biological opinion issued by the Service to the U.S. Forest Service (USFS) on the nationwide use of fire retardants, the Service concluded that the use of fire retardants can cause mortality to fish by exposing them to ammonia. We concluded in the opinion that the proposed action, which included the application of fire retardants throughout the range of the species, was likely to jeopardize the continued existence of the spikedace and loach minnow (Service 2008a). This consultation was recently reinitiated and completed in October 2011. The revised biological opinion included additional buffers and protective measures and concluded that the revised protocol for fire retardant use was not likely to jeopardize the continued existence of either spikedace or loach minnow (Service 2011).

Severe wildfires capable of extirpating or decimating fish populations are a relatively recent phenomenon, and result from the cumulative effects of historical or ongoing grazing and fire suppression (Madany and West 1983, pp. 665–667; Savage and Swetnam 1990, p. 2374; Swetnam 1990, p. 12; Touchan *et al.* 1995, pp. 268–271; Swetnam and Baisan 1996, p. 29; Belsky and Blumenthal 1997, pp. 315–316, 324–325; Gresswell 1999, pp. 193–194, 213). Historical wildfires were primarily cool-burning understory fires with

return intervals of 4 to 8 years in ponderosa pine (Swetnam and Dieterich 1985, pp. 390, 395). Cooper (1960, p. 137) concluded that, prior to the 1950s, crown fires were extremely rare or nonexistent in the region. However, since 1989, high-severity wildfires, and subsequent floods and ash flows, have caused the extirpation of several populations of Gila trout in the Gila National Forest, New Mexico (Propst *et al.* 1992, pp. 119–120, 123; Brown *et al.* 2001, pp. 140–141). It is not known if spikedace or loach minnow have suffered local extirpations; however, native fishes, including spikedace and loach minnow, in the West Fork Gila River, showed 60 to 80 percent decreases in population following the Cub Fire in 2002, due to flooding events after the fire (Rinne and Carter 2008, pp. 171). Increased fines (sediments) and ash may be continuing to affect the populations on the West Fork Gila, near the Gila Cliff Dwellings (Propst *et al.* 2008, p. 1247).

Since the proposed rule was published in October of 2011, the Wallow Fire burned portions of the critical habitat designations for spikedace and loach minnow, specifically the Black River Complex in Unit 2 (loach minnow only), and the Blue River Complex in Unit 7 (both species). The Wallow Fire encompassed just over 217,721 ha (538,000 ac) total in Arizona and New Mexico (InciWeb 2011), and was the largest wildfire in Arizona's history.

Portions of Units 2 and 7 of the critical habitat designation fall within the Wallow Fire perimeter. Within Unit 2, the North Fork East Fork Black River falls within an unburned area inside the perimeter of the fire, as does most of Boneyard Creek. The majority of East Fork Black River falls within an area that experienced low burn severity, but does cross a few areas that were either unburned or burned at moderate burn severity. Coyote Creek is in an area almost entirely burned at low severity. Within Unit 7, the majority of Campbell Blue Creek is within unburned or low burn severity areas; however, approximately 2.4 km (1.5 mi) of the upper end of Campbell Blue Creek is within moderate and high burn severity. The Wallow Fire stopped just west of the Blue River, but came within approximately 0.3 km (0.2 mi) of the River. However, the rainfall during the summer monsoon, which began before the fire was extinguished, contributed ash and sediment to both streams. In the Blue River, ash and sediment travelled as far downstream as the San Francisco River, resulting in fish kills (Blasius, 2011, pers. comm.). Fish surveys completed in the fall of 2011 indicated reduced numbers of loach minnow (Adelsberger *et al.* 2011, p. 1).

Effects of fire may be direct and immediate or indirect and sustained over time. Because spikedace and loach minnow are found primarily in the lower elevation, higher-order streams, they are most likely affected by the indirect effects of fire (e.g., ash flows, increased water temperatures), not direct effects (e.g., drastic changes in pH, ammonium concentrations). Indirect effects of fire include ash and debris flows, increases in water temperature, increased nutrient inputs, and sedimentation, some of which can last for several years to more than a decade after the fire (Amaranthus *et al.* 1989, pp. 75–77; Propst *et al.* 1992, pp. 119–120; Gresswell 1999, pp. 194–211; Burton 2005, pp. 145–146; Dunham *et al.* 2007, pp. 335, 340–342; Rinne and Carter 2008, pp. 169–171; Mahlum *et al.* 2011, pp. 243–246). Of these, ash flows probably have the greatest effect on spikedace and loach minnow. Ash and debris flows may occur months after fires, when barren soils are eroded during monsoonal rain storms (Bozek and Young 1994, pp. 92–94). Ash and fine particulate matter created by fire can fill the interstitial spaces between gravel particles, eliminating spawning habitat or, depending on the timing, suffocating eggs that are in the gravel. Ash and debris flows can also decimate aquatic invertebrate populations that the fish depend on for food (Molles 1985, p. 281).

Recreation

The impacts to spikedace and loach minnow from recreation can include movement of people or livestock, such as horses or mules, along streambanks, trampling, loss of vegetation, and increased danger of fire (Northern Arizona University 2005, p. 136; Monz *et al.* 2010, pp. 553–554). In the arid Gila River Basin, recreational impacts are disproportionately distributed along streams as a primary focus for recreation (Briggs 1996, p. 36). Within the range of spikedace and loach minnow, the majority of the occupied areas occur on Federal lands, which are managed for recreation and other purposes. Spikedace and loach minnow are experiencing increasing habitat impacts from such use in some areas. For example, Fossil Creek experienced an increase in trail use at one site, with an estimated 8,606 hikers using the trail in 1998, and an estimated 19,650 hikers using the trail in 2003. Dispersed camping also occurs in the area. The greatest impacts from camping were vegetation loss and litter (Northern Arizona University 2005, pp. 134–136). Similar impacts have been observed at Aravaipa Creek. We do not have information on the impacts of litter on spikedace and loach minnow; however, impacts from vegetation loss can include soil compaction, which when combined with vegetation loss, can result in increased runoff and sedimentation in waterways (Monz *et al.* 2010, pp. 551–553; Andereck 1993, p. 2).

Recreation overuse can result in decreased riparian vegetation (USFS 2008, pp. 7–17) and subsequent increases in stream temperatures. Recreation is cited as one of the causes of impairment due to water temperature on the West Fork Gila River (EPA 2010, p. 1). We discuss temperature tolerances below in the microhabitat discussions for each species. Spikedace and loach minnow are known to have a range of temperatures in which they occur, and recent research by the University of Arizona has determined upper temperature tolerances for the two species. Spikedace did not survive exposure of 30 days at 34 or 36 °C (93.2 or 96.8 °F), and 50 percent mortality occurred after 30 days at 32.1 °C (89.8 °F). In addition, growth rate was slowed at 32 °C (89.6 °F), as well as at the lower test temperatures of 10 and 4 °C (50 and 39.2 °F). Multiple behavioral and physiological changes were observed, indicating the fish became stressed at 30, 32, and 33 °C (86, 89.6 and 91.4 °F) treatments. Similarly, the study determined that no loach minnow survived for 30 days at 32 °C (89.6 °F), and that 50 percent mortality occurred after 30 days at 30.6 °C (87.1 °F). For loach minnow, growth rate slowed at 28 and 30 °C (82.4 and 86.0 °F) compared to growth at 25 °C (77 °F), indicating that loach minnow were stressed at sublethal temperatures. The study concludes that temperature tolerance in the wild may be even lower due to the influence of additional stressors, including disease, predation, competition, or poor water quality.

Roads and Bridges

Roads impact Gila River Basin streams (Dobyns 1981, pp. 120–129, 167, 198–201), including spikedace, loach minnow, and their habitats (Jones *et al.* 2000, pp. 82–83). The need for bridges and roads increases with increasing rural and urban populations in Arizona (Arizona Department of Transportation 2000, pp. 1–3). In addition, existing roads and bridges have ongoing maintenance requirements that result in alterations of stream channels within spikedace and loach minnow habitats (Service 1994a, pp. 8–

12; Service 1995a, pp. 10–12; Service 1995b, pp. 5–7; Service 1997a, pp. 10–15; Service 1997b, pp. 54–77). Bridge construction or repair causes channel alteration and, if not carefully executed, can result in long-term channel adjustments, altering habitats upstream and downstream. In some areas, low-water crossings exist within occupied spikedace and loach minnow habitats and cause channel modification and habitat disruption. Low-water crossings on general-use roads exist in a number of areas that may support spikedace and loach minnow. These crossings frequently require maintenance following minor flooding.

Generally, there are fewer new bridge construction projects within critical habitat; however, one proposed bridge will occur near the designation for spikedace in Unit 2 over Tonto Creek. Road and bridge maintenance and repairs occur frequently on the Blue River. There have been repeated road repairs near the Gila Cliff Dwellings on the West Fork Gila River because the bridge span is too short to accommodate peak flows. This is a common problem on bridges that cross the Gila River, and on other rivers occupied by spikedace and loach minnow in the Southwest. In an attempt to protect bridges, large amounts of fill (such as boulders, rip rap, and dirt) are used to confine and redirect the river. Typically, this habitat alteration is detrimental to spikedace and loach minnow because it changes the channel gradient and substrate composition, and reduces habitat availability. Eventually, peak flows remove the fill material, roads and bridges are damaged, and the resulting repairs and reconstruction lead to additional habitat disturbance (Service 1998, 2002a, 2005, 2008b, 2008c, 2009, 2010a).

The impacts of bridge and road construction, usage, and repairs can include increased sedimentation, either due to driving across low-water crossings in active stream channels, or due to excavation associated with maintenance and repair activities. Vehicles using low-water crossings as well as heavy equipment in active channels during construction or repairs can both harm eggs of spikedace and loach minnow, and compress substrates so that the interstitial spaces used by adult loach minnow are removed. Maintenance and construction work on banks around bridges and roads may also lead to increased sedimentation due to sediment disturbance or the removal of vegetation.

Livestock Grazing

Livestock grazing has been one of the most widespread and long-term causes of adverse impacts to native fishes and their habitat (Miller 1961, pp. 394–395, 399), but is one of the few threats where adverse effects to species such as spikedace and loach minnow are decreasing, due to improved management on Federal lands (Service 1997c, pp. 121–129, 137–141; Service 2001, pp. 50–67). This improvement occurred primarily by discontinuing grazing in the riparian and stream corridors. However, although adverse effects are less than in the past, livestock grazing within watersheds where spikedace and loach minnow and their habitats are located continues to cause adverse effects. These adverse effects occur through watershed alteration and subsequent changes in the natural flow regime, sediment production, and stream channel morphology (Platts 1990, pp. I–9—I–11; Belsky *et al.* 1999, pp. 1–3, 8–10; Service 2001, pp. 50–67).

Livestock grazing can destabilize stream channels and disturb riparian ecosystem functions (Platts 1990, pp. I–9—I–11; Armour *et al.* 1991, pp. 7–10; Tellman *et al.* 1997, pp. 20–21, 33, 47, 101–102; Wyman *et al.* 2006, pp. 5–7). Medina *et al.* (2005, p. 99) note that the impacts of grazing vary within and among ecoregions, and that some riparian areas can sustain little to no ungulate grazing, while others can sustain very high use. They further note that threatened and endangered fish populations and their associated riparian habitat ''* * * may require some form of protection from grazing of all ungulates (e.g., elk, deer, cattle) * * *''. Improper livestock grazing can negatively affect spikedace and loach minnow through removal of riparian vegetation (Propst *et al.* 1986, p. 3; Clary and Webster 1989, p. 1; Clary and Medin 1990, p. 1; Schulz and Leininger 1990, p. 295; Fleishner 1994, pp. 631–633, 635–636), that can result in reduced bank stability and higher water temperatures (Kauffman and Krueger 1984, pp. 432–434; Platts and Nelson 1989, pp. 453, 455; Fleishner 1994, pp. 635–636; Belsky *et al.* 1999, pp. 2–5, 9–10). Livestock grazing can also cause increased sediment in the stream channel, due to streambank trampling and riparian vegetation loss (Weltz and Wood 1986, pp. 364–368; Pearce *et al.* 1998, pp. 302, 307; Belsky *et al.* 1999, p. 10). Livestock can physically alter the streambank through trampling and shearing, leading to bank erosion (Trimble and Mendel 1995, pp. 243–244; Belsky *et al.* 1999, p. 1). In combination, loss of riparian vegetation and bank erosion can alter channel morphology, including increased erosion and deposition, increased sediment loads, downcutting, and an increased width-to-depth ratio, all of which lead to a loss of spikedace and loach minnow habitat components. Livestock grazing management also continues to include construction and maintenance of open stock tanks, which are often stocked with nonnative aquatic species harmful to spikedace and loach minnow (Service 1997b, pp. 54–77) if they escape or are transported to waters where these native fish occur.

An indirect effect of grazing can include the development of water tanks for livestock. In some cases, stocktanks are used to stock nonnative fish for sportfishing, or they may support other nonnative aquatic species such as bullfrogs or crayfish. In cases where stocktanks are in close proximity to live streams, they may occasionally be breached or flooded, with nonnative fish escaping from the stocktank and entering stream habitats (Hedwall and Sponholtz 2005, pp. 1–2; Stone *et al.* 2007, p. 133).

Climate Conditions

Climate conditions have contributed to the status of the spikedace and loach minnow now and will likely continue into the future. While floods may benefit the species, habitat drying affects the occurrence of natural events, such as fire, drought, and forest die-off, and increases the chances of disease and infection.

Consideration of climate change is a component of our analyses under the Endangered Species Act. In general terms, ''climate change'' refers to a change in the state of the climate (whether due to natural variability, human activity, or both) that can be identified by changes in the mean or variability of its properties, and that persists for an extended period—typically decades or longer (Intergovernmental Panel on Climate Change (IPCC) 2007a, p. 78).

Changes in climate are occurring. Examples include warming of the global climate system over recent decades, and substantial increases in precipitation in some regions of the world and decreases in other regions (for these and other examples see IPCC 2007a, p. 30; Solomon *et al.* 2007, pp. 35–54, 82–85).

Most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is very likely due to the observed increase in greenhouse gas concentrations in the atmosphere as a result of human

activities, particularly emissions of carbon dioxide from fossil fuel use (IPCC 2007a, p. 5 and Figure SPM.3; Solomon *et al.* 2007, pp. 21–35). Therefore, to project future changes in temperature and other climate conditions, scientists use a variety of climate models (which include consideration of natural processes and variability) in conjunction with various scenarios of potential levels and timing of greenhouse gas emissions (e.g., Meehl *et al.* 2007 entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529).

The projected magnitude of average global warming for this century is very similar under all combinations of models and emissions scenarios until about 2030. Thereafter, the projections show greater divergence across scenarios. Despite these differences in projected magnitude, however, the overall trajectory is one of increased warming throughout this century under all scenarios, including those which assume a reduction of greenhouse gas emissions (Meehl *et al.* 2007, pp. 760–764; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (For examples of other global climate projections, see IPCC 2007b, p. 8.)

Various types of changes in climate can have direct or indirect effects on species and these may be positive or negative depending on the species and other relevant considerations, including interacting effects with existing habitat fragmentation or other nonclimate variables. There are three main components of vulnerability to climate change: Exposure to changes in climate, sensitivity to such changes, and adaptive capacity (IPCC 2007a, p. 89; Glick *et al.* 2011, pp. 19–22). Because aspects of these components can vary by species and situation, as can interactions among climate and nonclimate conditions, there is no single way to conduct our analyses. We use the best scientific and commercial data available to identify potential impacts and responses by species that may arise in association with different components of climate change, including interactions with nonclimate conditions.

As is the case with all potential threats, if a species is currently affected or is expected to be affected in a negative way by one or more climate-related impacts, this does not necessarily mean the species meets the definition of a threatened or endangered species as defined under the Act. The impacts of climate change and other conditions would need to be to the level that the species is in danger of extinction, or likely to become so, throughout all or a significant portion of its range. If a species is listed as threatened or endangered, knowledge regarding the species' vulnerability to, and impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

Climate simulations of 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 2006–2030 and 2035–2060 predict an increase in drought severity with surface warming. Additionally, drought still increases during wetter simulations because the effect of heat-related moisture loss (Hoerling and Eicheid 2007, p. 19). Annual mean precipitation is likely to decrease in the Southwest as well as 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). Exactly how climate change will affect precipitation is less certain, because precipitation predictions are based on continental-scale general circulation models that do not yet account for land use and land cover change effects on climate or regional phenomena. Consistent with recent observations in changes from climate, the outlook presented for the Southwest predicts warmer, drier, drought-like conditions (Seager *et al.* 2007, p. 1181; Hoerling and Eischeid 2007, p. 19). A decline in water resources with or without climate change will be a significant factor in the compromised watersheds of the desert southwest.

On August 16, 2011, the U.S. Department of Agriculture granted a request from the Governor of Arizona to assign Apache, Cochise, Graham, Greenlee, and Santa Cruz counties as primary natural disaster areas due to losses caused by drought, wildfires, and high winds. The purpose of such a designation is to make farm operators in both primary and contiguous disaster areas eligible to be considered for assistance from the Farm Service Agency (FSA) (Vilsack 2011). However, this designation is a recognition of drought in counties inhabited by spikedace and loach minnow, including Apache, Graham, and Greenlee counties. For New Mexico, the NMOSE reported that, for the first 5 months of 2011, statewide precipitation was only 35 percent of normal in New Mexico (NMOSE 2011b). They include spikedace and loach minnow on a list of species likely to be affected by drought due to loss of habitat (NMOSE 2011c). Habitat losses occur when surface waters decrease, resulting in insufficient flows which may continue to fill low areas as pool habitat, but which do not continue to have sufficient depth or velocity to create the habitat types preferred by spikedace and loach minnow.

Summary of Factor A

Spikedace and loach minnow face a variety of threats throughout their range in Arizona and New Mexico, including groundwater pumping, surface water diversions, impoundments, dams, channelization, improperly managed livestock grazing, wildfire, agriculture, mining, road building, residential development, and recreation. These activities, alone and in combination, contribute to riparian habitat loss and degradation of aquatic resources in Arizona and New Mexico.

Changes in flow regimes are expected to continue into the foreseeable future. Groundwater pumping, surface water diversions, and drought are reducing available surface flow in streams occupied by spikedace and loach minnow. These conditions are ongoing, but drought conditions are worsening and there are at least two large diversion projects in the planning stages which may result in further water withdrawals on the Verde and Gila rivers. For spikedace and loach minnow, reduced surface flow in streams can decrease the amount of available habitat by eliminating flowing portions of the stream used by the two species. In addition, stream channel alterations, such as diversion structures and channelization of streams, affect the flow regimes, substrate, and sedimentation levels that are needed for suitable spikedace and loach minnow habitat.

Impacts associated with roads and bridges, changes in water quality, improper livestock grazing, and recreation have altered or destroyed many of the rivers, streams, and watershed functions in the ranges of the spikedace and loach minnow. While fish kills are less common now than in the past, water quality issues exist in several streams, and can include contamination by cadmium, lead, nitrates, beryllium, mercury, and total dissolved solids. These contaminants can have adverse effects on the prey base of the species and can be either sublethal, affecting their overall health or ability to reproduce, or can be lethal. Construction and maintenance at bridges, improper livestock grazing, wildfire, and recreation may also remove or reduce vegetation, which can impact water temperatures. With

increased temperatures, spikedace and loach minnow may experience multiple behavioral and physiological changes at elevated temperatures, and extreme temperatures can result in death. Decreases in precipitation and increases in temperatures due to climate change and drought are likely to further limit the areas where spikedace or loach minnow can persist by causing further decreases in surface flows and potentially increases in temperature.

The combined impacts of decreased flows, increased sedimentation, increased temperatures, and impaired water quality diminish the amount of habitat available and the suitability of that habitat in some areas. These impacts are further exacerbated by predation by and competition with nonnative species and other factors, as outlined below.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Currently, collection of spikedace and loach minnow in Arizona is prohibited by Arizona Game and Fish Commission Order 40, except where such collection is authorized by special permit (Arizona Game and Fish Department (AGFD) 2009, p. 5). The collection of these species is prohibited in the State of New Mexico except by special scientific permit (New Mexico Department of Game and Fish (NMDGF) 2010, p. 4). Because spikedace and loach minnow do not grow larger than 80 mm (3 in), we conclude that angling for this species is not a threat. No known commercial uses exist for spikedace or loach minnow. A limited amount of scientific collection occurs, but does not pose a threat to these species because it is regulated by the States. Therefore, we have determined that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to spikedace or loach minnow at this time.

C. Disease or Predation

The introduction and spread of nonnative species has been identified as one of the primary factors in the continuing decline of native fishes throughout North America and particularly in the Southwest (Miller 1961, pp. 365, 397–398; Lachner *et al.* 1970, p. 21; Ono *et al.* 1983, pp. 90–91; Carlson and Muth 1989, pp. 222, 234; Fuller *et al.* 1999, p. 1; Propst *et al.* 2008, pp. 1246–1251; Pilger *et al.* 2010, pp. 300, 311–312). Miller *et al.* (1989, pp. 22, 34, 36) concluded that introduced nonnative species were a causal factor in 68 percent of fish extinctions in North America in the last 100 years. For the 70 percent of fish species that are still extant, but are considered to be endangered or threatened, introduced nonnative species are a primary cause of the decline (Lassuy 1995, pp. 391–394). Release or dispersal of new nonnative aquatic organisms is a continuing phenomenon in the species' range (Rosen *et al.* 1995, p. 254). Currently, the majority of native fishes in Arizona and 80 percent of native fishes in the Southwest are on either State or Federal protection lists.

Nonnative fish introductions in the southwestern United States began before 1900, and have steadily increased in frequency (Rinne and Stefferud 1996, p. 29). New species are continually being introduced through various mechanisms, including aquaculture, aquarium trade, sport fish stocking, live bait use, interbasin water transfers, and general ''bait bucket transport,'' where people move fish from one area to another without authorization and for a variety of purposes (Service 1994b, pp. 12–16; Service 1999, pp. 24–59). Nearly 100 kinds of nonnative fishes have been stocked or introduced into streams in the Southwest (Minckley and Marsh 2009, p. 51). Nonnative fishes known to occur within the historical range of the spikedace include channel catfish (*Ictalurus punctatus*), flathead catfish (*Pylodictis olivaris*), red shiner (*Cyprinella lutrensis*), fathead minnow (*Pimephales promelas*), green sunfish (*Lepomis cyanellus*), largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieui*), rainbow trout (*Oncorhynchus mykiss*), brown trout (*Salmo trutta),* mosquitofish (*Gambusia affinis*), carp (*Cyprinus carpio*), bluegill (*Lepomis macrochiris*), yellow bullhead (*Ameiurus natalis*), black bullhead (*Ameiurus melas*), and goldfish (*Carassius auratus*) (ASU 2002).

In the Gila River basin, introduction of nonnative species is considered a primary factor in the decline of native fish species (Minckley 1985, pp. 1, 68; Williams *et al.* 1985, pp. 1–2; Minckley and Deacon 1991, pp. 15–17; Douglas *et al.* 1994, pp. 9–11; Clarkson *et al.* 2005 p. 20; Olden and Poff 2005, pp. 79–87). Aquatic and semiaquatic mammals, reptiles, amphibians, crustaceans, mollusks (snails and clams), parasites, disease organisms, and aquatic and riparian vascular plants outside of their historical range, have all been documented to adversely affect aquatic ecosystems (Cohen and Carlton 1995, pp. i–iv). The effects of nonnative fish competition on spikedace and loach minnow can be classified as either interference or exploitive. Interference competition occurs when individuals directly affect others, such as by fighting, producing toxins, or preying upon them (Schoener 1983, p. 257). Exploitive competition occurs when individuals affect others indirectly, such as through use of common resources (Douglas *et al.* 1994, p. 14). Interference competition in the form of predation is discussed here, while a discussion of the history of nonnative species introductions and resulting interference competition for resources is under Factor E below.

Altered Flow Regimes and Nonnative Predators

Alterations of stream channels through channelization, surface and groundwater withdrawals are discussed above under Factor A. Propst *et al.* (2008, p. 1236) completed a study on the interaction of physical modification of stream channels coupled with the widespread introduction and establishment of nonnative aquatic species. Following evaluation of six study sites in the upper Gila River drainage, they determined that the negative association between nonnatives and native fishes indicated a complex relationship between naturally variable flows and nonnative species, and varied at the study sites (Propst *et al.* 2008, p. 1236). For the West, Middle, and East Forks of the Gila River, they determined that natural flow alone would be insufficient to conserve native fish assemblages. The Tularosa and San Francisco River study sites were affected by human use (albeit at low levels), and neither site supported more than a few nonnative fishes, with none in most years. Declines of loach minnow in this area may be due to the natural variability of the system; however, the research concluded that resilience of native fish assemblages may be compromised by the presence of the nonnative species.

The Gila River study site, just downstream of the town of Cliff, was the most affected by human activity, and was exposed to the greatest number of nonnative fishes; however, over the course of the study, the native fish assemblage at the site did not change. Although not entirely explained, the researchers indicate that the lack of optimal (i.e., pool) habitat for nonnative predators and the comparative abundance of habitats (e.g., cobble riffles and shallow gravel runs) favored by native fishes partially explains the persistence of the native fish assemblage. They speculate that other factors, including thermal regime or turbidity, might also have buffered the interactions between native and nonnative fishes (Propst *et al.* 2008, pp.

1246–1249). The study concludes that, while native fish assemblages may persist through drought, their resistance and resilience are compromised if nonnative predators are present. They also conclude that, while retention of natural hydrologic regimes is crucial for the persistence of native fish assemblages in arid-land streams, removal and preclusion of nonnative predators and competitors are equally important (Propst *et al.* 2008, p. 1251).

Predation

Nonnative channel catfish, flathead catfish, and smallmouth bass all prey on spikedace and loach minnow, as indicated by prey remains of native fishes in the stomachs of these species (Propst *et al.* 1986, p. 82; Propst *et al.* 1988, p. 64; Bonar *et al.* 2004, pp. 13, 16–21). Channel catfish move into riffles to feed, preying on the same animals most important to loach minnows, while juvenile flathead catfish prey on loach minnows (Service 1991a, p. 5). Smallmouth bass are known to co-occur with spikedace and are documented predators of the species (Service 1991b, p. 6; Paroz *et al.* 2009, pp. 12, 18). When smallmouth bass densities increased on the East Fork Gila River, densities of native fishes decreased (Stefferud *et al.* 2011, pp. 11–12). Green sunfish are also thought to be a predator, likely responsible for replacement of native species like spikedace and loach minnow. While no direct studies have been completed on predation by green sunfish on spikedace or loach minnow, they are a known predator of fish that size, and they occur within areas occupied by these species.

Declines of native fish species appear linked to increases in nonnative fish species. In 1949, for example, 52 spikedace were collected at Red Rock on the Gila River, while channel catfish composed only 1.65 percent of the 607 fish collected. However, in 1977, only 6 spikedace were located at the same site, and the percentage of channel catfish had risen to 14.5 percent of 169 fish collected. The decline of spikedace and the increase of channel catfish is likely related (Anderson 1978, pp. 2, 13, 50–51). Similarly, interactions between native and nonnative fishes were observed in the upper reaches of the East Fork of the Gila River. Prior to the 1983 and 1984 floods in the Gila River system, native fish were limited, with spikedace being rare or absent, while nonnative channel catfish and smallmouth bass were moderately common. After the 1983 flooding, adult nonnative predators were generally absent, and spikedace were collected in moderate numbers in 1985 (Propst *et al.* 1986, p. 83).

The majority of areas considered occupied by spikedace and loach minnow have seen a shift from a predominance of native fishes to a predominance of nonnative fishes. For spikedace, this is best demonstrated on the upper Verde River, where native species dominated the total fish community at greater than 80 percent from 1994 to 1996, before dropping to approximately 20 percent in 1997 and 19 percent in 2001. At the same time, three nonnative species increased in abundance between 1994 and 2000 (Rinne *et al.* 2004, pp. 1–2). Similar changes in the dominance of nonnative fishes have occurred on the Middle Fork Gila River, with a 65 percent decline of native fishes between 1988 and 2001 (Propst 2002, pp. 21–25).

In other areas, nonnative fishes may not dominate the system, but their abundance has increased, while spikedace and loach minnow abundance has declined. This is the case for the Cliff-Gila Valley area of the Gila River, where nonnative fishes increased from 1.1 percent to 8.5 percent, while native fishes declined steadily over a 40-year period (Propst *et al.* 1986, pp. 27–32). At the Redrock and Virden valleys on the Gila River, the relative abundance in nonnative fishes in the same time period increased from 2.4 percent to 17.9 percent (Propst *et al.* 1986, pp. 32–34). Four years later, the relative abundance of nonnative fishes increased to 54.7 percent at these sites (Propst *et al.* 1986, pp. 32–36). The percentage of nonnative fishes increased by almost 12 percent on the Tularosa River between 1988 and 2003, while on the East Fork Gila River, nonnative fishes increased to 80.5 percent relative abundance in 2003 (Propst 2005, pp. 6–7, 23–24). Nonnative fishes are also considered a management issue in other areas including Eagle Creek, the San Pedro River, West Fork Gila River, and to a lesser extent on the Blue River and Aravaipa Creek.

Generally, when the species composition of a community shifts in favor of nonnative fishes, a decline in spikedace or loach minnow abundance occurs (Olden and Poff 2005, pp. 79–86). Propst *et al.* (1986, p. 38) noted this during studies of the Gila River between 1960 and 1980. While native species, including spikedace, dominated the study area initially, red shiner, fathead minnow, and channel catfish were more prevalent following 1980. Propst *et al.* (1986, pp. 83–86) noted that drought and diversions for irrigation first brought a decline in habitat quality, followed by the establishment of nonnative fishes in remaining suitable areas, thus reducing the availability and utility of these areas for native species. It should be noted that the effects of nonnative fishes often occur with, or are exacerbated by, changes in flow regimes or declines in habitat conditions (see Factor A above) and should be considered against the backdrop of historical habitat degradation that has occurred over time (Minckley and Meffe 1987, pp. 94, 103; Rinne 1991, p. 12).

Nonnative channel catfish, flathead catfish, and smallmouth bass are present in most spikedace habitats, including the Verde River (Minckley 1993, pp. 7–13; Jahrke and Clark 1999, pp. 2–7; Rinne 2004, pp. 1–2; Bahm and Robinson 2009b, pp. 1–4; Robinson and Crowder 2009, pp. 3–5); the Gila River (Propst *et al.* 1986, pp. 14–31; Springer 1995, pp. 6–10; Jakle 1995, pp. 5–7; Propst *et al.* 2009, pp. 14–17); the San Pedro River (Jakle 1992, pp. 3–5; Minckley 1987, pp. 2, 16); the San Francisco River (Papoulias *et al.* 1989, pp. 77–80; Propst *et al.* 2009, pp. 5–6); the Blue River (ASU 1994, multiple reports; ASU 1995, multiple reports; Clarkson *et al.* 2008, pp. 3–4); the Tularosa River, East Fork Gila River, West Fork Gila River, and Middle Fork Gila River (Paroz *et al.* 2009, p. 12; Propst *et al.* 2009, pp. 7–13) and Eagle Creek (Marsh *et al.* 2003, p. 667; ASU 2008, multiple reports; Bahm and Robinson 2009a, pp. 2–6).

Pilger *et al.* (2010, pp. 311–312) studied the food webs in six reaches of the Gila River. Their study attempted to quantify resource overlap among native and nonnative fishes. Their study determined that nonnative fishes consumed a greater diversity of invertebrates and more fish than native species, and that nonnative fishes consumed predacious invertebrates and terrestrial invertebrates more frequently than native fishes. They found that, on average, the diets of adult nonnative fishes were composed of 25 percent fish, but that there was high variability among species. Only 6 percent of the diet of channel catfish was fish, while fish made up 84 percent of the diet of flathead catfish. They found that both juvenile and adult nonnative species could pose a predation threat to native fishes.

As noted below under Factor E, nonnative fishes also compete for resources with native fishes. While nonnative fishes are preying on native fishes, small-bodied nonnative fishes are also potentially affecting native fishes through competition (discussed further under Factor E), so that native fishes are impacted by both competition and predation. Pilger *et al.* (2010, p.

312) note that removal and preclusion of nonnative predators and competitors may be necessary for conservation of native fishes in the upper Gila River in order to mitigate the effects they have on native species. Rinne and Miller (2006, pp. 91, 95) note that, in the upper Verde River, native fishes have declined precipitously since the mid-1990s. They conclude that there are declining trends of native fish abundances in the upper Gila River, and that the coexistence of native and nonnative fishes there may indicate that the threshold has not been reached, but may be imminent.

Disease

Various parasites may affect spikedace and loach minnow. Asian tapeworm (*Bothriocephalus acheilognathi*) was introduced into the United States with imported grass carp (*Ctenopharyngodon idella*) in the early 1970s. It has since become well established in areas throughout the southwestern United States. The definitive host in the life cycle of Asian tapeworm is a cyprinid fish (carp or minnow), and therefore it is a potential threat to spikedace and loach minnow, as well as other native cyprinids in Arizona. The Asian tapeworm adversely affects fish health by impeding the digestion of food as it passes through the digestive track. Emaciation and starvation of the host can occur when large enough numbers of worms feed off the fish directly. An indirect effect is that weakened fish are more susceptible to infection by other pathogens. Asian tapeworm invaded the Gila River basin and was found during the Central Arizona Project's fall 1998 monitoring in the Gila River at Ashurst-Hayden Dam. It has also been confirmed from Bonita Creek in 2010 and from Fossil Creek in 2004 and 2010 (U.S. Fish and Wildlife Service National Wild Fish Health Survey 2004, 2010). This parasite can infect many species of fish and is carried into new areas along with nonnative fishes or native fishes from contaminated areas.

The parasite (*Ichthyophthirius multifiliis*) (Ich) usually occurs in deep waters with low flow and is a potential threat to spikedace and loach minnow. Ich has occurred in some Arizona streams, probably encouraged by high temperatures and crowding as a result of drought. Ich is known to be present in Aravaipa Creek (Mpoame 1982, pp. 45–47), which is currently occupied by both spikedace and loach minnow. This parasite was observed being transmitted on the Sonora sucker (*Catostomus insignis*), although it does not appear to be host-specific and could be transmitted by other species (Mpoame 1982, p. 46). It has been found on desert and Sonoran suckers, as well as roundtail chub (Robinson *et al.* 1998, p. 603). This parasite becomes embedded under the skin and within the gill tissues of infected fish. When Ich matures, it leaves the fish, causing fluid loss, physiological stress, and sites that are susceptible to infection by other pathogens. If Ich is present in large enough numbers, it can also impact respiration because of damaged gill tissue. There are recorded spikedace mortalities in captivity due to Ich.

Anchor worm (*Lernaea cyprinacea*), an external parasite, is unusual in that it has little host specificity, infecting a wide range of fishes and amphibians. Infection by this parasite has been known to kill large numbers of fish due to tissue damage and secondary infection of the attachment site (Hoffnagle and Cole 1999, p. 24). Presence of this parasite in the Gila River basin is a threat to spikedace, loach minnow, and other native fishes. In July 1992, the BLM found anchor worms in Bonita Creek. They have also been documented in Aravaipa Creek and the Verde River (Robinson *et al.* 1998, pp. 599, 603–605). Both spikedace and loach minnow occur in Bonita and Aravaipa Creeks.

Yellow grub (*Clinostomum marginatum)* is a parasitic, larval flatworm that appears as yellow spots on the body and fins of a fish. These spots contain larvae of worms which are typically introduced by fish-eating birds who ingest fish infected with the parasite. Once ingested, the parasites mature and produce eggs in the intestines of the bird host. The eggs are then deposited into water bodies in the bird waste, where they infect the livers of aquatic snails. The snail hosts in turn allow the parasites to develop into a second and third larval form, which then migrates into a fish host. Because the intermediate host is a bird, and therefore highly mobile, yellow grub are easily spread. When yellow grub infect a fish they penetrate the skin and migrate into its tissues, causing damage and potentially hemorrhaging. Damage from one yellow grub may be minimal, but in greater numbers, yellow grub can kill fish (Maine Department of Inland Fisheries and Wildlife 2002a, p. 1). Yellow grub occur in many areas in Arizona and New Mexico, including Aravaipa Creek (Amin 1969, p. 436; U.S. Geological Survey (USGS) 2004, p. 71; Widmer *et al.* 2006, p. 756), Oak Creek (Mpoame and Rinne 1983, pp. 400–401), the Salt River (Amin 1969, p. 436; Bryan and Robinson 2000, p. 19), the Verde River (Bryan and Robinson 2000, p. 19), and Bonita Creek (Robinson, 2011b, pers. comm.).

Black grub, also called black spot, (*Neascus* spp.) is a parasitic larval fluke that appears as black spots on the skin, tail base, fins, and musculature of a fish. As with yellow grub, adult black grub trematodes live in a bird's mouth and produce eggs, which are swallowed unharmed and released into the water in the bird's feces. Each stage of their life cycle is named. Eggs mature in the water releasing miracidia, which infect mollusks as a first intermediate host, and continue to grow, becoming redia. They then migrate into the tissues of a second intermediate host, which is typically a fish. At this stage, they are termed ''cercaria.'' When the cercaria penetrates and migrates into the tissues of a fish, it causes damage and possibly hemorrhaging. It then becomes encapsulated by host tissue, and melanophores, or pigmented cells, surround the outer layers, resulting in the darker color, which appears as a black spot. The damage caused by one cercaria is negligible, but in greater numbers they may kill a fish (Lane and Morris 2000, pp. 2–3; Maine Department of Inland Fisheries and Wildlife 2002b, p. 1). Black grub are present in the Verde River (Robinson et al. 1998, p. 603; Bryan and Robinson 2000, p. 21), Silver Creek, Redfield Canyon, and Fossil Creek (Robinson, 2011b, pers. comm.), and are prevalent in the San Francisco River in New Mexico (Paroz, 2011 pers. comm.).

Summary of Factor C

Both spikedace and loach minnow have been severely impacted by the predation of nonnative predators. Aquatic nonnative species have been introduced or spread into new areas through a variety of mechanisms, including intentional and accidental releases, sport stocking, aquaculture, aquarium releases, and bait-bucket release. Channel catfish, flathead catfish, and smallmouth bass appear to be the most prominent predators, although other species contribute to the decline of spikedace and loach minnow. Spikedace and loach minnow have been replaced by nonnative fishes in several Arizona streams. In addition to threats from predation, we also conclude that both spikedace and loach minnow are reasonably certain to become impacted by parasites that have been documented in the Gila River basin and that are known to adversely affect or kill fish hosts. For these reasons, we find that disease and predation are significant threats to the spikedace and loach minnow.

D. The Inadequacy of Existing Regulatory Mechanisms

Because of the complex, indirect, and cumulative nature of many of the threats to spikedace and loach minnow, existing regulatory mechanisms are inadequate to address or ameliorate the threats. Causes of the declining status of these species are a mix of many human activities and natural events, which makes them difficult to control through regulation.

State Regulations

Spikedace is listed by New Mexico as an endangered species, while loach minnow is listed as threatened (Bison-M 2010). These designations provide the protection of the New Mexico Wildlife Conservation Act. However, the primary focus of the New Mexico Wildlife Conservation Act and other State legislation is to prevent actual destruction or harm to individuals of the species. Since most of the threats to these species come from actions that do not directly kill individuals, but indirectly result in their death from the lack of some habitat requirement or an inability to reproduce, the State protection is only partially effective for this species. Similarly, spikedace and loach minnow are listed as species of concern by the State of Arizona. The listing under the State of Arizona law does not provide protection to the species or their habitats; however, AGFD regulations prohibit possession of these species (AGFD 2006, Appendix 10, p. 4).

As discussed above under Factor C, the introduction and spread of nonnative aquatic species is a major threat to spikedace and loach minnow. Neither the States of New Mexico and Arizona nor the Federal Government has adequate regulatory mechanisms to address this issue. Programs to introduce, augment, spread, or permit such actions for nonnative sport, bait, aquarium, and aquaculture species continue. Regulation of these activities does not adequately address the spread of nonnative species, as many introductions are conducted through incidental or unregulated actions.

New Mexico water law does not include provisions for instream water rights to protect fish and wildlife and their habitat. Arizona water law does recognize such provisions; however, because this change is relatively recent, instream water rights have low priority and are often overcome by more senior diversion rights. Indirectly, Arizona State law also allows surface water depletion by groundwater pumping.

A limited amount of scientific collection occurs under State permitting, as authorized by the special rule for the two species, but does not pose a threat to these species because it is regulated by the States.

Federal Regulations

Many Federal statutes potentially afford protection to spikedace and loach minnow. A few of these are section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*), Federal Land Policy and Management Act (43 U.S.C. 1701–1782), National Forest Management Act (16 U.S.C. 1600 *et seq.*), National Environmental Policy Act (NEPA), and the Act. However, in practice these statutes have not been able to provide sufficient protection to prevent the downward trend in the populations and habitat of spikedace and loach minnow and the upward trend in threats. Section 404 of the Clean Water Act regulates placement of fill into waters of the United States, including most of spikedace and loach minnow habitat. However, many actions highly detrimental to spikedace and loach minnow and their habitats, such as gravel mining and irrigation diversion structure construction and maintenance, are often exempted from the Clean Water Act. Other detrimental actions, such as bank stabilization and road crossings, are covered under nationwide permits that receive little or no Service review. A lack of thorough, site-specific analyses for projects can allow substantial adverse effects to spikedace, loach minnow, and their habitat.

The Federal Land Policy and Management Act and National Forest Management Act provide mechanisms for protection and enhancement of spikedace, loach minnow, and their habitat on Federal lands. The USFS and the BLM have made significant progress on some stream enhancements (Fossil Creek, Blue River, Hot Springs Canyon, and Bonita Creek). However, despite the protection and enhancement mechanisms in these laws, competing multiple uses, limited funding and staffing have resulted in few measureable on-the-ground successes, and the status of these species has continued to decline.

Spikedace and loach minnow are currently listed as threatened under the Act and therefore are afforded the protections of the Act. Special rules were promulgated for spikedace and loach minnow in 1986, which prohibit taking of the species, except under certain circumstances in accordance with applicable State fish and wildlife conservation laws and regulations. Violations of the special rules are considered violations of the Act (50 CFR 17.44(p) for spikedace and 50 CFR 17.44(q) for loach minnow). As a result of the special rules for spikedace and loach minnow, the AGFD is issuing scientific collecting permits. This authority was granted at 50 CFR 17.44(p) for spikedace and 50 CFR 17.44(q) for loach minnow. This is confirmed through Arizona Commission Order 40 and New Mexico special permit (19 New Mexico Administrative Code 33.6.2).

Under section 7 of the Act, Federal agencies must insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the adverse modification or destruction of designated critical habitat. The Service promulgated regulations extending take prohibitions under section 9 for endangered species to threatened species. Prohibited actions under section 9 include, but are not limited to, take (i.e., harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such activity). Critical habitat designation alerts the public that the areas designated as critical habitat are important for the future recovery of the species, as well as invoking the review of these areas under section 7 of the Act with regard to any possible Federal actions in that area.

Section 10 of the Act allows for the permitting of take in the course of otherwise lawful activities by private entities, and may involve habitat conservation plans which can ultimately benefit spikedace or loach minnow. The habitat conservation plan (HCP) prepared by Salt River Project (SRP) is expected to benefit spikedace and loach minnow in the Verde River.

Spikedace and loach minnow have been protected under the Act since their listing in 1986. While the Act provides prohibitions against take, and allows for the development of HCPs, the species have continued to decline. To date, section 7 consultation has not been an effective tool in addressing this decline. This is due in part to the fact that some causes of the decline, such as competition and predation with nonnative aquatic species, decreases in surface flows due to drought, and habitat losses caused by wildfires are not covered by the Act. In addition, water diversions are often ''grandfathered'' into existing law and are therefore not subject to section 7.

Summary of Factor D

Despite the prohibitions against take, which have been in place since the

species were listed in 1986, spikedace and loach minnow have continued to decline. While section 7 consultation may be effective in addressing impacts from Federal actions such as a road construction project or implementation of an allotment management plan, they are not effective at minimizing losses to the species from competition and predation with nonnative species, the impacts of drought or climate change, or the effects of wildfires. Review under the CWA is lacking, and the Federal Land Policy and Management Act and National Forest Management Act are not currently having a positive effect on the species. In summary, existing regulatory mechanisms that prohibit taking of the two species have been in place for decades, however, these regulations are not adequate to address the significant habitat effects, particularly water diversion and the distribution and abundance of nonnative fishes, affecting spikedace and loach minnow. Because existing regulatory mechanisms do not provide adequate protection for these species or their habitats throughout their ranges, we conclude the inadequacy of existing regulatory mechanisms is a significant threat to the spikedace and loach minnow.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Nonnative Fishes

As described under Factor C above, nonnative fishes pose a significant threat to Gila River basin native fishes, including spikedace and loach minnow (Minckley 1985, pp. 1, 68; Williams *et al.* 1985, pp. 3, 17–20; Minckley and Deacon 1991, pp. 15–17). Competition with nonnative fish species is considered a primary threat to spikedace and loach minnow. See Factor C for the discussion of predation by nonnative fish species.

As with many fish in the West, spikedace and loach minnow lacked exposure to a wider range of species over evolutionary time, so that they seem to lack the competitive abilities and predator defenses developed by fishes from regions where more species are present (Moyle 1986, pp. 28–31; Douglas *et al.* 1994, pp. 9–10). As a result, the native western fish fauna is significantly impacted by interactions with nonnative species. The introduction of more aggressive and competitive nonnative fish has led to significant losses of spikedace and loach minnow (Douglas *et al.* 1994, pp. 14–17). Nonnative fishes known to occur within the historical range of spikedace and loach minnow in the Gila River basin include channel catfish, flathead catfish, red shiner, fathead minnow, green sunfish, largemouth bass, smallmouth bass, rainbow trout, western mosquitofish, carp, warmouth (*Lepomis gulosus*), bluegill, yellow bullhead, black bullhead, and goldfish (Miller 1961, pp. 373–394; Nico and Fuller 1999, pp. 16, 21–24; Clark 2001, p. 1; AGFD 2004, Bahm and Robinson 2009b, p. 3).

The aquatic ecosystem of the central Gila River basin has relatively small streams with warm water and low gradients, and many of the native aquatic species are small. In these areas, small, nonnative fish species pose a threat to spikedace and loach minnow (Deacon *et al.* 1964, pp. 385, 388). Examples of this are the impacts of mosquitofish and red shiner, which may compete with, or predate upon, native fish in the Gila River basin (Meffe 1985, pp. 173, 177–185; Douglas *et al.* 1994, pp. 1, 13–17). However, negative interactions also occur between small native and large nonnative individuals. On the East and Middle Forks of the Gila River, where large nonnative predators were comparatively common, small native species were uncommon or absent. Conversely, on the West Fork Gila River, when large nonnative predators were rare, most small-bodied and young of large-bodied native fishes persisted (Stefferud *et al.* 2011, pp. 1409–1411).

For spikedace and loach minnow, every habitat that has not been renovated or protected by barriers has at least six nonnative fish species present, at varying levels of occupation. In addition to nonnative fishes, parasites have been introduced incidentally with nonnative species and may be deleterious to spikedace and loach minnow populations. Nonnative crayfish (*Orconectes virilis*) have invaded occupied spikedace and loach minnow habitats (Taylor *et al.* 1996, p. 31; Robinson and Crowder 2009, p. 3; Robinson *et al.* 2009b, p. 4; USGS 2009, p. 1). Crayfish are known to eat fish eggs, especially those bound to the substrate (Dorn and Mittlebach 2004, p. 2135), as is the case for spikedace and loach minnow. Additionally, crayfish cause decreases in macroinvertebrates, amphibians, and fishes (Hanson *et al.* 1990, p. 69; Lodge *et al.* 2000, p. 11). Several of the nonnative species now in spikedace and loach minnow habitats arrived there since the species were listed, such as red shiner in Aravaipa Creek (Stefferud and Reinthal 2005, p. 51) and Asian tapeworm in the middle Gila River.

Competition can be classified as either interference competition or exploitive competition. Interference competition occurs when individuals directly affect others, such as by fighting, producing toxins, or preying upon them (Schoener 1983, p. 257). Exploitive competition occurs when individuals affect others indirectly, such as through use of common resources (Douglas *et al.* 1994, p. 14). Exploitive competition in the form of predation is discussed above under Factor C. Interference competition occurs with species such as red shiner. Nonnative red shiners compete with spikedace for suitable habitats, as the two species occupy essentially the same habitat types. The red shiner has an inverse distribution pattern in Arizona to spikedace (Minckley 1973, p. 138). Where the two species occur together, there is evidence of displacement of spikedace to less suitable habitats than previously occupied (Marsh *et al.* 1989, pp. 67, 107). As a result, if red shiners are present, suitable habitat for spikedace is reduced. In addition, the introduction of red shiner and the decline of spikedace have occurred simultaneously (Minckley and Deacon 1968, pp. 1427–1428; Douglas *et al.* 1994, pp. 13, 16–17). The red shiner was introduced in the mainstem Colorado River in the 1950s, spreading upstream to south-central Arizona by 1963, and by the late 1970s eastward into New Mexico. Spikedace disappeared at the same time and in the same progressively upstream direction, likely as a result of interactions with red shiner and in response to impacts of various water developments (Minckley and Deacon 1968, pp. 1427–1428; Minckley and Deacon 1991, pp. 7, 15; Douglas *et al.* 1994, pp. 13–17).

One study focused on potential impacts of red shiner on spikedace in three areas: (1) Portions of the Gila River and Aravaipa Creek having only spikedace; (2) a portion of the Verde River where spikedace and red shiner co-occurred for three decades; and (3) a portion of the Gila River where red shiner invaded areas and where spikedace have never been recorded. The study indicated that, for reaches where only spikedace were present, spikedace displayed a preference for slower currents and smaller particles in the substrate than were generally available throughout the Gila River and Aravaipa Creek systems. Where red shiner occur in the Verde River, the study showed that red shiner occupied waters that were generally slower with smaller particle sizes in the substrate than were, on average, available in the system. The study concludes that in areas where spikedace co-occurrs with

red shiner, red shiner remain in the preferred habitat, while spikedace move into currents swifter than typically occupied (Douglas *et al.* 1994, pp. 14–16). The areas with swifter currents are likely less suitable for spikedace, as evidenced by their nonuse until such competition occurs. Red shiners are known to occur in the Verde River (Minckley 1993, p. 10; Jahrke 1999, pp. 2–7; Bahm and Robinson 2009b, pp. 3–5), Aravaipa Creek (Reinthal, 2011, pp. 1–2), Blue River (ASU 2004, multiple reports; ASU 2005, multiple reports), and Gila River (Minckley 1973, pp. 136–137; Marsh *et al.* 1989, pp. 12–13; Propst *et al.* 2009, pp. 14–18).

As with spikedace, exploitive competition also appears to occur between red shiner and loach minnow. Red shiners occur in all places known to be formerly occupied by loach minnow, and are absent or rare in places where loach minnow persists. Because of this, red shiner has often been implicated in the decline of loach minnow. Loach minnow habitat is markedly different than that of red shiner, so interaction between the two species is unlikely to cause shifts in habitat use by loach minnow (Marsh *et al.* 1989, p. 39). Instead, studies indicate that red shiner move into voids left when native fishes such as loach minnow are extirpated due to habitat degradation in the area (Bestgen and Propst 1986, p. 209). Should habitat conditions improve and the habitat once again become suitable for loach minnow, the presence of red shiner may preclude occupancy of loach minnow, although the specific mechanism of this interaction is not fully understood. Prior to 1960, the Glenwood-Pleasanton reach of the San Francisco River supported a native fish assemblage of eight different species. Post-1960, four of these species became uncommon, and ultimately three of them were extirpated. In studies completed between 1961 and 1980, it was determined that loach minnow was less common than it had been, while the diversity of the nonnative fish community had increased in comparison to the pre-1960 period. Following 1980, red shiner, fathead minnow, and channel catfish were all regularly collected. Drought and diversions for irrigation resulted in a decline in habitat quality, with canyon reaches retaining most habitat components for native species. However, establishment of nonnative fishes in the canyon reaches has reduced the utility of these areas for native species (Propst *et al.* 1988, pp. 51–56).

Western mosquitofish were introduced outside of their native range to help control mosquitoes. Because of their aggressive and predatory behavior, mosquitofish may negatively affect populations of small fishes through predation and competition (Courtenay and Meffe 1989, pp. 320–324). Introduced mosquitofish have been particularly destructive to native fish communities in the American West, where they have contributed to the elimination or decline of populations of federally endangered and threatened species, such as the Gila topminnow (*Poeciliopsis occidentalis occidentalis*) (Courtenay and Meffe 1989, pp. 323–324). Pilger *et al.* (2010, p. 312) found that the generalist feeding strategy of smallbodied nonnative fishes could further affect native fishes through competition, particularly if there is a high degree of overlap in habitat use. In their study on the upper Gila River, they determined that the diets of nonnative, small-bodied fishes and all age groups of native fishes overlapped, so that the presence of both juvenile and adult nonnative species could pose a competitive threat to native fishes spikedace and loach minnow (Pilger *et al.* 2010, p. 311). Western mosquitofish represent an additional challenge for spikedace and loach minnow management, in that they are harder to effectively remove during stream renovation efforts. In the desert Southwest, the habitat conditions are so limited that native fish reintroductions can occur only in those areas where the competition and predation of nonnative fishes can be physically precluded, such as above a fish barrier.

Drought

The National Integrated Drought Information System (2011) classifies drought in increasing severity categories from abnormally dry, to moderate, severe, extreme, and, most severe, exceptional. The southwestern United States is currently experiencing drought conditions classified as moderate to exceptional. Drought conditions are reported as abnormally dry to moderate for the Verde River, with the remainder of the critical habitat streams in severe to extreme in Arizona. Critical habitat areas in New Mexico fall within the severe to extreme drought categories (National Integrated Drought Information System 2011).

While spikedace and loach minnow have survived many droughts in their evolutionary histories, drought may have more of an impact on the species due to already reduced habitat suitability from other effects, as described above. In some areas of spikedace and loach minnow habitat, drought results in lower streamflow, and consequently warmer water temperatures beyond the species' tolerance limits, and more crowded habitats with higher levels of predation and competition. In other areas, drought reduces flooding that would normally rejuvenate habitat and tend to reduce populations of some nonnative species, which are less adapted to the large floods of southwestern streams (Minckley and Meffe 1987, pp. 94, 104; Stefferud and Rinne 1996a, p. 80). The combined effects of drought with ongoing habitat loss and alteration; increased predation, competition, and disease from nonnative species; and the general loss of resiliency in highly altered aquatic ecosystems have had and continue to have negative consequences for spikedace and loach minnow populations.

Genetics

Each remaining population of spikedace is genetically distinct. Genetic distinctiveness in the Verde River and Gila River fishes indicates that these populations have been historically isolated (Tibbets and Dowling 1996, (pp. 1285–1291); Anderson and Hendrickson 1994, pp. 148, 150–154). The center of the historical distribution for spikedace is permanently altered, and the remaining populations are isolated and represent the fringes of the formerly occupied range. Isolation of these populations has important ramifications for the overall survival of the species. Loss of any population may be permanent, as there is little ability to repopulate isolated areas, due largely to habitat alterations in areas between remaining populations (Propst *et al.* 1986, pp. 38, 86). No genetic exchange is possible between the remaining populations of spikedace without human assistance. In addition, because genetic variation is important to the species' fitness and adaptive capability, losses of genetic variation represent a threat to the species (Meffe and Carroll 1997, pp. 162–172).

Spikedace in the upper Verde River are genetically different than those that were translocated to Fossil Creek; however, there is a minimal opportunity for the two populations to interbreed due to the length of the river between the two occupied areas. While the Verde River supports many of the habitat features for spikedace, it currently supports a high number of nonnative species that compete with, and prey on, spikedace. We anticipate that, until extensive management takes place, spikedace in the two areas will remain isolated. The spikedace translocation in Fossil Creek has been in place for

approximately 4 years. It is not known if that translocation effort will succeed.

As with spikedace, each remaining population of loach minnow is genetically distinct. Genetic subdivision into three geographic regions indicates that gene flow has been low but not historically absent (Tibbets 1993, pp. 22–24, 33). The center of the loach minnow's historical distribution is permanently gone, and the remaining populations are isolated and represent the fringes of the formerly occupied range. Isolation of these populations has important ramifications for the overall survival of the species. Loss of any population may be permanent, as there is little ability to repopulate isolated areas, due largely to habitat alterations in areas between remaining populations (Propst *et al.* 1988, p. 65). No genetic exchange is likely between the remaining populations of loach minnow without human assistance. As noted for spikedace, genetic variation is important to the species' fitness and adaptive capability, and losses of genetic variation represent a threat to the species (Meffe and Carroll 1997, pp. 162–172).

Flow Regime, Nonnative Fishes, and Connectivity

The competitive effects of nonnative fish species are often exacerbated by changes in flow regimes or declines in habitat conditions associated with water developments, as discussed above, and should be considered against the backdrop of historical habitat degradation that has occurred over time (Minckley and Meffe 1987, pp. 94, 103; Rinne 1991, p. 12). Stefferud and Rinne (1996b, p. 25) note that a long history of water development and diversion coupled with nonnative fish introductions has resulted in few streams in Arizona retaining their native fish communities. Using the Gila River as an example, Propst *et al.* (1988, p. 67) note that natural (e.g., drought) and human-induced (e.g., flow level reductions through irrigation diversion) factors combined to reduce loach minnow abundance in the Gila River. They note that where canyon habitat would normally continue to contain surface flows and suitable habitat for loach minnow, the establishment of nonnative fishes in canyon reaches has reduced their suitability as habitat for the minnow. Minckley and Douglas (1991, pp. 7–17) concluded that, for fishes native to the Southwest, the combination of changes in stream discharge patterns and nonnative fish introductions has reduced the range and numbers of all native species of fish, and has led to extinction of some.

Recent work completed by Propst *et al.* (2008) indicates that individual factors, such as the presence of nonnative fishes or existing flow regimes may have impacts on native fish species, but it is likely that the interaction of these factors causes a decline in native fish species. In studies on the upper Gila River drainage in New Mexico, Propst *et al.* (2008) determined that flow regime was a primary factor in shaping fish assemblages, with the greatest densities of native fishes occurring in those years with higher stream discharges. However, they also found that pressure from competition and predation with nonnative fishes also affected fish assemblages. They concluded that there was a negative association between nonnatives and native fishes, which indicated that there is a complex relationship between naturally variable flows and nonnative species, and that natural flow alone was not enough to conserve native fish species (Propst *et al.* 2008, p. 1246). The way in which these factors interact varied from stream to stream in the study.

Propst *et al.* (2008) also note the importance of connectivity, stating that it is critical to ensuring the long-term persistence of native fishes. They note that loach minnow, while still present throughout much of its historical range, has been apparently extirpated from four of six sites in 10 years or less, and that loss of connectivity among populations has reduced the likelihood that many will recover naturally, even if causes for elimination are removed. They conclude that ''It is almost certain similar, but undocumented, losses have occurred throughout the species range, and its status is much more fragile than presumed'' (Propst *et al.* 2008, p. 1251). However, where flows remain suitable, and connectivity is maintained, there is the inherent risk of exposure to nonnative species traveling from one area to another. They conclude that retention of natural hydrologic regimes and preclusion of nonnative predators and competitors are equally important (Propst *et al.* 2008, p. 1251).

Summary of Factor E

The reduced distribution and decreasing numbers of spikedace and loach minnow make the two species susceptible to natural environmental variability, including climate conditions such as drought. However, research indicates that it is the interaction of individual factors such as nonnative fishes and altered flow regimes that is causing a decline of native fish species. Native fishes are unable to maintain a competitive edge in areas where resources are already limited, and these resources are likely to become more limited due to water developments and drought. Increased water demands are likely to further limit the areas where spikedace or loach minnow can persist. We therefore conclude that the spikedace and loach minnow are threatened by other natural or manmade factors.

Reclassification Determination

As required by the Act, we considered the five factors in assessing whether the spikedace and loach minnow are endangered or threatened throughout all or a significant portion of their range. We carefully assessed the best scientific and commercial information available regarding reclassification of the spikedace and the loach minnow from threatened to endangered. There are many threats to both species, including habitat loss and modifications (Factor A) caused by historical and ongoing land uses such as water diversion and pumping, livestock grazing, and road construction. However, competition with, or predation by, nonnative species, such as channel and flathead catfish, green sunfish, and red shiner, is likely the largest remaining threat to the species (Factors C and E). In addition, recent research indicates that the combination of altered flow regimes and nonnative fishes together are causing declines in native fishes. Existing regulatory mechanisms (Factor D) have not proven adequate to halt the decline of spikedace or loach minnow or habitat losses since the time of their listing as threatened species. In addition, the warmer, drier, drought-like conditions predicted to occur due to climate change (Factor A) will further reduce available resources for spikedace and loach minnow.

In 1991, we completed a 5-year review for spikedace and loach minnow in which we determined that the species' status was very precarious and that a change in status from threatened to endangered was warranted. Since that time, although some recovery actions have occurred, the majority of the areas historically occupied by spikedace and loach minnow have experienced a shift from a predominance of native fishes to a predominance of nonnative fishes. The low numbers of spikedace and loach minnow, their isolation in tributary waters, drought, ongoing water demands, and other threats leads us to conclude the species are now in danger of extinction throughout their ranges.

We determined in 1994 that reclassifying spikedace and loach minnow to endangered status was warranted but precluded (59 FR 35303,

July 11, 1994), and restated this conclusion on January 8, 2001 (66 FR 1295). We reanalyzed the determination each year in our Candidate Notice of Review, and determined that reclassification to endangered is warranted, in the Candidate Notice of Review published on November 9, 2009 (74 FR 57804). Spikedace and loach minnow were not addressed in the Candidate Notice of Review published in 2011, as this reclassification determination was funded in FY 2010. Candidate assessments are not reviewed on an annual basis once they are funded.

Both species have been reduced in range and numbers since the time of listing through either localized extirpations, reduced distribution within occupied drainages, or reductions in numbers within a given drainage. Spikedace and loach minnow are both extirpated from the Salt and San Pedro rivers. Spikedace are additionally extirpated from the San Francisco River, while loach minnow are extirpated from the Verde River.

In terms of reduced distribution since listing within occupied drainages, spikedace currently have a much reduced distribution in the Verde River, where the known locations at listing occurred over approximately 25 percent of the previously occupied area. Loach minnow are reduced in distribution in the San Francisco and Tularosa rivers, occurring in a portion up and downstream of the Whitewater Creek confluence and again farther upstream of the Tularosa River. Spikedace and loach minnow are both reduced in distribution in the East and Middle Forks of the Gila River, occurring closer to the confluence with the Gila River, but no longer extending as far upstream as in the past. The strongholds for both species are Aravaipa Creek in Arizona and the Gila River mainstem in New Mexico, but more recent records indicate at least small reductions in the up and downstream extent of their distributions in these systems.

In addition to extirpations and reductions in range, some spikedace and loach minnow populations persist, but are at reduced numbers. In the Verde River, spikedace numbers were frequently in the hundreds, with a high of 407 in 1986, but reduced to double and then single digits in the late 1980s and 1990s (ASU 2002). While spikedace likely still occur in the Verde River, they are at extremely low numbers and on the verge of extirpation. Survey records indicate a similar situation exists for both spikedace and loach minnow in Eagle Creek. Loach minnow are in extremely low numbers in the North Fork East Fork Black River as well (ASU 2002).

Two of the primary threats to spikedace and loach minnow are nonnative fishes and loss of water due to diversions, pumping, drought, or other causes, as detailed above. Recently, Propst *et al.* (2008) indicated that individual factors, such as the presence of nonnative fishes or existing flow regimes may have impacts on native fish species, but it is likely that the interaction of these factors may cause a decline in native fish species. Past events (both legal and alleged illegal) resulted in the establishment of at least 60 nonnative fish species, at least three nonnative amphibians (American bullfrog, Rio Grande leopard frog, American tiger salamander), at least four invertebrates (two species of crayfish, Asiatic clam, and New Zealand mud snail), and several diseases or parasites that affect native fish or amphibians in areas across Arizona (*See* Service 2002a for additional information). The impacts of nonnative fishes on spikedace and loach minnow are detailed above. Nonnative aquatic species are known to occur in varying levels in every stream occupied by spikedace or loach minnow, with the exception of streams in the early stages of renovation and/or reintroduction projects, such as Hot Springs Canyon. Nonnative species are considered a serious cause of the decline of the two species in all streams except for Aravaipa Creek and the mainstem Gila River in New Mexico; however, nonnatives are present in these streams as well.

Alteration or reductions of stream flow is a concern in many areas as well, including the Verde River, Salt River, San Pedro River, Gila River, Eagle Creek, and San Francisco River. In these areas, diversion structures may cause stream levels to drop or become dewatered, especially during drought and during the drier months. Future water needs in the arid southwest, coupled with the ongoing drought and climate change, are likely to increase the number of dewatered areas, the size of the dewatered areas, and the length of time for which dewatering occurs. Additional, pending water development projects have been identified above.

Recovery actions have occurred at Hot Springs Canyon, Redfield Canyon, Fossil Creek, Bonita Creek, and the San Francisco River in New Mexico, and have focused on building barriers to nonnative fishes or using existing structures as barriers. In some instances, chemical and/or mechanical removal of nonnative species has occurred. To date, these projects have been costly, requiring millions of dollars for barrier construction, and extensive time and costs for personnel involved in the renovation. Sufficient time has not yet elapsed to determine the success of these projects. Fossil Creek is showing early signs of success for spikedace (Robinson 2011a, p. 1), but the downstream barrier has been breached by nonnatives on one occasion since the project began in 2007. Bonita Creek was reinvaded, despite its barrier. Redfield Canyon currently has inadequate flows to support either species. Regardless of the success of these efforts, Hot Springs Canyon and Redfield Canyon flow into the dry portions of the San Pedro River so are not connected to any other populations of spikedace or loach minnow. Fossil Creek does flow into the active channel of the Verde River, but the Verde River at that confluence is currently dominated by nonnatives. Bonita Creek flows into the Gila River, which is also dominated by nonnatives and ultimately becomes dewatered as well. Therefore, the recovery actions completed to date, while allowing the species to persist, have limited ability to help recover the species at this time.

An additional complication in recovery of the species is the lack of available suitable habitat. The species are both currently found in isolated areas, with little opportunity for expansion or for genetic interchange. The Verde River feeds into two reservoirs, effectively isolating it from the Salt River. Those portions of the Salt River that were historically occupied by the species now have four dams and reservoirs. The San Pedro River is dewatered in some areas, especially downstream of known historical distribution. Aravaipa Creek, while supporting the largest population of the two species in Arizona, ends at a dry stretch of the San Pedro River. Those portions of Eagle Creek occupied by the two species occur above a diversion dam, downstream of which nonnative levels are high. Eagle Creek then joins the Gila River, which is also dominated by nonnative fishes. Downstream of the occupied area in the Gila River, which supports the largest known populations of the species, there are water diversions that ultimately result in a dry stream channel as the river travels into Arizona from New Mexico.

In summary, spikedace and loach minnow previously had a relatively widespread distribution covering portions of Arizona, New Mexico, and northern Mexico. Both species have suffered major reductions in numbers and range over time due to persistent threats such that spikedace are now estimated to occur in only 10 percent of

their former range, while loach minnow occur in 10 to 20 percent of their former range. Currently, only small, isolated populations of these species remain, with limited to no opportunities for interchange between populations or expansion of existing areas, making the species more vulnerable to threats including reproductive isolation. The two primary threats of nonnative aquatic species competition and predation and alteration or diminishment of stream flows are persistent, and research indicates that the combination of the two is leading to declines of native species such as spikedace and loach minnow (Propst *et al.* 2008). The ongoing drought and climate conditions aggravate the loss of water in some areas, and future water development projects have been identified. Finally, the opportunities for expansion of the two species' range are limited by dams, reservoirs, dewatering, and nonnative species distribution.

Based on this information, as well as the above review of the best scientific and commercial information available, we find that both species are currently in danger of extinction and therefore meet the definition of endangered species under the Act. Because we have determined that these species are currently on the brink of extinction and are not in danger of extinction in the foreseeable future, we have determined that the correct status for the species under the Act is endangered. As a result, we are reclassifying both spikedace and loach minnow from threatened species to endangered species. With this reclassification of spikedace and loach minnow to endangered status, we remove the special rules for these species at 50 CFR 17.44(p) and 17.44(q), respectively. Special rules apply only to threatened species; therefore, as spikedace and loach minnow are now listed as endangered, these special rules no longer apply.

Available Conservation Measures

Conservation measures provided to spikedace and loach minnow under the Act include several reintroduction and augmentation projects. Some of these projects have already begun; others are in the planning stage. Project planning is under way for renovation efforts in Blue River and Spring Creek in Arizona. Other recovery actions include reintroduction or translocation of spikedace into streams within its historical range. In 2007, spikedace were translocated into Hot Springs Canyon, Redfield Canyon, and Fossil Creek. In 2008, spikedace were translocated into Bonita Creek in Arizona and reintroduced to the San Francisco River in New Mexico. Monitoring has occurred at each of these sites annually, with annual augmentations at Hot Springs Canyon, Redfield Canyon, and Fossil Creek in subsequent years when fish are available, up to and including 2011. Spikedace were augmented in the San Francisco River in 2009, but monitoring and augmentations did not occur in 2010 or 2011 due to a lack of adequate staffing and resources. Due to a reinvasion by nonnative species, augmentations are temporarily on hold at Bonita Creek.

Several translocation projects for loach minnow are also in the planning stages. These projects may occur with or without construction of fish barriers. Loach minnow may also benefit from the Blue River and Spring Creek renovation projects mentioned above. Additional recovery actions include translocations or reintroduction of loach minnow into streams within its historical range. In 2007, translocations of loach minnow occurred at Hot Springs Canyon, Redfield Canyon, and Fossil Creek. Monitoring of these sites occurs annually, and the sites have been augmented annually when fish are available, up to and including 2011. In 2008, loach minnow were translocated into Bonita Creek, Arizona. Monitoring occurs annually at this site; however, due to a reinvasion by nonnative species, augmentations are temporarily on hold.

The AGFD and Bureau of Reclamation continue to fund equipment and staff to run the Bubbling Ponds Native Fish Research Facility through the Gila River Basin Native Fishes Conservation Program (formerly known as the Central Arizona Project Fund Transfer Program). Salt River Project's habitat conservation plan was signed in 2008, and is expected to benefit both the spikedace and the loach minnow in the Verde River watershed. Also in 2008, AGFD staff managed original source stock and their progeny at the Bubbling Ponds facility, totaling 740 Gila River spikedace, 1,650 Aravaipa Creek spikedace, 670 Blue River loach minnow, and 3,250 Aravaipa Creek loach minnow. Plans are under way to bring in stock from every extant population of loach minnow, including those in the San Francisco River, the three forks of the Gila River, the upper Gila River in New Mexico, and the Eagle and Black River system in Arizona. Bubbling Ponds will serve as a refuge for some populations, and as a captive breeding facility for others, depending on the status of the population and availability of translocation sites.

In an effort to minimize impacts from nonnative fish interactions, the NMDGF initiated a nonnative removal effort in the Forks area in 2007, and at Little Creek (a tributary to West Fork Gila River) in 2010. These efforts are expected to continue.

Critical Habitat Designations for Spikedace and Loach Minnow

Summary of Changes From Proposed Rule

As noted in our October 4, 2011, notice of availability (NOA) (76 FR 61330), we used three criteria in the proposed rule to evaluate if unoccupied habitat was essential to the survival and recovery of the species. One of the criteria evaluated the potential of a stream segment to ''connect to other occupied areas, which will enhance genetic exchange between populations.'' After additional review of the stream segments proposed for critical habitat, we concluded there were no stream segments that met this criterion, and we removed it as an element of the ruleset. We continue to believe that both loach minnow and spikedace conservation will require genetic exchange between the remaining populations to allow for genetic variation, which is important for species' fitness and adaptive capability. We also acknowledge that areas equally important to the conservation of the species, outside of the critical habitat designations, will be necessary for long-term conservation, subject to future on-the-ground recovery actions and 7(a)(1) opportunities. Based on information we received during the comment periods on the proposed rule, several changes have been made to the areas designated as critical habitat in this final rule. These changes are summarized in Table 1 below.

TABLE 1—CHANGES IN STREAM SEGMENTS INCLUDED WITHIN THE CRITICAL HABITAT DESIGNATIONS FOR LOACH MINNOW AND SPIKEDACE

Stream	From km (mi)	To km (mi)	Change in km (mi)
San Francisco River*	180.7 (112.3)	203.6 (126.5)	Addition of 22.8 (14.2).

TABLE 1—CHANGES IN STREAM SEGMENTS INCLUDED WITHIN THE CRITICAL HABITAT DESIGNATIONS FOR LOACH MINNOW AND SPIKEDACE—Continued

Stream	From km (mi)	To km (mi)	Change in km (mi)
Bear Creek*	0.0 (0.0)	31.4 (19.5)	Addition of 31.4 (19.5).
Redfield Canyon	22.5 (14.0)	6.5 (4.0)	Reduction of 16.0 (10.0).
Hot Springs Canyon	19.0 (11.8)	9.3 (5.8)	Reduction of 9.7 (6.0).
Fossil Creek	7.5 (4.7)	22.2 km (13.8 mi)	Addition of 14.6 (9.1).

*This change made for loach minnow only.

San Francisco River. As noticed in the NOA (76 FR 61330; October 4, 2011), we are correcting an error made in the proposed rule by extending that portion of the San Francisco River designated for loach minnow by 22.8 km (14.2 mi). The mileage for spikedace remains the same as was in the proposed rule (75 FR 66482; October 28, 2010); however, we had intended to include the same mileage for loach minnow as was in the 2007 critical habitat designation as this area is currently occupied by loach minnow, as this area meets the definition of critical habitat for loach minnow. The total mileage included on the San Francisco River for loach minnow was changed from 180.7 km (112.3 mi) in the revised proposed rule to 203.6 km (126.5 mi) in this final rule. This change has been incorporated in this final rule. The mileage for spikedace remains the same as in the revised proposed rule.

Bear Creek. We noted in the NOA that we intended to add portions of Bear Creek to the designation for loach minnow, based on occupancy of this area by loach minnow. The NOA noted that we were adding 31.4 km (19.5 mi) of Bear Creek from its confluence with the Gila River upstream to the confluence with Sycamore and North Fork Walnut creeks. We consider those portions of Bear Creek included within the final designation to have been occupied at listing, as described in the NOA, although records were not known until 2005 and 2006. These areas meet the definition of critical habitat for loach minnow. As noted in our NOA, we recognize that portions of this stream are intermittent, but also acknowledge that streams with intermittent flows can function as connective corridors through which the species may move when the area is wetted. We have reviewed all of the information received, and conclude that inclusion of Bear Creek is appropriate at this time. We do not anticipate that loach minnow will occupy the lowermost portions of the Creek when they are dry, but we have determined that that area has value as a connective corridor to the mainstem Gila River during high-flow events.

It should be noted that the low number of fish does not, in all likelihood, represent the total number of fish present, as sampling rarely results in capture of all individuals present. Regardless, the number of fish present in Bear Creek is low. However, Bear Creek is a tributary to an occupied stream, and is within the historical range of the species. Loach minnow are currently much reduced in their overall distribution compared to historical conditions. The threats assessment above outlines current threats, which are numerous. While reintroduction projects are under way, the success of those efforts is currently limited. Streams are not abundant in the desert southwest. Because this area provides suitable habitat and is occupied by loach minnow, we conclude that it is essential to the conservation of the species.

Redfield and Hot Springs Canyons. In response to comments received during the second comment period, we have reevaluated the extent of each stream included within the designations, and concluded that they do not meet the definition of critical habitat for either spikedace or loach minnow. With further review, we have determined that, although connective habitat is important, the area previously retained as connective habitat (i.e., between the barrier location and the San Pedro River) currently connects to dewatered portions of the San Pedro River. We have therefore shortened the overall stretch of each stream to include just those sections currently supporting perennial flows. For Redfield Canyon, the designations changed from 22.5 km (14.0 mi) in the revised proposed rule to approximately 6.5 km (4.0 miles) in this final rule, and include that portion of the stream from the confluence with Sycamore Canyon downstream to the barrier constructed at Township 11 South, Range 19 East, section 36.

For Hot Springs Canyon, we are making similar changes. The barrier location and the downstream extent of perennial flows are approximately one mile apart. As with Redfield Canyon, Hot Springs Canyon ultimately connects with dewatered portions of the San Pedro River. In the proposed rule we included Hot Springs Canyon from its confluence with Bass Canyon downstream for 19.0 km (11.8 mi). In the final rule, we are reducing the portion of Hot Springs Canyon included within critical habitat to that area from its confluence with Bass Canyon downstream for approximately 9.3 km (5.8 mi).

Fossil Creek. We received several comments and new information indicating that the best habitat for the species in Fossil Creek occurs above the newly constructed barrier at Township 11½ North, Range 7 East, section 29. The portions of Fossil Creek above the barrier have been in use as a translocation site for spikedace beginning in 2008. Although there was limited success with the translocation initially, surveys in August 2011 (Crowder, 2011, pers. comm.) located numerous spikedace within Fossil Creek. While it would be premature to call the translocation a success, the persistence of spikedace indicates that it is suitable, and this area meets the definition of critical habitat for spikedace and loach minnow. For this reason, we are adjusting the area included within Fossil Creek to include the portions upstream of the barrier to the old Fossil Diversion Dam at Township 12 North, Range 7 East, section 14. The area incorporated in this stream segment will increase from 7.5 km (4.8 mi) to 22.2 km (13.8 mi).

In total, the areas designated as critical habitat for both species were reduced as compared to the revised proposed rule. For spikedace, the area included within the designation was reduced by 155 km (96 mi). For loach minnow, the area included within the designation was reduced by 160 km (99 mi). Portions of this are attributable to the changes noted above, and portions to changes made under the Exclusions section. The bulk of the reduced mileage can be attributed to exclusions on Eagle Creek and the San Pedro River and, to a lesser extent, on the Gila River.

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 pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies insure, 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) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, the critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (PCEs such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. PCEs are the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

The location and suitability of habitat changes and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; IPCC 2007b, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015. Generally, the outlook presented for the Southwest predicts warmer, drier, drought-like conditions (Seager *et al.* 2007, p. 1181; Hoerling and Eischeid 2007, p. 19), and a decline in water resources with or without climate change will be a significant factor in the compromised watersheds of the desert southwest.

Habitat is dynamic, or frequently changing, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designations, will continue to be subject to: (1) Conservation actions

implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Occupied Versus Unoccupied Areas

We include as occupied those areas that were identified as occupied for each species in the original listing documents, as well as any additional areas determined to be occupied after 1986. Our reasoning for including these additional areas (post-1986) is that they were likely occupied at the time of the original listings, but had not been detected in surveys. In summary, there are three reasons why a stream segment is considered occupied at the time of listing: (1) The stream segment was occupied in the 1986 listing document; or (2) the fish were found subsequently to 1986; and (3) the post-1986 stream segment is between two occupied, but separated, stream segments.

Several factors may influence whether or not spikedace or loach minnow were detected in a given survey, and at what level. In some instances, survey efforts may have been minimal or absent for a given area. Once a species is listed, awareness of the species is heightened for wildlife and land managers, and survey efforts are often increased or expanded to include areas where they might be present. Moreover, spikedace and loach minnow are small-bodied fish that can be difficult to detect when in low numbers. This may be partially responsible for the lack of determinations over a 44-year period on Eagle Creek for loach minnow, for example. Finally, capture efficiencies for seining of fish are low, with some research indicating that capture efficiency of a seine haul averages 49 percent (Dewey and Holland-Bartels 1997, p. 101). This means that 51 percent of the fish present may not be captured. It should be noted that various factors can affect seining efficiency, and that most surveys involve more than one seine haul. However, if a species is present in low numbers, as is common for spikedace and loach minnow, the likelihood of catching them at the low capture efficiencies associated with seining is low. Loach minnow are likely to be more difficult to detect due to their having a reduced gas bladder. They are typically restricted to bottom-dwelling habitat, swimming in only brief movements, which may further reduce the likelihood of its being collected in a seine. We believe a combination of these factors to be responsible for the lack of detections over a 44 year period on Eagle Creek for loach minnow, as described above.

In some instances, areas were known to have been occupied by one or both species prior to listing, but were not described as occupied in the listing document based on the limited data available. Subsequent detections after listing in 1986 have caused us to reconsider the occupancy status of some streams. For example, we were aware of one loach minnow record for Dry Blue Creek from 1948 up until listing, but did not include Dry Blue Creek as occupied at listing in 1986 based on this record. Subsequent positive survey records in the late 1990s have caused us to reconsider this area. As a result, in this designation, we consider Dry Blue Creek to be occupied by loach minnow at the time of listing. Similarly, Eagle Creek had one record of loach minnow from 1950, but was not included as occupied at listing in 1986. Loach minnow were subsequently detected again in the 1990s, and it is therefore considered occupied at the time of listing within this designation.

In every case, areas discovered to be occupied after 1986 are connected, or historically were connected, to occupied areas. For example, the Black River complex was not known to be occupied until 1996; however, it is connected, albeit over long distances, to the White River, which is currently occupied, and the Salt River, which was historically occupied. Dry Blue Creek, described above, is connected to the occupied Blue River. Eagle Creek is a tributary to the Gila River, and at one time perennial flows would have connected this population to those in the upper portions of the Gila River in New Mexico. It is therefore logical to conclude that these areas had been occupied since listing, although possibly at low numbers that were difficult to detect.

Because areas determined to be occupied after 1986 are or were connected to occupied areas, the survey efforts for the species have been less than thorough, and because both species are difficult to detect in low numbers, we anticipate that, although occupancy was not determined in some areas until post-1986, the species were likely present at listing in 1986 in these areas, but not discovered until after listing.

Given that spikedace and loach minnow are small-bodied fish that can be difficult to detect when in low numbers, we also consider those areas included in this designation to be essential to the conservation of the species.

Physical and Biological Features

Under the Act and its implementing regulations, we are required to identify the physical and biological features (PBFs) essential to the conservation of spikedace and loach minnow in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider PCEs to be the elements of physical and 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. We outline the appropriate quantities and spatial arrangements of the elements in the Physical and Biological Features (PBFs) section of the October 28, 2010, proposed rule. For example, spawning substrate would be considered an essential feature, while the specific composition (sand, gravel, and cobble) and level of embeddedness are the elements (PCEs) of that feature.

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the PBFs essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific PBFs required for spikedace and loach minnow from studies of their habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on October 28, 2010, and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on July 1, 1986 (spikedace; 51 FR 23769) and October 28, 1986 (loach minnow; 51 FR 39468), and the recovery plans for each of the species (Service 1991a, 1991b). Below, we provide a discussion of the physical and biological features that are essential to the conservation of the spikedace and loach minnows:

Space for Individual and Population Growth and for Normal Behavior

Spikedace

Microhabitats. Habitat occupied by spikedace can be broken down into smaller, specialized habitats called microhabitats. These microhabitats vary by stream, by season, and by species' life stage. Studies on habitat use have been completed on the Gila River in New Mexico, and the Verde River and Aravaipa Creek in Arizona. Generally, spikedace occupy moderate to large perennial streams at low elevations over substrates (river bottom material) of sand, gravel, and cobble (Barber and Minckley 1966, p. 31; Propst *et al.* 1986, pp. 3, 12; Rinne and Kroeger 1988, p. 1). Occupied streams are typically of low gradient (Barber *et al.* 1970, p. 10; Rinne and Kroeger 1988, p. 2; Rinne 1991, pp. 8–12; Rinne and Stefferud 1996, p. 17), and less than 1 meter (m) (3.28 feet (ft)) in depth (Propst *et al.* 1986, p. 41; Minckley and Marsh 2009, p. 155).

Larval spikedace occur most frequently in slow-velocity water near stream margins or along pool edges. Most larvae are found over sand substrates. Juvenile spikedace tend to be found over a greater range of water velocities than larvae, but still in shallow areas. Juvenile spikedace occupy areas with a gravel or sand substrate, although some have been found over cobble substrates as well. Larvae and juveniles may occasionally be found in quiet pools or backwaters (*e.g.,* pools that are connected with, but out of, the main river channel) (Sublette *et al.* 1990, p. 138).

Adult spikedace occur in the widest range of flow velocities. They are typically associated with shear zones (areas within a stream where more rapidly flowing water abuts water moving at slower velocities), downstream of sand bars, and in eddies or small whirlpools along downstream margins of riffles (those shallow portions of the stream with rougher, choppy water). Adult spikedace are found in shallow water over predominantly gravel-dominated substrates (Propst *et al.* 1986, p. 40; Rinne 1991, pp. 8–12; Rinne and Stefferud 1997, p. 21; Rinne and Deacon 2000, p. 106; Rinne 2001, p. 68), but also over cobble and sand substrates (Minckley and Marsh 2009, p. 155; Rinne and Kroeger 1988, p. 3; Sublette *et al.* 1990, p. 138).

In addition to substrate type, the amount of embeddedness (filling in of spaces by fine sediments) is also important to spikedace. Spikedace more commonly occur in areas with low to moderate amounts of fine sediment and substrate embeddedness, which is important for the healthy development of eggs. Spawning has been observed in areas with sand and gravel beds and not in areas where fine materials smaller than sand coats the sand or gravel substrate. Additionally, low to moderate amounts of fine sediments ensure that eggs remain well-oxygenated and will not suffocate due to sediment deposition (Propst *et al.* 1986, p. 40). Water temperatures of occupied spikedace habitat vary with time of year.

Water temperatures have been recorded at Aravaipa Creek, and on the Gila River in the Forks area and at the Cliff-Gila Valley. Water temperatures of occupied spikedace habitat vary with time of year. Summer water temperatures were between 19.3 degrees Celsius (°C) (66.7 degrees Fahrenheit (°F)) (Gila River, Forks Area) and 27 °C (80.6 °F) (Aravaipa Creek). Winter water temperatures ranged between 8.9 °C (48.0 °F) at Aravaipa Creek and 11.7 °C (53.1 °F) in the Cliff-Gila Valley (Barber and Minckley 1966, p. 316; Barber *et al.* 1970, pp. 11, 14; Propst *et al.* 1986, p. 57).

Studies by the University of Arizona focused on temperature tolerances of spikedace. In the study, fish were acclimated to a given temperature, and then temperatures were increased by 1 °C (33.8 °F) per day until test temperatures were reached. The study determined that no spikedace survived exposure of 30 days at 34 or 36 °C (93.2 or 96.8 °F), and that 50 percent mortality occurred after 30 days at 32.1 °C (89.8 °F). In addition, growth rate was slowed at 32 °C (89.6 °F), as well as at the lower test temperatures of 10 and 4 °C (50 and 39.2 °F). Multiple behavioral and physiological changes were observed, indicating the fish became stressed at 30, 32, and 33 °C (86, 89.6 and 91.4 °F). The study concludes that temperature tolerance in the wild may be lower due to the influence of additional stressors, including disease, predation, competition, or poor water quality. Survival of fish in the fluctuating temperature trials in the study likely indicates that exposure to higher temperatures for short periods during a day would be less stressful to spikedace. The study concludes that 100 percent survival of spikedace at 30 °C (86 °F) in the experiment suggests that little juvenile or adult mortality would occur due to thermal stress if peak water temperatures remain at or below that level (Bonar *et al.* 2005, pp. 7–8, 29–30).

Spikedace occupy streams with low to moderate gradients (Propst *et al.* 1986, p. 3; Rinne and Stefferud 1997, p. 14; Stefferud and Rinne 1996, p. 21; Sublette *et al.* 1990, p. 138). Specific gradient data are generally lacking, but the gradient of occupied portions of Aravaipa Creek and the Verde River varied between approximately 0.3 to < 1.0 percent (Barber *et al.* 1970, p. 10; Rinne and Kroeger 1988, p. 2; Rinne and Stefferud 1997, p. 14).

Table 2 compares specific parameters of habitat occupied by spikedace at various ages as identified through studies completed to date. Studies on flow velocity in occupied spikedace habitat have been completed on the Gila River, Aravaipa Creek, and the Verde River (Barber and Minckley 1966, p. 321; Minckley 1973, p. 114; Anderson 1978, p. 17; Schreiber 1978, p. 4; Turner and Tafanelli 1983, pp. 15–16; Propst *et al.* 1986, pp. 39–41; Rinne and Kroeger 1988, p. 1; Hardy *et al.* 1990, pp. 19–20, 39; Sublette *et al.* 1990, p. 138; Rinne 1991, pp. 9–10; Rinne 1999a, p. 6).

TABLE 2—HABITAT PARAMETERS FOR VARYING LIFE STAGES OF SPIKEDACE

	Larvae	Juveniles	Adults
Flow velocity in centimeters per second (inches per second).	8.4 (3.3)	16.8 (6.6)	23.3–70.0 (9.2–27.6).
Depth in centimeters (inches)	3.0–48.8 (1.2–19.2)	3.0–45.7 (1.2–18.0)	6.1–42.7 (2.4–16.8).
Gradient (percent)	No data	No data	0.3 to <1.0.

TABLE 2—HABITAT PARAMETERS FOR VARYING LIFE STAGES OF SPIKEDACE—Continued

	Larvae	Juveniles	Adults
Substrates	Primarily sand, with some over gravel or cobble.	Primarily gravel, with some sand and cobble.	Sand, gravel, cobble, and low amounts of fine sediments.

In studies on the Gila River, there were seasonal shifts in microhabitats used, involving depth or velocity, depending on the study site. It is believed that seasonal shifts in microhabitat use reflect selection by spikedace for particular microhabitats. In the cold season, when their metabolic rate decreases, spikedace near the Forks area on the Gila River seek protected areas among the cobble of stream channel margins, where water is shallower and warmer. In other areas such as the Cliff-Gila Valley, cobbled banks for protection were generally not available, but slow-velocity areas in the lee of gravel bars and riffles were common, and spikedace shifted to these protected areas of slower velocity during the cold season. Seasonal changes in microhabitat preference by spikedace are not entirely understood, and additional study is needed (Propst *et al.* 1986, pp. 47–49).

Studies indicate a geographic variation in the portion of the stream used by spikedace. On the Verde River, outside of the April to June breeding season, 80 percent of the spikedace collected used run and glide habitat. For this study, a glide was defined as a portion of the stream with a lower gradient (0.3 percent), versus a run which had a slightly steeper gradient (0.3–0.5 percent) (Rinne and Stefferud 1996, p. 14). In contrast, spikedace in the Gila River were most commonly found in riffle areas of the stream with moderate to swift currents (Anderson 1978, p. 17) and some run habitats (J.M. Montgomery 1985, p. 21), as were spikedace in Aravaipa Creek (Barber and Minckley 1966, p. 321).

Flooding. In part, suitable habitat conditions are maintained by flooding. Periodic flooding appears to benefit spikedace in three ways: (1) Removing excess sediment from some portions of the stream; (2) removing nonnative fish species from a given area; and (3) increasing prey species diversity. Items 2 and 3 will be addressed in greater detail below.

Flooding in Aravaipa Creek has resulted in the transport of heavier loads of sediments, such as cobble, gravel, and sand that are deposited where the stream widens, gradient flattens, and velocity and turbulence decreases. Natural dams formed by the deposition of this sediment can temporarily cause water to back up and break into braids downstream of the dam. The braided areas provide excellent nurseries for larval and juvenile fishes (Velasco 1997, pp. 28–29).

On the Gila River in New Mexico, flows fluctuate seasonally with snowmelt, causing spring pulses and occasional floods, and late-summer or monsoonal rains produce floods of varying intensity and duration. These high flows likely rejuvenate spikedace spawning and foraging habitat (Propst *et al.* 1986, p. 3). Floods likely benefit native fish by breaking up embedded bottom materials (Mueller 1984, p. 355). A study of the Verde River analyzed the effects of flooding in 1993 and 1995, finding that the floods either stimulated spawning, enhanced recruitment of three native species, or eliminated one of the nonnative fish species (Stefferud and Rinne 1996a, p. 80).

In summary, based on the best scientific and commercial information available for spikedace, we have developed the following ranges in habitat parameters:

- Shallow water generally less than 1 m (3.3 ft) in depth;
- Slow to swift flow velocities between 5 and 80 cm per second (sec) (1.9 and 31.5 in. per sec);
- Glides, runs, riffles, the margins of pools and eddies, and backwater components;
- Sand, gravel, and cobble substrates with low or moderate amounts of fine sediment and substrate embeddedness, as maintained by a natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, a flow regime that allows for adequate river functions, such as flows capable of transporting sediments;
- Low gradients of less than approximately one percent;
- Water temperatures in the general range of 8 to 28 °C (46.4 to 82.4 °F); and
- Elevations below 2,100 m (6,890 ft).

Loach Minnow

Microhabitat. The best scientific and commercial information available indicates that, in general, loach minnow live on the bottom streams or rivers with low gradients within shallow, swift, and turbulent riffles. They are also known to occupy pool, riffle, and run habitats in some areas. They live and feed among clean, loose, gravel-to-cobble substrates. Their reduced air bladder (the organ that aids in controlling a fish's ability to float without actively swimming) allows them to persist in high-velocity habitats with a minimal amount of energy, and they live in the interstitial spaces (openings) between rocks (Anderson and Turner 1977, pp. 2, 6–7, 9, 12–13; Barber and Minckley 1966, p. 315; Lee *et al.* 1980, p. 365; Britt 1982, pp. 10–13, 29–30; J.M. Montgomery 1985, p. 21; Marsh *et al.* 2003, p. 666; Minckley 1981, p. 165; Propst *et al.* 1988, p. 35; Rinne 1989, p. 109; Velasco 1997, p. 28; Sublette *et al.* 1990, p. 187; AGFD 1994, pp. 1, 5–11; Bagley *et al.* 1995, pp. 11, 13, 16, 17, 22; Rinne 2001, p. 69; Minckley and Marsh 2009, p. 174). Loach minnow are sometimes found in or near filamentous (threadlike) algae, which are attached to the stream substrates (Anderson and Turner 1977, p. 5; Lee *et al.* 1980, p. 365; Minckley 1981, p. 165; Sublette *et al.* 1990, p. 187; Minckley and Marsh 2009, p. 174).

Microhabitats used by loach minnow vary by life stage and stream. Adult loach minnow occupy a broad range of water velocities, with the majority of adults occurring in swift flows. Their eggs are adhesive, and are placed on the undersurfaces of rocks in the same riffles that they themselves occupy. After hatching, larval loach minnow move from the rocks under which they were spawned to areas with slower velocities than the main stream, typically remaining in areas with significantly slower velocities than juveniles and adults. Larval loach minnow occupy areas that are shallower and significantly slower than areas where eggs are found (Propst *et al.* 1988, p. 37; Propst and Bestgen 1991, p. 32). Juvenile loach minnow generally occur in areas where velocities are similar to those used by adults, and that have higher flow velocities than those occupied by larvae (Propst *et al.* 1988, pp. 36–37).

Substrate is an important component of loach minnow habitat. Studies in Aravaipa Creek and the Gila River indicate that loach minnow prefer cobble and large gravel, avoiding areas dominated by sand or fine gravel. This may be because loach minnow maintain a relatively stationary position on the bottom of a stream in flowing water. An irregular bottom, such as that created by cobble or larger gravels, creates pockets

of lower water velocities around larger rocks where loach minnow can remain stationary with less energy expenditure (Turner and Tafanelli 1983, pp. 24–25). In the Gila and San Francisco rivers, the majority of loach minnow captured occurred in the upstream portion of a riffle, rather than in the central and lower sections of the riffle, where loose materials are more likely to fall out of the water column and settle on the stream bottom. This is likely due to the availability of interstitial spaces in the cobble-rubble substrate, which became filled with sediment more quickly in the central and lower sections of a riffle (Propst *et al.* 1984, p. 12).

Varying substrates are used during different life stages of loach minnow. Adults occur over cobble and gravel, and place their eggs in these areas. Larval loach minnow are found where substrate particles are smaller than those used by adults. Juvenile loach minnow occupy areas with substrates of larger particle size than larvae. Generally, adults exhibited a narrower preference for depth and substrate than did juveniles, and were associated with gravel to cobble substrates within a narrower range of depths (Propst *et al.* 1988, pp. 36–39; Propst and Bestgen 1991, pp. 32–33).

Loach minnow have a fairly narrow range in temperature tolerance, and their upstream distributional limits in some areas may be linked to low winter stream temperature (Propst *et al.* 1988, p. 62). Suitable temperature regimes appear to be fairly consistent across geographic areas. Studies of Aravaipa Creek, East Fork White River, the San Francisco River, and the Gila River determined that loach minnow were present in areas with water temperatures in the range of 9 to 22 °C (48.2 to 71.6 °F) (Britt 1982, p. 31; Propst *et al.* 1988, p. 62; Leon 1989, p. 1; Propst and Bestgen 1991, p. 33; Vives and Minckley 1990, p. 451).

Studies by the University of Arizona focused on temperature tolerances of loach minnow. In one study, fish were acclimated to a given temperature, and then temperatures were increased by 1 °C (33.8 °F) per day until test temperatures were reached. The study determined that no loach minnow survived for 30 days at 32 °C (89.6 °F), and that 50 percent mortality occurred after 30 days at 30.6 °C (87.1 °F). In addition, growth rate slowed at 28 and 30 °C (82.4 and 86.0 °F) compared to growth at 25 °C (77 °F), indicating that loach minnow were stressed at sublethal temperatures. Survival of fish in the fluctuating temperature trials of the study likely indicates that exposure to higher temperatures for short periods during a day would be less stressful to loach minnow. The study concludes that temperature tolerance in the wild may be lower due to the influence of additional stressors, including disease, predation, competition, or poor water quality. The study concludes that since 100 percent survival of loach minnow at 28 °C (82.4 °F) was observed, that little juvenile or adult mortality would occur due to thermal stress if peak water temperatures remain at or below that level (Bonar *et al.* 2005, pp. 6–8, 28, 33).

Gradient may influence the distribution and abundance of loach minnow. In studies of the San Francisco River, Gila River, Aravaipa Creek, and the Blue River, loach minnow occurred in stream reaches where the gradient was generally low, ranging from 0.3 to 2.2 percent (Rinne 1989, p. 109; Rinne 2001, p. 69).

Table 3 compares specific parameters of microhabitats occupied by loach minnow at various ages as identified through studies completed to date. Studies on habitat occupied by loach minnow have been completed on the Gila River, Tularosa River, San Francisco River, Aravaipa Creek, Deer Creek, and Eagle Creek (Barber and Minckley 1966, p. 321; Britt 1982, pp. 1, 5, 10–12, 29; Turner and Tafanelli 1983, pp. 15–20, 26; Propst *et al.* 1984, pp. 7–12; Propst *et al.* 1988, pp. 32, 36–39; Rinne 1989, pp. 111–113, 116; Propst and Bestgen 1991, p. 32; Vives and Minckley 1990, pp. 451–452; Propst and Bestgen 1991, pp. 32–33; Velasco 1997, pp. 5–6; Marsh *et al.* 2003, p. 666).

TABLE 3—HABITAT PARAMETERS FOR VARYING LIFE STAGES OF LOACH MINNOW

	Egg	Larvae	Juveniles	Adults
Flow velocity in centimeters per second (inches per second).	3.0–91.4 (1.2–36.0)	0.0–48.8 (0.0–19.2)	3.0–85.3 (1.2–33.6)	0.0–79.2 (0.0–31.2).
Depth in centimeters (inches).	3.0–30.5 (1.2–12)	3.0–45.7 (1.2–8.0)	6.1–42.7 (2.4–16.8)	6.1–45.7 (2.4–18.0).
Substrate	Large gravel to rubble	No data	No data	Gravel to cobble.

There are some differences in microhabitats occupied by loach minnow in different areas. Studies completed in New Mexico determined that there were significant differences in water velocities occupied among the three study sites, with the mean velocities at 37.4 (Tularosa River), 56.3 (Forks area of the Gila River) and 60.5 cm per second (Cliff-Gila Valley site on the Gila River). Differences in water depth were not as pronounced, however. Much of the variation in microhabitat utilization may be explained by habitat availability, as the compared streams varied in size (Propst *et al.* 1988, pp. 37–43).

Flooding. Flooding also plays an important role in habitat suitability for loach minnow. In areas where substantial diversions (structures created to divert water to pools for pumping from the stream) or impoundments have been constructed, loach minnow are less likely to occur (Propst *et al.* 1988, pp. 63–64; Propst and Bestgen 1991, p. 37). This is in part due to habitat changes caused by the construction of the diversions, and in part due to the reduction of beneficial effects of flooding on loach minnow habitat. Flooding appears to positively affect loach minnow population dynamics by resulting in higher recruitment (reproduction and survival of young) and by decreasing the abundance of nonnative fishes (addressed further below) (Stefferud and Rinne 1996b, p. 1).

Flooding also cleans, rearranges, and rehabilitates important riffle habitat (Propst *et al.* 1988, pp. 63–64). Flooding allows for the scouring of sand and gravel in riffle areas, which reduces the degree of embeddedness of cobble and boulder substrates (Britt 1982, p. 45). Typically, sediment is carried along the bed of a stream and deposited at the downstream, undersurface side of cobbles and boulders. Over time, this can result in the filling of cavities created under cobbles and boulders (Rinne 2001, p. 69). Flooding removes the extra sediment, and cavities created under cobbles by scouring action of the

flood waters provides enhanced spawning habitat for loach minnow.

Studies on the Gila, Tularosa, and San Francisco rivers found that flooding is primarily a positive influence on native fish, and apparently had a positive influence on the relative abundance of loach minnow (Britt 1982, p. 45). Rather than following a typical pattern of winter mortality and population decline, high levels of loach minnow recruitment occurred after the flood, and loach minnow relative abundance remained high through the next spring. Flooding enhanced and enlarged loach minnow habitat, resulting in a greater survivorship of individuals through winter and spring (Propst *et al.* 1988, p. 51). Similar results were observed on the Gila and San Francisco rivers following flooding in 1978 (Britt 1982, p. 45).

In summary, based on the best scientific and commercial information available for loach minnow, we have developed generalized ranges in habitat parameters within streams or rivers, as follows:

- Shallow water generally less than 1 m (3.3 ft) in depth;
- Slow to swift flow velocities between 0 and 80 cm per sec (0.0 and 31.5 in. per sec);
- Pools, runs, riffles and rapids;
- Sand, gravel, cobble, and rubble substrates with low or moderate amounts of fine sediment and substrate embeddedness, as maintained by a natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, flow regime that allows for adequate river functions, such as flows capable of transporting sediments;
- Water temperatures in the general range of 8 to 25 °C (46.4 to 77 °F);
- Low stream gradients of less than approximately 2.5 percent; and
- Elevations below 2,500 m (8,202 ft).

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Spikedace

Food. Spikedace are active, highly mobile fish that visually inspect drifting materials both at the surface and within the water column. Gustatory inspection, or taking the potential prey items into the mouth before either swallowing or rejecting it, is also common (Barber and Minckley 1983, p. 37). Prey body size is small, typically ranging from 2 to 5 mm (0.08 to 0.20 in) long (Anderson 1978, p. 36).

Stomach content analysis of spikedace determined that mayflies, caddisflies, true flies (Order Diptera), stoneflies, and dragonflies (Order Odonata) are all potential prey items. In one Gila River study, the frequency of occurrence was 71 percent for mayflies, 34 percent for true flies, and 25 percent for caddisflies (Propst *et al.* 1986, p. 59). A second Gila River study of four samples determined that total food volume was composed of 72.7 percent mayflies, 17.6 percent caddisflies, and 4.5 percent true flies (Anderson 1978, pp. 31–32). At Aravaipa Creek, mayflies, caddisflies, true flies, stoneflies, and dragonflies were all prey items for spikedace, as were some winged insects and plant materials (Schreiber 1978, pp. 12–16, 29, 35–37). Barber and Minckley (1983, pp. 34–38) found that spikedace at Aravaipa Creek also consumed ants and wasps (Order Hymenoptera), spiders (Order Areneae), beetles (Order Coleoptera), true bugs, and water fleas (Order Cladocera).

Spikedace diet varies seasonally (Barber and Minckley 1983, pp. 34–38). Mayflies dominated stomach contents in July, but declined in August and September, increasing in importance again between October and June. When mayflies were available in lower numbers, spikedace consumed a greater variety of foods, including true bugs, true flies, beetles, and spiders.

Spikedace diet varies with age class as well. Young spikedace fed on a diversity of small-bodied invertebrates occurring in and on sediments along the margins of the creek. True flies were found most frequently, but water fleas and aerial adults of aquatic and terrestrial insects also provide significant parts of the diet. As juveniles grow and migrate into the swifter currents of the channel, mayfly nymphs (invertebrates between the larval and adult life stages, similar to juveniles) and adults increase in importance (Barber and Minckley 1983, pp. 36–37).

Spikedace are dependent on aquatic insects for sustenance, and the production of the aquatic insects consumed by spikedace occurs mainly in riffle habitats (Propst *et al.* 1986, p. 59). Barber and Minckley (1983, pp. 36–37, 40) found that spikedace in pools had eaten the least diverse food, while those from riffles contained a greater variety of taxa, indicating that the presence of riffles in good condition and abundance help to ensure that a sufficient number and variety of prey items will continue to be available for spikedace.

Aquatic invertebrates that constitute the bulk of the spikedace diet have specific habitat parameters of their own. Mayflies occur primarily in fresh water with an abundance of oxygen. Spikedace consume mayflies from the genus *Baetidae* (Schreiber 1978, p. 36), which are free-ranging species of rapid waters that maintain themselves in currents by clinging to pebbles. Spikedace also consumed individuals from two other mayfly genera (*Heptageniidae* and *Ephemerellidae*), which are considered ''clinging species,'' as they cling tightly to stones and other objects and may be found in greatest abundance in crevices and on the undersides of stones (Pennak 1978, p. 539). The importance of gravel and cobble substrates is illustrated by the fact that the availability of these prey species, which make up the bulk of the spikedace diet, requires these surfaces to persist.

The availability of food for spikedace is affected by flooding. The onset of flooding corresponds with an increased diversity of food items, as inflowing flood water carries terrestrial invertebrates, such as ants, bees, and wasps, into aquatic areas (Barber and Minckley 1983, p. 39).

Water. As a purely aquatic species, spikedace are entirely dependent on streamflow habitat for all stages of their life cycle. Therefore, perennial flows are an essential feature. Areas with intermittent flows may serve as connective corridors between occupied or seasonally occupied habitat through which the species may move when the habitat is wetted.

In addition to water quantity, water quality is important to spikedace. Water with no or low levels of pollutants is essential for the survival of spikedace. For spikedace, pollutants such as copper, arsenic, mercury, cadmium, human and animal waste products, pesticides, suspended sediments, ash, and gasoline or diesel fuels should not be present at high levels (Baker, 2005, pers. comm.). In addition, for freshwater fish, dissolved oxygen should generally be greater than 3.5 cubic centimeters per liter (cc per l) (Bond 1979, p. 215). Below this level, some stress to fish may occur.

Fish kills have been documented within the range of the spikedace, including on the San Francisco River (Rathbun 1969, pp. 1–2) and the San Pedro River (Eberhardt 1981, pp. 1–4, 6–9, 11–12, 14, 16, and Tables 2–8). Occupancy by spikedace at the San Francisco River site is less certain, but spikedace were present in the Gila River upstream of its confluence with the San Francisco. Spikedace were present in the San Pedro River up through 1969 within the area affected by the Cananea Mine spill, which extended 97 km (60 mi) north of the United States/Mexico border (Eberhardt 1981, p. 3). All aquatic life within this 97-km (60-mi)

stretch was killed between 1977 and 1979, and no spikedace records are known after that time. For both the San Francisco and San Pedro rivers, leaching ponds associated with copper mines released waters into the streams, resulting in elevated levels of toxic chemicals. For the San Pedro River, this included elevated levels of iron, copper, manganese, and zinc. Both incidents resulted in die-offs of species inhabiting the streams. Eberhardt (1981, pp. 1, 3, 9, 10, 14–15) noted that no bottom-dwelling aquatic insects, live fish, or aquatic vegetation of any kind were found in the area affected by the spill. Rathbun (1969, pp. 1–2) reported similar results for the San Francisco River. As detailed above under the threats discussion, spills or discharges have occurred in the Gila River and affected streams within the watersheds of spikedace, including the Gila River, San Francisco River, San Pedro River, and some of their tributaries (EPA 1997, pp. 24–67; Arizona Department of Environmental Quality 2000, p. 6; Church *et al.* 2005, p. 40; Arizona Department of Environmental Quality 2007, p. 1).

In summary, based on the best scientific and commercial information available for spikedace, we conclude that an appropriate prey base and water quality parameters for spikedace will include:

- An abundant aquatic insect food base consisting of mayflies, true flies, black flies, caddisflies, stoneflies, and dragonflies;
- Streams with no or no more than low levels of pollutants;
- Perennial flows, or interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted;
- Streams with a natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, a flow regime that allows for adequate river functions, such as flows capable of transporting sediments.

Loach Minnow

Food. Loach minnow are opportunistic, feeding on riffle-dwelling larval mayflies, black flies, and true flies, as well as from larvae of other aquatic insect groups such as caddisflies and stoneflies. Loach minnow in the Gila, Tularosa, and San Francisco rivers consumed primarily true flies and mayflies, with mayfly nymphs being an important food item throughout the year. Mayfly nymphs constituted the most important food item throughout the year for adults studied on the Gila and San Francisco Rivers, while larvae of true flies (insects of the order Diptera) were most common in the winter months (Propst *et al.* 1988, p. 27; Propst and Bestgen 1991, p. 35). In Aravaipa Creek, loach minnow consumed 11 different prey items, including mayflies, stoneflies, caddisflies, and true flies. Mayflies constituted the largest percentage of their diet during this study except in January, when true flies made up 54.3 percent of the total food volume (Schreiber 1978, pp. 40–41).

Loach minnow consume different prey items during their various life stages. Both larvae and juveniles primarily consumed true flies, which constituted approximately 7 percent of their food items in one year, and 49 percent the following year in one study. Mayfly nymphs were also an important dietary element at 14 percent and 31 percent during a one-year study. Few other aquatic macroinvertebrates were consumed (Propst *et al.* 1988, p. 27). In a second study, true fly larvae and mayfly nymphs constituted the primary food of larval and juvenile loach minnow (Propst and Bestgen 1991, p. 35).

The availability of pool and run habitats affects availability of prey species. While most of the food items of loach minnow are riffle species, two are not, including true fly larvae and mayfly nymphs. Mayfly nymphs, at times, made up 17 percent of the total food volume of loach minnow in a study at Aravaipa Creek (Schreiber 1978, pp. 40–41). The presence of a variety of habitat types is, therefore, important to the persistence of loach minnow in a stream, even though they are typically associated with riffles.

Water Quality. Water, with no or low pollutant levels, is important for the conservation of loach minnow. For loach minnow, waters should have no more than low levels of pollutants, such as copper, arsenic, mercury, cadmium, human and animal waste products, pesticides, suspended sediments, and gasoline or diesel fuels (Baker, 2005, pers. comm.). In addition, for freshwater fish, dissolved oxygen should generally be greater than 3.5 cc per l (Bond 1979, p. 215). Below this, some stress to the fish may occur.

Fish kills associated with previous mining accidents, as well as other contaminants issues, are detailed under the spikedace discussion above. These incidents occurred within the historical range of the loach minnow. As with spikedace, loach minnow were known to occur in the area affected by the Cananea Mine spill up through 1961. All aquatic life within the affected area was killed between 1977 and 1979, and no loach minnow records are known after that time. On the San Francisco River, loach minnow are known to have occurred in the general area of the spill in the 1980s and 1990s (ASU 2002). Additional spills or discharges have occurred in the Gila River and affected streams within the watersheds occupied by loach minnow, including the Gila River, San Francisco River, San Pedro River, and some of their tributaries (EPA 1997, pp. 24–67; Arizona Department of Environmental Quality 2000, p. 6; Church *et al.* 2005, p. 40; Arizona Department of Environmental Quality 2007, p. 1).

In summary, based on the best scientific and commercial information available for loach minnow, we have identified an appropriate prey base and water quality for loach minnow to include:

- An abundant aquatic insect food base consisting of mayflies, true flies, black flies, caddisflies, stoneflies, and dragonflies;
- Streams with no or no more than low levels of pollutants;
- Perennial flows, or interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted; and
- Streams with a natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, a flow regime that allows for adequate river functions, such as flows capable of transporting sediments.

Cover or Shelter

Spikedace. No specific information on habitat parameters used specifically for cover and shelter is available for spikedace. Therefore, we have not identified any specific conditions specific to cover and shelter for spikedace.

Loach Minnow. As noted above, adult loach minnow are sometimes associated with filamentous algae, which may serve as a protective cover (Anderson and Turner 1977, p. 5; Lee *et al.* 1980, p. 365; Minckley 1981, p. 165; Sublette *et al.* 1990, p. 187; Minckley and Marsh 2009, p. 174). Loach minnow adults place their adhesive eggs on the undersides of rocks, with the rock serving as protective cover. Propst *et al.* (1988, p. 21) found that the rocks used were typically elevated from the surface of the streambed on the downstream side, with most rocks flattened and smooth surfaced. Adult loach minnow remain with the eggs, so that the rock serves as a protective cover for them as

well (Propst *et al.* 1988, pp. 21–25, 36–39).

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Spikedace

Suitable sites. Spikedace occur in specific habitat during the breeding season, with female and male spikedace becoming segregated. Females occupy pools and eddies, while males occupy riffles flowing over sand and gravel beds in water approximately 7.9 to 15.0 cm (3.1 to 5.9 in) deep. Females then enter the riffles occupied by the males before eggs are released into the water column (Barber *et al.* 1970, pp. 11–12).

Spikedace eggs are adhesive and develop among the gravel and cobble of the riffles following spawning. Spawning in riffle habitat ensures that the eggs are well oxygenated and are not normally subject to suffocation by sediment deposition due to the swifter flows found in riffle habitats. However, after the eggs have adhered to the gravel and cobble substrate, excessive sedimentation could cause suffocation of the eggs (Propst *et al.* 1986, p. 40).

Larval and juvenile spikedace occupy peripheral portions of streams that have slower currents (Anderson 1978, p. 17; Propst *et al.* 1986, pp. 40–41). Gila River studies found larval spikedace in velocities of 8.4 cm per second (3.3 in. per sec) while juvenile spikedace occupy areas with velocities of approximately 16.8 cm per second (6.6 in. per sec) (Propst *et al.* 1986, p. 41).

Once they emerge from the gravel of the spawning riffles, spikedace larvae disperse to stream margins where water velocity is very slow or still. Larger larval and juvenile spikedace (those fish 25.4 to 35.6 mm (1.0 to 1.4 in) in length) occurred over a greater range of water velocities than smaller larvae, but still occupied water depths of less than 32.0 cm (12.6 in) (Propst *et al.* 1986, p. 40). Juveniles and larvae are also occasionally found in quiet pools or backwaters (e.g., pools that are connected with, but out of, the main river channel) lacking streamflow (Sublette *et al.* 1990, p. 138).

During a study on the Gila River, 60 percent of spikedace larvae were found over sand-dominated substrates, while 18 percent were found over gravel, and an additional 18 percent found over cobble-dominated substrates. While 45 percent of juvenile spikedace were found over sand substrates, an additional 45 percent of the juveniles were found over gravel substrates, with the remaining 10 percent associated with cobble-dominated substrates. Juveniles occupy a wider range in flow velocities than larvae (0.0 to 57.9 cm per second (22.8 in. per second)), but occurred at similar depths as larvae (Propst *et al.* 1986, pp. 40–41).

As noted above, excessive sedimentation can lead to suffocation of eggs. Clean substrates are therefore essential for successful breeding. Both flooding and unaltered flow regimes are essential for maintenance of suitable substrates. As noted above under habitat requirements, periodic flooding appears to benefit spikedace by removing excess sediment from some portions of the stream, breaking up embedded bottom materials, or rearranging sediments in ways that restore suitable habitats. Flooding may also stimulate spawning or enhance recruitment (Mueller 1984, p. 355; Propst *et al.* 1986, p. 3; Stefferud and Rinne 1996a, p. 80; Minckley and Meffe 1987, pp. 99, 100; Rinne and Stefferud 1997, pp. 159, 162; Velasco 1997, pp. 28–29). Streams in the southwestern United States have a wide fluctuation in flows and some are periodically dewatered. While portions of stream segments included in these designations may experience dry periods, they are still considered important because the spikedace is adapted to stream systems with fluctuating water levels. While they cannot persist in dewatered areas, spikedace will use these areas as connective corridors between occupied or seasonally occupied habitat when they are wetted. Areas that serve as connective corridors are those ephemeral or intermittent stream segments that connect two or more other perennial stream segments.

Therefore, based on the information above, we identify appropriate sites for breeding, reproduction, or development of offspring for spikedace to include:

- Sand, gravel, and cobble substrates;
- Riffle habitat;
- Slower currents along stream margins with appropriate stream velocities for larvae;
- Appropriate water depths for larvae and juvenile spikedace;
- Flow velocities that encompass the range of 8.5 cm per sec (3.3 in. per sec) to 57.9 cm per sec (22.8 in. per sec); and
- Streams with a natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, a flow regime that allows for adequate river functions, such as flows capable of transporting sediments.

Loach Minnow

Adult loach minnow attach eggs to the undersurfaces of rocks in the same riffles in which they are typically found. In studies conducted on the Gila River, water velocities in these areas ranged from 3.0 to 91.4 cm per second (36.0 in. per second). The majority of rocks with attached eggs were found in water flowing at approximately 42.7 cm per second (16.8 in. per second). The range of depths in which rocks with eggs attached were found was 3.0 to 30.5 cm (1.2 to 12 in), with the majority found between 6.1 and 21.3 cm (2.4 and 8.4 in) (Propst *et al.* 1988, pp. 36–39).

Loach minnow larvae occupy shallower and slower water than eggs. In Gila River studies, larvae occurred in flow velocities averaging 7.9 cm per second (3.1 in. per second), and in depths between 3.0 to 45.7 cm (1.2 to 18 in). Juveniles occurred in areas with higher velocities, ranging between 35.1 and 85.3 cm per second (13.8 and 33.6 in. per second). Juveniles occurred in slightly deeper water of approximately 6.1 to 42.7 cm (2.4 to 16.8 in) (Propst *et al.* 1988, pp. 36–39).

As noted above under general habitat requirements, flooding is important in maintaining loach minnow habitat, including habitats used for breeding. Flooding reduces embeddedness of cobble and boulder substrates under which eggs are placed (Britt 1982, p. 45). The construction of water diversions have reduced or eliminated riffle habitat in many stream reaches, resulting in pool development. Loach minnow are generally absent in stream reaches affected by impoundments. While the specific factors responsible for this are not known, it is likely related to modification of thermal regimes, habitat, food base, or discharge patterns (Propst *et al.* 1988, p. 64; Minckley 1973, pp. 1–11).

Therefore, based on the information above, we identify appropriate sites for breeding, reproduction, or development of offspring for loach minnow to include:

- Cobble substrates;
- Riffle habitats;
- Slower currents along stream margins with appropriate stream velocities for larvae;
- Appropriate water depths for larvae and juvenile loach minnow;
- Flow velocities that encompass the range of 6.1 to 42.7 cm (2.4 to 16.8 in); and
- Streams with a natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, a flow regime that allows for adequate river functions, such as flows capable of transporting sediments.

Spikedace

Nonnative aquatic species. One of the primary reasons for the decline of native species is the presence of nonnative aquatic species, as described above

under Factors C and E above. Nonnative aquatic species can include fishes, crayfish, or parasites, among others. Interactions with nonnative fishes can occur in the form of interference competition (e.g., predation) or exploitive competition (competition for resources), and introduced species are considered a primary factor in the decline of native species (Anderson 1978, pp. 50–51; Miller *et al.* 1989, p. 1; Lassuy 1995, p. 392). Multiple nonnative fish species are now present in the range of spikedace and loach minnow. In addition, nonnative parasites are also present.

Flooding may help to reduce the threat presented by nonnative species. Minckley and Meffe (1987, pp. 99–100) found that flooding, as part of a natural flow regime, may temporarily remove nonnative fish species, which are not adapted to flooding patterns in the Southwest. Thus flooding consequently removes the competitive pressures of nonnative fish species on native fish species which persist following the flood. Minckley and Meffe (1987, pp. 99–100) studied the differential response of native and nonnative fishes in seven unregulated and three regulated streams or stream reaches that were sampled before and after major flooding and noted that fish faunas of canyon-bound reaches of unregulated streams invariably shifted from a mixture of native and nonnative fish species to predominantly, and in some cases exclusively, native fishes after large floods. Samples from regulated systems indicated relatively few or no changes in species composition due to releases from upstream dams at low, controlled volumes. However, during emergency releases, effects to nonnative fish species were similar to those seen with flooding on unregulated systems. There is some variability in fish response to flooding. Some nonnative species, such as smallmouth bass and green sunfish, appear to be partially adapted to flooding, and often reappear in a few weeks (Minckley and Meffe 1987, p. 100).

The information presented above indicates the detrimental effects of interference and exploitive competition with nonnative species to spikedace, as well as the issues presented by the introduction of nonnative parasites. Therefore, based on the best scientific and commercial information currently available for spikedace, we conclude that suitable habitat with respect to nonnative aquatic species is habitat devoid of nonnative aquatic species, or habitat in which nonnative aquatic species are at levels that allow persistence of spikedace.

Loach Minnow

As with spikedace (discussed above), interference and exploitive competition with nonnative species can be detrimental to loach minnow. Interference competition, in the form of predation, may result from interactions between loach minnow and nonnative channel and flathead catfish, while exploitive competition likely occurs with red shiner.

The discussion under Factor C above on disease and predation includes information on other nonnative aquatic species, such as Asian tapeworm, anchor worm, and Ich, which are also detrimental to loach minnow.

The discussion under spikedace on flooding and its benefits in potentially minimizing threats from nonnative fishes applies to loach minnow as well. The information presented above indicates the detrimental effects of interference and exploitive competition with nonnative species to loach minnow, as well as the issues presented by the introduction of nonnative parasites. Therefore, based on the best scientific and commercial information currently available for spikedace, we conclude that suitable habitat with respect to nonnative aquatic species should include:

- Habitat devoid of nonnative aquatic species, or habitat in which nonnative aquatic species are at levels that allow persistence of loach minnow; and
- Streams with a natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, a flow regime that allows for adequate river functions, such as flows capable of transporting sediments.

Primary Constituent Elements for Spikedace

As noted above, we are required to identify the PBFs essential to the conservation of spikedace and loach minnow in areas occupied at the time of listing, focusing on the features' PCEs. We consider PCEs to be the elements of PBFs that provide for a species' life-history processes, and that are essential to the conservation of the species. We outline the appropriate quantities and spatial arrangements of the elements in the *Physical or Biological Features (PBFs)* section of the October 28, 2010, proposed rule. For example, spawning substrate would be considered an essential feature, while the specific composition (sand, gravel, and cobble) and level of embeddedness are the elements (PCEs) of that feature. This section identifies the PCEs for both spikedace and loach minnow.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the habitat requirements for sustaining the essential life-history functions of the species, we have determined that PCEs for the spikedace are:

(1) Habitat to support all egg, larval, juvenile, and adult spikedace, which includes:

a. Perennial flows with a stream depth generally less than 1 m (3.3 ft), and with slow to swift flow velocities between 5 and 80 cm per second (1.9 and 31.5 in. per second).

b. Appropriate stream microhabitat types including glides, runs, riffles, the margins of pools and eddies, and backwater components over sand, gravel, and cobble substrates with low or moderate amounts of fine sediment and substrate embeddedness;

c. Appropriate stream habitat with a low gradient of less than approximately 1.0 percent, at elevations below 2,100 m (6,890 ft); and

d. Water temperatures in the general range of 8.0 to 28.0 °C (46.4 to 82.4 °F).

(2) An abundant aquatic insect food base consisting of mayflies, true flies, black flies, caddisflies, stoneflies, and dragonflies.

(3) Streams with no or no more than low levels of pollutants.

(4) Perennial flows, or interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

(5) No nonnative aquatic species, or levels of nonnative aquatic species that are sufficiently low as to allow persistence of spikedace.

(6) Streams with a natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, a flow regime that allows for adequate river functions, such as flows capable of transporting sediments.

Primary Constituent Elements for Loach Minnow

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the habitat requirements for sustaining the essential life-history functions of the species, we have determined that PCEs for the loach minnow are:

(1) Habitat to support all egg, larval, juvenile, and adult loach minnow which includes:

(a) Perennial flows with a stream depth of generally less than 1 m (3.3 ft), and with slow to swift flow velocities between 0 and 80 cm per second (0.0 and 31.5 in. per second);

(b) Appropriate microhabitat types including pools, runs, riffles, and rapids over sand, gravel, cobble, and rubble substrates with low or moderate amounts of fine sediment and substrate embeddedness;

(c) Appropriate stream habitats with a low stream gradient of less than 2.5 percent and are at elevations below 2,500 m (8,202 ft); and

(d) Water temperatures in the general range of 8.0 to 25.0 °C (46.4 to 77 °F).

(2) An abundant aquatic insect food base consisting of mayflies, true flies, black flies, caddisflies, stoneflies, and dragonflies.

(3) Streams with no or no more than low levels of pollutants.

(4) Perennial flows, or interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

(5) No nonnative aquatic species, or levels of nonnative aquatic species that are sufficiently low to allow persistence of loach minnow.

(6) Streams with a natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, a flow regime that allows for adequate river functions, such as flows capable of transporting sediments.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas determined to be occupied at the time of listing contain the PBFs and may require special management considerations or protection. We believe each area included in these designations requires special management and protections as described in our unit descriptions.

Special management considerations for each area will depend on the threats to the spikedace or loach minnow, or both, in that critical habitat area. For example, threats requiring special management include nonnative fish species and the continued spread of nonnative fishes into spikedace or loach minnow habitat. Other threats requiring special management include the threat of fire, retardant application during fire, and excessive ash and sediment following fire. Poor water quality and adequate quantities of water for all life stages of spikedace and loach minnow threaten these fish and may require special management actions or protections. Certain livestock grazing practices can be a threat to spikedace and loach minnow and their habitats, although concern for this threat has lessened due to improved management practices. The construction of water diversions can cause increasing water depth behind diversion structures, and has reduced or eliminated riffle habitat in many stream reaches. In addition, loach minnow are generally absent in stream reaches affected by impoundments. While the specific factor responsible for this is not known, it is likely related to modification of thermal regimes, habitat, food base, or discharge patterns.

We have included below in our description of each of the critical habitat areas for the spikedace and loach minnow a discussion of the threats occurring in that area requiring special management or protections.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of spikedace and loach minnow, and areas outside of the geographical areas occupied at the time of listing that are essential for the conservation of spikedace and loach minnow. Sources of data for these two species include multiple databases maintained by universities and State agencies for Arizona and New Mexico, existing recovery plans, endangered species reports (Propst *et al.* 1986, 1988), and numerous survey reports on streams throughout the species' range. We have also reviewed available information that pertains to the habitat requirements of this species. Sources of information on habitat requirements include existing recovery plans, endangered species reports, studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts.

The recovery plans for spikedace and loach minnow were both finalized in 1991 (Service 1991a; Service 1991b), and are in need of revision to update information on species distribution, revisit conservation priorities, address any new information developed through monitoring and research, and bring the plans into conformance with current Service standards. At the time the plans were written, captive propagation and reintroduction projects had not yet begun. With these efforts now under way, prioritization is needed. We are in the process of convening a recovery team for this purpose. In the interim, we have developed an internal preliminary recovery assessment of potential steps necessary for achieving recovery of spikedace and loach minnow.

The current distribution of both spikedace and loach minnow is much reduced from their historical distribution. We anticipate that recovery will require continued protection of existing populations and habitat, as well as establishing populations in additional streams within their historical ranges. Not all streams within their historical range have retained the necessary PBFs, and the critical habitat designation does not include all streams known to have been occupied by the species historically. The critical habitat designation instead focuses on streams within the historical range that have retained the necessary PBFs, and that will allow the species to reach recovery by ensuring that there are adequate numbers of fish in stable populations, and that these populations occur over a wide geographic area. This will help to minimize the likelihood that catastrophic events, such as wildfire or contaminant spills, would be able to simultaneously affect all known populations. We developed necessary steps for downlisting as well as delisting.

For spikedace, our preliminary recovery assessment recommends that, in order to downlist the species from endangered to threatened, one additional stable population be established in either the Salt or Verde subbasins, and the number of occupied streams be increased from 8 (the current level) to 10 rangewide. Occupancy may be established through natural means (*i.e.,* expansion by the fish themselves) or through translocation efforts. For delisting of spikedace, our preliminary recovery assessment indicates that a stable population should be established in the remaining subbasin, and that occupied streams within the historical range of the species be increased to 12. In addition, the goal is to ensure that all genetic lineages are adequately represented in the 12 occupied streams, where appropriate and feasible.

For loach minnow, our preliminary recovery assessment recommends that, in order to downlist the species from endangered to threatened, the number of occupied streams be increased from 19 (the current level) to 22, with one occupied stream in each of the major watersheds. For delisting, the preliminary recovery assessment recommends increasing the number of occupied streams to 25, with at least one occupied stream in each of the major watersheds, and that remaining genetic lineages be adequately represented in at

least one stream, where appropriate and feasible.

The preliminary recovery assessment makes other recommendations, including establishing protective measures for connective areas, maintaining captive breeding stocks, and developing plans for augmentation of captive breeding stock.

Our preliminary recovery assessment of the habitats needed for conservation of these species attempts to provide geographic distribution across the ranges of the species, represent the full ranges of habitat and environmental variability the species have occupied, and preserve existing genetic diversity. We anticipate that the final recovery plans developed by the Recovery Team, once formed, may vary from this assessment, and will likely provide additional criteria and prioritization of recovery actions. However, the broad goals used in our preliminary recovery assessment will be similar to those for the recovery planning process as recovery will require expanding the currently contracted ranges and establishing additional populations.

We determined that all areas designated as critical habitat for spikedace and loach minnow contain the PCEs for each species. There are no developed areas within the designations for either species except for barriers constructed on streams or road crossings of streams, which do not remove the suitability of these areas for these species.

Using our preliminary recovery assessment for selection of critical habitat, we have developed a designation to expand the current distribution of the two species by including both specific areas known to be occupied by the species at listing, as well as including some areas that were not known to be occupied at listing, but which were once part of their historical ranges. These unoccupied areas are essential to the recovery of the species because their current distribution is reduced to 10 to 20 percent of historical range, and concentrates fish in a few remaining areas that could be more susceptible to catastrophic events.

We used the following ruleset for both spikedace and loach minnow, also summarized in Table 4, to determine which areas to designate as critical habitat:

(1) Evaluate the habitat suitability of stream segments known to have been occupied at listing:

(a) Retain those segments that contain the PCEs to support life-history functions essential for the conservation of the species, or

(b) Eliminate those areas known to have been occupied at listing, but that no longer contain any PCEs for the species.

(2) Evaluate stream segments not known to have been occupied at listing but that are within the historical range of the species to determine if they are essential to the survival and conservation (*i.e.,* recovery) of the species. Essential areas are those that:

(a) Serve as an extension of habitat within the geographic area of an occupied unit; or

(b) Expand the geographic distribution within areas not occupied at the time of listing across the historical range of the species.

TABLE 4—SUMMARY OF CATEGORIZATION OF WATERWAYS DESIGNATED AS CRITICAL HABITAT FOR LOACH MINNOW AND SPIKEDACE

Stream category	Criterion	Categorized as
Occupied at listing	Segment contains sufficient PCEs* to support life-history functions essential to the conservation of the species.	1a
	Segment no longer supports any PCEs for the species, or segment has been permanently altered so that restoration is unlikely.	1b
Not known to be occupied at listing but within the species' historical range.	Segment serves as an extension of habitat in the unit	2a
	Segment expands the geographic distribution across the range of the species.	2b

* PCE = primary constituent element.

The critical habitat designation includes two different categories of habitat. The ''2a'' category includes currently unoccupied stream reaches within units that are tributaries to other, occupied stream reaches. For example, within Unit 1, we include West Clear Creek as a 2a stream for spikedace. West Clear Creek is not currently occupied, but it is a tributary to the Verde River, which is currently occupied. Increasing the amount of occupied habitat in units, like the Verde River, already occupied by the species is essential because it expands the available habitat within a given unit that can be occupied by the two species and provides for an increased population size within that stream system. Increased population sizes are essential to conserving the two species as higher numbers of individuals increases the likelihood of their persistence over time.

The ''2b'' category includes streams within units that are not currently occupied by the species but that are still within their historical range. The difference between ''2a'' and ''2b'' streams is that there is no occupancy within the entire unit for a ''2b'' stream. For example, while there are historical records of spikedace from within the Salt River Subbasin (Unit 2), this subbasin is unoccupied by the species. We have included Tonto Creek and some of its tributaries as ''2b'' streams within the designation. Inclusion of this area provides for expansion of the overall geographic distribution of spikedace. Expanding the geographic distribution of both species is essential for species that occur in only a fragment of their former range, as is the case for spikedace and loach minnow. Identifying additional streams for recovery of the two species ultimately allows for additional occupied units over a broader geographic range, which reduces the overall impacts of catastrophic events.

In summary, we have considered the known occupancy of the area in determining which areas are either in category 1 (occupied at listing) versus category 2 (not occupied at listing), as well as the suitability and level of adverse impacts to habitat within each unit. We believe the areas designated as critical habitat provide for the conservation of the spikedace and the loach minnow because they include habitat for all extant populations and provide habitat for all known genetic lineages.

We evaluated those stream segments retained through the above analysis, and refined the starting and end points by evaluating the presence or absence of appropriate PCEs. We selected upstream and downstream cutoff points not to include areas that are highly degraded and are not likely restorable. For example, permanently dewatered areas, permanently developed areas, or areas in which there was a change to unsuitable parameters (*e.g.,* a steep gradient, bedrock substrate) were used to mark the start or endpoint of a stream segment within the designation. Critical habitat stream segments were then mapped using ArcMap (Environmental Systems Research Institute, Inc.), a Geographic Information Systems program.

With respect to length, the designations were designed to provide sufficient riverine area for breeding, nonbreeding, and dispersing adult spikedace and loach minnow, as well as for the habitat needs for juvenile and larval stages of these fishes. In addition, with respect to width, we evaluated the lateral extent necessary to support the PCEs for spikedace and loach minnow. The resulting designations take into account the naturally dynamic nature of riverine systems and floodplains (including riparian and adjacent upland areas) that are an integral part of the stream ecosystem. For example, riparian areas are seasonally flooded habitats (*i.e.,* wetlands) that are major contributors to a variety of functions vital to fish within the associated stream channel (Brinson *et al.* 1981, pp. 2–61, 2–69, 2–72, 2–75, 2–84 through 2–85; Federal Interagency Stream Restoration Working Group 1998). Riparian areas filter runoff, absorb and gradually release floodwaters, recharge groundwater, maintain streamflow, protect stream banks from erosion, and provide shade and cover for fish and other aquatic species. Healthy riparian and adjacent upland areas help ensure water courses maintain the habitat important for aquatic species (*e.g.,* see USFS 1979, pp. 18, 109, 158, 264, 285, 345; Middle Rio Grande Biological Interagency Team 1993, pp. 64, 89, 94; Castelle *et al.* 1994, pp. 279–281), including the spikedace and loach minnow. Habitat quality within the mainstem river channels in the historical range of the spikedace and loach minnow is intrinsically related to the character of the floodplain and the associated tributaries, side channels, and backwater habitats that contribute to the key habitat features (*e.g.,* substrate, water quality, and water quantity) in these reaches. We have determined that a relatively intact riparian area, along with periodic flooding in a relatively natural pattern, is important for maintaining the PCEs necessary for long-term conservation of the spikedace and the loach minnow.

The lateral extent (width) of riparian corridors fluctuates considerably between a stream's headwaters and its mouth. The appropriate width for riparian buffer strips has been the subject of several studies and varies depending on the specific function required for a particular buffer (Castelle *et al.* 1994, pp. 879–881). Most Federal and State agencies generally consider a zone 23 to 46 m (75 to 150 ft) wide on each side of a stream to be adequate (Natural Resource Conservation Service 1998, pp. 2–3; Moring *et al.* 1993, p. 204; Lynch *et al.* 1985, p. 164), although buffer widths as wide as 152 m (500 ft) have been recommended for achieving flood attenuation benefits (U.S. Army Corps 1999, pp. 5–29). In most instances, however, riparian buffer zones are primarily intended to reduce (*i.e.,* buffer) detrimental impacts to the stream from sources outside the river channel, such as pollutants in adjacent areas. Consequently, while a riparian corridor 23 to 46 m (75 to 150 ft) in width may protect water quality and provide some level of riparian habitat protection, a wider area would provide full protection of riparian habitat because the stream itself can move within the floodplain in response to high flow events. A 91.4 m (300 ft) buffer would better protect water temperatures, as well as reduce the impacts of high flow events, thereby providing additional protection to critical habitat areas.

To address this issue, the lateral extent of streams included in these designations is 91.4 m (300 ft) to either side of bankfull stage. We believe this width is necessary to accommodate stream meandering and high flows, and in order to ensure that these designations contain the features essential to the conservation of the species. Bankfull stage is defined as the upper level of the range of channel-forming flows, which transport the bulk of available sediment over time. Bankfull stage is generally considered to be that level of stream discharge reached just before flows spill out onto the adjacent floodplain. The discharge that occurs at bankfull stage, in combination with the range of flows that occur over a length of time, govern the shape and size of the river channel (Rosgen 1996, pp. 2–2 to 2–4; Leopold 1997, pp. 62–63, 66). The use of bankfull stage and 91.4 m (300 ft) on either side recognizes the naturally dynamic nature of riverine systems, recognizes that floodplains are an integral part of the stream ecosystem, and contains the area and associated features essential to the conservation of the species. Bankfull stage is not an ephemeral feature, meaning it does not disappear. Bankfull stage can always be determined and delineated for any stream we have designated as critical habitat. We acknowledge that the bankfull stage of any given stream may change depending on the magnitude of a flood event, but it is a definable and standard measurement for stream systems. Unlike trees or cliff facings used by terrestrial species, stream systems provide habitat that is in constant change. Following high flow events, stream channels can move from one side of a canyon to the opposite side, for example. If we were to designate critical habitat based on the location of the stream on a specific date, the area within the designation could be a dry channel in less than one year from the publication of the determination, should a high flow event occur.

We determined the 91.4-m (300-ft) lateral extent for several reasons. First, the implementing regulations of the Act require that critical habitat be defined by reference points and lines as found on standard topographic maps of the area (50 CFR 424.12(c)). Although we considered using the 100-year floodplain, as defined by the Federal Emergency Management Agency, we found that it was not included on standard topographic maps, and the information was not readily available from the Federal Emergency Management Agency or from the U.S. Army Corps of Engineers for the areas we are designating. We suspect this is related to the remoteness of many of the stream reaches where these species occur. Therefore, we selected the 91.4-m (300-ft) lateral extent, rather than some other delineation, for four biological reasons:

(1) The biological integrity and natural dynamics of the river system are maintained within this area (*i.e.,* the floodplain and its riparian vegetation provide space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry, store water for slow release to maintain base flows, provide protected side channels and other protected areas, and allow the river to meander within its main channel in response to large flow events).

(2) Conservation of the adjacent riparian area also helps to provide important nutrient recharge and protection from sediment and pollutants.

(3) Vegetated lateral zones are widely recognized as providing a variety of aquatic habitat functions and values (*e.g.,* aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality (see U.S. Army Corps of Engineers' Final Notice of Issuance and Modification of Nationwide Permits, March 9, 2000, 65 FR 12818).

(4) A 91.4-m (300-ft) buffer contributes to the functioning of a river, thereby supporting the PCEs needed for suitable spikedace and loach minnow habitat.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PCEs for spikedace and loach minnow. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PCEs in the adjacent critical habitat.

Eight units were designated as critical habitat based on sufficient elements of physical and biological features being present to support spikedace and loach minnow life processes. Some units contained all of the identified elements of physical and biological features and supported multiple life processes. Some segments contained only some elements of the physical and biological features necessary to support spikedace and loach minnow use of that habitat.

Final Critical Habitat Designations

We are designating eight units as critical habitat for spikedace and loach minnow. Within this designation, we refer to the eight units by subbasin name, as they are all subbasins to the Colorado River Basin. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Those eight units are: (1) Verde River Subbasin, (2) Salt River Subbasin, (3) San Pedro River Subbasin, (4) Bonita Creek Subbasin, (5) Eagle Creek Subbasin, (6) San Francisco River Subbasin, (7) Blue River Subbasin, and (8) Gila River Subbasin. Table 5 (spikedace) and Table 6 (loach minnow) show the occupied units.

TABLE 5—OCCUPANCY OF DESIGNATED CRITICAL HABITAT UNITS BY SPIKEDACE

Unit	Occupied at time of listing or documented after listing	Currently occupied	Translocated population
Unit 1—Verde River Subbasin			
Verde River	Yes	Yes	No.
Granite Creek	No	No	No.
Oak Creek	No	No	No.
Beaver and Wet Beaver Creek	No	No	No.
West Clear Creek	No	No	No.
Fossil Creek	No	Uncertain	Yes.
Unit 2—Salt River Subbasin			
Salt River Mainstem	No	No	No.
Tonto Creek	No	No	No.
Greenback Creek	No	No	No.
Rye Creek	No	No	No.
Spring Creek	No	No	No.
Rock Creek	No	No	No.
Unit 3—San Pedro River Subbasin			
San Pedro River	No	No	No.
Hot Springs Canyon	No	Yes	Yes.
Bass Canyon	No	No	No.
Redfield Canyon	No	Uncertain	Yes.
Aravaipa Creek	Yes	Yes	No.
Deer Creek	No	No	No.
Turkey Creek	No	No	No.
Unit 4—Bonita Creek Subbasin			
Bonita Creek	No	Uncertain	Yes.
Unit 5—Eagle Creek Subbasin			
Eagle Creek	Yes	Yes	No.
Unit 6—San Francisco River Subbasin			
San Francisco River	No	Uncertain	Yes.

TABLE 5—OCCUPANCY OF DESIGNATED CRITICAL HABITAT UNITS BY SPIKEDACE—Continued

Unit	Occupied at time of listing or documented after listing	Currently occupied	Translocated population
Unit 7—Blue River Subbasin			
Blue River	No	No	No.
Campbell Blue Creek	No	No	No.
Little Blue Creek	No	No	No.
Pace Creek	No	No	No.
Frieborn Creek	No	No	No.
Dry Blue Creek	No	No	No.
Unit 8—Gila River Subbasin			
Gila River	Yes	Yes	No.
West Fork Gila River	Yes	Yes	No.
Middle Fork Gila River	Yes	Yes	No.
East Fork Gila River	Yes	Yes	No.
Mangas Creek	Yes *	No	No.

* Spikedace documented after 1986 listing, including: Mangas Creek, first occupied in 1999.

TABLE 6—OCCUPANCY OF DESIGNATED CRITICAL HABITAT UNITS BY LOACH MINNOW

Stream segment	Occupied at time of listing	Currently occupied	Translocated population
Unit 1—Verde River Subbasin			
Verde River	No	No	No.
Granite Creek	No	No	No.
Oak Creek	No	No	No.
Beaver and Wet Beaver Creek	No	No	No.
Fossil Creek	No	Uncertain	Yes.
Unit 2—Salt River Subbasin			
White River Mainstem	Yes	Yes	No.
East Fork White River	Yes	Yes	No.
East Fork Black River	No	No	No.
North Fork East Fork Black River	Yes*	Yes	No.
Boneyard Creek	Yes*	No	No.
Coyote Creek	No	Yes	No.
Unit 3—San Pedro River Subbasin			
San Pedro River	No	No	No.
Hot Springs Canyon	No	Yes	Yes.
Bass Canyon	No	No	No.
Redfield Canyon	No	Uncertain	Yes.
Aravaipa Creek	Yes	Yes	No.
Deer Creek	Yes*	Yes	No.
Turkey Creek	Yes*	Yes	No.
Unit 4—Bonita Creek Subbasin			
Bonita Creek	No	Uncertain	Yes.
Unit 5—Eagle Creek Subbasin			
Eagle Creek	Yes*	Yes	No.
Unit 6—San Francisco River Subbasin			
San Francisco River	Yes	Yes	No.
Tularosa River	Yes	Yes	No.
Negrito River	Yes*	Yes	No.
Whitewater Creek	Yes	No	No.
Unit 7—Blue River Subbasin			
Blue River	Yes	Yes	No.
Campbell Blue Creek	Yes*	Yes	No.

TABLE 6—OCCUPANCY OF DESIGNATED CRITICAL HABITAT UNITS BY LOACH MINNOW—Continued

Stream segment	Occupied at time of listing	Currently occupied	Translocated population
Little Blue Creek	Yes*	No	No.
Pace Creek	Yes*	Yes	No.
Frieborn Creek	Yes*	Yes	No.
Dry Blue Creek	Yes*	Yes	No.
Unit 8—Gila River Subbasin			
Gila River	Yes	Yes	No.
West Fork Gila River	Yes	Yes	No.
Middle Fork Gila River	Yes	Yes	No.
East Fork Gila River	Yes	Yes	No.
Mangas Creek	Yes*	Yes	No.
Bear Creek	Yes*	Yes	No.

*Loach minnow documented after 1986 listing, including: North Fork East Fork Black River in 1996; Boneyard Creek in 1996; Deer Creek in 1996; Turkey Creek in 1996; Eagle Creek in 1994; Negrito Creek in 1998; Campbell Blue Creek in 1987; Little Blue Creek in 1994; Dry Blue Creek in 1998; Frieborn Creek in 1998; Pace Creek in 1998; Mangas Creek in 1999; and Bear Creek in 2005.

The approximate area of each critical habitat unit is shown in Table 7.

TABLE 7—LENGTH OF DESIGNATED CRITICAL HABITAT UNITS FOR SPIKEDACE AND LOACH MINNOW

[Length estimates reflect all land within critical habitat unit boundaries]

Unit	Federal		State		Local or tribal*		Private		Total	
	Km	Mi	Km	Mi	Km	Mi	Km	Mi	Km	Mi
1	155	96	4	2	3	2	133	82	295	182
2	117	72	0	0	0	0	14	9	131	81
3	37	23	4	2	2	2	31	19	74	46
4	16	10	0	0	0	0	8	5	24	15
5	19	12	0	0	0	0	8	5	27	17
6	155	96	3	2	0	0	70	44	228	142
7	93	58	0	0	0	0	15	9	108	67
8	161	100	10	6	0	0	88	55	259	161
Total	753	467	21	12	5	4	367	228	1146	711

Note: Area sizes may not sum due to rounding. Total figures vary from those in the text description. The additional stream miles fall within different landowner categories, which were not summarized here.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for spikedace and loach minnow or both, below. Table 8 at the end of this section summarizes the criteria from the ruleset (above) under which units were included.

Unit 1: Verde River Subbasin

Within the Verde River Subbasin, we are designating 294.5 km (183.0 mi) from Sullivan Lake downstream on the Verde River and its tributaries Granite Creek, Oak Creek, Beaver and Wet Beaver Creek, West Clear Creek, and Fossil Creek for spikedace. For loach minnow, we are designating 231.5 km (143.9 mi) from Sullivan Lake downstream on the Verde River and its tributaries Granite Creek, Oak Creek, Beaver and Wet Beaver Creek, and Fossil Creek. All of the area in the designation for loach minnow falls within the designation for spikedace. The Verde River and its tributaries included within these designations are in Yavapai and Gila Counties, Arizona. From Sullivan Lake, near its headwaters, the Verde River flows for 201 km (125 mi) downstream to Horseshoe Reservoir. This reach of the Verde River is unique in comparison to other desert streams such as the Salt or Gila Rivers in that it is free-flowing and perennial (Sullivan and Richardson 1993, pp. 19–21; The Nature Conservancy 2010).

Verde River Mainstem. The Verde River was considered occupied at listing for spikedace, but not for loach minnow. None of the tributaries within this unit were occupied at listing for either species. For spikedace, the Verde River meets criteria for a 1a stream as defined in the ruleset, indicating that it was occupied at listing and has the features essential to support life-history functions essential for the conservation of the species. All of the tributaries within this unit meet criteria for 2a streams as defined in the ruleset for spikedace, indicating that they were not occupied at listing and would serve as an extension of habitat in the unit. For loach minnow, the Verde River and its tributaries meet the criteria for 2b streams under the ruleset, indicating that they were not occupied at listing, but would expand the geographic distribution of the species. We determined that those areas classified as 2a or 2b are essential to the conservation of both species because they contain suitable habitat, and securing both species in this watershed will contribute significantly to their recovery by protecting occupied habitat for spikedace, extending protection to tributary streams which will serve as extensions of occupied habitat, and by protecting habitat for loach minnow which will allow for them to expand their current distribution. Additional

details on areas designated under Unit 1 are provided below.

Spikedace Only. For spikedace, we are designating as critical habitat 170.5 km (106.0 mi) of the Verde River from Sullivan Lake downstream to the confluence with Fossil Creek. The Verde River mainstem was considered occupied at the time of listing (ASU 2002, 51 FR 23679). While current occupancy remains uncertain, the Verde River is essential to the conservation of the species. It currently contains suitable habitat for all life stages of spikedace (PCE 1); has an appropriate food base (PCE 2); consists of perennial streams with no or low levels of pollutants (PCEs 3 and 4); and has an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6). The Verde River is the only occupied stream system in this geographic portion of the species' historical range, and represents one of four units in this designation in which spikedace are most likely to be found. Protection of the species in this portion of the historical range will contribute to the long-term conservation of the species. As noted above, spikedace are currently restricted to 10 percent of their historical range, so that every remaining population is important to their recovery. Critical habitat designation will ensure protection of the habitat in this occupied unit which in turn will contribute to conserving the species in this area. Finally, spikedace in the Verde River are genetically (Tibbets 1993, pp. 25–27, 34) and morphologically (Anderson and Hendrickson 1994, pp. 148, 154) distinct from all other spikedace populations.

The essential features in this unit may require special management considerations and protections due to water diversions; existing and proposed groundwater pumping potentially resulting in drying of habitat; residual effects of past livestock grazing and impacts to uplands riparian vegetation and the stream channel; human development of surrounding areas; increased recreation including off-road vehicle use; abnormally dry drought conditions (University of Nebraska-Lincoln 2011, p. 1); and competition with or predation by nonnative aquatic species.

We are designating as critical habitat for spikedace 10.9 km (6.8 mi) of West Clear Creek from the confluence with the Verde River upstream to the confluence with Black Mountain Canyon. Gradient and channel morphology changes above Black Mountain Canyon make the upstream area unsuitable for spikedace. West Clear Creek is on private and Coconino National Forest lands. West Clear Creek was not considered occupied at listing; however, one record exists for spikedace from West Clear Creek (from 1937; ASU 2002). West Clear Creek does have suitable habitat for spikedace, and is under consideration as a translocation site for spikedace by a multi-agency team. We consider this tributary essential for the conservation of the species based on the presence of suitable habitat, its past records of occupancy, and its consideration for translocation of spikedace, which indicates the area will serve as an important extension of the area occupied by spikedace in the Verde River watershed.

Loach Minnow Only. We are designating as critical habitat 118.5 km (73.6 mi) of the Verde River from Sullivan Lake downstream to the confluence with Wet Beaver Creek. The Verde River was not considered occupied by loach minnow at listing; however, there are later records of loach minnow from the Verde River mainstem near its confluence with Granite Creek, at the mouth of Beaver Creek, and in portions of the Verde River near Beaver Creek (ASU 2002). Subsequent surveys have failed to detect loach minnow in the Verde River or its tributaries. However, the Verde River is located in the far northwestern portion of the species' range, and is the only river system in that geographic portion of the species' range. Therefore, because the Verde River contains suitable habitat and will allow for the species' range to be expanded; we conclude that the Verde River is essential to the conservation of the loach minnow.

Within the Verde River Subbasin, approximately 1.2 km (0.8 mi) of the Verde River and 0.2 km (0.1 mi) of Beaver Creek/Wet Beaver Creek occur on lands owned by the Yavapai-Apache Nation. These areas have been excluded from the final critical habitat designations under section 4(b)(2) of the Act (see ''*Application of Section 4(b)(2) of the Act*'' section below for additional information).

Verde River Tributaries—Spikedace and Loach Minnow

For both spikedace and loach minnow, the designation of critical habitat for each species includes 3.2 km (2.0 mi) of Granite Creek from the confluence with the Verde River upstream to an unnamed spring. Above the unnamed spring, flows are insufficient to maintain these species. Granite Creek occurs predominantly on lands managed by the AGFD in their Upper Verde Wildlife Area. The primary emphasis in this area is on management of riparian habitat and maintenance of native fish diversity. The AGFD parcel includes approximately 1.6 km (1.0 mi) of Granite Creek; the remaining landownership is private.

Both Species. There are no known records of spikedace or loach minnow from Granite Creek. However, because of its suitability, confluence with occupied portions of the Verde River, and the opportunities it provides for extension of occupied habitat for spikedace and recovery habitat for loach minnow, this designated portion of Granite Creek is essential to the conservation of both species. Granite Creek is a perennial tributary of the Verde River, and its confluence with the Verde River occurs in that portion of the river with the highest species density for spikedace. Granite Creek meets criteria for a 2a stream for spikedace, serving as an extension of occupied spikedace habitat in the Verde River. For loach minnow, Granite Creek meets criteria for a 2b stream, expanding the current distribution of the species within its historically occupied range.

We are designating as critical habitat 54.3 km (33.7 mi) of Oak Creek from the confluence with the Verde River upstream to the confluence with an unnamed tributary near the Yavapai and Coconino County boundary. The lower portions of the creek contain suitable, although degraded, habitat. Above the unnamed tributary, the creek becomes unsuitable due to urban and suburban development, increasing gradient, and substrate size. Oak Creek occurs on a mix of private and Coconino National Forest lands.

Oak Creek was not considered occupied at listing for spikedace or loach minnow; however, we consider it to be essential for the conservation of both species. It contains suitable habitat for both species. A multi-agency team is currently evaluating Oak Creek as a translocation site for spikedace and loach minnow. As noted below in the Fossil Creek discussion, areas suitable for such actions are rare in the desert southwest. As a perennial tributary of the Verde River, Oak Creek contains the physical features that provide an important extension area for spikedace and would help to expand the current distribution of loach minnow within its historical range.

We are designating as critical habitat 33.3 km (20.7 mi) of Beaver and Wet Beaver Creek from the confluence with the Verde River upstream to the confluence with Casner Canyon. Beaver and Wet Beaver Creek occur on a mix of private, National Park, and Coconino National Forest lands. Neither Beaver

nor Wet Beaver Creek were considered occupied at listing by either spikedace or loach minnow. Beaver Creek and its upstream extension in Wet Beaver Creek historically supported spikedace (ASU 2002; AGFD 2004) and contains suitable, although degraded, habitat. There is one record for loach minnow from Beaver Creek but none from Wet Beaver Creek. There is an additional record for loach minnow on the mainstem Verde River approximately 7.2 km (4.5 mi) above the confluence with Beaver and Wet Beaver Creek (ASU 2002; AGFD 2004).

Beaver and Wet Beaver creeks are essential to the conservation of both species, and meet criteria 2a under the ruleset for spikedace as a stream that would extend occupied habitat. They meet the criteria for a 2b stream under the ruleset for loach minnow, expanding the species range. As noted under Granite and Oak creeks, habitat within this portion of the species' ranges is limited to the Verde River Unit, and including the Verde and a few of its perennial tributaries like Beaver and Wet Beaver Creeks expands the overall unit size, adding to available habitat, as well as expanding recovery potential for both species in this portion of their historical ranges.

We are including within these designations 22.2 km (13.8 mi) of Fossil Creek extending from the confluence with the Verde River upstream to the confluence with an unnamed tributary. Fossil Creek was not known to be occupied by spikedace or loach minnow at listing. Historically, sufficient flows were lacking in this creek but, in 2005, following decommissioning of the Childs-Irving Hydroelectric Power Plant, formerly diverted flows were returned to Fossil Creek (Robinson 2009b, p. 3). Spikedace and loach minnow were translocated into this stream in 2007 (Carter 2007a, p. 1), and additional fish were added in 2008 (Carter 2008a, pp. 1–2) and 2010 (Crowder, 2010, pers. comm.). Fossil Creek occurs primarily on Federal lands, forming the boundary between the Coconino and Tonto National Forests.

We consider this area to be essential to the conservation of the species. With the severe reductions in the species' overall distribution, and a translocation effort under way, Fossil Creek is essential to the recovery of spikedace and loach minnow because, if successful, the translocation effort will extend the distribution of spikedace in the Verde River watershed, meeting criteria for a 2a stream, and expand the distribution of loach minnow within its historical range, meeting criteria for a 2b stream. The translocation of spikedace and loach minnow into Fossil Creek is part of a larger conservation planning effort to restore a native fishery to the creek.

Unit 2: Salt River Subbasin

We are not designating any portion of the mainstem Salt River as critical habitat for spikedace or loach minnow at this time. Those portions below Theodore Roosevelt Reservoir have been altered by numerous dams and reservoirs, permanently limiting the natural flow regime and resulting in regulated flows. Those portions of the Salt River above the Reservoir support three historical records of spikedace near the confluence with Cibecue Creek (from 1950; ASU 2002). However, the majority of the Salt River, as well as the lower portions of Cibecue Creek, are canyon bound. While spikedace may occur in or travel through canyon areas, long stretches of canyon-bound rivers typically do not support the wider, shallower streams in which spikedace occur. Canyons are typically associated with a bedrock substrate, rather than the sand, gravel, or cobble over which spikedace are typically found. Due to its limited available habitat, limited habitat suitability, and permanent alteration for reservoirs, we have concluded that the PCEs for spikedace are not present at this time in the Salt River, in part due to permanent habitat alteration.

While we are not designating any habitat on the mainstem Salt River, we are designating critical habitat for both spikedace and loach minnow on other streams within the Salt River Subbasin. Within the Salt River Subbasin, there is no overlap between the areas we are designating for spikedace and loach minnow. For spikedace, the designation includes a total of 98.6 km (61.3 mi) of Tonto Creek and its tributaries Rye, Greenback, and Spring Creeks, as well as Rock Creek, which is a tributary to Spring Creek. None of these streams were known to be occupied by spikedace at listing, and therefore are classified as 2b streams under the ruleset, meaning that their occupancy by spikedace would allow for an increased distribution of the species within its historical range.

For loach minnow, we are designating a total of 32.0 km (19.9 mi) of the East Fork Black River, its tributaries Coyote Creek and North Fork East Fork Black River, and Boneyard Creek, a tributary to the North Fork East Fork Black. While East Fork Black River and Coyote Creek were not considered occupied at listing, the remainder of the streams included in the Salt River Subbasin for loach minnow were either occupied at listing (White River, East Fork White River) or determined to be occupied after listing (North Fork East Fork Black River, Boneyard Creek). Therefore, the East Fork Black River and Coyote Creek meet criteria for 2a streams under the ruleset, indicating they would serve as an extension to occupied habitat on the North Fork East Fork Black River, while White River, East Fork White River, North Fork East Fork Black River, and Boneyard Creek meet criteria for 1a streams under the ruleset. The unit descriptions and their rationale for inclusion are described below.

Spikedace Only. The Salt River Subbasin is a significant portion of spikedace historical range but currently has no known extant populations of spikedace. None of the streams within the Salt River Subbasin were known to be occupied at listing and therefore meet the criteria for 2b streams under the ruleset and are considered essential to the conservation of the species. Large areas of the subbasin are unsuitable, either because of topography or because of reservoirs and other stream-channel alterations. However, the presence of substantial areas of USFS lands, and suitable habitat in some stream segments makes this a promising subbasin for the reestablishment of spikedace, and conservation efforts are under way (see Spring Creek below). All stream segments designated for spikedace in the Salt River Subbasin are in Gila County, Arizona.

While it was not considered occupied at listing, there are limited records for spikedace from Tonto Creek (from 1937 only; ASU 2002). We are including within the designation 47.8 km (29.7 mi) of Tonto Creek from the confluence with Greenback Creek upstream to the confluence with Houston Creek. Tonto Creek below Greenback Creek is influenced by Theodore Roosevelt Reservoir, resulting in unsuitable habitat below Greenback Creek. Those portions of Tonto Creek above the confluence with Houston Creek are of a gradient and substrate that are not suitable to spikedace. Tonto Creek is within the historical range of spikedace, and occupancy of the creek would serve to increase the distribution of the species, as well as add to available, suitable habitat. We therefore consider the designated streams in this subbasin to be essential to the conservation of the species.

We are designating 15.1 km (9.4 mi) of Greenback Creek beginning at the confluence with Tonto Creek and continuing upstream to the confluence with Lime Springs. Portions of Greenback Creek are intermittent, but may connect Greenback Creek to Tonto

Creek during seasonal flows. While there are no known records of spikedace from Greenback Creek, the Salt River Subbasin is a significant portion of spikedace historical range, and there are limited areas of suitable habitat. The suitable habitat in Greenback Creek, its connection with Tonto Creek, and the fact that it occurs almost entirely on Federal lands makes this area an important expansion area for spikedace recovery, and we therefore consider it essential to the conservation of spikedace.

We are including within the designation 2.8 km (1.8 mi) of Rye Creek from the confluence with Tonto Creek upstream to the confluence with Brady Canyon. There are no known records of spikedace from Rye Creek. The entire portion of the designation is perennial. As with Greenback Creek, Rye Creek serves as connected perennial stream habitat that expands the available suitable habitat associated with Tonto Creek and the Salt River Subbasin; therefore, we believe it is essential to the conservation of the species.

We are including within the designation 27.2 km (16.9 mi) of Spring Creek from the confluence with Tonto Creek upstream to its confluence with Sevenmile Canyon. Portions of Spring Creek are perennial, while the lower portions are intermittent. The perennial portions of Spring Creek provide suitable habitat, and likely connect to Tonto Creek during seasonal flows, thereby expanding the available suitable habitat for spikedace. In addition, for both Spring and Rock (see below) creeks, conservation efforts for spikedace are under way. The feasibility of constructing a barrier and translocating spikedace to Spring Creek, a tributary to Tonto Creek, has been initiated with draft NEPA documents under development.

Finally, we are including within the designation 5.7 km (3.6 mi) of Rock Creek from its confluence with Spring Creek upstream to its confluence with Buzzard Roost Canyon. There are no known records of spikedace from Rock Creek; however, Rock Creek will further expand the available habitat in the Salt River Subbasin. The suitable habitat, perennial flows, and location within the Salt River Subbasin make Rock Creek essential to the conservation of the spikedace.

Within the Salt River Subbasin, a single record exists for spikedace on the Agua Fria River, which is located on the extreme western edge of the species' range in Yavapai and Maricopa Counties, Arizona. The Agua Fria River supports stretches of perennial flows interspersed with sections of intermittent flows before entering the Lake Pleasant reservoir created by Pleasant Dam. Suitable habitat on the Agua Fria River is therefore minimal, with perennial stretches mixed with predominantly intermittent stretches, and isolated from any mainstem system by a large reservoir. For these reasons, we have concluded that the Agua Fria River is not essential to the conservation of spikedace at this time.

Loach Minnow Only. Areas included for loach minnow within the Salt River Subbasin include portions of the East Fork Black River, North Fork East Fork Black River, and Coyote and Boneyard creeks. The East Fork Black River, North Fork East Fork Black River, Coyote, and Boneyard creeks are in Apache and Greenlee counties. All of these streams are perennial (The Nature Conservancy 2010).

The Salt River Subbasin encompasses a significant portion of loach minnow historical range, and the Salt River mainstem was known at listing to have historical records near the U.S. 60 (from 1950; ASU 2002). The Black and White rivers join to form the Salt River. The North Fork East Fork Black River, and Boneyard Creek were newly discovered as occupied after listing, and meet the criteria for 1a streams. We have no records of loach minnow from East Fork Black River or Coyote Creek, and have designated these areas as 2a streams.

Within the Salt River Subbasin, we are designating a total of 32.0 km (20 mi) of the East Fork Black River and its tributary Coyote Creek, and the North Fork East Fork Black River and its tributary Boneyard Creek. The presence of suitable habitat, and the presence of a distinct genetic population in the adjoining North Fork East Fork River, makes these streams important expansion areas for loach minnow, and they are therefore essential to the conservation of the species. We are including within this designation 19.1 km (11.9 mi) of the East Fork Black River extending from the confluence with the West Fork Black River upstream to the confluence with an unnamed tributary just downstream of Boneyard Creek and 3.4 km (2.1 mi) of Coyote Creek, extending from the confluence with East Fork Black River upstream to the confluence with an unnamed tributary. This area is connected to the North Fork East Fork Black River, which is occupied by loach minnow (Lopez, 2000, pers. comm.; ASU 2002; Gurtin, 2004, pers. comm., Robinson *et al.* 2009b, p. 1). East Fork Black River and Coyote Creek contain suitable habitat for loach minnow, and will allow for expansion of the existing population of loach minnow in North Fork East Fork Black River and Boneyard Creek.

The presence of multiple PCEs, its occupied status, and the presence of a distinct genetic population makes the North Fork East Fork Black River and Boneyard Creek essential to the conservation of loach minnow. We are including within the designation 7.1 km (4.4 mi) of the North Fork East Fork Black River extending from the confluence with East Fork Black River upstream to the confluence with an unnamed tributary, and 2.3 km (1.4 mi) of Boneyard Creek extending from the confluence with the North Fork East Fork Black River upstream to the confluence with an unnamed tributary. Above this tributary, the river has finer substrate and lacks riffle habitat, making it unsuitable for loach minnow. The North Fork East Fork Black River is currently occupied (ASU 2002; Gurtin, 2004, pers. comm.; Robinson *et al.* 2009b, p. 1), and is presumed to have been occupied at listing. Boneyard Creek is also occupied, and is connected to the North Fork East Fork Black River, which is occupied (ASU 2002; Gurtin, 2004, pers. comm.; Robinson *et al.* 2009b, p. 1), and contains suitable habitat for loach minnow. North Fork East Fork Black River contains suitable habitat for all life stages of loach minnow (PCE 1); has an appropriate food base (PCE 2); consists of perennial streams with no or low levels of pollutants (PCEs 3 and 4); and has an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6).

The portions of the North Fork East Fork Black River and Boneyard Creek included within this designation are entirely on Apache-Sitgreaves National Forests lands. Essential features may require special management or protection from the residual effects of past livestock grazing and impacts to uplands, riparian vegetation, and the stream; and competition with and predation by nonnative aquatic species. Native trout species are regularly stocked into the Black River, possibly resulting in increased competition for resources and predation by trout. The Wallow Fire burned through this stream complex in 2011, and there may be temporary increases in sediment carried into the stream from burned areas in the uplands.

White River and its tributary East Fork White River were considered occupied at listing, and meet criteria for 1a streams under the ruleset. We included within the designation 29.0 km (18.0 mi) of the White River from the confluence with the Black River upstream to the confluence with the

North and East Forks of the White River, as well as approximately 17.2 km (10.7 mi) of the East Fork White River from the confluence with North Fork White River upstream to the confluence with Bones Canyon. These areas have been excluded from the final critical habitat designations under section 4(b)(2) of the Act (see ''*Application of Section 4(b)(2) of the Act*'' section below for additional information).

In previous critical habitat designations, we have included portions of Tonto Creek, Rye Creek, and Greenback Creek as critical habitat for loach minnow. These areas have no historical records for loach minnow. Because there are other suitable areas for loach minnow within this portion of the species' range, we believe the limited mileage and habitat features in Tonto Creek and its tributaries are less important to the overall conservation of loach minnow, and our current assessment is that they are therefore not essential to the conservation of the species.

Unit 3: San Pedro Subbasin

Within the San Pedro Subbasin, we are designating 74.1 km (46.1 mi) of habitat on Aravaipa Creek and its tributaries Deer and Turkey creeks, Redfield Canyon, and Hot Springs canyons and its tributary Bass Canyon. All areas within this subbasin were proposed for both species. Aravaipa Creek, Redfield and Hot Spring canyons and their tributaries included within these designations are in Cochise, Pinal, and Graham counties, Arizona. The majority of Redfield Canyon, Hot Springs Canyon, and Aravaipa Creek are perennial, with small downstream areas considered formerly perennial (The Nature Conservancy 2010) but still connected during high flow events. Streams included within this subbasin occur primarily on BLM, State, and private lands.

The San Pedro Subbasin contains streams that are known to have been occupied by both species at listing, some of which are currently occupied, and some with translocated populations of spikedace and loach minnow. Aravaipa Creek was occupied by both species at listing, and is classified as a 1a stream for both species. Deer and Turkey creeks are considered occupied by loach minnow due to the species being newly detected after listing in 1996 (ASU 2002), but were not considered occupied at listing by spikedace and therefore meet criteria for 1a streams for loach minnow, and for 2a streams for spikedace. Hot Springs, Redfield, and Bass canyons were not known to be occupied at listing by either species. Both Hot Springs and Redfield canyons currently support translocated populations of spikedace and loach minnow that were placed into the streams in 2007 (Robinson 2008a, pp. 1, 15–16). They, along with Bass Canyon, meet criteria for 2a streams for both species.

We proposed as critical habitat 60.0 km (37.2 mi) on the upper San Pedro River from the international border with Mexico downstream to the confluence with the Babocomari River. However, due to concerns for national security, the San Pedro River in its entirety has been excluded from the final critical habitat designations under section 4(b)(2) of the Act (see ''*Application of Section 4(b)(2) of the Act*'' section below for additional information). In addition, in response to comments received, we have reduced the overall mileage included for Hot Springs and Redfield canyons. Please see the ''Summary of Changes from Proposed Rule'' for more detail.

With the removal of the San Pedro and decreased mileage on Hot Springs and Redfield Canyon, we are including within these designations a total of 74.1 km (46.1 mi) for spikedace and loach minnow. This area includes 44.9 km (27.9 mi) of Aravaipa Creek from the confluence with the San Pedro River upstream to the confluence with Stowe Gulch. Stowe Gulch is the upstream limit of sufficient perennial flows to support spikedace and loach minnow, and no records of either species are known from above this point. Aravaipa Creek currently supports one of the largest remaining populations of spikedace and loach minnow, and has been monitored regularly since 1943 (ASU 2002; Stefferud and Reinthal 2005, pp. 15–21; AGFD 2004; Reinthal 2011, pp. 1–2).

The long-term presence and current occupancy by both species, makes this area essential to their conservation. Aravaipa Creek is unique in that it supports an intact native fish fauna comprising seven species (Stefferud and Reinthal 2005, p. 11). It contains suitable habitat for all life stages of spikedace and loach minnow (PCE 1); has an appropriate food base (PCE 2); consists of perennial flows (PCE 3); has no nonnative aquatic species, or levels of nonnative aquatic species are sufficiently low to allow for persistence of both species (PCE 5); and has an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6).

Land ownership at Aravaipa Creek is predominantly BLM, with large parcels of private and State land on either end of the river. The essential features in this unit may require special management considerations or protection due to contaminants issues with lead, arsenic, and cadmium; surface and groundwater removal; limited recreation; severe drought (University of Nebraska-Lincoln 2011, p. 1); and channelization in upstream portions (Stefferud and Reinthal 2005, pp. 36–38).

We are including within these designations 3.7 km (2.3 mi) of Deer Creek from the confluence with Aravaipa Creek upstream to the boundary of the Aravaipa Wilderness. Above this point, habitat is no longer suitable for spikedace or loach minnow. We are also including 4.3 km (2.7 mi) of Turkey Creek from the confluence with Aravaipa Creek upstream to the confluence with Oak Grove Canyon. Above this point, flows are not suitable for spikedace or loach minnow.

Both Deer and Turkey creeks are considered occupied by loach minnow with the species first detected in 1996, and both creeks are currently occupied by loach minnow. Each of these tributary streams contains suitable habitat for all life stages of loach minnow (PCE 1); have appropriate food bases (PCE 2); consist of perennial streams with no or low levels of pollutants (PCEs 3 and 4); and have an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6). Both Deer and Turkey creeks occur on lands managed by the BLM. The essential features in these two streams may require special management due to surface and ground water removal; limited recreation; severe drought (University of Nebraska-Lincoln 2011, p. 1); occasional issues with nonnative aquatic species; and proposed utilities projects, such as the SunZia Southwest Transmission Project, which is currently in the study phase (Service 2010b, pp. 1–7). In addition, Turkey Creek experiences low flows through part of most years, limiting occupancy by loach minnow during those times. Occupancy by loach minnow, as well as the presence of perennial water and other key features indicate that Deer and Turkey creeks are likely suitable for spikedace as well. Because they are tributaries to Aravaipa Creek, they meet criteria for a 2a stream for spikedace. We have therefore determined they are essential to the conservation of spikedace.

We have included within these designations 9.3 km (5.8 mi) of stream in Hot Springs Canyon from the confluence with the San Pedro River upstream to the confluence with Bass Canyon. (The stream in Hot Springs Canyon is not named and is known only

as Hot Springs Canyon.) Hot Springs Canyon occurs on a mix of State, private, and BLM lands. There are no known records of spikedace or loach minnow from Hot Springs Canyon, but it is within the geographical range known to be occupied by both species, and meets criteria as a 2a stream for both species.

Following coordination by a multi-agency team, spikedace and loach minnow were translocated into Hot Springs Canyon in 2007, with augmentations in 2008, 2009, 2010, and 2011 (Robinson 2008a, pp. 1, 15–16; Robinson *et al.* 2010a, pp. 4–5; Robinson *et al.* 2010b, pp. 5–6, 20–22; Robinson and Crowder 2011, *In Draft,* p. 9). Spikedace and loach minnow have been captured each year since the project began (Robinson *et al.* 2010b, p. 7) indicating that conditions in the stream allow the species to persist year to year; however, insufficient time has elapsed to allow for evaluation of the ultimate success of the translocation effort.

Hot Springs Canyon contains suitable habitat for both spikedace and loach minnow, is currently occupied by a translocated population, and serves as an extension of habitat in this subbasin. We have therefore determined this area essential to the conservation of the two species.

We are including within this designation 6.5 km (4.0 mi) of stream in Redfield Canyon from the confluence with the San Pedro River upstream to the confluence with Sycamore Canyon. (The stream in Redfield Canyon is not named and is known only as Redfield Canyon.) Above Sycamore Canyon, perennial water becomes very scarce, and the habitat becomes steeper, and more canyon-confined, thus making it unsuitable for spikedace and loach minnow. The majority of Redfield Canyon occurs on State lands, with smaller areas of private and Federal (BLM) lands. Although there are no known records of spikedace or loach minnow from Redfield Canyon, it is within the geographical range known to be occupied by both species, and meets criteria as a 2a stream for both species.

Redfield Canyon was specifically identified within the species' Recovery Plan as an area with potential for spikedace (Service 1991a, p. 21; Service 1991b, p. 20). Following coordination by a multi-agency team, spikedace and loach minnow were translocated into Redfield Canyon in 2007, with augmentations in 2008 (Robinson 2008b, pp. 1, 15–16; Robinson *et al.* 2010a, pp. 4–5, Robinson *et al.* 2010b, pp. 5–6, 20–22). Redfield Canyon currently supports loach minnow that were translocated to the site (Robinson *et al.* 2010b, pp. 20–22), and contains suitable habitat for both spikedace and loach minnow. The most recent surveys of Redfield Canyon (Robinson *et al.* 2010b) did not detect spikedace; however, the reintroduction project is not yet complete. The current occupancy by loach minnow and the presence of suitable habitat, which extends the available habitat in this unit, make this area essential to the conservation of both species.

We are including within these designations 5.5 km (3.4 mi) of stream in Bass Canyon from the confluence with Hot Springs Canyon upstream to the confluence with Pine Canyon. (The stream in Bass Canyon is not named and is known only as Bass Canyon). Bass Canyon occurs on private and BLM lands. There are no known records of spikedace or loach minnow from Bass Canyon, but it is within the geographical range known to be occupied by both species. In addition, spikedace and loach minnow have been translocated into Hot Springs Canyon, to which Bass Canyon is connected and is a tributary stream (see discussion above under Hot Springs Canyon). Bass Canyon contains suitable habitat for spikedace and loach minnow, has been identified as a potential stream for restoration activities, and meets criteria for a 2a stream under the ruleset. Bass Canyon serves as an extension to Hot Springs Canyon fish populations. We therefore consider it to be essential to the conservation of both species.

Unit 4: Bonita Creek Subbasin

Within the Bonita Creek Subbasin, we are including 23.8 km (14.8 mi) of Bonita Creek from the confluence with the Gila River upstream to the confluence with Martinez Wash in Graham County, Arizona. The Bonita Creek subbasin is not known to have been occupied at listing but is within the geographical range known to have been occupied by both species. It meets criteria for a 2b stream for both species under our ruleset. Land ownership at Bonita Creek is almost entirely Federal (BLM), with a few small private parcels. The designations end at the San Carlos Indian Reservation boundary.

Cooperative conservation efforts for spikedace and loach minnow are ongoing in Bonita Creek. A Memorandum of Understanding is in place with the City of Safford regarding water management for Bonita Creek as part of this effort. To date, those activities have resulted in the removal of nonnative fish species and translocation of spikedace, loach minnow, Gila topminnow, and desert pupfish into Bonita Creek. Spikedace and loach minnow were translocated into the lower portions of Bonita Creek in 2008 (Robinson, 2008c, pers. comm.). In 2009, an additional small population of spikedace was placed above the City of Safford's infiltration gallery, but below the southern boundary of the San Carlos Indian Reservation. However, due to a reinvasion by nonnative species, augmentations of spikedace and loach minnow are temporarily on hold at Bonita Creek.

As noted above for Fossil Creek, Hot Springs Canyon, and Redfield Canyon, there are limited opportunities for translocating or reintroducing populations of spikedace and loach minnow, and the current reduction in the species' distribution necessitates that additional populations be established to recover the species. Bonita Creek is considered essential to the survival and recovery of spikedace and loach minnow because it contains suitable habitat for all life stages of both species, occurs within the historical range of both species, and allows for the expansion of the geographic distribution of the species' ranges.

Unit 5: Eagle Creek Subbasin

We are including within these designations 26.5 km (16.5 mi) of Eagle Creek from the Freeport-McMoRan (FMC) diversion dam upstream to the confluence with East Eagle Creek in Greenlee and Graham Counties, Arizona. Eagle Creek is a largely perennial system (The Nature Conservancy 2010). Eagle Creek occurs primarily on San Carlos Apache Tribal and Apache-Sitgreaves National Forests' lands, along with small parcels of State, private, and BLM lands. Spikedace and loach minnow are both considered currently present, but likely in small numbers (Marsh 1996, p. 2; ASU 2002; Bahm and Robinson 2009a, p. 1).

Eagle Creek was known to be occupied at the time of listing by spikedace, and therefore meets criteria for a 1a stream under our ruleset. It was determined to be occupied by loach minnow after listing, in 1994 (ASU 2002), and therefore meets criteria for a 1a stream for loach minnow under our ruleset. Eagle Creek contains suitable habitat for all life stages of spikedace and loach minnow (PCE 1); has an appropriate food base (PCE 2); consists of perennial flows with no or low levels of pollutants (PCEs 3 and 4); and has an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6) above the barrier, which serves as the endpoint of this unit.

Approximately 27.5 km (17.1 mi) of Eagle Creek in Graham County are on

the San Carlos Apache Reservation. Additionally, 21.4 km (13.3 mi) of Eagle Creek also flow through private lands belonging to Freeport McMoRan. These areas have been excluded from the final critical habitat designations under section 4(b)(2) of the Act (see ''*Application of Section 4(b)(2) of the Act*'' section below for additional information).

The essential features in this stream may require special management considerations or protection due to competition with and predation by nonnative aquatic species; residual effects of past livestock grazing and impacts to uplands, riparian vegetation, and the stream; mining activities in the uplands; moderate to severe drought (University of Nebraska-Lincoln 2011, p. 1); road construction and maintenance within and adjacent to the stream channel, and the indirect effect of wildfires that have occurred in the watershed since 2007.

Unit 6: San Francisco River Subbasin

We are including within these designations 228.1 km (141.7 miles) of stream segments from the San Francisco River and its tributaries Tularosa River, Negrito Creek, and Whitewater Creek. All of this area is designated for loach minnow, while 166.6 km (103.5 miles) is also designated for spikedace. All of the area included for spikedace is within the area designated for loach minnow. The portions of the San Francisco, Tularosa River, Negrito Creek, and Whitewater Creek included within these designations are in Greenlee County, Arizona, and Catron County, New Mexico.

Portions of the San Francisco River in Greenlee County totaling 14.1 km (8.8 mi) are on lands owned by FMC. These areas have been excluded from the final critical habitat designations under section 4(b)(2) of the Act (see ''*Application of Section 4(b)(2) of the Act*'' section below for additional information).

The San Francisco River is one of the larger intact streams remaining within the species' ranges, with an overall length of approximately 202 km (125 mi). It is considered perennial throughout this length, except for seasonal drying in the Alma Valley. Land ownership on the San Francisco River includes primarily BLM and Apache-Sitgreaves National Forest with small parcels of private and State lands in Arizona, and the Gila National Forest with small parcels of private lands in New Mexico.

Occupancy within this subbasin is mixed. The San Francisco River downstream of the Tularosa River confluence was not known to be occupied by spikedace at listing; however, a reintroduction of spikedace occurred in 2008 above the town of Alma, New Mexico (NMDGF 2009, p. 1). The success of this translocation effort remains to be determined, but the stream meets criteria for a 2b for spikedace. The San Francisco River was known to be occupied by loach minnow at listing (NMDGF 2008; Propst *et al.* 2009, pp. 5–6), and therefore meets the criteria for a 1a stream under the ruleset for loach minnow.

There are no known records of spikedace from the Tularosa River, Negrito Creek, or Whitewater Creek, and spikedace have not been known to occur any higher in the San Francisco River than Pleasanton (Paroz and Propst 2007, pp. 13–15). We are not including any of these tributary streams for spikedace in the designation at this time. In contrast, the Tularosa River and Whitewater Creek were known to have been occupied at listing by loach minnow, and meet the criteria for a 1a stream under the ruleset. Negrito Creek was not known to have been occupied at listing by loach minnow, but loach minnow have since been detected in Negrito Creek (Miller 1998, pp. 1–6). For this reason, we have included Negrito Creek as a 1a stream under the ruleset.

Both Species. This designation includes 166.6 km (103.5 mi) of the San Francisco River as critical habitat for spikedace from the confluence with the Gila River upstream to the confluence with the Tularosa River. We are including a total of 203.6 km (126.5 mi) of the San Francisco River for loach minnow, from its confluence with the Gila River upstream to the town of Cruzville. For loach minnow, the San Francisco River was known to be occupied at listing. The San Francisco River contains suitable habitat for all life stages of loach minnow (PCE 1); has an appropriate food base (PCE 2); consists of perennial flows with no or low levels of pollutants (PCEs 3 and 4); and has an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6). The essential features in this stream may require special management considerations or protection due to livestock grazing and impacts to uplands, riparian vegetation, and the stream; severe drought (University of Nebraska-Lincoln 2011, p. 1) in those portions in Arizona; competition with and predation by nonnative aquatic species; water diversions; road construction and maintenance; and channelization.

The San Francisco River was not known to be occupied by spikedace at listing. The presence of loach minnow, suitable habitat characteristics, reintroduced population of spikedace, and location within the historical range of spikedace indicate that this area is suitable for spikedace. The reduced distribution of spikedace and the suitability of this large, intact river system in the upper San Francisco River indicates that it is essential to the conservation of the species.

Loach Minnow Only. We are designating 30.0 km (18.6 mi) of the Tularosa River from the confluence with the San Francisco River upstream to the town of Cruzville, New Mexico. Above Cruzville, habitat becomes unsuitable for loach minnow. The Tularosa River is currently occupied by loach minnow (Propst *et al.* 2009, pp. 4–5). The Tularosa River is perennial throughout this reach, and contains suitable habitat for all life stages of loach minnow (PCE 1); has an appropriate food base (PCE 2); consists of perennial flows with no or low levels of pollutants (PCEs 3 and 4); and has an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6). Land ownership along the Tularosa River is predominantly Gila National Forest, with private inholdings. The essential features in this stream may require special management considerations or protection due to residual effects of livestock grazing, and impacts to uplands, and competition with and predation by nonnative aquatic species.

We include within this designation 6.8 km (4.2 mi) of Negrito Creek extending from the confluence with the Tularosa River upstream to the confluence with Cerco Canyon. Negrito Creek is perennial through this reach. Above this point, gradient and channel morphology make the creek unsuitable for loach minnow. Loach minnow in Negrito Creek were newly discovered after listing (Miller 1998, pp. 1–6). Negrito Creek contains suitable habitat for all life stages of loach minnow (PCE 1); has an appropriate food base (PCE 2); consists of perennial flows with no or low levels of pollutants (PCEs 3 and 4); and has an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6). Negrito Creek occurs primarily on the Gila National Forest, with a few parcels of private land interspersed with the Forest lands. The essential features in this stream may require special management considerations or protection due to residual effects of past livestock grazing and impacts to uplands, riparian vegetation, and the stream, as well as other disturbances in the watershed.

We include within this designation 1.9 km (1.2 mi) of Whitewater Creek from the confluence with the San

Francisco River upstream to the confluence with Little Whitewater Creek. Upstream of this point, gradient and channel changes make the habitat unsuitable for loach minnow. Whitewater Creek was known to be occupied by loach minnow at the time of listing and has perennial flows. It serves as an extension of habitat on the San Francisco River. Whitewater Creek contains suitable habitat for all life stages of loach minnow (PCE 1); has an appropriate food base (PCE 2); consists of perennial flows with no or low levels of pollutants (PCEs 3 and 4); and has an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6). Whitewater Creek occurs entirely on private lands. The essential features in this stream may require special management considerations or protection due to residual impacts from past livestock grazing and impacts to uplands, riparian vegetation, and the stream; water diversions; competition with and predation by nonnative aquatic species; road construction and maintenance; channelization, and moderate drought (University of Nebraska-Lincoln 2011, p. 1).

Unit 7: Blue River Subbasin

Within the Blue River Subbasin, we are including 106.6 km (66.3 mi) of the Blue River, Campbell Blue and Little Blue creeks in Greenlee County, Arizona, and portions of Campbell Blue, Pace, Frieborn, and Dry Blue creeks in Catron County, New Mexico, for both spikedace and loach minnow. The Blue River, Campbell Blue Creek, and Little Blue Creek occur predominantly on Federal lands of the Apache-Sitgreaves National Forest. The tributaries Pace, Frieborn, and Dry Blue creeks occur entirely on Federal lands on the Gila National Forest in New Mexico.

Within this subbasin, occupancy by spikedace and loach minnow is mixed. None of the streams designated as critical habitat in the Blue River Subbasin were known to have been occupied at listing by spikedace. Streams within this subbasin are included as 2b streams for spikedace under the ruleset. In contrast, the Blue River was known to have been occupied at listing, and all of the tributary streams of Campbell Blue, Little Blue, Pace, Dry Blue, and Frieborn Creeks were discovered to be occupied by loach minnow after listing, as follows: Campbell Blue Creek—1987; Pace Creek—1998; Dry Blue Creek—1998, and Frieborn Creek—1998 (ASU 2002). We are therefore including each of these streams as 1a streams under the ruleset for loach minnow. Additional detail on the suitability of each stream is provided below.

Both Species. We are including within these designations 81.4 km (50.6 mi) of the Blue River from the confluence with the San Francisco River upstream to the confluence of Campbell Blue and Dry Blue creeks. As noted above, this river was not known to have been occupied by spikedace at listing. The Blue River is occupied by loach minnow, and contains suitable habitat for all life stages of loach minnow (PCE 1); has an appropriate food base (PCE 2); consists of perennial streams with no or low pollutant issues (PCEs 3 and 4); has no nonnative aquatic species, or levels of nonnative aquatic species that are sufficiently low to allow persistence of spikedace and loach minnow (PCE 5); and has an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6). The Blue River occurs predominantly on Federal lands on the Apache-Sitgreaves National Forest, as well as on private parcels of land within the Forest. The essential features in this stream may require special management considerations or protection due to residual effects of past livestock grazing and impacts to uplands, riparian vegetation, and the stream; moderate to severe drought (University of Nebraska-Lincoln 2011, p. 1); and competition with and predation by nonnative aquatic species.

The larger size of the Blue River, compared to smaller, tributary streams within the species' range, along with its perennial flows and conservation management activities, make this area important to spikedace. In addition, planning among several State and Federal agencies is underway for restoration of native fish species, including spikedace, in the Blue River through construction of a barrier that will exclude nonnative fish from moving upstream and allow for translocation of spikedace. Barrier feasibility studies have been completed, as has a draft Memorandum of Understanding with land managers and residents in this area. Federal land ownership throughout the majority of this proposed critical habitat unit would facilitate management for the species. We therefore consider the Blue River to be essential to the conservation of spikedace.

We are including within these designations stream miles on multiple tributaries for both spikedace and loach minnow, as follows:

- Campbell Blue Creek—12.4 km (7.7 mi) extending from the confluence of Dry Blue and Campbell Blue Creeks upstream to the confluence with Coleman Canyon. Above Coleman Canyon, the creek changes and becomes steeper and rockier, making it unsuitable for spikedace and loach minnow.
- Pace Creek—1.2 km (0.8 mi) of Pace Creek from the confluence with Dry Blue Creek upstream to a barrier falls. Habitat above the barrier is considered unsuitable.
- Dry Blue Creek—4.7 km (3.0 mi) of Dry Blue Creek from the confluence with Campbell Blue Creek upstream to the confluence with Pace Creek.
- Frieborn Creek—1.8 km (1.1 mi) of Frieborn Creek from the confluence with Dry Blue Creek upstream to an unnamed tributary.
- Little Blue Creek—5.1 km (3.1 mi) of Little Blue Creek. This includes the lower, perennial portions of Little Blue Creek extending from the confluence with the Blue River upstream to the confluence with an unnamed canyon. Above the canyon, flows are not perennial.

Each of these streams were occupied at the time of listing by loach minnow, contain suitable habitat for all life stages (PCE 1); have an appropriate food base (PCE 2); consist of perennial flows with no or low levels of pollutants (PCEs 3 and 4); have no nonnative aquatic species, or levels of nonnative aquatic species that are sufficiently low to allow persistence of spikedace and loach minnow (PCE 5); and have an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6). the essential features in this subbasin may require special management considerations or protection due to residual impacts of past livestock grazing and impacts to uplands, riparian vegetation, and the stream; moderate to severe drought (University of Nebraska-Lincoln 2011, p. 1); and competition with and predation by nonnative aquatic species. Campbell Blue Creek and portions of the Blue River were burned during the Wallow Fire in 2011, and increased ash and sedimentation within the active stream may be a temporary issue in these streams.

Because these streams are occupied by loach minnow, which often co-occur with spikedace, and because they occur within the historical range of the species, we believe these streams are suitable for spikedace. In addition, as discussed above, perennial flows, and occurrence predominantly on Federal lands make these areas especially suitable for spikedace recovery, and cooperative management plans for a native fishery in the Blue River enhance opportunities for spikedace conservation. We therefore believe the Blue River, Campbell Blue, Pace, Dry

Blue, Frieborn, and Little Blue creeks to be essential to the conservation of the species.

Unit 8. Gila River Subbasin

These designations include approximately 258.6 km (160.7 mi) of the upper Gila River and five tributaries including West Fork Gila River, Middle Fork Gila River, East Fork Gila River, Mangas Creek, and Bear Creek in Hidalgo, Grant, and Catron Counties, New Mexico. A slightly larger area was included for loach minnow on the Middle Fork Gila River. All mileage included for spikedace on the Middle Fork Gila River is included within this area. All streams included within this unit are considered occupied at listing by both species (Paroz *et al.* 2009, p. 12), and therefore meet the criteria for 1a streams under the ruleset. Spikedace and loach minnow were first detected in Mangas Creek after listing, which meets the criteria for a 1a stream under the ruleset (in 1999; NMGFD 2008). Similarly, loach minnow were first detected in Bear Creek after listing, which also meets the criteria for a 1a stream (in 2005; Schiffmiller 2005; NMGFD 2008).

Both Species. These designations include 153.5 km (95.4 mi) of the Gila River from the confluence with Moore Canyon (near the Arizona-New Mexico border) upstream to the confluence of the East and West Forks are included within these designations. Below Moore Canyon, the river is substantially altered by agriculture, diversion, and urban development. In addition, there are no loach minnow and only one spikedace records known from the Gila River between its confluence with Moore Canyon and a spikedace record from Pinal County, Arizona, near the Ashurst-Hayden Dam. This portion of the Gila River supports the largest remaining populations of spikedace and loach minnow (NMDGF 2008; Propst *et al.* 2009, pp. 14–17). In addition, we are designating 13.0 km (8.1 mi) of the West Fork Gila River from the confluence with the East Fork Gila River upstream to the confluence with EE Canyon and 42.1 km (26.2 mi) of the East Fork Gila River from the confluence with the West Fork Gila River upstream to the confluence of Beaver and Taylor Creeks. Above EE Canyon, the river becomes unsuitable for spikedace and loach minnow due to gradient and channel morphology. All stream segments contain suitable habitat for all life stages of spikedace and loach minnow (PCE 1); have an appropriate food base (PCE 2); consist of perennial streams with no or low levels of pollutants (PCEs 3 and 4); and have an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6).

Spikedace and loach minnow on the Gila River mainstem occur primarily on Federal lands managed by the BLM and the Gila National Forest, interspersed with private and State lands (NMDGF at Heart Bar Wildlife Area). The essential features in the Gila River may require special management considerations or protection due to residual impacts of past livestock grazing and impacts to uplands, riparian vegetation, and the stream; competition with and predation by nonnative aquatic species; road construction and maintenance; water diversions; recreation; and moderate drought (University of Nebraska-Lincoln 2011, p. 1).

Approximately 11.5 km (7.2 mi) of streams on the Gila River mainstem within this unit are owned and managed by FMC. This area has been excluded from the final critical habitat designations under section 4(b)(2) of the Act (see ''*Application of Section 4(b)(2) of the Act*'' section below for additional information).

The West Fork Gila River occurs primarily on a mix of Federal lands on the Gila National Forest, the National Park Service, and private lands. The essential features in this stream may require special management considerations or protection due to competition with and predation by nonnative aquatic species, road construction and maintenance, watershed impacts associated with past wildfires, and moderate drought (University of Nebraska-Lincoln 2011, p. 1).

The East Fork Gila River occurs primarily on Federal lands on the Gila National Forest, with small parcels of private lands interspersed. The essential features in this stream may require special management considerations or protection due to residual impacts of past livestock grazing and impacts to uplands, riparian vegetation, and the stream; competition with and predation by nonnative aquatic species; watershed impacts associated with past wildfires (University of Nebraska-Lincoln 2011, p. 1).

We are including within these designations 1.2 km (0.8 mi) of Mangas Creek for both species from the confluence with the Gila River upstream to the confluence with Willow Creek. Mangas Creek is currently occupied by spikedace and loach minnow (NMDGF 2008). Mangas Creek contains suitable habitat for all life stages of spikedace and loach minnow (PCE 1); has an appropriate food base (PCE 2); and has an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6).

Approximately 7.9 km (4.9 mi) on Mangas Creek within this unit are on lands owned and managed by FMC. These areas have been excluded from the final critical habitat designations under section 4(b)(2) of the Act (see ''*Application of Section 4(b)(2) of the Act*'' section below for additional information).

Spikedace and loach minnow on Mangas Creek occur primarily on private lands, with small portions occurring on lands managed by the BLM. The essential features in Mangas Creek may require special management considerations or protection due to residual impacts of past livestock grazing and impacts to uplands, riparian vegetation, and the stream; impaired water quality due to high organic matter and excessive algal growth likely caused by resource extraction (mining), loss of riparian habitat, wildlife use of the area, municipal discharges, recreation and tourism, agriculture (livestock grazing) (EPA 2002, pp. 4–12; EPA 2004; EPA 2010, p. 1) and moderate drought (University of Nebraska-Lincoln 2011, p. 1).

Spikedace Only. We are including within the designation 12.5 km (7.7 mi) of the Middle Fork Gila River extending from the confluence with West Fork Gila River upstream to the confluence with Big Bear Canyon. This area is currently occupied by spikedace and is connected to currently occupied habitat on the West Fork of the Gila River (NMDGF 2008; Propst *et al.* 2009, pp. 9–11). The Gila River contains suitable habitat for all life stages of spikedace (PCE 1); has an appropriate food base (PCE 2); consists of perennial streams with no or low pollutant issues (PCEs 3 and 4); and has an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6). This area is considered essential to the survival and recovery of the species because of its historical and current occupancy and multiple PCEs. In addition, the Middle Fork Gila River is connected to habitat occupied by spikedace on the West Fork Gila River. The Middle Fork Gila River occurs primarily on Federal lands managed by the Gila National Forest, with small parcels of private lands interspersed with Federal lands. The essential features in this stream may require special management considerations or protection due to residual impacts of past livestock grazing and impacts to uplands, riparian vegetation, and the stream; competition with and predation by nonnative aquatic species; watershed impacts associated with past wildfires; and

moderate drought (University of Nebraska-Lincoln 2011, p. 1).

Loach Minnow Only. In addition to the areas described above for this unit, we are including within the designation 19.1 km (11.9 mi) of the Middle Fork Gila River extending from the confluence with West Fork Gila River upstream to the confluence with Brothers West Canyon. The 12.5 km (7.7 mi) designated on the Middle Fork Gila River for spikedace is completely within this 19.1 km (11.9 mi). This area is currently occupied by loach minnow (NMDGF 2008; Propst *et al.* 2009, pp. 9–11).

The Middle Fork Gila River contains suitable habitat for all life stages of loach minnow (PCE 1); has an appropriate food base (PCE 2); consists of perennial flows with no or low levels of pollutants (PCEs 3 and 4); and has an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6). This area is considered essential to the survival and recovery of loach minnow due to its historical and current occupancy, its multiple PCEs, and its connection to the West Fork of the Gila River, which is currently occupied by loach minnow. See the description above, describing the designation along the West and Middle Forks of the Gila River for spikedace for details on land ownership and special management needs.

We are including within this designation 31.4 km (19.5 mi) of Bear Creek from its confluence with the Gila River upstream to the confluence with Sycamore Creek and North Fork Walnut Creek. Loach minnow were first found in Bear Creek in 2005 and again in 2006 (Schiffmiller 2005, pp. 1–4; NMDGF 2008). Bear Creek is classified as perennial interrupted, with stream segments that may dry up seasonally, depending on weather events (USFS 2010). While it was initially believed that loach minnow detected in 2005 came from the Gila River during a period when the upstream, perennial section was temporarily connected to the Gila River, further discussions with biologists familiar with the stream, a review of the loach minnow records, and reconsideration of the species biology make this seem unlikely. The location of the loach minnow detections on Bear Creek was approximately 18 miles upstream of the Gila River confluence. We believe it is unlikely that loach minnow were able to swim upstream 18 miles during a high flow event to become established in this location. Nearby Dorsey Spring maintains perennial flows in the section of river in which the loach minnow are found, and we believe it is more likely that loach minnow persist in this area of perennial flows.

Portions of Bear Creek contain suitable habitat for all life stages of loach minnow (PCE 1); have an appropriate food base (PCE 2); consist of perennial flows with no or low levels of pollutants (PCEs 3 and 4); have no nonnative aquatic species, or levels of nonnative aquatic species that are sufficiently low to allow persistence of spikedace and loach minnow (PCE 5); and have an appropriate hydrologic regime to maintain suitable habitat characteristics (PCE 6). The essential features in this stream may require special management considerations or protection due to some residual impacts of past livestock grazing and impacts to uplands, riparian vegetation, and the stream; and moderate drought (University of Nebraska-Lincoln 2011, p. 1).

Approximately .9 km (1.2 mi) on Bear Creek within this unit are on lands owned and managed by FMC. These areas have been excluded from the final critical habitat designations under section 4(b)(2) of the Act (see ''*Application of Section 4(b)(2) of the Act*'' section below for additional information).

TABLE 8—STREAM SEGMENTS CONSIDERED IN THESE CRITICAL HABITAT DESIGNATIONS AND THE CRITERIA UNDER WHICH THEY ARE IDENTIFIED

Stream	Occupied by spikedace at the time of listing or at any time thereafter/rule criteria met	Occupied by loach minnow at the time of listing or at any time thereafter/rule criteria met *
Unit 1—Verde River Subbasin		
Verde River	Yes/1a	No/2b.
Granite Creek	No/2a	No/2b.
Oak Creek	No/2a	No/2b.
Beaver and Wet Beaver Creek	No/2a	No/2b.
West Clear Creek	No/2a	Not applicable.
Fossil Creek	No/2a	No/2b.
Unit 2—Salt River Subbasin		
Salt River	No/	Not applicable.
Tonto Creek	No/2b	Not applicable.
Greenback Creek	No/2b	Not applicable.
Rye Creek	No/2b	Not applicable.
Spring Creek	No/2b	Not applicable.
Rock Creek	No/2b	Not applicable.
White River	Not Applicable	Yes/1a.
East Fork White River	Not Applicable	Yes/1a.
East Fork Black River	Not applicable	No/2a.
North Fork East Fork Black River	Not applicable	Yes/1a.
Boneyard Creek	Not applicable	Yes/1a.
Coyote Creek	Not applicable	No/2a.
Unit 3—San Pedro River Subbasin		
San Pedro River	No/2b	No/2b.
Hot Springs Canyon	No/2a	No/2a.
Bass Canyon	No/2a	No/2a.

TABLE 8—STREAM SEGMENTS CONSIDERED IN THESE CRITICAL HABITAT DESIGNATIONS AND THE CRITERIA UNDER WHICH THEY ARE IDENTIFIED—Continued

Stream	Occupied by spikedace at the time of listing or at any time thereafter/rule criteria met	Occupied by loach minnow at the time of listing or at any time thereafter/rule criteria met *
Redfield Canyon	No/2a	No/2a.
Aravaipa Creek	Yes/1a	Yes/1a.
Deer Creek	No/2a	Yes/1a.
Turkey Creek	No/2a	Yes/1a.
Unit 4—Bonita Creek Subbasin		
Bonita Creek	No/2b	No/2b.
Unit 5—Eagle Creek Subbasin		
Eagle Creek	Yes/1a	Yes1a.
Unit 6—San Francisco River Subbasin		
San Francisco River	No/2b	Yes/1a.
Tularosa River	Not applicable	Yes/1a.
Negrito Creek	Not applicable	Yes/1a.
Whitewater Creek	Not applicable	Yes/1a.
Unit 7—Blue River Subbasin		
Blue River	No/2b	Yes/1a.
Campbell Blue Creek	No/2b	Yes/1a
Little Blue Creek	No/2b	Yes/1a.
Pace Creek	No/2b	Yes/1a
Frieborn Creek	No/2b	Yes/1a.
Dry Blue Creek	No/2b	Yes/1a.
Unit 8—Gila River Subbasin		
Gila River	Yes/1a	Yes/1a.
West Fork Gila River	Yes/1a	Yes/1a.
Middle Fork Gila River	Yes/1a	Yes/1a.
East Fork Gila River	Yes/1a	Yes/1a.
Mangas Creek	Yes/1a	Yes/1a.
Bear Creek	Not Applicable	Yes/1a.

Effects of Critical Habitat Designations

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to

adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for spikedace and loach minnow. 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.

Examples of activities that, when authorized, funded, or carried out by a Federal agency, may affect critical habitat and therefore should result in consultation for the spikedace and loach minnow include, but are not limited to:

(1) Actions that would significantly diminish flows within the active stream channel. Such activities could include, but are not limited to: Water diversions; channelization; construction of any barriers or impediments within the active river channel; removal of flows in excess of those allotted under a given water right; construction of permanent or temporary diversion structures; and groundwater pumping within aquifers associated with the river. These actions could affect water depth, velocity, and flow pattern, all of which are essential to the different life stages of spikedace or loach minnow.

(2) Actions that significantly alter the water chemistry of the active channel. Such activities could include, but are not limited to: Release of chemicals, biological pollutants, or other substances into the surface water or connected groundwater at a point source or by dispersed release (nonpoint source); and storage of chemicals or pollutants that can be transmitted, via surface water, groundwater, or air into critical habitat. These actions can affect water chemistry, and in turn the prey base of spikedace and loach minnow.

(3) Actions that would significantly increase sediment deposition within a stream channel. Such activities could include, but are not limited to: Excessive sedimentation from improper livestock grazing; road construction; commercial or urban development; channel alteration; timber harvest; ORV use; recreational use; or other watershed and floodplain disturbances. These activities could adversely affect reproduction of the species by preventing hatching of eggs, or by eliminating suitable habitat for egg placement by loach minnow. In addition, excessive levels of sedimentation can make it difficult for these species to locate prey.

(4) Actions that could result in the introduction, spread, or augmentation of aquatic species in occupied stream segments, or in stream segments that are hydrologically connected to occupied stream segments, even if those segments are occasionally intermittent, or introduction of other species that compete with or prey on spikedace or loach minnow. Possible actions could include, but are not limited to: Introduction of parasites or disease; stocking of nonnative fishes; stocking of sport fish (whether native or nonnative); stocking of nonnative amphibians or other nonnative taxa; or other related actions. These activities can affect the growth, reproduction, and survival of spikedace and loach minnow.

(5) Actions that would significantly alter channel morphology. Such activities could include, but are not limited to: Channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes in water flows and levels that would eliminate the spikedace or loach minnow, degrade their habitats, or both. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of spikedace and loach minnow.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Amendment of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and

restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the critical habitat designations for either species. Therefore, we are not exempting lands from these final designations of critical habitat for spikedace or loach minnow pursuant to section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary 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 designations, we identify the benefits of including the area in the designations, identify the benefits of excluding the area from the designations, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide, forego disproportionate economic impacts resulting from the designation of critical habitat, or avoid potential conflicts with national security issues.

After evaluating the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If 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 designations.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we evaluated whether certain lands in the critical habitat in Units 1, 2, 3, 5, and 8 were appropriate for exclusion from these final designations pursuant to section 4(b)(2) of the Act. As discussed in detail below, the Secretary is exercising his discretion to exclude the following areas from critical habitat designations for both spikedace and loach minnow:

(1) The San Pedro River in its entirety within Unit 3 of the designations;

(2) Those portions of the Verde River and Beaver and Wet Beaver Creeks in Unit 1 occurring within the boundaries of the Yavapai-Apache Nation and subject to the provisions of Tribal Resolution 46–2006;

(3) Those portions of the mainstem White River and East Fork White River within the boundaries of the White Mountain Apache Tribe and subject to the provisions of the Loach Minnow Management Plan;

(4) Those portions of Eagle Creek in Unit 5 that are within the boundaries of the San Carlos Apache Nation and subject to the provisions of their FMP;

(5) Those portions of the mainstem Eagle Creek and the San Francisco River that are owned by FMC or their subsidiaries; and

(6) Those portions of the Gila River, Mangas Creek, or Bear Creek that are owned by FMC or their subsidiaries.

The Secretary is also exercising his discretion to exclude the areas because we determined the following:

(1) Their value for conservation will be preserved for the foreseeable future by existing protective actions, or

(2) The benefit of excluding them under the ''other relevant factor'' provisions of section 4(b)(2) of the Act outweighs the benefit of including them in critical habitat.

Table 9 below provides approximate length of streams that meet the definition of critical habitat but are excluded under section 4(b)(2) of the Act from the final critical habitat rule. Table 9 also provides our reasons for the exemptions and exclusions.

TABLE 9—EXCLUSIONS AND AREAS CONSIDERED FOR EXCLUSION FROM DESIGNATION OF CRITICAL HABITAT FOR LOACH MINNOW AND SPIKEDACE BY CRITICAL HABITAT UNIT

Unit	Specific area	Basis for exclusion	Areas meeting the definition of critical habitat in kilometers (miles)	Areas excluded in kilometers (miles)
1	Verde River and Beaver and Wet Beaver Creeks on Yavapai-Apache Nation lands.	Yavapai-Apache Nation Tribal Resolution 46–2006; Tribal Sovereignty; Working Relationship with the Yavapai-Apache Nation.	1.2 km (0.8 mi) of the Verde River and 0.2 km (0.1 mi) of Beaver Creek and Wet Beaver Creek.	1.2 km (0.8 mi) of the Verde River and 0.2 km (0.1 mi) of Beaver Creek and Wet Beaver Creek.

TABLE 9—EXCLUSIONS AND AREAS CONSIDERED FOR EXCLUSION FROM DESIGNATION OF CRITICAL HABITAT FOR LOACH MINNOW AND SPIKEDACE BY CRITICAL HABITAT UNIT—Continued

Unit	Specific area	Basis for exclusion	Areas meeting the definition of critical habitat in kilometers (miles)	Areas excluded in kilometers (miles)
2	Mainstem White River and East Fork White River.	Loach Minnow Management Plan; Tribal Sovereignty; Working Relationship with the White Mountain Apache Tribe.	29.0 km (18.0 mi) of the White River and 17.2 km (10.7 mi) of the East Fork White River.	29.0 km (18.0 mi) of the White River and 17.2 km (10.7 mi) of the East Fork White River.
3	San Pedro River	National Security	59.8 km (37.2 mi) of the San Pedro River.	59.8 km (37.2 mi) of the San Pedro River.
5	Eagle Creek	San Carlos Apache Tribe Fisheries Management Plan; Tribal Sovereignty; Working Relationship with the San Carlos Apache Tribe.	75.5 km (46.9 mi) of Eagle Creek.	27.5 km (17.1 mi) of Eagle Creek on the San Carlos Apache Reservation.
5	Eagle Creek	FMC Spikedace and Loach Minnow Management Plan Eagle Creek and San Francisco River Greenlee and Graham County, Arizona.	75.5 km (46.9 mi) of Eagle Creek.	Approximately 21.4 km (13.3 mi) of Eagle Creek owned by FMC or its subsidiaries.
5	San Francisco River	FMC Spikedace and Loach Minnow Management Plan Eagle Creek and San Francisco River Greenlee and Graham County, Arizona.	203.6 km (126.5 mi of the San Francisco River for loach minnow; 180.7 km (112.3 mi) of the San Francisco River for spikedace.	14.1 km (8.8 mi) of the San Francisco River owned by FMC or its subsidiaries.
8	Gila River	FMC Spikedace and Loach Minnow Management Plan Upper Gila River, Including Bear Creek and Mangas Creek Grant County, New Mexico.	165.1 km (102.6 mi) of the Gila River.	12.9 km (7.2 mi) of the Gila River owned by FMC or its subsidiaries.
8	Bear Creek	FMC Spikedace and Loach Minnow Management Plan Upper Gila River, Including Bear Creek and Mangas Creek Grant County, New Mexico.	31.4 km (19.5 mi) of Bear Creek.	1.9 km (1.2 mi) of Bear Creek owned by FMC or its subsidiaries.
8	Mangas Creek	FMC Spikedace and Loach Minnow Management Plan Upper Gila River, Including Bear Creek and Mangas Creek Grant County, New Mexico.	9.1 km (5.7 mi) of Mangas Creek.	7.9 km (4.9 mi) of Mangas Creek owned by Freeport McMoRan or its subsidiaries.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis of the critical habitat designations and related factors (IEc. 2011). The draft analysis, dated July 6, 2011, was made available for public review from October 4, 2011, through November 3, 2011 (76 FR 61330). Following the close of the comment period, a final analysis (dated January 24, 2012) of the potential economic effects of the designations was developed taking into consideration the public comments and any new information (IEc 2012).

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for spikedace and loach minnow; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designations is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designations of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designations of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designations of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designations of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designations of critical habitat.

While we think that the incremental effects approach is appropriate and meets the intent of the Act, we have taken a conservative approach in this instance to ensure that we are fully evaluating the probable effects of this designation. Given that we do not have

a new definition of ''destruction or adverse modification,'' there may be certain circumstances where we may want to evaluate impacts beyond those that are solely incremental. Such is the case with spikedace and loach minnow, where we have extensive case law and determinations of effects that suggest we gather information concerning not only incremental effects, but also coextensive effects.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. Decision-makers can use this information to assess whether the effects of the designations might unduly burden a particular group or economic sector. Finally, the FEA considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis based on the data available during the analysis. The FEA quantifies economic impacts of spikedace and loach minnow conservation efforts associated with the following categories of activity: Water use and management; livestock grazing; recreation; species management; residential and commercial development; transportation, fire management; and Tribal lands.

The FEA estimates that no significant economic impacts are likely to result from the designation of critical habitat. Quantified incremental impacts are estimated to be $2.95 million to $6.7 million over 20 years ($261,000 to $592,000 annually) using a discount rate of seven percent. The San Pedro River Unit, is anticipated to bear the highest incremental costs in both the low and high end scenarios. Quantified incremental costs are related to an anticipated large and costly consultation at Fort Huachuca Military Reservation, as well as annual monitoring costs on the San Pedro River of $100,000 to $200,000 annually. It should be noted that the San Pedro River has been excluded under section 4(b)(2) of the Act and is not part of the final designation, due to national security impacts at Fort Huachuca. The next largest quantified incremental impacts are expected in the Gila River unit primarily related to anticipated costs related to riparian fencing construction.

In conclusion, there is not significant economic impact are likely to be a result from the designation of critical habitat for these two species. As a result, the Secretary is not exercising his discretion to exclude any particular area from the final designation based on a disproportionate economic impact to any entity or sector. A copy of the FEA with supporting documents may be obtained by contacting the Arizona Ecological Services Field Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov* or at *http://www.fws.gov/southwest/es/arizona/*.

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 these designations, we determined that the lands within the designations of critical habitat for spikedace and loach minnow are not owned or managed by the DOD. A nexus exists, however, between critical habitat in the San Pedro River in Subunit 3 and groundwater pumping by the United States Army Garrison Fort Huachuca (Fort Huachuca) in Cochise County, Arizona. An additional nexus is created by the geographic areas not owned but designated for use by Fort Huachuca. Because of this, and in response to comments received from Fort Huachuca, we completed a balancing analysis of the benefits of inclusion and the benefits of exclusion of lands in the San Pedro River in Subunit 3.

Fort Huachuca

Fort Huachuca is located in Cochise County, Arizona, approximately 15 miles north of the international border with Mexico. While the area designated as Fort Huachuca itself does not occur along the San Pedro River, Fort Huachuca officials indicated in their comment letter that there are geographic areas designated for Department of Defense (DOD) use including the Buffalo Soldier Electronic Test Range (BSETR), R–2303 restricted airspace, and groundwater resources in a regional aquifer of the Sierra Vista Subwatershed of the San Pedro River that are all located within critical habitat in Unit 3. The BSETR covers approximately 10.5 square kilometers (4.1 square miles), with 10.1 square kilometers (3.9 square miles) off-post and encompassing the entire 60 km (30.7 mi) of the critical habitat proposed along the San Pedro. Their R–2303 restricted airspace covers 3.9 square kilometers (1.5 square miles), with 3.4 square kilometers (1.3 square miles) off-post and nearly totally encompassing the critical habitat along the San Pedro River.

Fort Huachuca notes that the Army and Joint Military testing community is co-located at Fort Huachuca because of the BSETR and the unique environmental setting in which it occurs, which allows for specialized electronic testing. According to Fort Huachuca, the BSETR and R–2303 restricted airspace are vital resources to national security that are not duplicated elsewhere within the United States. For the BSETR, Fort Huachuca notes that ''the metal-bearing mountain ranges on the Fort create conditions conducive to testing and that these conditions are not replicated anywhere else in the United States with the only other known location in the world in the outback of Australia (Fort Huachuca 2011).'' With respect to the R–2303 restricted airspace, Fort Huachuca notes that the special restricted airspace that extends downward to the ground surface is critical for the training of Unmanned Aerial Systems operators for the Army, Marines, National Guard, and Department of Homeland Security. Fort Huachuca notes that this type of restricted airspace, which extends to the ground surface, is not duplicated anywhere else in the United States, and that this is one of the only Military Restricted Airspace complexes in the country: (1) Whose activation has no impact on commercial air traffic corridors; and (2) allows for unmanned aircraft to have priority over manned aircraft for testing, training, and border security. Fort Huachuca cites several other examples of the importance of their activities to national security; however, the BSETR and the unique environmental settings in which it occurs, as well as the R–2303 restricted airspace, were of greatest concerns in this evaluation due to lack of duplicate conditions elsewhere in the United States.

To carry out these missions, Fort Huachuca pumps groundwater to serve its on-base military and civilian population. Fort Huachuca's pumping results in both removal of groundwater from storage in the regional aquifer and the capture of water from discharge. Groundwater in storage is that which resides in an aquifer. Such stored water may be discharging to a spring or waterway. Water withdrawn from the ground by wells initially derives exclusively from storage. As pumping continues, increasing proportions of water are derived from the capture of discharge, and decreasing proportions are derived from storage. In other words, ground water wells are withdrawing not only water residing in the aquifer, but also water that was otherwise destined to become the surface flow of a stream or be available to sustain riparian

vegetation. If water withdrawal continues unmitigated, it will eventually deplete storage, reverse the flow direction of groundwater, and capture (dewater) the stream itself. Deprivation of the base flow of the San Pedro River could eventually cause perennial reaches to become intermittent or ephemeral. While these portions of the San Pedro River are not currently occupied by either species, such a change in the hydrologic regime of the San Pedro River, depending upon the reach in which it occurred, may not allow the San Pedro River to facilitate the expansion of the geographic distribution of spikedace and loach minnow in areas not occupied at the time of listing. Expansion within the geographic historic range of the species is important to the conservation of the species, as identified in the ruleset for ''2b'' areas.

The potential impacts of groundwater pumping by Fort Huachuca on several threatened and endangered species are described in detail in a 2007 section 7 biological opinion (Service 2007; Service 2002b and Service 2002c). This opinion also details the actions taken by Fort Huachuca to minimize the effects of their groundwater pumping. These actions are numerous, and include fixture upgrades (i.e., replacement of high water use plumbing fixtures with low water use fixtures), facility infrastructure removal/consolidation (i.e., demolition of facilities), aggressive leak detection and repair, water conservation education, and implementation of a strict landscape watering policy in military family housing. Fort Huachuca has also undertaken groundwater recharge, acquisition of conservation easements to reduce future developments, mitigation for increases in personnel, participation in and providing funding to the Upper San Pedro Partnership (USPP), and development of a strategic plan for water mitigation.

According to the biological opinion, costs to Fort Huachuca for this work are considerable. As noted in the biological opinion, Fort Huachuca typically invests $3.3 to $5.5 million per year in environmental, natural resources, and cultural projects. From 1997 through 2006, Fort Huachuca spent over $42 million in those categories exclusive of the $12 million spent for large construction (effluent recharge and extension of an effluent distribution system) projects. The biological opinion notes that recently, funding emphasis has shifted toward management of threatened and endangered species, and Fort Huachuca spent an estimated $10 million in a 4-year period for conservation work.

The biological opinion addressed potential impacts of actions taken by Fort Huachuca on Huachuca water umbel (*Lilaeopsis schaffneriana* var. *recurva*) with critical habitat, southwestern willow flycatcher (*Empidonax traillii extimus*) with critical habitat, Mexican spotted owl (*Strix occidentalis lucida*), lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*), Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*), Huachuca springsnail (*Pyrgulopsis thompsoni*), Ramsey Canyon leopard frog (*Rana subaquavocalis*), Canelo Hills ladies' tresses (*Spiranthes delitescens*); bald eagle, (*Haliaeetus leucocephalus*); jaguar (*Panthera onca*); spikedace with critical habitat; Gila topminnow (*Poeciliopsis occidentalis occidentalis*), and desert pupfish (*Cyprinodon macularius*). With respect to the critical habitat designation, Fort Huachuca notes they already completely offset groundwater pumping associated with on-post groundwater use, and are required to mitigate an additional 1,000 acre feet of groundwater use due to off-post groundwater usage at an estimated cost of $20,000 to $40,000 per acre foot, or a total cost of $20 million to $40 million. Fort Huachuca further notes that the completed biological opinion allows for up to 16,000 employees, which limits their flexibility with respect to DOD's needs to ''* * * bring additional high priority, high visibility missions to the fort (Fort Huachuca 2011, p. 11)''. They conclude that any additional restrictions placed on them have a strong probability of impacting the missions currently present at Fort Huachuca as well as DOD's flexibility to respond to changing requirements in theater and to protect the lives of military personnel (Fort Huachuca 2011, p. 11).

In a 2011 court decision (*See Center for Biological Diversity et al.* v. *Salazar et al.* 4:07-cv-00484–AWT), United States District Court, District of Arizona), the completed biological opinion was deemed inadequate in addressing recovery of the Huachuca water umbel and the Southwestern willow flycatcher, among other factors, and Fort Huachuca will be required to reconsult with the Service.

Benefits of Inclusion—Fort Huachuca

The principal benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The jeopardy analysis evaluates the action's impact to survival and recovery of the species, while the destruction or adverse modification analysis evaluates the action's effects to the designated habitat's contribution to conservation. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

However, for some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. In the case of spikedace and loach minnow in the San Pedro River, consultation would occur strictly based on critical habitat as the species are absent from this stream. Therefore, this principal benefit of section 7 consultation under the Act would be a benefit of inclusion of the San Pedro within the designation. BLM manages 50.6 km (31.4 mi), or 84 percent, of the land along the portion of the San Pedro River included within the designation, so actions taken by them or on their lands would likely result in section 7 consultation for any potential effects to critical habitat for spikedace or loach minnow.

An additional benefit of including portions of the San Pedro River within the critical habitat designation for spikedace and loach minnow is that it provides an additional 59.8 km (37.2 mi) of critical habitat within the southeastern portion of their historical range. The San Pedro River has collection records for both species that begins in the 1840s and spans more than 120 years. We categorized the San Pedro River as a 2a stream in this rule, as it was not identified as occupied at listing by either species, but has the features essential to the conservation for spikedace and loach minnow and would serve as an extension of occupied habitat in Aravaipa Creek within Unit 3.

Public education is often cited as another possible benefit of including lands in critical habitat as it may help focus conservation efforts on areas of

high value for certain species. A critical habitat designation can inform the public about the Act, listed species, their habitat needs, and conservation. Only 9.2 km (5.7 mi), or 16 percent, of the portion of the San Pedro within the designation are on private lands; however, because this area is indirectly tied to Fort Huachuca, and Fort Huachuca can have a staff of up to 16,000 individuals and interacts with other management groups through the Upper San Pedro Partnership, the educational benefits may be expanded beyond private landowners immediately adjacent to the stream.

The designation of critical habitat may strengthen or reinforce some Federal laws, such as NEPA or the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental law. Because multiple listed species are known to occur along the San Pedro River, the overall impact of the designation in strengthening or reinforcing other laws is somewhat diminished as there have been and would continue to be awareness for other species listed under the Act that would lead to conservation measures.

Benefits of Exclusion—Fort Huachuca

As noted above, there are benefits to spikedace and loach minnow from having this portion of the San Pedro River protected as critical habitat for the two species, particularly given that it is currently unoccupied by either species. However, the minimal conservation and regulatory benefits gained through inclusion of this area as critical habitat for spikedace and loach minnow are at least partially offset by the fact that this area is already managed for a number of other species under which protections would be in place, including those covered by the biological opinion, as discussed above.

According to Fort Huachuca's comment letter, inclusion of the San Pedro as critical habitat for spikedace and loach minnow has a high probability of negative impacts to missions that are essential to national security. While actions taken by Fort Huachuca are already analyzed for effects to other species, Fort Huachuca states that, should critical habitat be designated in the San Pedro River, additional restrictions may result for protection of spikedace and loach minnow critical habitat, particularly as both species require running streams for habitat. Fort Huachuca currently has a staff of approximately 13,100, but anticipates that number could rise to 16,000. They note that any additional restrictions to water usage could affect their ability to increase staffing when needed, or carry out missions critical to national security. Further, because of the unique conditions within the BSETR, these missions could not be moved to another location as no other areas within the United States currently have those conditions. With the recent litigation on the existing biological opinion, and the requirement that consultation be completed again, the Fort believes there is both uncertainty as to what measures may be required of them through section 7 consultation to resolve the court's concern, as well as strong evidence that third party litigation may influence actions required of them in the future.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Fort Huachuca

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of the 59.8-km (37.2-mi) stretch of the San Pedro River for which Fort Huachuca has requested exclusion from these designations of critical habitat. Since this portion of the San Pedro River is unoccupied, a benefit of inclusion of this portion of the San Pedro River would be the requirement of section 7 consultation under the adverse modification standard. However, we believe there would be minimal additional regulatory and educational benefits from a designation of critical habitat for spikedace and loach minnow because multiple listed species are known to occur along the San Pedro River and are currently being managed.

Because of the unique conditions within the BSETR, the critical national security missions could not be moved to another location as no other areas within the United States currently have those conditions. Therefore, exclusion of these lands from critical habitat will allow Fort Huachuca to continue their critical national security missions. Therefore, in consideration of the potential impact to national security, we determined the significant benefits of exclusion outweigh the benefits of inclusion in the critical habitat designation.

In summary, we find that excluding this 59.8-km (37.2-mi) stretch of the San Pedro River from this final critical habitat will preserve Fort Huachuca's ability to continue with their missions critical to national security. This benefit of continuing critical national security missions are significant and outweigh the minimal additional regulatory and educational benefits of including these lands in final critical habitat for spikedace and loach minnow.

Exclusion Will Not Result in Extinction of the Species—Fort Huachuca

The San Pedro River is not currently occupied by either spikedace or loach minnow. Loach minnow were last detected in 1961, and spikedace in 1966 (ASU 2002). The San Pedro represents a portion of the streams included within Unit 3, which also includes Aravaipa Creek, Hot Springs Canyon, Redfield Canyon, and Bass Canyon. As a result, this portion of the species range would not be void of protected habitat. Finally, the Service has identified eight units for designation as critical habitat, and the San Pedro River represents a portion of the habitat within one of eight units. Because the San Pedro is unoccupied, represents approximately eight percent of the overall proposed critical habitat designation for either spikedace or loach minnow, does not represent the only critical habitat designated within Unit 3, and will receive some protection through section 7 consultation for other species, we conclude that excluding the San Pedro River will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude the 59.8-km (37.2-mi) stretch of the San Pedro River from the designations of critical habitat for spikedace and loach minnow.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designations.

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 received information and management plans from four different entities, including the Yavapai-Apache Nation, White Mountain Apache Tribe, the San Carlos Apache Tribe, and from FMC Corporation. We have identified the benefits of inclusion and the benefits of exclusion for each of these management plans, and we carefully weighed the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion.

Tribal Exclusions

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's Memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); President's Memorandum of November 5, 2009, ''Tribal Consultation'' (74 FR 57881); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are more appropriately managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. In most cases, designation of tribal lands as critical habitat provides very little additional conservation benefit to endangered or threatened species. Conversely, such designation is often viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance, and may negatively impact a positive government-to-government relationship between the Service and tribal governments essential to achieving a mutual goal of successfully managing ecosystems upon which endangered and threatened species depend. When conducting our analysis under section 4(b)(2) of the Act, we consider our existing and future partnerships with tribes and existing conservation actions that tribes have implemented or are currently implementing. We also take into consideration conservation actions that are planned as a result of ongoing government-to-government consultations with tribes.

Yavapai-Apache Nation—The Yavapai-Apache Nation submitted a comment letter during the first comment period in 2010 in which they discuss measures in place to protect the Verde River and its surrounding habitat on the lands of the Yavapai-Apache Nation. According to these comments, the Yavapai-Apache Nation is implementing conservation measures designed to preserve the Verde River and its riparian corridor for the benefit of all species, and in order to protect the traditional and cultural practices of the Nation. The Yavapai-Apache Nation's continued efforts to work cooperatively with the Service to protect federally listed species have been demonstrated through adoption of a Southwestern Willow Flycatcher Management Plan, dated May 25, 2005, which details objectives for protection of the riparian community on Tribal lands. The Yavapai-Apache Nation notes that the habitat protected under the Southwestern Willow Flycatcher Management Plan overlaps those areas proposed as critical habitat for spikedace. Because the existing Management Plan requires that the habitat of the Verde River be protected and preserved for the flycatcher, its protections similarly extend to the spikedace.

More specifically to spikedace and loach minnow and their habitat, the Yavapai-Apache Nation adopted Tribal Resolution 46–2006. Resolution 46–2006, completed in June of 2006, details land use restrictions and management plan goals along the Verde River ''* * * in order to continue to protect the traditional and cultural practices of the Nation, and to preserve those PCEs found within the riparian corridor of the Verde River which are essential to native wildlife species, including species listed as endangered or threatened by the federal government under the Endangered Species Act, such as the federally listed spikedace and loach minnow (Yavapai-Apache Nation 2006).''

The Resolution provides for conservation of the PCEs for spikedace and loach minnow both through conservation of existing habitat, and through restriction of some activities. The resolution established a riparian conservation corridor along both sides of the Verde River that encompasses the critical habitat designations. Protection and conservation of the riparian corridor minimizes disturbance in the active channel, protects vegetation, which in turn can act as a buffer strip and filter out sediment and contaminants from overland flow, stabilizes banks and reduces erosion and siltation, and maintains temperatures by preserving vegetation that provides shading of the stream channel (PCEs 1 and 2). In addition, the Resolution resolved that there would be no stocking of nonnative fishes (PCE 5), and that livestock, grazing, construction, and other activities would be minimized to assure that no net loss of habitat for spikedace and loach minnow occurs and that no permanent modification of habitat essential to spikedace and loach minnow is allowed. The Resolution also details a commitment by the Yavapai-Apache Nation to continue to cooperate with the Service on a variety of issues, including habitat monitoring and surveys.

In their 2010 comment letter, the Yavapai-Apache Nation notes that, under the Resolution, they have taken additional steps to protect the Verde River and its habitat. Specifically, they note that the Yavapai-Apache Nation's Tribal Housing Department and Planning Committee do not allow development within the riparian conservation corridor. The Yavapai-Apache Nation has also taken steps to educate Tribal members on the importance of protecting and preserving the Verde River and its riparian habitat for future generations. The Yavapai-Apache Nation further notes that they have pursued and secured grants that will enable them to examine ways to protect Verde River water quality and remove invasive plant species from the riparian corridor. The Yavapai-Apache Nation is examining how possible restoration activities and instream flow regimes could improve the health of riparian habitat within the Verde River and Beaver Creek to provide for restoration of native plants. Finally, the Yavapai-Apache Nation notes in their comment letter that they are continuing to improve their working relationship with the Service through improved coordination. These comments demonstrate that the Yavapai-Apache Nation has begun and continues to implement the Resolution, and provides the Service with the assurance that implementation of the Resolution is likely to continue.

The Yavapai-Apache Nation notes that a critical habitat designation on their lands would have adverse impacts to the Yavapai-Apache Nation and its ability to exist within its permanent Tribal homeland. Specifically, they believe these impacts will include interfering with the sovereign right of the Yavapai-Apache Nation to protect and control its own resources; undermining the positive and effective

government-to-government relationship between the Yavapai-Apache Nation and the Service; hampering or confusing the Yavapai-Apache Nation's own long-standing protections for the Verde River and its habitat; imposing an additional and disproportionate impact on the Yavapai-Apache Nation's overall land base, and adding additional economic and administrative costs, and potentially personnel burdens to the Yavapai-Apache Nation in order to meet increased section 7 consultations and other requirements under the Act. A Federal nexus exists for land use decisions or other tribal actions which require approval by the Bureau of Indian Affairs due the fact that the United States holds the Yavapai Apache land in trust, A federal nexus could also exists if a tribal action utilizes other Federal funding, or requires a Federal permit for their actions. The Service respects these concerns.

Benefits of Inclusion—Yavapai-Apache Nation

Those portions of the Verde River on lands belonging to the Yavapai-Apache Nation within the critical habitat designations for spikedace and loach minnow constitute part of a continuous stream habitat for the two species. Spikedace records exist for both the Verde River and Beaver Creek, although they are few in number and only as recent as 1950. We categorized the Verde River as a 1a stream for spikedace in the rule, as it was identified as occupied at listing, and supports one or more of the PCEs for the two species. We categorized the Verde River as a 2b stream for loach minnow, as it was not known to be occupied at listing.

The principal benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. We do consider the Verde River occupied, albeit at low numbers. Section 7 consultation would therefore require both a jeopardy and an adverse modification analysis. The draft and final economic analyses identified a future housing project, as well as wastewater treatment facilities and water development projects, all with potential ties to Federal funding or permitting, that could potentially require section 7 consultation.

Public education is often another possible benefit of including lands in critical habitat as it may help focus conservation efforts on areas of high value for certain species. The Service will continue ongoing coordination with the Yavapai-Apache Nation. However, we note that the Yavapai-Apache Nation has already undertaken education of Tribal members, as noted in their comment letter in which they indicate that they have taken steps to educate Tribal members on the importance of protecting and preserving the Verde River and its riparian habitat for future generations.

Finally, the designation of critical habitat may strengthen or reinforce some Federal laws, such as NEPA or the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws. However, the Yavapai-Apache Nation is fully aware of the sensitive habitat on their lands.

Benefits of Exclusion—Yavapai-Apache Nation

Under Secretarial Order 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act, we recognize that we must carry out our responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to tribes and tribal sovereignty while striving to ensure that tribes do not bear a disproportionate burden for the conservation of listed species, so as to avoid or minimize the potential for conflict and confrontation. In accordance with the Presidential memorandums of April 29, 1994, and November 9, 2009, we believe that, to the maximum extent possible, tribes are the appropriate governmental entities to manage their lands and tribal trust resources, and that we are responsible for strengthening government-to-government relationships with tribes. Federal regulation through critical habitat designation will adversely affect the tribal working relationships we now have and which we are strengthening throughout the United States. Maintaining positive working relationships with tribes is the key to implementing natural resource programs of mutual interest, including habitat conservation planning efforts. In light of the above-mentioned Secretarial Order 3206, and because of their sovereignty status, critical habitat designation is typically viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance. In comments submitted during the public comment periods on this proposed rule, tribes have stated that designation of critical habitat would negatively impact government-to-government relations.

In the case of the critical habitat designations for spikedace and loach minnow, the Yavapai-Apache Nation has indicated that designation on the Yavapai-Apache Reservation is not necessary to protect the habitat as the Nation already protects the riparian areas under its jurisdiction. They further note that such a designation is not only unwarranted but would be disruptive of the Nation's exercise of its own sovereign authority over its Tribal resources and lands. In addition, they state that the designation of critical habitat on Yavapai-Apache Nation lands would interfere with their ability to preserve themselves in their Tribal homeland, and that designation of critical habitat on the Reservation is contrary to the United States' obligations under the Apache Treaty of 1852 and to the Constitution of the Yavapai-Apache Nation, which was approved by the Secretary of the Interior. Finally, they note that designation of critical habitat on their lands would lead to restrictions and/or other circumstances that would violate the trust responsibility of the United States to the Yavapai-Apache Nation, as well as the letter and spirit of numerous Secretarial Orders and Presidential memoranda, as well as the Department of the Interior's own manual. The Yavapai-Apache Nation notes in their comment letter that they will use their own regulatory structure, including Resolution 46–2006, in protecting the Verde River and its riparian corridor. They note they have an ongoing commitment to cooperate with the Service on a wide variety of matters, including habitat monitoring, surveys, and future activities within the riparian corridor that may have the potential to adversely impact habitat essential to the conservation and recovery of federally listed species such as the spikedace and loach minnow.

We believe there are significant benefits from exclusion of the portion of the Verde River on the Yavapai-Apache Nation's lands. These benefits include:

(1) Continuing and strengthening of our ongoing coordination with the Tribe to promote conservation of spikedace and loach minnow and their habitat, as well as other federally listed species; and

(2) Allowing continued meaningful collaboration and cooperation in working toward recovering these species, including conservation actions

developed by a partnership with the Tribe that might not otherwise occur.

Because the Yavapai-Apache Nation is the entity that carries out protective regulations on Tribal trust reservation land, and we have a working relationship with them, we believe exclusion of these lands will yield a significant partnership benefit. There has been a substantial amount of coordination with the Yavapai-Apache Nation on spikedace and loach minnow, other federally listed species, and water management issues on the Verde River. In their comment letter, the Yavapai-Apache Nation has noted that we have established a positive and effective government-to-government relationship with them which in and of itself serves to protect federally listed species and their habitat. We will continue to work cooperatively with the Yavapai-Apache Nation on efforts to conserve spikedace and loach minnow. Therefore, excluding these lands from critical habitat would provide the benefit of maintaining and strengthening our existing conservation partnership.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Yavapai-Apache Nation

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of those portions of the Verde River on the Yavapai-Apache Nation. The Yavapai-Apache Nation is educating Tribal members on the importance of conservation of the riparian corridor along the Verde River. Further, they are applying restrictions for building within the 100-year floodplain. The Yavapai-Apache Nation has indicated they will continue to use their existing regulatory structure in regulating development in this area to protect spikedace and loach minnow and their habitat. Further, exclusion of these lands from critical habitat will help preserve and strengthen the conservation partnership we have developed with the Yavapai-Apache Nation.

We believe that the Verde River supports one or more of the PCEs for spikedace and loach minnow. However, we believe the benefits to be gained through the Yavapai-Apache Nation's Tribal Resolution exceed those that would be gained through a critical habitat designation. Based on the information provided by the Yavapai-Apache Nation in their comment letter and Tribal resolution, the concerns outlined by the Yavapai-Apache Nation, and the protective measures already in place, we conclude that the benefits of excluding the 1.2 km (0.8 mi) of the Verde River and 0.2 km (0.1 mi) of Beaver Creek/Wet Beaver Creek outweigh the benefits of including this area.

Exclusion Will Not Result in Extinction of the Species—Yavapai-Apache Nation

While we believe these stream segments are important to the conservation of the species and currently support one or more PCEs, any direct impacts to the fish themselves due to exclusion of these areas is unlikely due to the low numbers of fish remaining in the Verde River. The protective measures already established by the Yavapai-Apache Nation will ensure that habitat remains in these streams for spikedace and loach minnow and that conservation of the two species and their habitat will not be precluded in this area. We therefore believe that excluding those portions of the Verde River and Beaver/Wet Beaver Creek on Yavapai-Apache Nation lands will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude the 1.2 km (0.8 mi) of the Verde River and 0.2 km (0.1 mi) of Beaver Creek/Wet Beaver Creek on Yavapai-Apache Nation lands from the designations of critical habitat for spikedace and loach minnow.

White Mountain Apache Tribe—The White Mountain Apache Tribe provided comments during the first comment period in 2010, and incorporated their 2000 Loach Minnow Management Plan (White Mountain Apache Tribe 2000) as part of their comments. The Loach Minnow Management Plan identifies several Tribal regulation and management efforts they believe to be beneficial to loach minnow, including Resolution #89–149, which designates streams and riparian zones as Sensitive Fish and Wildlife areas, requiring that authorized programs ensure these zones remain productive for fish and wildlife. The White Mountain Apache Tribe additionally adopted a Water Quality Protection Ordinance in 1999 to ''promote the health of Tribal waters and the people, plants and wildlife that depend on them through holistic management and sustainable use.''

The White Mountain Apache Tribe has also adopted Livestock and Range Management Plans, which regulate their stocking, rotation, and management practices for their Cattle Associations. According to their comments, their plan is aimed at ''maintaining or improving a stable and desired vegetative community, improving water quality and quantity, and reducing soil erosion'' while providing for livestock. The White Mountain Apache Tribe has also established Recreation Regulations and Game and Fish Code which regulates fishing, camping, hunting, and other recreational activities. The White Mountain Apache Tribe notes that large portions of the Reservation continue to be closed to recreational use.

The White Mountain Apache Tribe notes that they also have a process to review and approve all development activities on the Reservation. The Tribal Plan and Project Review Panel, among other things, investigates impacts to sensitive habitats and species, and provides for the implementation of mitigation measures to avoid adverse impacts to those resources. Finally, the White Mountain Apache Tribe noted in their comment letter that Tribal fish biologists and the sensitive species coordinator monitor any land operations or proposed timber sales along the East Fork White River, and monitor river levels, so that if river flows fall below a certain level, irrigation ditch gates that serve Tribal member farmlands are closed until such time as stream levels are restored.

The White Mountain Apache Tribe has a full-time Sensitive Species Coordinator and Technician who coordinate and participate in protection, research, management, and administrative activities involving Federally listed sensitive species on the Reservation, and these individuals are responsible for overseeing the implementation and ongoing development of the Loach Minnow Management Plan. The goals of the Loach Minnow Management Plan are to determine and quantify the full extent of loach minnow distribution on the Reservation; continue to develop and strengthen management actions that effectively address species threats and that provide adequate protection for, and sustainability of, existing Reservation loach minnow populations and habitats; complete the development and ongoing maintenance of Tribal data, information, and mapping for this and other native fish species; and evaluate and refine the application of Plan management practices, over time, in a manner that promotes the practical and effective long-term conservation of all Reservation native fish populations and assemblages, including those of loach minnow (White Mountain Apache Tribe 2000).

The Loach Minnow Management Plan provides an action and strategy outline with eight steps that provide additional detail on how they will be carried out. The eight steps and corresponding PCEs that they may affect include:

- Determining the distribution of loach minnow within Reservation boundaries;

• Continuing routine surveys and expanding efforts to include habitat assessment; continuing to monitor and refine existing management treatments involving irrigation uses and activities to develop adequate mitigation against related threats;

• Continuing to apply and refine existing monitoring and mitigation protocols involving low water and/or drought conditions to provide sustainable protection of loach minnow populations (PCEs 1 and 4);

• Development of contingency plans with responses to potential catastrophic events; evaluating and refining existing nonnative fish management and mitigation practices to provide sustainable protection of loach minnow populations and habitat (PCE 1); and

• Organizing data collection, handling, storage, and maintenance among partners; and continuing to monitor and refine existing Tribal Plan and Project Review Process, management plans, and practices to meet loach minnow and native fish management goals.

The Tribe additionally notes that they have a long-standing history of conservation efforts involving listed species and cooperation with the Service and other entities. These efforts include development of management plans for Mexican spotted owls (*Strix occidentalis lucida*), Arizona willow (*Salix arizonica*), Apache trout (*Oncorhynchus gilae apache*), and Mexican gray wolf (*Canis lupus baileyi*). Their comment letter notes additional conservation efforts, incorporated herein by reference, and the recognition that they have received for their conservation ethic.

Benefits of Inclusion—White Mountain Apache Tribe

Those portions of the mainstem White River and the East Fork White River on lands belonging to the White Mountain Apache and within the critical habitat designations for loach minnow are part of a continuous stream habitat for the species. Loach minnow records exist for both streams. We categorized the mainstem White River and the East Fork White River as 1a streams for loach minnow in the proposed rule, as they were identified as occupied at listing, and supports one or more of the PCEs for the species. Neither stream is known to have been occupied by spikedace.

Those portions of the mainstem White River and East Fork White River on lands belonging to the White Mountain Apache Tribe that are within the critical habitat designation for loach minnow may support a genetically distinct population of loach minnow, and comments received from peer reviewers note that loach minnow in the White River are likely highly divergent and deserving of management as a distinct unit. The length of perennial flows with suitable habitat parameters, historical occupancy, and potential current occupancy make this area important to the conservation of the loach minnow. Both the White River and East Fork White River were classified as 1a streams in this designation, indicating they were known to be occupied at listing. Both are considered currently occupied by loach minnow.

The principal benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The jeopardy analysis evaluates the action's impact to survival and recovery of the species, while the destruction or adverse modification analysis evaluates the action's effects to the designated habitat's contribution to conservation. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone. However, for some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. Lands being evaluated for exclusion in this unit are occupied by loach minnow and are subject to consultation requirements of the Act.

Public education is often another possible benefit of including lands in critical habitat as it may help focus conservation efforts on areas of high value for certain species. The Service will continue ongoing coordination with the White Mountain Apache Tribe for exchange of relevant information. However, we note that the White Mountain Apache Tribe has developed a management plan for loach minnow, and currently employs a Sensitive Species Coordinator through which education of Tribal members can occur without critical habitat designation. In addition, Tribal fisheries biologists participate in review of development projects and timber sales, and can work to educate project proponents of the species' needs.

Finally, the designation of critical habitat may strengthen or reinforce some Federal laws, such as NEPA or the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws. However, because the White Mountain Apache Tribe is fully aware of the sensitive habitat on their lands, designation of critical habitat is not necessary to heighten awareness when applying these laws.

Benefits of Exclusion—White Mountain Apache Tribe

Please see the discussion on Secretarial Order 3206, American Indian Tribal Rights, and Federal-Tribal Trust Responsibilities and the Endangered Species Act under ''*Benefits of Exclusion—Yavapai Apache Nation*'' above. As stated there, we seek to balance our responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to tribes and tribal sovereignty while ensuring that tribes do not bear a disproportionate burden for the conservation of listed species. We also note that, to the maximum extent possible, tribes are the appropriate governmental entities to manage their lands and tribal trust resources, and we are responsible for strengthening government-to-government relationships with tribes. We further believe that Federal regulation through critical habitat designation can adversely affect the tribal working relationships we now have and which we are strengthening throughout the United States.

In the case of this critical habitat designation for loach minnow, the White Mountain Apache Tribe states in their comment letter that Federal common law embodied in the decisions of the U.S. Supreme Court, the Indian Reorganization Act (IRA), the Tribe's IRA Constitution, and Congressional policies and laws established for the protection of Indian natural resources and forests confirm their retained or residual inherent sovereign authority to promulgate regulations and management plans to protect and manage Tribal trust lands, wildlife, forests and other natural resources. They cite numerous authorities that confirm their authority over wildlife and other natural resources existing

within their ancestral lands and to govern both their members and their territory and retain sovereign interests in activities that occur on land that they own and control.

The White Mountain Apache Tribe states in their comment letter that the benefits of excluding White Mountain Apache Tribal lands from critical habitat will continue to: ''(1) Advance the Service's Federal Indian Trust obligations, deference for tribes to develop and implement tribal conservation and natural resources management plans for the lands and resources, which includes the Loach minnow and other federal trust species; (2) maintain the effective working relationship to promote the conservation of the Loach minnow and their habitats; (3) perpetuate a continued and meaningful collaboration and cooperation on the Loach minnow management and other resources of interest to the federal government; and (4) enhance the provision of conservation benefits to riparian ecosystems and a host of species, including the Loach minnow and their habitat, that might not otherwise occur.'' We agree with the White Mountain Apache Tribe's explanation regarding the benefits of exclusion.

Weighing Benefits of Exclusion Against Benefits of Inclusion—White Mountain Apache Tribe

The principal benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The jeopardy analysis evaluates the action's impact to survival and recovery of the species, while the destruction or adverse modification analysis evaluates the action's effects to the designated habitat's contribution to conservation. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone. However, for some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. Lands being evaluated for exclusion in this unit are occupied by both species and are subject to consultation requirements of the Act.

The White Mountain Apache Tribe clearly explained their sovereign authority to promulgate regulations and management plans to protect and manage Tribal trust lands, wildlife, forests, and other natural resources, and cited numerous authorities that confirm their authority over wildlife and other natural resources existing within their ancestral lands. In addition, they have shown a commitment to other federally listed species, such as the Mexican spotted owl (*Strix occidentalis lucida*) and the Arizona willow (*Salix arizonica*).

Based on our working relationship with the Tribe, their demonstration of conservation through past efforts, and the protective provisions of the Loach Minnow Management Plan, we conclude that the benefits of excluding the 29.0 km (18.0 mi) of the mainstem White River and 17.2 km (10.7 mi) of East Fork White River outweigh the benefits of including this area.

Exclusion Will Not Result in Extinction of the Species—White Mountain Apache Tribe

The current occupancy of streams on the White Mountain Apache Tribe are unknown due to the proprietary nature of Tribal survey information. However, the information contained in the management plan, as well as commitments to management through ordinances, codes, and the hiring of a sensitive species coordinator indicate that the White Mountain Apache Tribe has committed to management of loach minnow on their Tribal lands. While we continue to believe these stream segments are important to the conservation of the species and currently support one or more PCEs, we believe that commitments made by the White Mountain Apache Tribe in their management plan and comment letter ensure that habitat remains in these streams for loach minnow. We therefore believe that excluding those portions of the mainstem White River and East Fork White River will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude the 29.0 km (18.0 mi) of the mainstem White River and 17.2 km (10.7 mi) of East Fork White River on White Mountain Apache Tribal lands from the designations of critical habitat for spikedace and loach minnow.

San Carlos Apache Tribe—The San Carlos Apache Tribe submitted comments during the second comment period. Within their comment letter the Tribe notes that Traditional Ecological Knowledge (TEK) is ''* * * a key and fundamental principle of species conservation and land management on the Reservation,'' and that TEK uses an ecosystem-based approach to land and species management and preservation. The Tribe notes that use of TEK by Tribal government, Tribal leaders, Tribal elders, and the Apache people results in incorporation of adaptive management practices for land and species management and preservation. The Tribe also notes that jeopardizing the existence of any species would be counter to their beliefs, and that TEK was critical in the development of the 2005 Fishery Management Plan (FMP).

In their comment letter, the Tribe notes that the FMP does not specifically address loach minnow, but that both loach minnow and spikedace benefit from management actions in the FMP. The FMP was adopted in 2005, and has been actively implemented since that time on Tribal lands. Under the FMP, one management step taken to benefit spikedace and loach minnow is that the Tribe no longer stocks nonnative fishes in the Bonita Creek or Eagle Creek drainages (PCE 5). In addition, the Tribe is working with both the Service and the AGFD to complete additional survey work on Eagle Creek. The Tribe is currently discussing captive propagation of any spikedace or loach minnow found in Eagle Creek for future recovery purposes.

The Tribe notes that various departments are taking actions that benefit the species. The Recreation and Wildlife Department consults with other Tribal departments interested in restoration activities and, using the FMP, evaluates impacts on spikedace and loach minnow and their habitats and determines how to prevent or mitigate any impacts (PCE 1). The Soil and Moisture Conservation Department is developing a project for the removal of nonnative and invasive salt cedar and planting of native species, and has worked with the Recreational and Wildlife Department in applying the FMP to the proposal. The Recreation and Wildlife Department also surveys all proposed home and construction projects, and consults with the Tribal attorneys, providing information from the FMP for use in negotiating water exchanges and in determining mitigation measures for projects that may impact listed species or their habitat. Consultation with the Recreation and Wildlife Department is

for prescribed burns or thinning, and wildfire management actions are measured to ensure no net loss or permanent modification to spikedace and loach minnow habitat. The Tribe has also built fencing to exclude livestock grazing in riparian areas containing native fish or their habitats (PCE 1).

The Tribe's comment letter incorporated information from their FMP. The FMP has several goals relevant to native fish management, including development and implementation of integrated, watershed-based approaches to fishery resource management; conserving, enhancing, and maintaining existing native fish populations and their habitats as part of the natural diversity of the Reservation and preventing, minimizing, or mitigating adverse impacts to all native fishes, especially threatened or endangered, and their habitats when consistent with the Reservation as a permanent home and abiding place for San Carlos Apache Tribal members; restoring extirpated native fishes and degraded natural habitats when appropriate and economically feasible; increasing Tribal awareness of native fish conservation and values; and aggressively pursuing funding adequate to support all Tribal conservation and management activities for all native fishes and their habitats. Each of the goals has identified objectives, actions, and evaluations, which are incorporated here by reference (San Carlos Apache Tribe 2005, pp. 63–71).

Benefits of Inclusion—San Carlos Apache Tribe

Evidence of occupancy for Eagle Creek was most recently found in 1989 for spikedace and in 1997 for loach minnow in 1997 (ASU 2002). This area continues to support one or more of the PCEs for the two species. The benefits of including this stream within the designations include protecting an area with a long record of occupancy, and with perennial flows, as well as other PCEs. The length of perennial flows with suitable habitat parameters, historical occupancy, and current occupancy by both spikedace and loach minnow make Eagle Creek an area important to the conservation of both species. Eagle Creek was classified as a 1a stream for both species for these designations, indicating it was known to be occupied at listing.

The principal benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. A Federal nexus may exist for tribal projects such as land leases or water development through either the Bureau of Indian Affairs or the U.S. Army Corps of Engineers. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The jeopardy analysis evaluates the action's impact to survival and recovery of the species, while the destruction or adverse modification analysis evaluates the action's effects to the designated habitat's contribution to conservation. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone. However, for some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. Lands being evaluated for exclusion in this unit are occupied by both species and are subject to consultation requirements of the Act.

Public education is often another possible benefit of including lands in critical habitat as it may help focus conservation efforts on areas of high value for certain species. The Service will continue ongoing coordination with the San Carlos Apache Tribe for exchange of relevant information. However, we note that the San Carlos Apache Tribe, through their Recreation and Wildlife Department, surveys all proposed home and construction projects, and provides information from the FMP for use in negotiating water exchanges and in determining mitigation measures for projects that may impact listed species or their habitat. The Recreation and Wildlife Department therefore has an opportunity to provide information regarding the species and their habitat across the Reservation. In addition, per their comment letter, the San Carlos Apache Tribe has adopted an interdisciplinary team approach to all natural resources matters. The team works together to provide an ecosystem management approach in developing strategic plans and management plans. Through this team, Tribal members can be informed of steps necessary to conservation of spikedace and loach minnow and their habitat.

The designation of critical habitat may strengthen or reinforce some Federal laws, such as NEPA or the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental law. However, because the San Carlos Apache Tribe is fully aware of the sensitive species and habitat on their lands, designation of critical habitat is not necessary to heighten awareness when applying these laws.

Benefits of Exclusion—San Carlos Apache Tribe

Please see the discussion on Secretarial Order 3206, American Indian Tribal Rights, and Federal-Tribal Trust Responsibilities and the Endangered Species Act under ''*Benefits of Exclusion—Yavapai Apache Nation*'' above. As stated there, we seek to balance our responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to tribes and tribal sovereignty while ensuring that tribes do not bear a disproportionate burden for the conservation of listed species. We also believe that, to the maximum extent possible, tribes are the appropriate governmental entities to manage their lands and tribal trust resources, we are responsible for strengthening government-to-government relationships with tribes. We also note that Federal regulation through critical habitat designation can adversely affect the tribal working relationships we now have and which we are strengthening throughout the United States.

In the case of these critical habitat designations for spikedace and loach minnow, the San Carlos Apache Tribe notes in their comment letter that there is a unique and distinctive relationship between the United States and Indian Tribes, as defined by the Constitution, treaties, statutes, executive orders, and judicial decisions that differentiate tribes from other entities that work with or are affected by the Federal government. They note that, in recognition of the responsibilities and the relationship between the United States and Indian tribes, the Secretaries of Commerce and the Interior issued Secretarial Order 3206, which strives to ensure that Indian Tribes do not bear a disproportionate burden for the

conservation of listed species. They conclude that, oftentimes, tribal lands provide some of the better quality for federally protected species because the lands have not been subjected to the same development philosophies and pressures as those on non-tribal lands, and that tribal conservation practices, such as those established by the FMP, should be embraced, if not rewarded.

We believe there are significant benefits from exclusion of the portion of those portions of Eagle Creek on the San Carlos Apache Reservation. These benefits include:

(1) Continuing and strengthening of our ongoing coordination with the Tribe to promote conservation of spikedace and loach minnow and their habitat, as well as other federally listed species; and

(2) Allowing continued meaningful collaboration and cooperation in working toward recovering these species, including conservation actions that might not otherwise occur.

Because the San Carlos Apache Tribe is the entity that enforces protective regulations on Tribal trust reservation land, and because we have a working relationship with them, we believe exclusion of these lands will yield a significant partnership benefit. As noted, the San Carlos Apache Tribe is coordinating with the AGFD and the Service on surveys and captive propagation plans. We will continue to work cooperatively with the San Carlos Apache Nation on efforts to conserve spikedace and loach minnow. Therefore, excluding these lands from critical habitat would provide the benefit of maintaining and strengthening our existing conservation partnership.

Weighing Benefits of Exclusion Against Benefits of Inclusion—San Carlos Apache Tribe

As noted above, the San Carlos Apache Tribe has indicated a commitment to TEK, which uses an ecosystem-based approach to land and species management and preservation. In addition, they have developed the FMP, which benefits spikedace and loach minnow by discontinuing nonnative fish stocking in the Bonita Creek or Eagle Creek drainages. Further, the Tribe is working with both the Service and the AGFD to complete additional survey work on Eagle Creek, and is discussing captive propagation for spikedace and loach minnow.

The Tribe has focused on known areas of concern for the species management, and has discontinued stocking of nonnative fishes in the Bonita and Eagle Creek watersheds. The FMP contains goals of conserving and enhancing native fishes on the Reservation; restoring native fishes and their habitats; and preventing, minimizing or mitigating impacts to native fishes, among others. In addition, the Tribe has indicated that, through TEK, they practice an ecosystem-based approach to land-and-species based management and preservation. We conclude that the benefits to be gained through the FMP, coordination with the Service and AGFD, discontinuance of sportfish stocking, and proactive measures such as captive propagation all indicate that the San Carlos has committed to conservation measures that exceed benefits to be gained through a critical habitat designation. We, therefore, conclude that the benefits of excluding the 27.5 km (16.1 mi) of Eagle Creek on Tribal lands of the San Carlos Apache Tribe outweigh the benefits of including this area.

Exclusion Will Not Result in Extinction of the Species—San Carlos Apache Tribe

The Service considers Eagle Creek to be an occupied stream for both spikedace and loach minnow. The information provided by the San Carlos Apache Tribe regarding TEK and the FMP, as well as their discontinuance of sportfish stocking in the Eagle Creek watershed and continued coordination with the Service, will help to ensure that habitat remains in Eagle Creek for spikedace and loach minnow, and will reduce the potential for harm to the fish. We, therefore, believe that excluding those portions of Eagle Creek on the San Carlos Apache Reservation will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude the 27.5 km (16.1 mi) of Eagle Creek on Tribal lands of the San Carlos Apache Tribe from the designations of critical habitat for spikedace and loach minnow.

Freeport-McMoRan—Freeport-McMoRan provided two separate management plans during the second comment period. The first plan focuses on Eagle Creek and the San Francisco River in Arizona, while the second focuses on the Gila River, Mangas Creek, and Bear Creek in New Mexico. These two plans are evaluated separately below.

Background—Freeport-McMoRan is a member of the International Council on Mining and Minerals (ICMM). In their management plan for Eagle Creek and the San Francisco River, FMC notes that, as a member of ICMM, their parent company, FMC Copper & Gold Inc. (FCX), adheres to ten sustainable development principles, including integration of sustainable development considerations within the corporate decision making process; seeking continual improvement of our environmental performance; and contributing to conservation of biodiversity and integrated approaches to land use planning. In addition, FCM adhere to the ICMM requirement to report its performance against the Global Reporting Initiative (GRI) G3 metrics and identify/manage and report against key sustainable development risks and opportunities. As part of this effort, FCX annually establishes corporate Sustainable Development Performance Targets and reports progress against those targets in its annual *Working Towards Sustainable Development Report* (*See www.fcx.com*). In support of the company's efforts in implementing the ICMM Sustainable Development principles, FCX established a corporatewide Biodiversity Task Force in 2010. In accordance with these principles and reporting obligations, FMC has prepared these management plans to guide actions associated with the management of its lands along portions of Eagle Creek, the lower San Francisco River in Arizona, and portions of the Gila River, Bear Creek, and Mangas Creek in New Mexico. According to their management plans, it is FMC's intention, through implementation of these plans, to provide for the long-term protection and multiple use benefits of these natural systems.

FMC recognizes that the conservation of the spikedace, the loach minnow, and other native aquatic species is an important goal. In the southwest, FMC has funded studies and granted access to company land along Eagle Creek for many years, allowing the development of detailed information on the creek's native and nonnative fish communities. In addition, FMC has implemented a management system on its U–Bar Ranch, which is located along the upper Gila River in the vicinity of Cliff in Grant County, New Mexico. The Pacific Western Land Company (PWLC), a subsidiary of FMC, owns the U–Bar Ranch. Under FMC's existing management system, the riparian zone adjacent to the Gila River has expanded in width, benefitting the endangered southwestern willow flycatcher and other riparian species. Currently, the U–Bar Ranch supports one of the largest flycatcher populations in the Southwest. Freeport-McMoRan has been conducting surveys for flycatchers since 1994.

The land management practices that have allowed the flycatcher to flourish are compatible with the maintenance of spikedace and loach minnow habitat,

and the Gila/Cliff Valley segment of the Gila River currently supports the largest number of spikedace and loach minnow of any area within the species' ranges. In addition, surveys show that there are low levels of nonnative fishes in this stream segment. Freeport-McMoRan also has funded surveys for spikedace, loach minnow, and other fishes. Monitoring supported by FMC along Mangas Creek determined that, at that time, Mangas Creek supported only native fish species. Most of the lower 9.3 km (5.8 mi) of Mangas Creek is located on private land belonging to an FMC subsidiary, and has been grazed at moderate levels for decades.

Freeport-McMoRan has previously developed and implemented management plans for the conservation of listed species. In 2005, FMC prepared and submitted a plan to the Service for the management of the U-Bar Ranch, which supported exclusion of the FMC's land from the 2006 southwestern willow flycatcher critical habitat designation. The following year, FMC prepared and submitted management plans for the spikedace and loach minnow in Eagle Creek and in the upper Gila River, in the Gila/Cliff Valley. Those management plans supported the exclusion of FMC's land along Eagle Creek and the upper Gila River from the 2007 spikedace and loach minnow critical habitat designations.

Freeport-McMoRan has supported biological surveys for spikedace and loach minnow, as well as other species, on Eagle Creek for several years by allowing access to private lands to researchers, and also contracted with BIOME, a consulting firm, who provided assistance in completing surveys on Eagle Creek. During the 2007 critical habitat designation process, FMC developed management plans for Eagle Creek that involved monitoring the distribution and abundance of the loach minnow and spikedace in Eagle Creek passing through the FMC reach; providing the Service with reasonable notice of any significant changes to the water supply management system outside of historical operating parameters; making reasonable efforts to attend regularly scheduled fisheries management working group meetings; and continuing historical land use practices and water supply practices that enhance water flows in the FMC reach; and consideration of loach minnow and spikedace habitat when deviating from such historic management practices. In implementing these management plans, FMC provided annual reports to the Service regarding changes in management, or anticipated changes in management for the coming year. No changes were made to management during the time period covered by these plans.

Spikedace and Loach Minnow Management Plan—Eagle Creek and San Francisco River, Greenlee and Graham County, Arizona

Freeport-McMoRan owns land and water rights in the watersheds of both Eagle Creek and the San Francisco River, which are used in connection with the operation of the Morenci Mine near Clifton, Arizona. Under the current management plan, FMC will spend up to $4,000,000 over the next 10 years to investigate, design, and implement conservation measures along Eagle Creek upstream of its diversion dam and on the lower San Francisco River near Clifton, Arizona.

As part of the overall management plan, FMC has established a coordination process for review of all conservation measures. In order to ensure that their proposed projects are consistent and compatible with the goals and actions of the Gila River Basin Native Fishes Conservation Program (Native Fishes Program), under which much of the management of spikedace and loach minnow occurs, FMC will develop individual work plans and submit the plans to the Native Fishes Program Technical Committee during their annual project review period. This Committee consists of personnel from the Service, Bureau of Reclamation, USFS, Bureau of Land Management, New Mexico Department of Game and Fish, and the AGFD, all of whom are actively involved in native fish management. The purposes of the Native Fishes Program are: (1) to undertake conservation actions (recovery and protection) for Federal and state-listed or candidate fish species native to the Gila River Basin by implementing existing and future recovery plans for those fishes; and (2) to implement nonnative control activities to manage nonnative aquatic organisms where they interfere with native fish conservation activities, or provide funding for research in support of nonnative control actions. Freeport-McMoRan may revise work plans to meet comments received from the Native Fishes Program, or may respond to their recommendations and submit a final work plan to the Native Fishes Program. If necessary, FMC will meet with the Native Fishes Program to present revised work plans at that time.

As part of their management plan, FMC would submit a Safe Harbor Agreement and application for a permit pursuant to 50 CFR 17.22(c) which may also include a request for a permit under 50 CFR 17.22(d) and 17.32(d). The permit would address all listed fish species currently found in Eagle Creek and the San Francisco River, as well as other species that might be listed as threatened or endangered in the future. The Safe Harbor Agreement would be based on the conservation measures set forth in the management plan.

Eagle Creek. Eagle Creek was occupied by both species at listing, and is classified as a 1a stream under this designation. The management plan consists of four conservation measures, the first of which is investigation and construction of a fish passage barrier. Within their management plan, FMC commits to completing a feasibility study to determine three possible sites for the construction of a fish barrier above the Willow Creek confluence. Freeport-McMoRan has indicated that the area above Willow Creek is most suitable for a barrier due to the fact that nonnative fishes still enter Eagle Creek from the San Carlos Apache Reservation. Following review of the proposed sites by the Service, FMC will prepare a preliminary work plan that describes barrier construction, which will be submitted for review to the Native Fishes Program by September 1, 2014, using the coordination process described above. If the Native Fish Program finds the work plan acceptable, and if the barrier will cost $1.5 million or less, FMC will prepare an engineering study and prepare related documents for the fish barrier. Upon approval by the Native Fishes Program, FMC will secure required permits and approvals and build the fish barrier. For those portions of Eagle Creek upstream of the barrier, this conservation measure would be effective in addressing PCE #5, regarding no nonnative aquatic species, or levels of nonnative aquatic species that are sufficiently low as to allow persistence of spikedace and loach minnow.

The second conservation measure involves alternatives to barrier construction. Should barrier construction exceed $1.5 million in cost to build or be determined to be infeasible, FMC and the Service will develop other projects that will provide conservation benefits to spikedace and loach minnow in Eagle Creek and its tributaries. Alternative conservation measures, such as crayfish removal, and chemical treatment of the stream, or others that will contribute to the recovery of the two species, be technically sound and be implemented in a reasonable timeframe, and will not be redundant in scope with other projects will be considered. All alternative measures will be submitted

for review to the Native Fishes Program, as described above. Freeport-McMoRan will fund alternative projects not to exceed $1.5 million.

The third conservation measure is an exotic species removal study. Freeport-McMoRan will develop and implement a 3-year monitoring program to detect the presence of other types of invasive aquatic species (e.g., bullfrogs and crayfish) within the upper reach of Eagle Creek, and will investigate the practicability and cost of removal actions to suppress the populations of these species in the upper reach of Eagle Creek. The results of the study would be used to inform future management actions to remove nonnative species within Eagle Creek. This conservation measure would inform management agencies on how to better achieve PCE 5 regarding no nonnative aquatic species, or levels of nonnative aquatic species that are sufficiently low as to allow persistence of spikedace and loach minnow.

The fourth conservation measure is ecological monitoring for spikedace, loach minnow, and other warm water fish species. The Recovery Plans for both the spikedace and the loach minnow emphasize the need to consistently monitor the status of existing populations, including the establishment of standard monitoring locations and techniques, as well as investigate and quantify through field research the habitat needs of the species and effects of physical habitat modification (Service 1991a, pp.12–27; Service 1991b, pp. 11–27). Freeport-McMoRan will use the existing permanent sample locations that have been used in previous survey efforts, and will undertake a more robust monitoring program on both Eagle Creek and the lower reach of the San Francisco River, from its confluence with the Gila River upstream to its confluence with the Blue River. Monitoring will be conducted annually, with reports on information gathered provided to the Service and the Native Fishes Program. As part of this management plan, FMC will study and analyze the ecology of the loach minnow, spikedace, other native fish, and their habitat in Eagle Creek, including the relationship between native fish preferences for selected habitats and various associated environmental factors (e.g., substrates, channel characteristics, vegetation, and channel morphology). A key component of this effort will be the regular monitoring of PCEs within targeted stream segments that can affect the suitability of these streams for native fish and inform adaptive management decisions.

As mentioned earlier, in conjunction with the submission of the preliminary studies of possible fish barrier sites on Eagle Creek and the San Francisco River, FMC will submit a Safe Harbor Agreement and application for a permit pursuant to 50 CFR 17.22(c).

Benefits of Inclusion—Freeport-McMoRan at Eagle Creek

The principal benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The jeopardy analysis evaluates the action's impact to survival and recovery of the species, while the destruction or adverse modification analysis evaluates the action's effects to the designated habitat's contribution to conservation. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

However, for some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. Lands being evaluated for exclusion in this unit are occupied by both species and are subject to consultation requirements of the Act. Approximately 20.5 km (12.7 mi) of Eagle Creek are on Federal lands, and projects with a Federal nexus through permitting or funding on non-Federally owned areas along Eagle Creek may also require section 7 consultation. As proposed, the designation included 75.5 km (46.9 mi) of contiguous habitat. However, it should be noted that those portions on the San Carlos Apache Indian Reservation have been excluded under a separate management plan, as noted above, and that not all of the remaining 75.5 km (46.9 mi) occur on Federal lands or would have a Federal nexus for purposes of section 7 consultation.

All lands considered for exclusion are currently considered occupied by spikedace and loach minnow and will be subject to the consultation requirements of the Act in the future. Although a jeopardy and adverse modification analysis must satisfy two different standards, because any modifications to proposed actions resulting from a section 7 consultation to minimize or avoid impacts to spikedace and loach minnow would be habitat-based, it is difficult to differentiate measures implemented solely to minimize impacts to the critical habitat from those implemented to minimize impacts to the species. Therefore, in the case of spikedace and loach minnow, we believe the incremental benefits of critical habitat designation are minimal as compared to the conservation and regulatory benefits derived from the species being listed.

The Service has completed one consultation on a water diversion structure modification on FMC mining operations in the past. Generally, the mining operations have not resulted in consultation, as the Morenci Mine (as well as the Tyrone Mine) are not located adjacent to the stream channel. As noted in the water quality section above, spills associated with mines have occurred in spikedace and loach minnow habitat in the past. However, even absent a section 7 connection, other safeguards are in place, including water quality parameters and monitoring by the Arizona Department of Environmental Quality and the EPA. The Service also has an Environmental Contaminants Program and staff involved in identification of environmental contaminant problems affecting threatened and endangered species and other resources. Through this program, the Service identifies contaminant problems and pursues appropriate actions to eliminate contaminant threats and restore affected resources.

Public education is often cited as another possible benefit of including lands in critical habitat as it may help focus conservation efforts on areas of high value for certain species. Eagle Creek occurs in an isolated area; however, there are ranchers in the area, and the area is used for sportfishing by the general public. Designation of critical habitat could inform those who either live locally or use the area for recreation about listed species and their habitat needs. Freeport-McMoRan has indicated that this area is heavily used by employees of the Morenci Mine, and it is possible that a public outreach campaign could be used to educate

those who fish in the area about native fish species. Partnership efforts with FMC to conserve spikedace and loach minnow have resulted in awareness about the species that occur within the Eagle Creek. However, we believe there is little, if any, educational benefit attributable to critical habitat beyond those achieved from listing the species under the Act, and FMC's continued work in conserving these species.

The designation of critical habitat for spikedace and loach minnow within Eagle Creek may strengthen or reinforce some Federal laws, such as NEPA or the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws; however, the listing of these species, prior designations of critical habitat and consultations that have already occurred will provide this benefit. Therefore, in this case we view the regulatory benefit to be largely as redundant with the benefit the species will receive from listing under the Act and may only result in minimal additional benefits.

In summary, we do not believe that designating critical habitat within lands owned and managed by FMC along Eagle Creek will provide significant additional benefits for spikedace and loach minnow. Projects on these lands with a Federal nexus will require section 7 consultation with the Service (regardless of critical habitat designation) because the habitat is occupied and we believe the incremental benefit from critical habitat would be minimal. Furthermore, FMC continues to show a commitment to conservation of these species.

Benefits of Exclusion—Freeport-McMoRan at Eagle Creek

The significant benefit of exclusion of FMC owned lands which are subject to the management plan for the Eagle Creek is the maintenance and strengthening of the ongoing partnership with the Service. Freeport-McMoRan has demonstrated a partnership with the Service beginning with the management plan submitted to the Service in 2005 for the southwestern willow flycatcher, the 2007 management plans for spikedace and loach minnow, and they have indicated a willingness to continue as a partner to the Service in the conservation of spikedace and loach minnow on Eagle Creek. Evidence of this partnership can be shown through the assistance with past monitoring efforts for spikedace and loach minnow on Eagle Creek, carried out under their 2007 management plan, and the continued occupancy of Eagle Creek by spikedace and loach minnow. Additional evidence of the partnership between FMC and the Service is shown by FMC's past commitment in 2005 to develop and implement a management plan for southwestern willow flycatcher and their current commitment to pursue a safe harbor agreement for all native fish in Eagle Creek. In addition, the identified coordination procedures and funding indicate a commitment on the part of FMC to on-the-ground spikedace and loach minnow conservation. And, FMC has also identified monitoring and exotic species removal studies. Information gained by both studies would be useful in guiding future management of the species and in managing Eagle Creek. In summary, exclusion of this area from the designation would maintain, and strengthen the partnership between the Service and FMC. The exclusion of these lands may enhance opportunities to partner with other entities not yet identified.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Freeport-McMoRan at Eagle Creek

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of FMC owned lands along Eagle Creek as critical habitat for spikedace and loach minnow. We believe past, present, and future coordination with FMC has provided and will continue to provide sufficient education regarding spikedace and loach minnow habitat conservation needs on these lands, such that there would be minimal additional educational benefit from designation of critical habitat. Further, because any potential impacts to spikedace and loach minnow habitat from future projects with a Federal nexus will be addressed through a section 7 consultation with the Service under the jeopardy standard, we believe that the incremental conservation and regulatory benefit of designated critical habitat on Freeport-McMoRan owned lands would largely be redundant with the combined benefits of listing and existing management. Therefore, the incremental conservation and regulatory benefits of designating critical habitat on FMC owned lands along Eagle Creek are minimal.

On the other hand, the benefits of excluding FMC owned lands along Eagle Creek from critical habitat are significant. Freeport-McMoRan's management plan establishes a framework for cooperation and coordination with the Service in connection with resource management activities based on adaptive management principles, including, if necessary, the development of alternative conservations measures, at a total cost of up to $1,500,000 to protect habitat for spikedace and loach minnow on Eagle Creek. Most importantly, the management plans indicate a continuing commitment to ongoing management that has resulted in habitat that supports spikedace and loach minnow.

Exclusion of these lands from critical habitat will help preserve and strengthen the conservation partnership we have developed with FMC, reinforce those we are building with other entities, and foster future partnerships and development of management plans; whereas inclusion will negatively impact our relationships with FMC and other existing or future partners. We are committed to working with FMC to further the conservation of spikedace and loach minnow and other endangered and threatened species. Freeport-McMoRan will continue to implement their management plans and play an active role to protect spikedace and loach minnow and their habitat. Therefore, in consideration of the relevant impact to our partnership with FMC, and the ongoing conservation management practices of FMC, we determined the significant benefits of exclusion outweigh the benefits of inclusion in the critical habitat designation.

In summary, we find that excluding FMC owned lands along Eagle Creek from this final critical habitat will preserve our partnership and may foster future habitat management and species conservation plans with FMC and with other entities now and in the future. These partnership benefits are significant and outweigh the minimal additional regulatory and educational benefits of including these lands in final critical habitat for spikedace and loach minnow.

Exclusion Will Not Result in Extinction of the Species—Eagle Creek

We have determined that the exclusion of 21.4 km (13.3 mi) of FMC owned lands along Eagle Creek from the designation of critical habitat for spikedace and loach minnow will not result in the extinction of either species. The jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process due to spikedace and loach minnow occupancy provide assurances that this species will not go extinct as a result of excluding these lands from the critical habitat designation. Therefore, based on the

above discussion, the Secretary is exercising his discretion to exclude approximately of 21.4 km (13.3 mi) of FMC owned lands along Eagle Creek from the designation of critical habitat for spikedace and loach minnow.

San Francisco River. The San Francisco River was not occupied by spikedace at listing, and is classified as a 2b stream for spikedace, indicating it would serve as an expansion of the species' range. Spikedace were reintroduced into the San Francisco River in 2007; however, insufficient time has elapsed to determine if the reintroduction program will be a success. The San Francisco River was occupied at listing by loach minnow and is currently occupied, and is therefore classified as a 1a stream under this designation.

Freeport-McMoRan notes that they are the primary private property owner along the lower reach of the San Francisco River in Arizona. Under the Eagle Creek and San Francisco River Management Plan, FMC proposes to spend $2,500,000 on the San Francisco River. The coordination process with the Native Fishes Program, as detailed above, would apply to conservation measures for the San Francisco River as well.

The management plan describes the lower reach of the San Francisco River as a well-known sport fishery, with channel catfish, carp, and red shiner. For the San Francisco River, FMC's management plan proposes completing a feasibility study to evaluate three potential barrier sites. Provided that a suitable barrier site is found, FMC will prepare a preliminary work plan following the coordination procedures outlined above, and will submit it to the Service for review and comment, and then to the Native Fishes Program by September 1, 2014.

If approved by the Native Fish Program, and provided the cost does not exceed $2,500,000, FMC will construct a barrier on the San Francisco River with the goal of completing construction in 5 years. Freeport-McMoRan will report progress on the report semi-annually until barrier construction is complete. For those portions of the San Francisco River upstream of the barrier, this conservation measure would be effective in addressing PCE #5, regarding no nonnative aquatic species, or levels of nonnative aquatic species that are sufficiently low as to allow persistence of spikedace and loach minnow.

As with Eagle Creek, should barrier construction costs be estimated to exceed $2,500,000, if barrier construction is deemed infeasible, or if the Native Fish Program determines that it is not advisable to construct a fish barrier, FMC commits in the management plan to conferring in good faith with the Service to identify other projects that will provide conservation benefits to spikedace and loach minnows in the San Francisco River and its tributaries. Any identified conservation measures would contribute to the recovery of the two species, would be technically sound and able to be implemented in a reasonable timeframe, and would not be redundant in scope. Any alternative proposals developed would be reviewed through the coordination process described above, and FMC commits to paying $2,500,000 for the development, review, and implementation of conservation measures, including any expenditures to investigate the feasibility of a fish barrier.

In addition, FMC commits in the management plan to implementing a detailed monitoring program along the lower reach of the San Francisco River to assist in the conservation of spikedace and loach minnow. As noted above, the Recovery Plans for both the spikedace and the loach minnow emphasize the need to consistently monitor the status of existing populations, including the establishment of standard monitoring locations and techniques, as well as investigating and quantifying through field research the habitat needs of the species and effects of physical habitat modification (Service 1991a, pp. 12–27; Service 1991b, pp. 11–27). There is no regular monitoring of the portions of the San Francisco River in Arizona at this time. The monitoring program would include a minimum of 15 permanent sample locations. As with Eagle Creek, standardized sampling techniques and protocols would be used, and the management plan contains additional detail on equipment and procedures.

Freeport-McMoRan commits to providing an annual report to the Service regarding its implementation of the management plan. The report will provide a description of implementation of plan elements over the course of the previous year and discuss anticipated implementation for the coming year. Each year's report would be provided to the Service by April of the following year.

Benefits of Inclusion—Freeport-McMoRan on the San Francisco River

The principal benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The jeopardy analysis evaluates the action's impact to survival and recovery of the species, while the destruction or adverse modification analysis evaluates the action's effects to the designated habitat's contribution to conservation. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone. However, for some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. Lands being evaluated for exclusion in this unit are occupied by loach minnow (and possibly by spikedace, if the translocation efforts are successful) and are subject to consultation requirements of the Act. Approximately 13.2 km (8.2 mi) of those portions of the San Francisco River covered by the management plan are on Federal lands, and projects impacting other non-Federally owned areas may require section 7 consultation for impacts to critical habitat if they require Federal permitting or use Federal funds.

It is possible that projects impacting other non-Federally owned areas may require section 7 consultation for impacts to critical habitat if they require Federal permitting or use Federal funds. However, we do not anticipate there being many consultations along FMC's lands on the San Francisco River due to the lack of a Federal nexus and due to the lack of a history of consultations. Due to the lack of consultations in these areas, we conclude the benefit of inclusion based on consultation requirements under the Act is reduced.

All lands considered for exclusion are currently considered occupied by loach minnow and will be subject to the consultation requirements of the Act in the future. Although a jeopardy and adverse modification analysis must satisfy two different standards, because any modifications to proposed actions resulting from a section 7 consultation

to minimize or avoid impacts to loach minnow would be habitat-based, it is difficult to differentiate measures implemented solely to minimize impacts to the critical habitat from those implemented to minimize impacts to the species. Therefore, in the case of spikedace and loach minnow, we believe the incremental benefits of critical habitat designation are minimal as compared to the conservation and regulatory benefits derived from the species being listed.

Public education is often cited as another possible benefit of including lands in critical habitat as it may help focus conservation efforts on areas of high value for certain species. The San Francisco River occurs near the towns of Clifton and Morenci. The area is currently heavily used for sportfishing by the general public, and designation of critical habitat could inform those who either live locally or use the area for recreation about listed species and their habitat needs. Partnership efforts with FMC to conserve spikedace and loach minnow have resulted in awareness about the species that occur within the San Francisco River. However, we believe there is little, if any, educational benefit attributable to critical habitat beyond those achieved from listing the species under the Act, and FMC's continued work in conserving these species.

The designation of critical habitat for spikedace and loach minnow within the San Francisco River may strengthen or reinforce some Federal laws, such as NEPA or the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws; however, the listing of these species, prior designations of critical habitat, and consultations that have already occurred will provide this benefit. Therefore, in this case we view the regulatory benefit to be largely redundant with the benefit the species will receive from listing under the Act and may only result in minimal additional benefits.

In summary, we do not believe that designating critical habitat within lands owned and managed by FMC along the San Francisco River will provide significant additional benefits for spikedace and loach minnow. Projects on these lands with a Federal nexus will require section 7 consultation with the Service (regardless of critical habitat designation) because the habitat is occupied and we believe the incremental benefit from critical habitat would be minimal. However, due to the lack of a consultation history along the San Francisco River, the benefits of inclusion that stem from consultation requirements under the Act are reduced. Furthermore, FMC continues to show a commitment to conservation of these species through the development and implementation of the management plans which cover the San Francisco River for spikedace and loach minnow.

Benefits of Exclusion—Freeport-McMoRan on the San Francisco River

The significant benefit of exclusion of FMC owned lands which are subject to the management plan for the San Francisco River is the maintenance and strengthening of the ongoing partnership with the Service. Freeport-McMoRan has demonstrated a partnership with the Service beginning with the management plan submitted to the Service in 2005 for the southwestern willow flycatcher, the 2007 management plans for spikedace and loach minnow, and they have indicated a willingness to continue as a partner to the Service in the conservation of spikedace and loach minnow on San Francisco River. Evidence of this partnership can be shown through the past monitoring efforts for spikedace and loach minnow on Eagle Creek, carried out under their 2007 management plan. Additional evidence of the partnership between FMC and the Service is shown by FMC's past commitment in 2005 to develop and implement a management plan for southwestern willow flycatcher and their current commitment to pursue a safe harbor agreement for all native fish in the San Francisco River. In addition, the identified coordination procedures and funding indicate a commitment on the part of FMC to on-the-ground spikedace and loach minnow conservation. Finally, Freeport-McMoRan has demonstrated a commitment to the 2007 management plans, and indicated a willingness to continue as a partner to the Service in the conservation of spikedace and loach minnow in the San Francisco River. Excluding the San Francisco River would promote that partnership. The identified coordination procedures and funding indicate a commitment on the part of FMC to on-the-ground spikedace and loach minnow conservation. And, FMC has also identified increased monitoring on the San Francisco River. The lower portions of the San Francisco River have been surveyed with less frequency and regularity than most spikedace and loach minnow streams. The commitment to monitoring in the management plan would assist conservation management efforts for the species. In summary, exclusion of this area from the designation would maintain, and strengthen the partnership between the Service and FMC. The exclusion of these lands may enhance opportunities to partner with other entities not yet identified.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Freeport-McMoRan on the San Francisco River

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of FMC owned lands along the San Francisco River as critical habitat for spikedace and loach minnow. We believe past, present, and future coordination with FMC has provided and will continue to provide sufficient education regarding spikedace and loach minnow habitat conservation needs on these lands, such that there would be no additional educational benefit from designation of critical habitat. Further, because any potential impacts to spikedace and loach minnow habitat from future projects with a Federal nexus will be addressed through a section 7 consultation with the Service under the jeopardy standard, we believe that the incremental conservation and regulatory benefit of designated critical habitat on FMC owned lands would largely be redundant with the combined benefits of listing and existing management. Therefore, the incremental conservation and regulatory benefits of designating critical habitat on FMC owned lands along the San Francisco River are minimal.

On the other hand, the benefits of excluding FMC owned lands along the San Francisco River from critical habitat are significant. Freeport-McMoRan's management plan establishes a framework for cooperation and coordination with the Service in connection with resource management activities based on adaptive management principles, including, if necessary, the development of alternative conservations measures, at a total cost of up to $2,500,000 to protect habitat for spikedace and loach minnow on the San Francisco River. Most importantly, the management plans indicate a continuing commitment to ongoing management that has resulted in habitat that supports spikedace and loach minnow.

Exclusion of these lands from critical habitat will help preserve and strengthen the conservation partnership we have developed with FMC, reinforce those we are building with other entities, and foster future partnerships and development of management plans; whereas inclusion will negatively impact our relationships with FMC and

other existing or future partners. We are committed to working with FMC to further the conservation of spikedace and loach minnow and other endangered and threatened species. Freeport-McMoRan will continue to implement their management plans and play an active role to protect spikedace and loach minnow and their habitat. Therefore, in consideration of the relevant impact to our partnership with FMC, and the ongoing conservation management practices of FMC, we determined the significant benefits of exclusion outweigh the benefits of inclusion in the critical habitat designation.

In summary, we find that excluding FMC owned lands along the San Francisco River from this final critical habitat will preserve our partnership and may foster future habitat management and species conservation plans with FMC and with other entities now and in the future. These partnership benefits are significant and outweigh the minimal additional regulatory and educational benefits of including these lands in final critical habitat for spikedace and loach minnow.

Exclusion Will Not Result in Extinction of the Species—San Francisco River

We have determined that the exclusion of 14.1 km (8.8 mi) FMC owned lands along the San Francisco River from the designation of critical habitat for spikedace and loach minnow will not result in the extinction of either species. The jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process due to loach minnow occupancy (and spikedace if the translocation efforts are successful) provide assurances that this species will not go extinct as a result of excluding these lands from the critical habitat designation. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 14.1 km (8.8 mi) of FMC owned lands along the San Francisco River from the designation of critical habitat for spikedace and loach minnow.

Spikedace and Loach Minnow Management Plan—Upper Gila River, Including Bear Creek and Mangas Creek, Grant County, New Mexico

Freeport-McMoRan provided this management plan during the second comment period. Freeport-McMoRan currently owns more than 11.5 km (7.2 mi) along the Gila River, approximately 7.9 km (4.9 mi) along Mangas Creek, and approximately 1.9 km (1.2 mi) along Bear Creek. Much of this area is owned by the Pacific Western Land Company (PWLC), a subsidiary of FMC, and is included in the U-Bar Ranch. Freeport-McMoRan's land and water rights in the Gila/Cliff Valley support operations at the Tyrone Mine in addition to its agricultural operations along the Gila River. Freeport-McMoRan diverts water from the Gila River for use at the Tyrone Mine located southwest of Silver City, New Mexico. Their water right includes a diversion structure on the Gila River above its confluence with Mangas Creek, which diverts water into a canal. A pump station moves water from the canal to the Bill Evans Reservoir, and water is pumped from the reservoir through a 35.4-km (22-mi) pipeline to the Tyrone Mine. The Bill Evans Reservoir is managed by the NMDGF as a recreational facility, and stocked with sportfish. The Reservoir is separated from the active stream channel.

Freeport-McMoRan's management plan provides background on steps taken by FMC for environmental management in this region in general, as well as conservation measures for spikedace and loach minnow. One such measure is FMC's participation in a voluntary water conservation program administered by the New Mexico Office of the State Engineer (OSE). Under this program, FMC has enrolled 2,876 acre feet of its annual average diversion rights through 2018. The program allows FMC to increase or decrease the amount of water rights that are restricted from diversion and consumptive use on an annual basis, depending on their current water needs.

As detailed in the plan, this portion of the Gila River maintains a healthy stream and riparian system, and supports the largest populations of spikedace and loach minnow in the two species' ranges. The river in this area is perennial, and has very low levels of nonnative fishes. Under the plan, FMC will continue participation in the water conservation program noted above, and commits to re-enrolling to continue their participation in the water conservation program should their enrollment lapse during the life of the management plan.

The management plan would also maintain minimum flow levels in the Gila River during periods of drought. Specifically, FMC will not divert water from the Gila River at the Bill Evans Reservoir diversion structure into the reservoir if both of the following conditions exist: (1) The Gila River is flowing at less than 25 cfs at the USGS Gage 09431500 near Redrock, New Mexico; and (2) the water level in Bill Evans Reservoir is at 1,424 meters (4,672 feet) above sea level. Should Gila River flows be less than 25 cfs, but the reservoir levels fall below 1,424 meters (4,672 feet), FMC will consult with the NMDGF regarding a temporary curtailment of water. Freeport-McMoRan concludes that the 25 cfs trigger will ensure that FMC diversions do not cause the river to dry up during low-flow conditions. Should FMC need to modify its water use and diversion activities due to unanticipated circumstances, they will confer with FWS regarding the impacts of such changes for the purpose of developing alternative conservation measures. Should such measures be needed, FMC commits to spending up to $500,000 for these measures. This measure would assist in maintaining perennial flows, as described under PCE 4.

Freeport-McMoRan has funded monitoring on Mangas Creek and the Gila River in the past, and commits to funding surveys on these two streams on a biennial basis, and furnishing the results of the surveys to the Service. The Recovery Plans for both the spikedace and the loach minnow emphasize the need to consistently monitor the status of existing populations, including the establishment of standard monitoring locations and techniques, as well as investigating and quantifying through field research the habitat needs of the species and effects of physical habitat modification (Service 1991a; Service 1991b). In addition, FMC will develop and implement a program to detect and remove crayfish from Mangas Creek. Removal of this nonnative aquatic species would help in improving habitat conditions for spikedace and loach minnow by reducing/minimizing the number of nonnative aquatic species as described in PCE 5.

Freeport-McMoRan commits to making a reasonable effort to coordinate with other landowners in the Gila/Cliff Valley regarding conservation-related issues and activities. They will ask that neighboring landowners assist in FMC's conservation efforts, and will provide assistance to neighboring landowners who wish to implement conservation measures. Freeport-McMoRan will also confer with the Service regarding activities that might be undertaken to increase public awareness of the habitat needs of spikedace and loach minnow.

The management plan contains provisions for reporting requirements, as well as for adaptive management. For reporting requirements, FMC notes that they will provide an annual report to the Service discussing implementation of the management plan, which will include information affirming plan implementation; note any changes from

historic operating parameters; and discuss anticipated implementation of the plan for upcoming years. Reports will be submitted each year by April 1 for the previous year.

With respect to adaptive management, FMC anticipates that operational requirements may require modification of its land and water use in the Gila/Cliff Valley, or that future surveys and monitoring activities could detect significant changes in the native and nonnative fish populations or key habitat parameters, indicating that an alternative conservation measure is needed to protect spikedace and low minnow. They commit to conferring in good faith in the development of alternative conservation measures and, as noted above, will spend up to $500,000 on these measures.

For Bear Creek, FMC indicates that they will continue to discourage trespass on their lands in the lower portions of Bear Creek, which can aid in maintaining or improving water quality by minimizing sedimentation. In addition, the management plan states that FMC will continue its existing land uses and management practices in the Gila/Cliff Valley. The lower portions of Bear Creek included in the management plan are part of the U-Bar Ranch and managed by an FMC subsidiary. Freeport-McMoRan notes that they will continue their existing land uses and management practices on this property, unless unanticipated circumstances arise that necessitate changes. In such an event, FMC would provide the Service with notice of any significant changes in land use and management practices that are outside the range of the historic operating parameters they provide in the management plan, and discuss potential impacts to loach minnow.

We conclude that the management plans provide benefits to spikedace and loach minnow that are equivalent to those that would be provided by critical habitat designation. Under FMC's past and current management, portions of the Gila River and Mangas Creek continue to support the largest numbers of spikedace and loach minnow in their range. Nonnative species currently appear to be at levels that have a minimal impact on native species in the Gila River, and are currently nonexistent in Mangas Creek, meeting PCE 5 for these streams. Freeport-McMoRan has made a commitment to maintaining perennial flows in the Gila River downstream of their diversion. Should the situation change, FMC has committed to meeting with the Service to develop additional conservation measures, and has dedicated funding in the amount of $500,000 to this task. The management plan details reporting requirements and effective dates for the initiation of the plan.

Benefits of Inclusion—Freeport-McMoRan on the Gila River, Mangas Creek, and Bear Creek

The principal benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The jeopardy analysis evaluates the action's impact to survival and recovery of the species, while the destruction or adverse modification analysis evaluates the action's effects to the designated habitat's contribution to conservation. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

However, for some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. Lands being evaluated for exclusion in this unit are occupied by both species and are subject to consultation requirements of the Act. Within the stream reach managed by FMC, only approximately 0.25 mile is managed by BLM, while the remainder of this reach is private or State owned. It is possible that projects impacting other non-Federally owned areas may require section 7 consultation for impacts to critical habitat if they require Federal permitting or use Federal funds. However, we do not anticipate there being many consultations along the Gila River, Mangas Creek, and Bear Creek due to the lack of a Federal nexus and due to the lack of a history of consultations. Due to the lack of consultations in these areas, we conclude the benefit of inclusion based on consultation requirements under the Act is reduced.

All lands considered for exclusion are currently considered occupied by either spikedace or loach minnow and will be subject to the consultation requirements of the Act in the future. Although a jeopardy and adverse modification analysis must satisfy two different standards, because any modifications to proposed actions resulting from a section 7 consultation to minimize or avoid impacts to spikedace and loach minnow would be habitat-based, it is not possible to differentiate any measures implemented solely to minimize impacts to the critical habitat from those implemented to minimize impacts to the species. Therefore, in the case of spikedace and loach minnow, we believe the incremental benefits of critical habitat designation are minimal as compared to the conservation and regulatory benefits derived from the species being listed.

Public education is often cited as another possible benefit of including lands in critical habitat as it may help focus conservation efforts on areas of high value for certain species. Partnership efforts with FMC to conserve spikedace and loach minnow have resulted in awareness about the species that occur within the Gila River, Mangas Creek, and Bear Creek. However, we believe there is little, if any, educational benefit attributable to critical habitat beyond those achieved from listing the species under the Act and FMC's continued work in conserving these species.

The designation of critical habitat for spikedace and loach minnow within the Gila River, Mangas Creek, and Bear Creek may strengthen or reinforce some Federal laws, such as NEPA or the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws; however, the listing of these species, prior designations of critical habitat and consultations that have already occurred will provide this benefit. Therefore, in this case we view the regulatory benefit to be largely as redundant with the benefit the species will receive from listing under the Act and may only result in minimal additional benefits.

In summary, we do not believe that designating critical habitat within lands owned and managed by FMC along the Gila River, Mangas Creek, and Bear Creek will provide significant additional benefits for spikedace and loach minnow. Projects on these lands with a Federal nexus will require section 7 consultation with the Service

(regardless of critical habitat designation) because the habitat is occupied and we believe the incremental benefit from critical habitat would be minimal. However, due to the lack of a consultation history along the Gila River, Mangas Creek, and Bear Creek, the benefits of inclusion that stem from consultation requirements under the Act are reduced. Furthermore, FMC continues to show a commitment to conservation of these species through the development and implementation of the management plans which cover the Gila River, Mangas Creek, and Bear Creek for spikedace and loach minnow.

Benefits of Exclusion—Freeport-McMoRan on the Gila River, Mangas Creek, and Bear Creek

The significant benefits of exclusion of FMC owned lands that are subject to the management plan for the Gila River, Mangas Creek, and Bear Creek is the maintenance and strengthening of the ongoing partnership with the Service. Freeport-McMoRan has demonstrated a partnership with the Service beginning with the management plan submitted to the Service in 2005 for the southwestern willow flycatcher, and the 2007 management plans for spikedace and loach minnow, and they have indicated a willingness to continue as a partner to the Service in the conservation of spikedace and loach minnow on the Gila River, Mangas Creek, and Bear Creek. Freeport-McMoRan has demonstrated a commitment to this partnership through conservation in this area by voluntarily enrolling in a water conservation program with the OSE for which they have dedicated 2,876 af of water that may be used for nonconsumptive purposes.

Evidence of this partnership can be shown through the management of those portions of the Gila River, Mangas Creek, and Bear Creek on FMC lands, which has resulted in expansion of riparian areas that provide suitable habitat for spikedace and loach minnow. Additional evidence of the partnership between FMC and the Service is shown by FMC's commitment to provide for adaptive management, such that should FMC need to modify its water use and diversion activities due to unanticipated circumstances, they will confer with the Service regarding the impacts of such changes and will adopt alternative conservation measures not to exceed $500,000 in cost. Exclusion of this area from the designation would maintain, and strengthen the partnership between the Service and FMC. The exclusion of these lands may enhance opportunities to partner with other entities not yet identified.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Freeport-McMoRan on the Gila River, Mangas Creek, and Bear Creek

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of FMC-owned lands along the Gila River, Mangas Creek, and Bear Creek as critical habitat for spikedace and loach minnow. We believe past, present, and future coordination with FMC has provided and will continue to provide sufficient education regarding spikedace and loach minnow habitat conservation needs on these lands, such that there would be minimal additional educational benefit from designation of critical habitat. Further, because any potential impacts to spikedace and loach minnow habitat from future projects with a Federal nexus will be addressed through a section 7 consultation with the Service under the jeopardy standard, we believe that the incremental conservation and regulatory benefit of designated critical habitat on FMC-owned lands would largely be redundant with the combined benefits of listing and existing management. Therefore, the incremental conservation and regulatory benefits of designating critical habitat on FMC owned lands along the San Francisco River are minimal.

On the other hand, the benefits of excluding FMC-owned lands along the Gila River, Mangas Creek, and Bear Creek from critical habitat are significant. Freeport-McMoRan's management plan establishes a framework for cooperation and coordination with the Service in connection with resource management activities based on adaptive management principles. Most importantly, the management plans indicate a continuing commitment to ongoing management that has resulted in habitat that supports spikedace and loach minnow. Exclusion of these lands from critical habitat will help preserve and strengthen the conservation partnership we have developed with FMC, reinforce those we are building with other entities, and foster future partnerships and development of management plans whereas inclusion will negatively impact our relationships with FMC and other existing or future partners. We are committed to working with FMC to further the conservation of spikedace and loach minnow and other endangered and threatened species. Freeport-McMoRan will continue to implement their management plans and play an active role to protect spikedace and loach minnow and their habitat. Therefore, in consideration of the relevant impact to our partnership with FMC, and the ongoing conservation management practices of FMC, we determined that the significant benefits of exclusion outweigh the benefits of inclusion in the critical habitat designation.

In summary, we find that excluding FMC-owned lands along the Gila River, Mangas Creek, and Bear Creek from this final critical habitat will preserve our partnership and may foster future habitat management and species conservation plans with FMC and with other entities now and in the future. These partnership benefits are significant and outweigh the minimal additional regulatory and educational benefits of including these lands in final critical habitat for spikedace and loach minnow.

Exclusion Will Not Result in Extinction of the Species—Gila River, Bear and Mangas Creek

We have determined that the exclusion of 20.3 km (13.3 mi) FMC owned lands along the Gila River, Mangas Creek, and Bear Creek from the designation of critical habitat for spikedace and loach minnow will not result in the extinction of either species. The jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process due to spikedace and loach minnow occupancy provide assurances that this species will not go extinct as a result of excluding these lands from the critical habitat designation. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 20.3 km (13.3 mi) of FMC-owned lands along the Gila River, Mangas Creek, and Bear Creek from the designation of critical habitat for spikedace and loach minnow.

Summary of Comments and Responses

We requested written comments from the public on the proposed designations of critical habitat for the spikedace and the loach minnow during two comment periods. The first comment period was associated with the publication of the proposed rule opened on October 28, 2010 (75 FR 66482) and closed on December 27, 2010. The second notice reopening the comment period opened on October 4, 2011, (76 FR 61330) and closed on November 3, 2011. We held a public hearing on October 17, 2011. We also contacted appropriate Federal, State, and local agencies; scientific organizations; peer reviewers, and other interested parties and invited them to

comment on the proposed rule and draft economic and environmental analyses during these comment periods.

During the first comment period we received 36 comment letters directly addressing the proposed critical habitat designations. During the second comment period we received 25 comment letters addressing the proposed critical habitat designations or the draft economic and environmental analyses. No individuals or organizations made comments on the proposed designations of critical habitat or the analyses for the spikedace and loach minnow during the October 17, 2011, public hearing, All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below. Comments received were grouped into four general issues specifically relating to reclassification for spikedace and loach minnow and the proposed critical habitat designations and are addressed in the following summary.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from 13 knowledgeable individuals outside the Service with scientific expertise to review our technical assumptions, interpretations of biology, and use of ecological principles with respect to the spikedace and loach minnow, and our analysis of the primary constituent elements (PCEs) and areas essential to the conservation of these species. We also asked for review on our adherence to regulations related to species reclassification and the critical habitat designations, and on whether or not we had used the best available information. We received responses from 6 of the 13 peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding threats to critical habitat for the spikedace and loach minnow. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat and reclassification rule. One peer reviewer noted that the literature cited contained a thorough listing of relevant reports and other literature relating to species status reclassification and critical habitat designation, which represents the best available scientific information to the best of the reviewer's knowledge. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* The reviewer stated that the term ''reasonably occupied'' in the proposed rule is not clear; suggest using the term ''occupied by the species at the time of listing.''

Our Response: In the October 4, 2011, NOA (76 FR 61330), we stated that, in order to improve clarity, we were revising the definition of occupied to include those areas identified as occupied for each species in the original listing documents, as well as any additional areas determined to be occupied after 1986. Our reasoning for including these additional, post-1986 areas is that it is likely that those areas were occupied at the time of the original listings, but had not been detected in surveys due to minimal or no survey efforts in some areas; low capture efficiencies associated with seining, and their small size. This language from the NOA has been incorporated into the final rule.

(2) *Comment:* The water temperature discussion should address the effects of shading on water temperature, including how water temperature would be affected by reductions in streambank vegetation. Belsky *et al.* 1999, Larson and Larson 1996, LeBlank *et al.* 1997, and Rutherford *et al.* 2004 were provided as potential sources of information for this discussion.

Our Response: We reviewed and added literature to address the possible increase in water temperatures as a result of the loss of vegetation by wildfire and recreation. Specifically, we added information indicating that indirect effects of wildfire, such as increases in stream temperatures, can last for several years to more than a decade after the fire.

(3) *Comment:* The term ''essential feature'' is used in the document, but is not defined. The peer reviewer noted that they would assume this means physical and biological features ''essential to the conservation of the species.''

Our Response: We have changed the language at the first use of essential feature to read ''essential feature to the conservation of the species.''

(4) *Comment:* Although the criteria for designating critical habitat are well described in the proposed rule, they seem overly focused on historical and present occupancy standards and do not always take into account how the species could best be recovered. For example, failing to consider designation of critical habitat within the Agua Fria drainage simply due to rejection of its single historical collection locality seems imprudent without more thoughtful deliberation.

Our Response: Please see page 66518, column 1 of the proposed rule. The Agua Fria was not included in the designation for spikedace for several reasons as stated there, including its location on the western edge of the species' range, and its relatively short stretches of perennial flows that enter the Lake Pleasant reservoir. Even with those conditions, we may have designated the Agua Fria had it served as an extension to any other spikedace area; however, it does not connect to any other occupied area. We do note elsewhere in the proposed rule (see page 66496, column 2) and the NOA (see page 61330) that we recognize that we have not necessarily included all areas that may be needed for recovery, and that other areas may be considered important for the species conservation by species managers or the Spikedace and Loach Minnow Recovery Team in the future. Page 66493, column 3 of the proposed rule further notes that critical habitat designations made on the basis of the best available information at the time of designations will not control the direction and substance of future recovery plans.

(5) *Comment:* It would seem that future designations of critical habitat should first be drafted by recovery teams to ensure that the entire process of recovery planning is comprehensively integrated and will produce the best possible chance of overall success.

Our Response: We agree. In the 1994 designation of critical habitat, the recovery plans from 1991 were in place to guide the designation. We used a revised and updated recovery outline to guide the current designation. There is no requirement in the Act that recovery plans need to be in place before critical habitat is designated, but we agree that recovery plans can be useful for critical habitat designations.

(6) *Comment:* The proposed rule states (page 66504, column 3) that all areas proposed for designation contain the physical and biological features (PBFs) for spikedace and loach minnow. However, on prior pages one PBF is defined as ''habitat devoid of nonnative aquatic species, or habitat in which nonnative aquatic species are at levels that allow persistence of spikedace and loach minnow.'' This is probably not true for most of the designation reaches, and actions such as barrier construction, chemical renovations upstream, and species augmentation or repatriations to achieve this PCE will be exceedingly difficult to implement. The document

falls short in its discussion of the intricacies associated with this PCE and the critical importance it has toward recovery of both species.

Our Response: Both the proposed and final rules provide a lengthy discussion of the impacts on spikedace and loach minnow from nonnative fishes. In addition, the descriptions of the streams throughout the document note the presence of nonnatives. In the final rule, we have added a section discussing the interaction between altered flow regimes and nonnatives. We recognize that nonnative aquatic species are a persistent threat throughout much, if not all, of the two species' ranges. Two facts about the PBFs are important to note. First, as written, the PCE on nonnatives is ''No nonnative aquatic species, or levels of nonnative aquatic species that are sufficiently low as to allow persistence'' of spikedace or loach minnow. It is not required that nonnative aquatic species be absent. Second, we look for one or more PBFs within a given unit in order to include it within the designations. In other words, a stream segment does not need to have all the PCEs in order to be designated as critical habitat.

(7) *Comment:* The potential for establishment of spikedace and loach minnow in Fossil Creek is much higher above the barrier than below, in the area proposed as critical habitat.

Our Response: Following review of comments received during the two comment periods, as well as new information received on the presence of spikedace, we have amended the area included within the designations to include that portion of Fossil Creek from its confluence with the Verde River, past and upstream of the barrier up to the old Fossil Diversion Dam. Please see the discussion under the section on ''Summary of Changes from Proposed Rule'' above for more detail.

(8) *Comment:* For Spring and Rock creeks in the Tonto River basin there was not enough justification provided to explain why spikedace was included but loach minnow was not. The chances of reestablishing both species are equal. It is not possible to accurately predict the outcome of the Rock and Spring Creeks translocation effort, and an a priori exclusion seems illogical and ill-advised.

Our Response: Please refer to the ruleset described in both the proposed rule and this final rule. Because there are no loach minnow known from Tonto Creek, Rock Creek, Spring Creek, Rye Creek, or Greenback Creek, these areas do not meet the category 1a criterion under the ruleset for occupied at the time of listing. Because none of these streams are tributary to an occupied stream, they do not meet criterion for category 2a of the ruleset. Because other streams are designated for loach minnow within this Subbasin (North Fork East Fork Black River, Coyote Creek, Boneyard Creek, and East Fork Black River), these areas would not significantly expand the distribution of loach minnow within its historical range (category 2b).

(9) *Comment:* With respect to reclassification, there seems to be little evidence presented to justify that the situation for either species is different (i.e., worse) now than at the time of listing. More recent reports may not show population decrease. Many surveys showed a boom for both species following the winter 2007–2008 flooding.

Our Response: As noted under the Reclassification Determination section of this rule, the decision to reclassify the two species began in 1991 with a 5-year review during which we determined that the species' status was precarious and that a change in status from threatened to endangered was warranted. While some recovery actions have occurred in the intervening years, and while we occasionally see an increase in numbers in a given area in response to flooding, the majority of areas occupied by spikedace and loach minnow have seen an increase in nonnative species, with nonnatives dominating some streams. The low numbers of spikedace and loach minnow, their isolation in tributary waters, drought, ongoing water demands, and other threats indicate that the species are now in danger of extinction throughout their ranges. While streams that were occupied at listing may continue to be occupied, the overall length of the occupied segment has shrunk in some areas (e.g., Verde River, East Fork Gila River), or the two species occur in extremely limited numbers (e.g., Eagle Creek). In other areas, the species are considered extirpated (e.g., San Pedro River).

(10) *Comment:* There are inconsistencies between the occupancy table (Tables 3 and 4) in the proposed rule and the tables in the draft Environmental Assessment (Tables 5 and 6).

Our Response: We agree and the tables have been modified for the final rule and final environmental assessment.

(11) *Comment:* Section A Threats need to include the need for flushing flows to provide loose/clean substrate.

Our Response: Please see the discussion under Stream Channel Alteration within the Factor A analysis, which discusses disruptions to natural channel dynamics. In the final rule, we have also added a section on the relationship between altered flow regimes and nonnative predators which also highlights the importance of stream flow.

(12) *Comment:* There is no mention of yellow grubs or black spot parasites under the disease discussion, and they are fairly prevalent in the San Francisco River.

Our Response: In response to this comment, we have added information regarding both yellow grub and black grub parasites to the discussion under Factor C.

(13) *Comment:* Loose substrate should be included as a PBF for the two species.

Our Response: We discuss substrate within PCE 1 for both species, which includes ''Appropriate stream microhabitat types include glides, runs, riffles, the margins of pools and eddies, and backwater components over loose sand, gravel, and cobble substrates with low or moderate amounts of fine sediment and substrate embeddedness.''

(14) *Comment:* There are no records of spikedace for those portions of the Blue River in New Mexico, and it may not be good habitat for that species.

Our Response: We do not have any records of spikedace for those portions of the Blue River in New Mexico. Within the proposed rule, we classified this stream as a 2b stream for spikedace, indicating that it would serve to expand the geographic distribution of the species. The Blue River system provides the PCEs for suitable habitat for spikedace, and we note that loach minnow, which often co-occur with spikedace, are found throughout the system, including those portions in both Arizona and New Mexico.

(15) *Comment:* Spikedace in the Verde River are very distinct from those in the Gila River. Hendrickson's morphology paper emphasizes the significance of thoroughly sampling the Verde to see if spikedace can be found.

Our Response: Please see the discussion under the Summary of Factors Affecting the Species. We include information regarding genetic and morphological differences, and cited Anderson and Hendrickson (1994) under Factor A in the proposed rule, and have added Anderson and Hendrickson (1994) as a cite under Factor E in the final rule.

(16) *Comment:* Populations of loach minnow actually show higher levels of differentiation than those of spikedace. Each unit identified to date is very distinct and each of the geographic subdrainages needs to be managed

independently. White River is likely highly divergent and deserving of management as a distinct unit.

Our Response: While not a criteria in the critical habitat designations, this information is used in ongoing management for the two species, and genetics is an important consideration in all captive propagation and translocation efforts. Additionally, information regarding the genetic and morphological distinctness of the two species will be considered as a revised recovery plan is completed.

(17) *Comment:* Throughout the document, but especially under the Available Conservation Measures section, the terms reintroduction, translocation, and augmentation are used. I would suggest they be defined, and defined early. I assume that for these purposes, reintroduction and translocation, when referring to loach minnow and spikedace, are synonymous. If so, defining them as synonymous early on or selecting one term and using it throughout the document would be of great value

Our Response: We have added definitions of reintroduction, translocation, and augmentation to the text. Briefly, a reintroduction occurs where the species was known to be present previously, but is believed likely absent based on a lack of detections; translocation occurs where the species was not known to be present previously, and augmentations are additions of more fish to streams as follow-up to reintroduction or translocation efforts.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from the State regarding the proposal to designate critical habitat for the spikedace and loach minnow are addressed below.

(18) *Comment:* Some commenters questioned whether it is appropriate to include as critical habitat those areas used for reintroduction sites when no success has yet been shown. They note that, if the species do not become established then it is likely that the habitat is unsuitable and, therefore, should not be included in the critical habitat designations. If designated, the AGFD would like the rule to state these areas will be removed if it is determined they are unsuitable. This would apply to Rock and Spring Creek, Fossil Creek, Hot Springs Canyon, Redfield Canyon, and Bonita Creek for both species, and the Blue River for spikedace only.

Our Response: Our studies indicate that inclusion of these areas is appropriate at this time. The translocation sites were chosen carefully, after field and scientific review of their suitability for spikedace and loach minnow. In some instances (e.g., spikedace in the San Francisco River in New Mexico), the species have been eradicated from the area, but previously occurred there, so that suitability is more certain. In other instances, a translocation may ultimately prove successful, and designation of critical habitat in the area will further protect and conserve habitat for the species. In some areas, should the translocation prove unsuccessful, it would be necessary to determine which factors are responsible for the failure. For example, a reinvasion by nonnative aquatic species, health issues, or water quality issues may ultimately prove responsible. Additional translocation efforts may be appropriate if these factors are addressed. Should this be the case, but suitable habitat is otherwise present, these streams could ultimately prove beneficial in the conservation of the species.

(19) *Comment:* The lower 33.7 kilometers (20.9 miles) of Oak Creek should not be included within the designations because there are no known records of either species, and this area is degraded. The upstream portions are in an urban area. In addition, this area is not currently being considered for translocation.

Our Response: We agree that there are no known records from this stream for either species, that some degradation has occurred, and there are no translocation efforts currently planned for this stream. However, spikedace and loach minnow are known to have occurred in the mainstem Verde River both above and below Oak Creek. Oak Creek does have perennial flows, and none of the degradation is permanent in nature (i.e., a dam, reservoir, or other permanent alteration). Because of its lack of occupancy records, Oak Creek is classified as an essential area for the conservation of both species. For spikedace, it was classified as a 2a stream, indicating that it will serve as an extension of habitat in the unit. For loach minnow, it was classified as a 2b stream, indicating it can serve to expand the geographic distribution of the species across its historical range.

(20) *Comment:* The lower portions of Fossil Creek below the barrier should not be included in the designations because of the presence of nonnatives.

Our Response: We agree that nonnative species are present in the lower portions of Fossil Creek. Ultimately, this is a situation which may be resolved, although that is not likely in the short term. Because we are attempting to conserve the species, and attempting to develop connectivity between occupied stream systems wherever possible, inclusion of this portion of the stream could ultimately serve as a connective corridor between the Verde River and upstream portions of Fossil Creek.

(21) *Comment:* The lower 2.8 km (1.7 miles) of Sycamore Creek should be included within the designations.

Our Response: We developed a ruleset, as described in both the proposed and final rules, which we applied in making determinations about the appropriateness of including or excluding specific areas. In addition, we used the best available information in determining which stream segments to include. At this time, we have no information regarding the suitability of this area.

(22) *Comment:* Those portions of the Verde River downstream of Tapco should be removed from the designations, as this area is developed.

Our Response: Development, in and of itself, does not make an area unsuitable for spikedace or loach minnow. The Verde River through these areas is classified as perennial, and spikedace are known to have occurred throughout this portion of the Verde River, while loach minnow records occur both above and below Tapco. The area may ultimately prove to provide suitable habitat, or serve as an important connective corridor between upstream portions of the Verde River and downstream areas, including tributary streams.

(23) *Comment:* The Salt River within the Salt River Canyon Wilderness should be included as there are records of spikedace from the Salt River confluence with Cibecue Creek.

Our Response: There are records for spikedace at the confluence with Cibecue Creek, with the most recent in 1967. Under the ruleset, however, we categorized this stream as a 1b stream, indicating the stream has been permanently altered by Theodore Roosevelt Dam and Lake, so that restoration is unlikely.

(24) *Comment:* Bass Canyon dries up into pools and is therefore not suitable for either species and should be removed from the designations.

Our Response: We have reviewed the site and spoken with individuals familiar with the site's flow regime and habitat. While the stream is not considered perennial, it provides suitable expansion habitat when flowing, and is a tributary to Hot

Springs Canyon. As such, we have classified it as an essential area (see discussion at 75 FR 66504). Hot Springs Canyon is the site of translocated populations of spikedace and loach minnow. These species were placed in Hot Springs Canyon in 2007, with annual augmentations of fish. Monitoring efforts showed that both species were present in 2011 (Robinson, 2011, pers. comm.). We anticipate that this translocation effort will be a success, and that Bass Canyon will serve as an extension of habitat in Hot Springs Canyon.

(25) *Comment:* The designations should exclude areas that have an economic impact on recreational fishing.

Our Response: Potential changes to recreational activities are discussed in Section 6 of the draft economic analysis. Potential impacts on recreational fishing losses are specifically discussed and estimated in Sections 6.4.1 and 6.5.2. The draft economic analysis notes that the AGFD has no planned or ongoing sportfish stocking projects on occupied reaches, with the exception of native Apache trout stocking on Fossil Creek. In New Mexico, the NMDGF stocked the East Fork Gila River in 2008 and 2009 and plans to continue stocking in the future. However, the Service completed a biological opinion on sportfish stocking activity in August 2011 that suggests that future stocking activities will not be found to jeopardize spikedace or loach minnow.

(26) *Comment:* Those portions of the Verde River covered by the SRP HCP should be excluded from the designations.

Our Response: While implementation of the HCP will provide some conservation measures for spikedace and loach minnow on the Verde River, the HCP does not involve all landowners on this portion of the Verde River, and therefore does not allow for exclusion of the area under section 4(b)(2) of the Act.

(27) *Comment:* Inclusion of Mangas Creek is appropriate.

Our Response: We agree, however, we have opted to exclude portions of Mangas Creek due to protections afforded by the FMC management plan for this area. We are retaining 1.2 km (0.7 mi) of Mangas Creek that are not on lands owned by FMC. Please see the discussion under the Exclusions section for additional detail.

(28) *Comment:* The decision not to include the Agua Fria River and those portions of the Gila River within Arizona is appropriate.

Our Response: We agree with this comment.

(29) *Comment:* The lower 4.2 kilometers (2.6 miles) of Negrito Creek are proposed as critical habitat and stated as occupied. The NMDGF is unaware of any records for this area. The lower 2.0 kilometers (1.25 miles) of Negrito will likely provide suitable habitat.

Our Response: Dennis Miller (1998) identified loach minnow from Negrito Creek in 1998, approximately 2.0 km (1.25 mi) upstream of its confluence with the Tularosa River. While the known collection sites are at this point, biologists from the Service and NMDGF had determined that Negrito Creek provided suitable habitat upstream as far as the Cerco Canyon confluence, as reflected in the designation.

(30) *Comment:* One State commenter noted a lack of awareness of any records for Frieborn Creek and stated that Frieborn Creek is marginal habitat for either species.

Our Response: Two monitoring efforts in 1998 and 2000 located loach minnow in Frieborn Canyon, indicating the suitability of the stream for loach minnow (ASU 2002; NMDGF 2008). We anticipate translocating spikedace to the Blue River system within the next 2 to 3 years, and conclude that Frieborn Canyon may serve as expansion habitat for spikedace as well.

(31) *Comment:* We recommend that the portions of the Gila River mainstem that are owned by FMC not be excluded from the final designations unless they adopt comprehensive plans that protect and enhance habitat within their ownership.

Our Response: Under Section 4(b)(2) of the Act, we consider a number of factors, during the development of a critical habitat designation, including whether the landowners have developed any HCPs or other management plans for an area. As with the 2007 designation, FMC provided a management plan for the Gila River, Mangas Creek, and Bear Creek in New Mexico. We have determined that it is appropriate to exclude portions of these three streams on FMC lands based on their management plans, with additional conditions. See the Exclusions section for further detail.

(32) *Comment:* We recommend that original work, especially published, be the primary source of information rather than synthesis documents or reports (e.g., Sublette *et al.* 1990, Propst 1999, and Minckley and Marsh 2009) unless synthesis documents report original sources of information.

Our Response: We are charged with using the best scientific information and commercial information available in a rule. In many instances, especially with monitoring data, ''synthesis'' documents are the only source of information available. Wherever possible, we attempt to use the original information.

(33) *Comment:* Stock tanks are an attractive nuisance and potential sources of nonnative fishes, and the problem of nonnatives caught in stock tanks and being released in the river should be identified.

Our Response: We agree that stock tanks can be a concern in native fish management, and have added language to our threats assessment to address this issue.

(34) *Comment:* The proposed rule states (p. 66483) that population estimates have not been developed as a result of the difficulty in detecting the species. The NMDGF notes that they do not find them difficult to detect in appropriate habitats with appropriate gear, but rather that population estimates likely have not been attempted, or reported, because of broad confidence intervals associated with estimates, the considerable effort associated with making reliable population estimates, and the brief time any estimate is relevant.

Our Response: Spikedace and loach minnow can be difficult to detect when at low numbers, as is the case for Eagle Creek or the Verde River. We agree, however, that at least in part, population estimates have not been attempted for the reasons cited in this comment. In addition, we note that different methodologies are applied in different streams by different survey teams, which can also complicate discussions on population numbers across the species' ranges as a whole.

(35) *Comment:* Soles 2003 should be added as a citation to the statement ''In the Gila River, agricultural diversions and groundwater pumping have caused declines in the water table, and surface flows in the central portion of the river basin are diverted for agriculture.''

Our Response: We have reviewed Soles 2003 and added the citation as recommended.

(36) *Comment:* Under the Water withdrawals section, the AWSA is discussed as a potential diversion on the Gila River. The AWSA also has the potential to facilitate diversions on the San Francisco River.

Our Response: This is correct, and we have made appropriate modifications to reflect this information.

(37) *Comment:* Additional or different citations should be used for portions of the document, including Propst *et al.* 2008, Paroz *et al.* 2009, and Pilger *et al.* 2010.

Our Response: We reviewed the citations and the text in the proposed

rule, and have made appropriate modifications in the final rule.

(38) *Comment:* The proposed rule states that the State of New Mexico lacks adequate regulatory mechanisms to address the issue of introduction and spread of nonnative aquatic species. It should be noted that New Mexico State regulations prohibit the use of nonnative baitfish, except for the use of fathead minnow (*Pimephales promelas*) as a baitfish in the Gila and San Francisco river drainages.

Our Response: This comment is, in part, correct. The remainder of the text on this point states that regulation of activities that can lead to the spread of nonnative species is inadequate, as many introductions are the result of incidental or unregulated actions.

(39) *Comment:* The NMDGF suggests adding language to the discussion on ''Available Conservation Measures'' regarding repatriation of spikedace to the San Francisco River, removal of nonnative fishes from the Forks area, beginning in 2007, and removal of nonnative fishes in Little Creek beginning in 2010; and efforts to acquire and hold separate stocks of spikedace and loach minnow in a refuge facility.

Our Response: Appropriate modifications were made to this section in the final rule.

(40) *Comment:* The rule should be updated to include Propst et al. 2008 as a reference regarding nonnative fishes, in place of Propst 1986.

Our Response: We have included Propst *et al.* 2008 in several places within the document in regards to nonnative fish.

(41) *Comment:* The final rule should include information about competition with and predation by smallmouth bass as a likely threat, and Pilger *et al.* 2010 should be added as a citation.

Our Response: Smallmouth bass are mentioned in several places within the rule. Pilger *et al.* 2010 is also cited in the text. Please see the Disease or Predation section. In addition, results of the study by Pilger *et al.* 2010 are discussed.

(42) *Comment:* Riffles are identified as a PBF for spikedace, but they prefer runs and glides, not riffles.

Our Response: While we agree that spikedace are primarily associated with runs and glides, they may be associated with other habitat types and many authors (Barber and Minckley 1966, p. 31; Propst *et al.* 1986, p. 12; Rinne and Kroeger 1988, p. 1; Rinne 1991, pp. 8–10) note use of riffles by spikedace.

(43) *Comment:* The San Francisco River dries annually through the Alma Valley and is not perennial throughout as stated on page 66515.

Our Response: This correction has been made within the text, with an appropriate citation.

General Comments Issue 1: Biological Concerns

(44) *Comment:* There were many comments submitted with technical corrections, additional literature citations, and specific biological information on stream segments.

Our Response: We have reviewed all of these comments and have incorporated the information in this final rule, as appropriate.

(45) *Comment:* We received comments that Bear Creek should be included within the designation for loach minnow, and conversely that Bear Creek should not be included within the designation.

Our Response: In reviewing the information on Bear Creek, including surveys and habitat, we have determined that inclusion of Bear Creek is appropriate. Please see the discussion on Bear Creek in the section on Summary of Changes from Proposed Rule.

(46) *Comment:* The lowermost mileage on the Gila River in New Mexico, as it travels through the Virden Valley, is predominantly dry, and has three diversion structures, rarely supports fish, and is not connected to any other suitable habitats at this time.

Our Response: We reviewed occupancy data for this area. Spikedace have been detected occasionally within the area downstream of the diversion structures during surveys conducted over a 50-year period, with the most recent detection in 1999 (Rinne *et al.* 1999, p. 22; NMDGF 2008). Spikedace and loach minnow have been detected immediately upstream of the diversion more recently, into 2003, and the area around the Sunset Diversion had sufficient potential for spikedace and loach minnow that it was added to regularly monitored sites in 2010 and 2011 (Propst, 2011, pers. comm.).

With respect to flow patterns, the nearest gage station is just downstream of the confluence with Blue Creek, so does not accurately portray the flow patterns below the diversion structures. The next nearest USGS gage downstream of the barriers is 09439000 on the Gila River at Duncan. The monthly statistical data for this gage, recorded since 2003, show that flows have been at 0 cfs on one occasion, and been below 5 cfs on five occasions in the months of May, June, or July. However, in the area immediately downstream of the Sunset Diversion, native suckers and channel catfish are frequently present, indicating that water remains in this area and may indicate that the area serves as a refuge. While the diversion structure may serve as an impediment to upstream movement, it is not necessarily a barrier to upstream movement of fish (Propst, 2011, pers. comm.). With water present below the diversion, and the presence of spikedace in this area, albeit not consistently, over the last 50 years, we conclude it is appropriate to retain this area within the critical habitat designations.

(47) *Comment:* Bass Canyon is unsuitable for spikedace and loach minnow due to lack of flows.

Our Response: We have visited the site and conclude that, while it may not be classified as perennial, it contains adequate flows and appropriate substrates during significant portions of the year to support the two species. In addition, it joins with Hot Springs Canyon, where a spikedace and loach minnow translocation effort has been under way since 2007. Bass Canyon can serve as an extension of habitat for that population, and we are therefore retaining Bass Canyon within the designations at this time.

(48) *Comment:* The Biological Opinion issued by the Service for Fort Huachuca on 14 June 2007 states that the ''most likely sites for such reestablishments appear to be springs within the tributaries to the mainstem San Pedro River rather than along the mainstem river where critical habitat would be designated. A scientific basis for changing the approach from reestablishing the spikedace at springs within the tributaries to the mainstem San Pedro River needs to be provided.

Our Response: This is an error in the biological opinion, and not in the proposed rule. The habitat use, as described in the proposed rule at pages 66483 and 66497 through 66498 is correct. All reestablishment efforts to date have occurred on flowing streams (Hot Springs Canyon, Redfield Canyon, Fossil Creek, Bonita Creek, and the San Francisco River) and not in springs.

(49) *Comment:* The proposed rule assumes that these species were present in the San Pedro River at the time of listing in 1986 but were undetected due to infrequent or inconsistent surveys.

Our Response: This statement is incorrect, and reflects a misunderstanding in the terminology used within the proposed rule. Our determination of ''occupied at listing'' was based on whether or not the species was present up to the date of listing in 1986, and not on the presumption that the species was present but undetected. It should be noted that in the NOA, we announced that we were modifying our definition of occupied to improve

clarity on our approach to the critical habitat designation. In the NOA, we defined areas occupied at the time of listing to be those areas where the fish were identified in the original listing documents, as well as any additional areas determined to be occupied after 1986. Our reasoning for the inclusion of these additional areas (post-1986) is that it is likely that those areas were occupied at the time of the original listings, but had not been detected in surveys. This change in definition does not result in a change to any of the areas included or excluded as critical habitat in the proposed rule.

(50) *Comment:* The statement that ''After leaving the Mogollon Mountains in New Mexico, the Gila River is affected by agricultural and industrial water diversions, impoundment, and channelization'' is incorrect. There have been no significant modifications to the river channel or further commercial activities along the river from Mogollon Creek to the New Mexico/Arizona State line since listing these species in 1986.

Our Response: This statement encompasses present uses of the area as well. Propst *et al.* 2008 (pp. 1237–1238) notes that irrigated agriculture and livestock grazing are the predominant uses, and that human settlement has increased since 1988. Soles (2003 p. 69) notes that diversions for agriculture in the Cliff-Gila Valley are modest, but that, during dry seasons, may remove the Gila's entire baseflow of about 40 cubic feet per second (cfs).

Part of the language in this statement pertains primarily to the Gila River below the Arizona border. We have separated these statements for accuracy and added the Propst *et al.* 2008 and Soles 2003 citations to the rule.

(51) *Comment:* Additional data should be supplied to support the conclusion that declines of native fish species appear linked to increases in nonnative fishes (p. 66491). FWS cites data with a 28-year gap, which is not good science because the periodicity cannot be used to establish a reasonable trend.

Our Response: We have added additional information from Propst *et al.* 2008. Propst *et al.* 2008 found that physical modification of streams, coupled with widespread introduction and establishment of nonnative aquatic species led to the decline of native fishes (Propst *et al.* 2008, p. 1236, 1246). This study took place just downstream of the town of Cliff. While this study does implicate both altered flow regimes and nonnative aquatic species, Propst *et al.* 2008 (p. 1246) conclude that managing for natural flow alone would not be sufficient to conserve native fish assemblages where nonnatives are present.

(52) *Comment:* The Service failed to establish that there is a need for uplisting spikedace and loach minnow, and does not give population estimates or know the status of the species. The Service should provide actual population counts.

Our Response: Please see our response at Comment 9 above, which addresses the status of the species.

(53) *Comment:* The Service is not using best scientific and commercial information available. Fifty percent of the citations are 10 or more years old. A number of links to Web sites cited were broken; at least nine of the citations referenced data about species other than the spikedace or loach minnow, or referenced different ecological environments than that of the spikedace or loach minnow.

Our Response: Critical habitat designations use the best available commercial and scientific data to identify lands that contain the physical and biological features essential to the conservation of the species. The Act requires that we use the best available scientific information regardless of the age of the information. In some cases, the best available information is derived from different species with similar habitat requirements. In designating critical habitat for spikedace and loach minnow, we have used the best available scientific and commercial information, including results of numerous surveys, peer-reviewed literature, unpublished reports by scientists and biological consultants, and expert opinion from biologists with extensive experience with these species. Further, information provided in comments on the proposed designations and the draft environmental and economic analysis were evaluated and taken into consideration in the development of these final designations, as appropriate.

(54) *Comment:* The Service has failed to specify what ''residual effects of past livestock grazing and impacts to uplands, riparian vegetation'' and streams actually entail.

Our Response: Please see the discussion on livestock grazing under ''The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range'' section. This section outlines the types of impacts that can occur as a result of improper livestock grazing. We used the term ''residual effects'' to indicate that, in some areas, these impacts are due to past, and not ongoing, livestock grazing.

(55) *Comment:* The Service should state what is accomplished by uplisting.

Our Response: The Act provides definitions of threatened and endangered species. A threatened species is one which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. An endangered species is one which is in danger of extinction throughout all or a significant portion of its range. We provide justification for the reclassification within the proposed and final rule, and note that we determined that listing the species as endangered was warranted but precluded in 1994 (59 FR 35303). In part, reclassifying the two species to endangered status fulfills our obligation for finalizing the reclassification. In addition, appropriately classifying the species notifies Federal agencies of the correct status of the species so that they can manage for the species appropriately.

The Service treats endangered animal species similarly to threatened species with regard to prohibitions on take and requirements for consultation by Federal agencies. However, the Act provides management flexibility for threatened species that is not allowed for endangered species. The Service sometimes makes exceptions to the take rule for threatened species (for example, to allow some traditional land-use activities to continue), and is able to issue take permits to allow more activities that affect threatened species than would be permitted for endangered species.

(56) *Comment:* We received several comments indicating that the Service did not adequately show that an individual land use necessitated designation of critical habitat. Specifically, one comment noted that numbers of cows and elk are down and that the Service should justify designation of critical habitat in light of the reduced populations of grazing animals. Another comment noted that the Service failed to provide justification for the designations of critical habitat due to improperly managed wildfire and the use of chemicals for fire suppression.

Our Response: We note that grazing animals and fire management are only one of several concerns for spikedace and loach minnow. Please see the discussion under Summary of Factors Affecting the Species.

(57) *Comment:* The spikedace and loach minnow coexisted with the diversion dams that have been a part of the local agricultural culture and heritage for hundreds of years. The Service should demonstrate how water uses today could impact habitat

although these same uses have not done so in the past.

Our Response: Please see the discussion on water diversions under the subheading of Water Withdrawals, which details the potential impacts associated with diversions and water withdrawals. In addition, climate change and drought are compounding the impacts of water withdrawals on these species.

(58) *Comment:* The Service has failed to acknowledge the causes for portions of the rivers, streams, and tributaries indicated on the maps as critical habitat periodically drying up. Human population, human use, livestock and wildlife populations and water diversion do not account for this phenomenon. According to the Northern Arizona University Forestry Department, the reason for reduced water flow is due to in excess of 300 percent greater tree density today, compared to presettlement. The Service should examine the relationship between tree density and water reduction, and should specify amount of water flow reduction due to tree density vs. other potential causes. The Service should further specify how designation of critical habitat would address the reduction of tree density issue.

Our Response: No literature citations were provided with this comment, and we were unable to locate any literature relevant to this comment. Please note that a critical habitat designation is not the process through which we rule out habitat suitability due to threats, nor is it the process through which we conduct research as suggested in the comment.

(59) *Comment:* The Service has failed to provide justification for the critical habitat designations due to human use of resources, including agriculture, mining, road building, residential development, and recreation. The Service should specify how these uses contribute to habitat loss and stream degradation.

Our Response: Please see the section on Summary of Factors Affecting the Species. This section addresses these, as well as other natural and human use impacts to the species.

(60) *Comment:* We received several comments indicating that we failed to look at the benefits of grazing to fish or wrongfully assumed that livestock grazing is harmful to spikedace and loach minnow and their habitat. In some instances, commenters noted that the work of Rinne and Medina should be included within our review.

Our Response: Please see the response to comment 51 above regarding use of the best scientific and commercial information available. The discussion on livestock grazing cites many studies and authors on the topic of livestock grazing, and we have added a citation from Medina *et al.* (2005). We have reviewed additional work by Rinne (Rinne 1999b) and considered the information in this literature. We believe the discussion on livestock grazing and impacts to fish provides a thorough discussion on this topic.

(61) *Comment:* Nonnative fish are the biggest problem for spikedace and loach minnow, and this is a threat that requires removal of the nonnatives and construction of barriers to prevent their spread, neither of which is facilitated by designation of critical habitat.

Our Response: The purpose of designating critical habitat is not to remove threats for the species, but is instead to identify those areas that are essential to the conservation of the species. While designation of critical habitat does not remove the threat from nonnative species, it does identify those areas that are critical to the conservation of the species, which allows land managers and others to prevent further degradation in areas critical to the species' conservation

(62) *Comment:* The current threat to spikedace and loach minnow from nonnative fish in the Gila River and Mangas Creek where they pass through FMC lands is greatly overstated.

Our Response: The discussion of Mangas Creek and the Gila River encompasses landowners other than FMC, and there are additional management considerations for these areas. We have updated the information for Mangas Creek.

(63) *Comment:* Road impacts to the species would be dealt with through section 7, and, therefore, designating critical habitat would not address this issue.

Our Response: This comment is incorrect. First, critical habitat designation is not the process through which we rule out habitat suitability due to threats, but the process through which we identify habitat that provides for one or more of the life-history functions of the species. Second, should future road projects have impacts on critical habitat, section 7 would be the process used to identify and minimize those threats, as appropriate. In areas where the species are not currently present, but that are designated as critical habitat, it would be the nexus between the project and critical habitat which would lead to section 7 consultation under the Act, assuming the action was either Federally funded, permitted, or carried out.

(64) *Comment:* Recreation is listed as a threat for the Gila River. No recreation occurs in the Cliff-Gila Valley.

Our Response: Our list of potential impacts to spikedace and loach minnow for the Gila River encompassed more than the Cliff-Gila Valley, including lands managed by the USFS, and we conclude the original assessment is correct.

(65) *Comment:* Occupancy by spikedace and loach minnow in Eagle Creek for only brief periods of time indicates that they suggest fish may have been placed there via bait bucket transfer.

Our Response: We have no evidence of bait bucket transfer, or any reasons to believe that such a transfer occurred. Marsh *et al.* 1990 (p. 112) provide a discussion on the likely cause for the sporadic records of spikedace and loach minnow in Eagle Creek, concluding it likely that the species were missed in some survey efforts while detected in others due to their tendency to expand and contract spatially in response to natural variations in their habitat. We further note that portions of Eagle Creek are not readily accessible, and are not regularly surveyed, so that the species could have been missed, yet present, during some of the survey efforts. Finally, we note that there are other gaps in the survey record for other streams. These gaps may be due to a lack of survey efforts, or to lack of detection during survey effort. For example, on the Verde River, spikedace were not detected from 1950 to 1975 (ASU 2002).

(66) *Comment:* The lower San Francisco is not occupied, with nearest detections 20 miles upstream, in the vicinity of Apache-Sitgreaves National Forests boundary.

Our Response: The San Francisco River, as a system, was classified as occupied at listing, and the designation reflects this.

(67) *Comment:* Both Eagle Creek and the San Francisco River have nonnatives and are not occupied by either spikedace or loach minnow. Neither can therefore be considered essential to the conservation of the species.

Our Response: We agree that both Eagle Creek and the San Francisco River have nonnative aquatic species; however, this alone does not preclude them from being considered for critical habitat designation. Further, as noted in the proposed rule, we consider Eagle Creek to be occupied by both species, while the San Francisco River is occupied by loach minnow and the site of a reintroduction effort for spikedace.

(68) *Comment:* The presence of a large nonnative fish population and refugia

that allow nonnative fish to persist and repopulate portions of proposed critical habitat on Eagle Creek and the lower reach of the San Francisco River following significant flood events make these streams unsuitable for both spikedace and loach minnow. Absent a comprehensive management plan agreed to by affected parties, the complex land ownership patterns and current uses of lower Eagle Creek and the lower San Francisco River substantially compromise the logistics and practicability of achieving adequate control of nonnative fish required to make the segment of these rivers suitable for spikedace and loach minnow.

Our Response: Critical habitat designation is not the process through which we rule out habitat suitability due to threats, but the process through which we identify habitat that provides for one or more of the life-history functions of the species. As defined in section 3(5)(A) of the Act, critical habitat means (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. During the designation process, the Service identifies threats to the best of our ability where they exist. Identification of a threat within an area does not mean that that area is no longer suitable, rather that special management or protections may be required. The need to address a particular threat, such as nonnative fishes, in a portion of the critical habitat designation may or may not arise in the future. Further, describing both the areas that support PBFs and the threats to those areas assists resource managers in their conservation planning efforts for threatened and endangered species like spikedace and loach minnow.

(69) *Comment:* Eagle Creek is listed as perennial, and this is incorrect.

Our Response: We have modified the description of Eagle Creek to indicate that the stream is largely a perennial system.

(70) *Comment:* We received comments that additional studies were needed, including a study of the future impacts of increased vegetation near the San Pedro River on the ability of groundwater to reach the river, and on pebble counts or other substrate evaluations of spikedace and loach minnow critical habitat.

Our Response: The Service makes every attempt to use the best scientific and commercial information available when evaluating areas to be included within critical habitat; however, the critical habitat designation process does not undertake studies of the kind recommended.

(71) *Comment:* Fossil Creek is the only stream on the Tonto National Forest that is occupied by loach minnow. Translocations for spikedace appear to be unsuccessful. Inclusion of Fossil Creek as critical habitat for spikedace may be premature.

Our Response: We recognize that Fossil Creek is a translocation site for both spikedace and loach minnow. We are designating Fossil Creek as a 2a stream, indicating that it could serve as an extension of habitat in the unit, as existing habitat is insufficient to recover the species. Please note the updated language regarding the potential success of the spikedace reintroduction effort in the section below on Summary of Changes from Proposed Rule. In addition, please see our response at Comment 18 to a similar question.

(72) *Comment:* The statement ''the majority of historical native habitat'' is overbroad and unclear as it applies to the Gila River in New Mexico. Also, this statement is incorrect, as it pertains to the Gila River in New Mexico, and the activities described have not, nor do they threaten destruction, modification, or curtailment of the loach minnow or spikedace habitat or range in New Mexico. Within New Mexico, the Gila River has not been altered significantly since the time of listing in 1986. The middle, east, and west forks of the Gila all lay within the Gila National Forest and watershed conditions have improved in these areas.

Our Response: This statement is found at the beginning of the discussion at Factor A, the Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range, and applies to the species rangewide, not to the Gila River in New Mexico specifically. As noted elsewhere in the proposed rule, we estimate the present range of spikedace to be approximately 10 percent of its historical range, while that of loach minnow is estimated to be 15 to 20 percent of its historical range. While watershed conditions may have improved within the Gila National Forest, there are still threats in those areas, including wildfires, residual impacts of livestock grazing, and competition with and predation by nonnative species.

(73) *Comment:* Additional data should be supplied to support the conclusion that declines of native fish species appear linked to increases in nonnative fishes. The Service cites data with a 28-year gap, which is not good science because the periodicity cannot be used to establish a reasonable trend.

Our Response: This comment addresses the information found in the proposed rule under the discussion at Factor C for Predation. Please also see the information on competition under Factor E on Nonnative Fishes, which provides additional citations.

(74) *Comment:* Portions of the proposed critical habitat in Units 6, 7, and 8 overlap sections of river currently occupied by Gila trout. The designations appear to create a conflict in management objectives; for example, adult Gila trout potentially prey on juvenile spikedace and loach minnow. The dynamics of this potential fish community are not yet clearly understood.

Our Response: We would agree that the dynamics of the interactions between Gila trout and spikedace and loach minnow may not yet be fully understood. However, this does not eliminate the possibility of the three species occurring in the same stream. For example, both Gila trout and spikedace are known to occur in the Verde River.

(75) *Comment:* Spikedace were found in the Middle Fork Gila River in 2008 and 2010.

Our Response: In response to this question, we have updated our information on the Middle Fork Gila River to reflect that spikedace were found in the Middle Fork Gila River in these years (Propst *et al.* 2009, p. 10; Gilbert 2011 pers. comm.).

(76) *Comment:* Propst *et al.* (2008) determined that the primary driver affecting native fish in the Upper Gila River and San Francisco River catchments was long-term discharge, with nonnative fish exacerbating the effects of low discharges. In the water withdrawal section, it should be noted that both existing and potential water withdrawals are one of the primary threats to spikedace and loach minnow. Long-term reductions of instream flow have been shown to negatively affect both species.

Our Response: In response to this and other comments, we have incorporated information from Propst *et al.* (2008) within the Flow Regime, Nonnative Fishes, and Connectivity discussion under Factor E above.

(77) *Comment:* A settlement agreement regarding pumping wells in the Big Chino Valley was effected between the Salt River Project and the towns of Prescott and Prescott Valley in 2010. This agreement will allow the withdrawal of approximately 2.5 billion gallons of water/year from the Big Chino

Valley aquifer, and could seriously impact surface flow in the upper Verde River. Implementation of this proposal lends credence to the need for uplisting to endangered of spikedace.

Our Response: We have added information and citations regarding the Agreement in Principle signed between Salt River Project, Prescott, and Prescott Valley indicating that they have agreed to try to move forward without litigation in the development of the Big Chino project.

(78) *Comment:* Some of the language under the Nonnative Fishes subheading of Factor E appears to discount the detrimental effect of larger nonnative species, e.g., green sunfish, smallmouth bass, flathead catfish, and others, all of which are highly predacious on spikedace and loach minnow.

Our Response: This language has been modified to indicate the specific problems associated with small and large nonnative fish species.

(79) *Comment:* Many of the descriptions of PBFs essential for spikedace and loach minnow are vague and undefined. They provide little detail as to their exact meaning. While this may be a result of the relative lack of research and knowledge of the species, it should also encourage the Service to advocate more applied investigations on the species in order to better understand their requirements.

Our Response: We acknowledge that additional research would be valuable; however, the discussion under the subheading of PBFs presents the best information currently available for the species.

(80) *Comment:* In addition to fishes, nonnative species that also affect spikedace and loach minnow include parasites, crayfish, mollusks, and probably others.

Our Response: We have modified the language under the subheading of Nonnative Aquatic Species to reflect this. Information regarding other nonnative aquatic species is found under Factor C.

(81) *Comment:* Although the concern for livestock grazing as a threat has lessened, the threat still remains. Livestock permittees on the National Forest lands continually request livestock access to riparian areas that were closed for resource protection. Also many of the areas proposed for critical habitat are not currently protected from livestock, either by structures or in their allotment management plans. Additionally, disturbance of soil and vegetation in upper watersheds will continually increase sedimentation in drainages.

Our Response: We include a discussion of the impacts of livestock grazing within Factor A of the rule. We note that adverse effects to species such as spikedace and loach minnow are decreasing, due to improved management on Federal lands (Service 1997c, pp. 121–129, 137–141; Service 2001, pp. 50–67), largely due to discontinuing grazing in the riparian and stream corridors. However, we also note that livestock grazing within watersheds where spikedace and loach minnow and their habitats are located continues to cause adverse effects. Following finalization of the critical habitat designations, existing consultations on livestock allotment management plans may require additional consultation.

(82) *Comment:* The recovery objectives for spikedace and loach minnow in the current recovery plans is delisting through protection of existing populations and restoration of populations into historical habitats. The downlisting and delisting criteria expressed in the proposed rule make no mention of the existing natural populations or their habitats. Assuring recovery and long-term conservation of existing natural populations should be the primary emphasis in any down- or delisting proposal.

Our Response: In response to this comment, we have amended the language to indicate that, in addition to increasing the number of occupied streams, there will be a continued protection of existing populations and habitat. This was implied in the text of the proposed rule, but we have clarified the language to place more emphasis on protection of existing populations and habitats.

(83) *Comment:* The Service should include bridges, diversion structures, and other structures in the designations. Although they lack the PBFs, it is often these structures that cause the most degradation, and including them would provide impetus to management agencies to modify their detrimental features in order to reduce effects on the species during both normal and extraordinary maintenance.

Our Response: Generally, areas without PBFs cannot be considered essential to the conservation of the species. However, it should be noted that, should one of these features require maintenance, the Service would evaluate potential up and downstream effects from such an action, assuming it has a Federal nexus.

(84) *Comment:* Current occupation of Fossil Creek and San Francisco should be uncertain.

Our Response: We agree, and have modified the table to reflect this for all translocated or reintroduced populations.

(85) *Comment:* Critical habitat in Fossil Creek should be extended upstream to Fossil Springs. Both spikedace and loach minnow have been translocated into Fossil Creek between the springs and downstream to Irving. Fossil Creek is considered recovery habitat for loach minnow and spikedace, but the habitat is threatened by recreational development and degraded by excessive human use. Fossil Creek was designated a Wild and Scenic River in 2010.

Our Response: Please see the response to comment 7, as well as the discussion below on Summary of Changes from Proposed Rule.

(86) *Comment:* It is unclear why West Clear Creek was excluded from critical habitat. The lower 7.2 miles of West Clear Creek was included in the 2000 designation.

Our Response: We are including the lower 10.9 km (6.8 mi) of West Clear Creek for spikedace only, as there are no known records for loach minnow from this stream.

(87) *Comment:* We do not agree that Tonto Creek, Rye Creek, and Greenback Creek should be excluded from critical habitat. Loach minnow and spikedace typically co-occurred historically. The lack of records of loach minnow from Tonto Creek was more likely an artifact of incomplete sampling, rather than lack of occurrence. We believe that Tonto Creek does have suitable habitat for loach minnow and is worthy of inclusion.

Our Response: Please see the response to comment 8 above.

(88) *Comment:* We question why West Fork Black River was excluded from critical habitat. The lower 6.4 miles was included in the 2000 designation.

Our Response: We have included within the designation 19.1 km (11.9 mi) of the East Fork Black River, 7.1 km (4.4 mi) of the North Fork East Fork Black River, 3.4 km (2.1 mi) of Coyote Creek, and 2.3 km (1.4 mi) of Boneyard Creek. There are no known records from the West Fork Black River. East Fork Black River is directly connected to the North Fork East Fork Black River, where loach minnow have been detected, whereas the West Fork Black River is not directly connected, and therefore does not provide an extension of habitat (i.e., is not a 2a stream) for loach minnow in this complex.

(89) *Comment:* Threats along the Gila River include water withdrawal, stream channelization, water quality degradation, roads and bridges, and

livestock grazing, as well as the spread of nonnative species and climate variability and change, especially drought.

Our Response: This issue has been addressed within the rule. Please see the discussion under Unit 8 for special management considerations, as well as the information on climate change and nonnative species.

(90) *Comment:* The proposed rule notes that grazing may cause increased erosion and deposition and increased sediment loads from livestock, but nowhere in the proposed rule does the document acknowledge the Chitty flood of July 2007 from Chitty Creek that changed the entire area and affected East Eagle and Eagle Creek. The Chitty, Hot Air, and Eagle wildfires have occurred since 2007. The Clifton Range District under the Mogollon Rim is prone to large lightning strikes and has no prescribed burns scheduled; therefore, the potential of another wildfire is evident and large-scale erosion occurring, making East Eagle and Eagle Creek not suitable for spikedace and loach minnow as stable habitat.

Our Response: We have added information regarding wildfires to the discussion for Eagle Creek. Eagle Creek continues to support one or more of the PBFs for spikedace and loach minnow, and we therefore believe it is reasonable to include Eagle Creek within the designation. East Eagle Creek was not included at the proposed rule stage, and is not included in the final rule for either species.

(91) *Comment:* The proposed rule states that open stock tanks contain nonnative aquatic species, which is not documented on East Eagle or Mud Springs allotment, and in fact all stock tanks go dry a minimum of once each year.

Our Response: The discussion on nonnative species and stock tanks is under the general discussion for livestock grazing, and is not attributed to Eagle Creek, or the East Eagle or Mud Springs allotments.

(92) *Comment:* The crayfish population is the only increasing aquatic life on Eagle Creek. Numerous studies over the last 10 years show no increase in native fish. A proposed rule change is not the solution.

Our Response: We have included discussions on the presence of nonnative aquatic species and potential impacts to spikedace and loach minnow; however, critical habitat designation is not the process through which we rule out habitat suitability due to threats, but the process through which we identify habitat that provides for one or more of the life-history functions of the species. Please see additional discussion on this point at comment 66.

(93) *Comment:* Eagle Creek has two year-round stream crossings and a third seasonal crossing, and all are on private land. There are private land holdings from Honeymoon Campground south on Eagle Creek. In addition, there are Upper Eagle Creek Watershed Association Management plans. For these reasons, Eagle Creek should be exempt from critical habitat.

Our Response: Critical habitat designation does not impose restrictions on private lands unless Federal funds, permits, or activities are involved. Federal agencies that undertake, fund, or permit activities that may affect critical habitat are required to consult with the Service to ensure that such actions do not adversely modify or destroy designated critical habitat. There will likely be minimal, if any, impact to private land holdings along Eagle Creek from the critical habitat designation, unless a Federal nexus exists, as described above. Appropriate exclusions along Eagle Creek have been made for the San Carlos Apache Tribe and FMC. With respect to the Upper Eagle Creek Watershed Association Management Plans, no such management plan was submitted to the Service for consideration during this rulemaking.

(94) *Comment:* Eagle Creek should be excluded as neither species has been seen there in more than 10 years.

Our Response: We refer the reader back to the ruleset used in determining which areas would be included as critical habitat, and to the definitions of occupancy within the rule. Eagle Creek was occupied at listing by both species, and is classified as a 1a stream under the ruleset, as it continues to provide suitable habitat for the species.

(95) *Comment:* The Upper Eagle Creek Watershed Association is participating in the Ranch Heritage alliance and has worked for the last two years with the National Riparian Service Team to develop plans, methods, and monitoring protocols to develop habitat for numerous species. This new method should be encouraged and the Greenlee County Rivers and tributaries should be excluded from the critical habitat designations for loach minnow and spikedace to give the management plans an opportunity to succeed. The past plan of just fencing the riparian areas has not been a total success, and a more positive approach of collaboration is recommended.

Our Response: We agree that collaboration is a positive approach to recovering threatened and endangered species. At this time, however, we have not received a complete management plan from the Upper Eagle Creek Watershed Association and, therefore cannot exclude this area from the designations.

(96) *Comment:* There were several comments referring to the unsuitability of the San Pedro River as critical habitat, especially because of the nonnative fishes and problems with pollution in the upstream portions of the river, which is in Mexico.

Our Response: The Service is aware of the challenges posed by nonnative aquatic species in the San Pedro River, particularly given that a suitable barrier site has not been found at this time. However, we have determined that inclusion of the San Pedro River may impact operations at Fort Huachuca critical to national security. Therefore, we are excluding the San Pedro River as critical habitat for the two species. See the Exclusion discussion in the text.

(97) *Comment:* Does the Service have any information regarding possible causes of the spikedace decline in New Mexico and the magnitude of the decline?

Our Response: The proposed and final rules contain a complete five-factor analysis, which describes threats to the species and presents the best available scientific information.

(98) *Comment:* Proposed critical habitat creates a conflict in management objectives between spikedace and loach minnow and Gila trout.

Our Response: There is some overlap in the species' distribution; however, designation of critical habitat would lead to protection of the stream habitat in which all three species occur, and we do not believe there will be conflicts in management.

(99) *Comment:* The Fish and Wildlife Service has stated 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. The proposed designation of the Redfield Canyon stream segment as critical habitat (CH) is based upon inaccurate information and would have no beneficial effect on the survival of the spikedace or loach minnow. In representing all private landowners along this segment and having the most firsthand and long-term knowledge of the area, we request that this segment be removed from consideration.

Our Response: Redfield Canyon is currently the site of a species translocation effort and it provides suitable habitat for the species. However, in response to information

received during the comment period, we have revised the designation within Redfield Canyon, and reduced the area to be designated as critical habitat to 6.5 km (4.0 miles) from the confluence with Sycamore Canyon downstream to the barrier constructed at Township 11 South, Range 19 East, section 36.

(100) *Comment:* Within the DEA for the designation you state: ''Conservation actions that might be performed for a variety of fish species include, but are not limited to (7) application of chemicals to eradicate fishes, etc.'' The chemical rotenone is most often used for this purpose. The Bureau of Reclamation (BOR) has recently acquired state lands along Redfield Canyon where the fish were translocated in 2007. BOR intends to construct a fish barrier in the Canyon to prevent nonnative fish from threatening the translocated fish. Generally following such a construction project rotenone is used to ensure that the area above the dam is clean of nonnatives. It is likely that rotenone will be used in Redfield Canyon and this is not reviewed or even mentioned in the DEA, which is in error given that the Arizona Game and Fish heavily depend upon this tool for managing native fish populations especially for threatened and endangered species. Analysis of this action should be included in the DEA and the effects it will have on local drinking water.

Our Response: For Redfield Canyon, nonnative aquatic species are limited to green sunfish, which are being mechanically removed. There are no plans to use rotenone in Redfield Canyon.

(101) *Comment:* The proposed rule and the environmental assessment lack specific discussions for each segment regarding how the unoccupied segment is ''essential for the conservation of the species.'' Both documents describe conditions in each segment that may be favorable to the species but do not explain how the Service determined that the unoccupied segment was essential. In addition, there is no discussion regarding the conservation value of unoccupied segments.

Our Response: We refer the commenter to the ruleset, as well as Table 6 within the proposed rule. For each stream, we indicated which portion of the ruleset was met. For example, the San Pedro is listed in Table 6 as a ''1a'' stream, and from the ruleset, this indicates that this stream was occupied at listing, and has sufficient PBFs to support life-history functions essential for the conservation of the species. The PBFs present in any stream segment are listed in the unit descriptions for each stream.

The conservation value of unoccupied segments is in their ability to allow the species to expand from their current distribution until recovery is reached. As noted in the rule, both species currently occur in a small percentage of their historical range, and cannot be recovered in place.

(102) *Comment:* How the Service expects success when they are only going to try to manage ''a portion of the Blue River'' and ''a small portion of Bonita Creek'' for native fish is confusing. We don't know the location of the proposed fish barrier on the Blue River but we do know that the failed fish barrier that is being fixed on Bonita Creek is almost at the confluence with the Gila River. That means that all the fish above the fish barrier for over 14 miles will mix.

Our Response: At this time, the only portion of the Blue River that may be mechanically treated for nonnative fishes are a few larger pools near where the barrier construction will take place, in the lower portions of the Blue River. For Bonita Creek, chemical renovation occurred in an approximately 2-mile stretch of the river. Both of these areas are limited in scope.

(103) *Comment:* The Service has relied on ephemeral reference points to describe critical habitat areas and is in violation of 50 CFR 424.12(c).

Our Response: The ephemeral reference point referred to is the use of the bankfull stage in describing critical habitat. Bankfull stage is described in the section Criteria Used to Identify Critical Habitat. It is not an ephemeral feature, in other words, it does not disappear. It can always be determined and delineated for any stream we have designated as critical habitat. We acknowledge that the bankfull stage of any given stream may change depending on the magnitude of a flood event, but it is a definable and standard measurement for stream systems.

(104) *Comment:* The precise areas proposed as critical habitat are improperly described, and their location and impacts on land and water uses are uncertain. The proposed critical habitat includes developed areas and improperly relies on post-designation exclusion criteria.

Our Response: As noted within the proposed rule, the scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. However, any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule are considered excluded by text in the rule and are not designated as critical habitat. Should Federal action occur involving these lands it will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PBFs in the adjacent critical habitat.

(105) *Comment:* The PBFs must be present before land is eligible to be designated as critical habitat. The Service cannot designate land that does not contain the PBFs, and then rely on exclusion criteria and subsequent Section 7(a)(2) consultations to filter out land that should not have been included in the designation.

Our Response: Each of the areas within the critical habitat designation contain one or more of the PBFs, and do not use exclusions or a section 7 consultation to filter out land after the listing action is complete. In fact, exclusions are developed before the listing is completed, and are based on several factors, which can be found in the ''Exclusions'' section of the rule. Section 7 is used to analyze the impacts of actions on PBFs present within a given area.

(106) *Comments:* There were several comments regarding discrepancies in stream miles proposed for critical habitat, especially in the draft economic and environmental analyses.

Our Response: We have revisited all of the mileage to ensure that it is accurate in this final rule. The final environmental and economic analyses will reflect the correct mileages.

(107) *Comment:* One commenter noted that, with respect to translocation or reintroduction sites for the species, the Service indicated that monitoring will be conducted at each of these sites to determine if populations ultimately become established at these new locations. The fish were translocated in 2007, yet there is no information included within the DEA or the **Federal Register** notice that describes the monitoring that has been done in these locations or gives the results of this monitoring. It is stated that the areas of Hot Springs and Redfield Canyon have been augmented. It is unknown to the public whether this augmentation was because the fish are not surviving or if the action was to increase what has been established. The need for augmentation is questionable if the fish are established, and if they are not surviving, it needs to be analyzed in this document so as to better determine whether the PFBs at this location are accurately analyzed. This information is critical to making the designation of critical habitat.

Our Response: Information is provided in the rule regarding the translocation and reintroduction efforts, monitoring, and augmentation. Please see comment 18 regarding the appropriateness of including reintroduction and translocation sites within the critical habitat designation.

(108) *Comments:* We received several comments regarding the adequacy of the information cited in discussions on livestock grazing. Some commenters also indicated that we should be using Minckley (*In* Stromberg and Tellman 2009) regarding the discussion on livestock grazing, and that the citations used were either dated or focused on salmonid species.

Our Response: Minckley (*In* Stromberg and Tellman 2009) did not focus on grazing. Minckley does indicate that threats from nonnative fish are the primary concern for native fish, which the Service acknowledges. However, we complete a five-factor analysis, looking at all potential concerns. With respect to literature by Rinne, we have reviewed this information and are familiar with the position that Rinne has taken regarding grazing and its benefits to native fishes. Resource management agencies continue to cite Platts 1990, which focuses not on salmonids, but the effects of grazing on stream habitats (See Cowley 2002, Guidelines for Establishing Allowable Levels of Streambank Alteration, Howery et al. 2000, A Summary of Livestock Grazing Systems Used on Rangelands in the Western United States and Canada, or the USFS Web site at *www.fs.fed.us/r5/snfpa/final-seis/biological-documents*, which all continue to cite Platts 1990).

(109) *Comment:* Item Number 7 in the Service's October 27, 2010, Question and Answer document reads: ''What sort of actions would continue to be allowed within areas designated as critical habitat? The Service's response to the question was, in part, ''We believe, based on best available information, that the following actions will not result in a violation of the ESA: Release, diversion, or withdrawal of water from or near spikedace or loach minnow habitat in a manner that (1) DOES NOT displace or result in desiccation or death of eggs, larvae, or adults, (2) DOES NOT result in disruption of perennial flows, (3) DOES NOT disrupt spawning activities * * * and (4) DOES NOT alter vegetation (emphasis added).'' How does anyone divert or withdraw water from the Gila River where fish are or may be present, without violating one or more of the ''DOES NOTS'' listed?

Our Response: Throughout the range of spikedace and loach minnow, numerous diversion structures are present, including in systems such as the Gila River, Blue River, and Verde River. These areas continue to divert water, and fish continue to persist, indicating that such diversions can take place. We anticipate that, should any new diversions be constructed, they would operate in a similar fashion.

(110) *Comment:* One commenter suggested that we discuss the pending decisions associated with the New Mexico Interstate Stream Commission's (SC) approval of 21 projects on the Gila River that could qualify to become part of the New Mexico Unit of the CAP approved in the AWSA.

Our Response: The AWSA provides for New Mexico water users to deplete 140,000 acre-feet of additional water from the Gila Basin in any 10-year period. The settlement also provides the ability to divert that water without complaint from downstream pre-1968 water rights in Arizona. New Mexico will receive $66 million to $128 million in non reimbursable Federal funding. The ISC Funds may be used to cover costs of an actual water supply project, planning, environmental mitigation, or restoration activities associated with or necessary for the project, and may be used on 1 or more of 21 alternative projects ranging from Gila National Forest San Francisco River Diversion/Ditch improvements to a regional water supply project (the Deming Diversion Project). It is not known how the funds will be spent, or which potential alternative(s) may be chosen. In addition, the AWSA mandates that the ISC make the final determination of contracts for water and allocation of funding and provide notice to the Secretary of the Interior by December 31, 2014. New Mexico ISC must make any final determination during an open, public meeting, and only after consultation with the Gila San Francisco Water Commission, the citizens of southwestern New Mexico, and other affected interests. Due to the timeline associated with this project, as well as the uncertainties in how funding will be spent, and which potential alternative or alternatives will be chosen, The Service is unable to determine the outcome of this process at this time.

(111) *Comment:* The draft environmental assessment states that quality fish habitat is intrinsically linked to the quality of the existing adjacent upland habitat that provides key habitat components (e.g., large woody debris) crucial for fish species. Spikedace and loach minnows do not need large woody debris.

Our Response: We note that large wood is an important factor to analyze in assessing riparian ecosystem health; however, we are not aware of any data at this time that illustrates what amount of large woody debris within a system would constitute ideal conditions for spikedace and loach minnow. Should such information be developed in the future, it would be another useful factor in evaluating river system health and habitat suitability for spikedace and loach minnow. However, we are removing this language from the draft environmental assessment at this time.

(112) *Comment:* The proposed loach minnow critical habitat in Apache County is made up of reaches of the East Fork of the Black River. The entire East Fork of the Black River and the upland watershed was burnt in the recent Wallow Fire. The effects of the Wallow Fire will adversely impact any existing loach minnow populations and greatly alter the habitat for this fish as sediments are washed into the Black River following the fire. There is a high probability that the reaches of the Black River in Apache County, which are being proposed for loach minnow critical habitat, will no longer support the species and remain uninhabitable by loach minnow for a considerable length of time. The Apache County Board of Supervisors feels the Service should reconsider their decision to propose the reaches of the Black River in Apache County as loach minnow critical habitat until it can be determined that these reaches of stream contain any of the PBFs of the loach minnow. The management required in order to again support the loach minnow in the Black River may well be beyond what can be reasonably accomplished under a critical habitat designation.

Our Response: Portions of Units Two (Black River Complex) and Seven (Blue River Complex) of the critical habitat designation fall within the Wallow Fire perimeter. While all of Unit Two is within the Wallow Fire burn perimeter, most of the area designated as critical habitat falls within areas that experienced either no or low burn severity. The North Fork East Fork Black River falls within an unburned area inside the perimeter of the fire, as does most of Boneyard Creek. The majority of East Fork Black River falls within an area that experienced low burn severity, but does cross a few areas that were either unburned or burned at moderate burn severity. Coyote Creek is in an area almost entirely burned at low severity. Within Unit 7, the majority of Campbell Blue Creek is within unburned or low

burn severity areas; however, approximately 2.4 km (1.5 mi) of the upper end of Campbell Blue Creek is within moderate and high burn severity. The Wallow Fire stopped just west of the Blue River, but came within approximately 0.3 km (0.2 mi) of the River.

The impacts from fire on fish and their habitat are described in greater detail within the discussion of threats. While the fire itself may not have reached high severity in proximity to the areas designated as critical habitat, the following ash and sediment that can be displaced from within the watershed into the streams is of primary concern. During the monsoon, which began before the fire was extinguished, ash and sediment entered Campbell Blue Creek and the Blue River. In the Blue River, ash and sediment travelled as far downstream as the San Francisco River, resulting in fish kills (Blasius, 2011, pers. comm.). Fish surveys completed during the fall of 2011 found reduced numbers of loach minnow (Adelsberger *et al.* 2011, p. 1). It is important to note however, that these areas, while temporarily affected by the ash and sediment resulting from the fire, are not permanently altered. We anticipate that they will continue to support loach minnow, albeit at reduced levels, and that, given sufficient time, they will recover sufficiently to provide habitat for loach minnow in Unit 2 and both spikedace and loach minnow in Unit 7.

(113) *Comment:* More than a century of stream and riparian habitat abuses does not indicate some happy coexistence between the livestock industry and conserving and recovering these two imperiled cyprinids that are facing extinctions largely from habitat alterations and fragmentation. There are clear and serious conflicts between domestic livestock grazing and conserving and fully recovering endangered spikedace and loach minnows throughout their historic ranges in the Gila River Basin of Arizona, New Mexico, and Northern Mexico.

Our Response: As noted in the threats analysis within the document, the Service recognizes that there are impacts from livestock grazing on riparian and stream systems and the species that depend on them. As also noted in the threats analysis, we believe that progress has been made with grazing management, but that legacy effects of past improper livestock grazing persist. At this time, we believe that progress has been made within the range of spikedace and loach minnow. However, because not all conflicts between grazing and fish have been eliminated, there is still a discussion on the types of impacts that can occur.

(114) *Comment:* We strongly support additional mileage and acreage of designated critical habitat for proposed endangered spikedace and loach minnow, but oppose the omission of much of the historic, unoccupied habitats necessary for not only the conservation, but the successful full recovery at a natural rate, without retardation, of these imperiled Southwestern cyprinids, and the eventual delisting of these species from the Act. While the Service proposes occupied habitat of an additional 14.2 miles of the San Francisco River and 19.5 miles of Bear Creek in New Mexico for the proposed endangered loach minnow critical habitat designations, it freely admits in the **Federal Register** Notice (at page 61332) to the fatal omission of stream reaches that connect occupied habitat for both imperiled cyprinids. We strongly disagree with the Service proposed critical habitat designation rule for omitting connecting reaches that would allow genetic exchanges between dwindling populations and pockets of individual spikedace and loach minnows—which do not constitute viable, sustainable populations—as well as other historic unoccupied habitats that may be crucial for the survival and full recovery of the two fishes. This blatant oversight ignores the basic precepts of modern conservation biology and the accepted science of conservation genetics needed to sustain viable populations of rare and declining species like the spikedace and loach minnow.

Our Response: As noted in the NOA (76 FR 61330), we were unable to identify additional areas within the historical range of the species that currently have sufficient habitat parameters to serve as connective corridors between occupied and unoccupied habitat. As also stated in the NOA, we believe that both loach minnow and spikedace conservation will require genetic exchange between the remaining populations to allow for genetic variation, which is important for species' fitness and adaptive capability. Our inability to identify unoccupied streams that would provide connections between occupied areas is a result of the highly degraded condition of unoccupied habitat and the uncertainty of stream corridor restoration potential. We anticipate that we will further address the issue of restoration of genetic exchange in our revised Recovery Plan. A Spikedace and Loach Minnow Recovery Team has been formed, and will be meeting in early 2012.

(115) *Comment:* We urge the Service to reevaluate the proposed 300-foot riparian strips and to consider them only as a minimum with wider riparian buffers required for larger stream reaches like the mainstem San Francisco River and Gila River. A similar approach is incorporated in the PACFISH/INFISH extant consultations in the interior Pacific Northwest, like the Land and Resource Management Plans Biological Opinion, which the Service issued for bull trout and other native fishes and the National Marine Fisheries Service issued for ESA-listed anadromous salmonids. In these consultations and agreements, while the minimum standard for a Riparian Conservation Area or Riparian Habitat Conservation Area (RHCA) is set, there are additional science-based criteria for increasing the area or breadth of the designated critical habitat surrounding critical stream reaches based on the stream order or size of the reach, and how the riparian ecosystems actually function. For an example, you should examine the designated critical habitat rule for the threatened Snake River spring/summer Chinook salmon. In that Designated Critical Habitat Final Rule, smaller tributaries are protected with the minimum RHCA, while larger rivers like the Salmon River or Snake River, maintain much broader RHCAs to conserve ecological functionality of the designated critical habitats and help ensure to maintain sustainable, viable populations and Distinct Population Segments or Evolutionarily Significant Units (or ''species'' under the Act).

Our Response: As stated in the 2007 **Federal Register** notice designating critical habitat, we selected the 300-foot lateral extent, rather than some other delineation, for three reasons: (1) The biological integrity and natural dynamics of the river system are maintained within this area (i.e., the floodplain and its riparian vegetation provide space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry, store water for slow release to maintain base flows, provide protected side channels and other protected areas, and allow the river to meander within its main channel in response to large flow events); (2) conservation of the adjacent riparian area also helps provide nutrient recharge and protection from sediment and pollutants; and (3) vegetated lateral zones are widely recognized as providing a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water

temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality (see U.S. Army Corps of Engineers' final notice concerning Issuance and Modification of Nationwide Permits, March 9, 2000, 65 FR 12818–12899).

(116) *Comment:* We urge the Service to expand the proposed critical habitat designation rules to encompass upstream stream reaches and riparian habitats, whether they are occupied, historic but currently unoccupied, or even historically unoccupied stream/riparian reaches that are upstream of designated critical habitats and/or spikedace and/or loach minnows. As a broadly accepted scientific principle that is at the heart of watershed science, hydrology, and stream ecology, what happens upstream in a watershed, including adverse effects like dewatering, accelerated bank and upland erosion, and subsequent increases in siltation and turbidity of streams like that associated with domestic livestock grazing, logging, road encroachment, and poorly regulated off-road vehicle use, has significant adverse effects downstream on listed fishes and/or their designated critical habitats.

Our Response: Some areas have been expanded as described in the notice of availability and in this document; other areas have been reduced. Federal actions that may affect critical habitat will be evaluated under section 7 of the Act, regardless of in which portion of the watershed those actions occur.

(117) *Comment:* While it is not as intuitive to consider upstream reaches and watersheds as part of the designated critical habitats and section 7 consultations, the Service also needs to include downstream reaches if the goal is conservation, and full recovery without retardation of the natural rates. As explained eloquently by Dave Rosgen in his 1996 book, *Applied River Morphology,* by other stream hydrologists and watershed scientists, and from our extensive experiences examining stream channel alterations across the West caused by domestic livestock grazing, restrictive culverts, and other habitat threats, what happens downstream can certainly affect upstream reaches in stream and riparian ecosystems, particularly in the Arid West. Fluvial morphological actions like downcutting, headcutting, stream widening, stream channel filling with increased sediment loads, and the simplification of stream channel morphology with the accompanying disconnection of impacted streams with their natural floodplains, not only adversely affects the impacted reaches and downstream riparian and stream habitats, but also can result in upstream bank sloughing, riparian vegetation collapse, alluvial water declines, stream channel straightening, steepening, and water velocity increase. These actions just feed the cycle and accelerate the habitat destabilization and degradation, to the detriment of the dependent fish populations like spikedace and loach minnows in the Gila River Basin of Arizona, New Mexico, and Northern Mexico.

Our Response: The Service is aware of the information provided in Rosgen's book titled *Applied River Morphology,* which is, in fact, cited within the rule. Under section 7 of the Act, the Service evaluates impacts to the species and their habitat and ecological needs based on the best information available, regardless of where those impacts originate.

(118) *Comment:* The Service should be conducting section 7 consultations with the USFS, BLM, Bureau of Indian Affairs, and others to conserve and recover endangered spikedace and loach minnow populations, prevent non exempted section 9 take of individual fishes, prevent the adverse modification of designated critical habitats, and closely examine if proposed Federal actions may retard the natural rates of recovery of these two Southwestern cyprinids. These consultations should occur in upland, riparian, and aquatic ecosystems in the Gila River Basin, whether the Federal actions are within occupied or unoccupied designated critical habitat or they are upstream of them. We remind the Service that it can expand the action areas presented to it in an action agency's biological assessment and as such, section 7 consultations are not restricted to the footprint of the proposed project or action or even to the property boundaries of lands managed by a Federal agency like the USFS, BLM, or the Service. Likewise, the Service, according to its own Section 7 Consultation Handbook, is not restrained by the action agency's effects determinations and in meeting the spirit and intent of the Act, should always err towards the conservation of listed species and their protected habitats, especially endangered species, which by their nature, are facing potential extinctions, by replacing the determinations with their own, stricter effects determinations for species, designated critical habitats, and recoveries.

Our Response: We agree that the ''action area'' of a project refers to all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action, as defined in 50 CFR 402.02.

(119) *Comment:* In the arid West, including in the Gila River of Arizona and New Mexico, as well as Northern Mexico, water diversions and artificial impoundments are prized for agricultural production, livestock watering, and domestic water supplies. Often, the diversion structures are not properly screened or designed to prevent impingement (i.e., fish get stuck on the screens or filters, if there are any, or entrainment such that fish get caught in water conveyance pipes and ditches and may end up stranded in dewatered structures), allow fish passage upstream and downstream, or completely dewater occupied reaches of stream or disconnect isolated populations. The Service must ensure that Federally funded, permitted, and/or designed water diversion works are not lethally or non lethally taking listed spikedace and loach minnow in the Gila River Basin. Additionally, we expect the Service to enforce the Act and fully prosecute water users taking spikedace and loach minnow without exemptions under a biologically sound and legal incidental take statement or habitat conservation plan under section 10 of the Act.

Our Response: Section 9 of the Act prohibits actions including, but are not limited to, take (i.e., harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such activity) for all listed species.

(120) *Comment:* While we recognize that the Service views western water law and individual water rights as a states issue, the Federal government does have some significant influence on modifying the diversion, conveyance, storage, and use of western waters diverted from watersheds like the Gila River Basin, including through section 7 consultations with Federal action agencies that are permitting, designing or funding such activities, whether they are on Federal public, military reservations, tribal lands, or state or private lands. For example, many diversions originate on Federal lands managed by the USFS or BLM and include conveyances and rights-of-way that cross public lands or are used, as in the case of livestock water, in troughs, tanks, and artificial ponds, actually on Federal lands. There is precedent for having Federal action agencies like the USFS condition how water is diverted and conveyed across Federal lands even if the water rights are held by private or corporate entities. For example, the Salmon-Challis National Forest and Sawtooth National Forest in Idaho have entered into a legal settlement agreement with Western

Watershed Project to condition diversions and conveyances in the Salmon River Basin to the benefit of listed anadromous salmonids and bull trout. The USFS has also executed a programmatic biological assessment for lockable head gates, measuring devices, and fish screens and has completed formal consultation with the Service and National Marine Fisheries Service. We strongly encourage the Service to lead the way with a similar effort in the water-limited Gila River Basin with its BLM, USFS, military and tribal consultation problems.

Our Response: A recovery team is being established to develop on-the-ground strategies to conserve these two species.

(121) *Comment:* It is alarming to note how the Service has carefully dissected the occupied and historic unoccupied reaches of the loach minnow and spikedace in their proposed critical habitat rule just to avoid existing water diversion structures. This ''gerrymandering'' of the proposed riparian and stream reaches goes well beyond the precepts of broadly accepted conservation biology and should be eliminated from the Final Rule.

Our Response: We acknowledge the absence of connective corridors in the proposed designation. We continue to believe that both loach minnow and spikedace conservation will require genetic exchange between the remaining populations. However, the designation was not developed with existing water diversion structures as a focal point. Instead, we developed a ruleset, which was applied across the historical ranges of the two species. Many of the stream segments included, such as the Verde River, Blue River, Eagle Creek, and Gila River, have existing diversion structures within the designated area.

(122) *Comment:* Endangered species should not be subject to section 4 permits with States like Arizona and New Mexico and the tribal governments for angling, fish stocking, and possibly stock assessments and research/experiments. The Service has expressed that endangered spikedace and loach minnow face real threats from predation, competition, and transmission of disease and parasites by nonnative species, some of which are managed by fish and game agencies as game or sport fishes. In most cases, through Dingell-Johnson Federal funds administered by the Service, states like Arizona and New Mexico operate sport fisheries including stocking of nonnative predators, lethal and nonlethal take associated with angling, fisheries inventories and research, and hatchery programs. These actions should be considered and, if continued, be subject to section 7 consultations to protect spikedace and loach minnow and their designated critical habitats.

Our Response: Federal funding of the Urban Stocking Program in Arizona was completed in 2011. The consultation resulted in a Statewide conservation program for native fishes while continuing sport fish stocking and management in designated streams.

(123) *Comment:* The Service should be carefully assessing the environmental risks to individuals and critical habitats of spikedace and loach minnow with the types, amounts, seasons, and methods of chemical control of pests and weeds. In the case of the USFS, BLM, Bureau of Indian Affairs, military, and the Service's wildlife refuges, environmental risk analyses scaled down for endangered fishes to the No Observed Effects Levels (''NOELs'') are necessary as are consultations and new labeling that restricts the uses of accepted chemicals and surfactants (and other carriers and adjutants) to protect spikedace and loach minnows. Special care is needed within the 300 ± ft riparian buffers, but effectiveness and implementation monitoring as well as water quality testing is needed to prevent unwanted extirpations or even extinctions.

Our Response: The Service has a long history of conducting section 7 consultations on a wide variety of pesticide and herbicide treatments, weed control, and related topics.

(124) *Comment:* Simply adding some 34 miles of streams to the designated critical habitats is insufficient when some 80 to 90 percent of the historical range is adversely modified and/or vacant. These meager actions on behalf of spikedace and loach minnow will not stem the slippery slope towards extinctions for these native desert stream fishes, especially with a significant portion of the two species' ranges altered or vacated.

Our Response: We are not certain where the figure of 34 additional miles came from in this comment. With this designation, we are increasing the overall mileage by 305 km (188 mi), compared to the 2007 designation.

General Comments Issue 2: Legal or Policy Concerns

(125) *Comment:* The Service needs to complete a regulatory flexibility analysis.

Our Response: Compliance with the Regulatory Flexibility Act is part of this final rule, and can be found under the subheading of ''*Regulatory Flexibility Act (5 U.S.C. 601* et seq.*)''*.

(126) *Comment:* The use of only one PBF in determining suitability is inadequate. If an area cannot support a viable population, then by definition it cannot be critical habitat.

Our Response: In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 453.12, in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species and which may require special management considerations or protection. In our final critical habitat designations, we did not include any occupied areas that contained only one PBF. All of the areas occupied at the time of listing for both species, or each individual species, contain more than one PBF, as described in the unit descriptions.

(127) *Comment:* Please explain why the word ''only'' is in the phrase ''* * * be included only if those features may require special management considerations or protection.'' The word ''only'' is not in section 3 of the Act (see page 66496, 1st column, item (II). It appears that this proposed rule is trying to narrow the scope of what can be included in critical habitat (i.e., make policy).

Our Response: We agree with the commenter that the language in the proposed rule was incorrect. We have inserted the following language in the final rule: ''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 and biological features which are essential to the conservation of the species and which may require special management considerations or protection.''

(128) *Comment:* The Service received several requests for an extension of the comment period.

Our Response: We believe the two comment periods allowed for adequate opportunity for public comment. A total of 90 days was provided for document review and the public to submit comments. In addition, a public hearing was scheduled on October 17, 2011, as another venue for comment submission.

(129) *Comment:* The Nation supports the Service's proposal to exclude those lands located within the exterior boundaries of the Yavapai-Apache Reservation from the final critical habitat designation under section 4(b)(2) of the Act, as the benefit of such exclusion outweighs the benefits of designating these lands as critical habitat, and such exclusion will not result in the extinction of the species.

Our Response: Within the proposed rule, we identified areas that we would consider for exclusion, including those of the Yavapai-Apache Reservation. Please see the Exclusions section for the analysis on the benefits of inclusion and exclusion for this area.

(130) *Comment:* There were several comments regarding the proposed exclusions in the proposed rule and that our rationale was not clear in determining which areas were proposed for exclusion. FWS should provide support for all exclusion determinations.

Our Response: We may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In addition, we can consider exclusion of areas covered by other management plans or agreements such as habitat conservation plans which provide equal or better protection than would be gained from a critical habitat designation. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. See the discussion in the exclusions section of the final rule for further details.

(131) *Comment:* Fort Huachuca is requesting that a national security analysis in compliance with section 4(b)(2) be performed in consultation with the fort. In addition, the fort would like to continue dialogue beyond November 3, 2011, on the issues that have been raised in both letters regarding the national security impacts and the lack of justification for critical habitat designation in Unit 3.

Our Response: We conducted an exclusion analysis based on a comment in which national security issues were raised by Fort Huachuca following closure of the second comment period. In this final rule, the San Pedro River has been excluded from the designation because the benefits of exclusion outweigh the benefits of inclusion based on potential impacts to national security. Refer to the discussion in the Exclusions section for further details.

(132) *Comment:* The Service is not following their own regulations, policies and guidelines by allowing a long list of major Federal actions, such as fish recovery projects carried out under the Central Arizona Project (CAP) Biological Opinion, and the proposed spikedace and loach minnow critical habitat designation, to occur without NEPA analysis.

Our Response: While actions taken under the CAP Fund Transfer Program do benefit spikedace and loach minnow, these are projects that are largely derived from the section 7 process. While ideally, recovery actions and critical habitat designation support one another to achieve recovery and delisting of the species, critical habitat designation is independent of these types of management actions. Had the Bureau of Reclamation and the Service decided for example, not to complete recovery actions on Bonita Creek or Hot Springs Canyon with barrier construction and translocations of the two species, we would still be designating critical habitat. These actions are therefore independent of one another and require separate NEPA analysis.

(133) *Comment:* The way the Service implements consultations, the designation of critical habitat does impose universal rules and restrictions on land use. It does automatically trigger consultation with Service for modifications and results in prohibiting and altering certain land uses and water development activities. An example is the Upper San Pedro River where the habitat is unoccupied. With designated critical habitat there is a universal rule and restriction that any activity within 300 feet of the river cannot adversely modify critical habitat. This automatically prohibits a land owner from creating a tilapia farm, alfalfa farm, alpaca ranch, livestock corral or otherwise lawful activity within 300 feet of the river. This is a universal blanket rule in critical habitat. To state otherwise is disingenuous.

Our Response: It should be noted that adverse modification is rarely reached. Designation of critical habitat does not prohibit projects, but should an action be proposed, permitted, or funded by a Federal agency, section 7 consultation may be required. The purpose of section 7 consultation is to provide minimization measures that reduce the impacts to listed species or their critical habitat. There are no automatic prohibitions to activities under the ESA.

(134) *Comment:* The term ''sufficient conservation measures'' is used three times in the Environmental Assessment. The subsequent EIS needs to detail the measures deemed sufficient so that the costs and benefits of excluding areas due to economic, national security, and other needs can be assessed.

Our Response: Please see the Exclusions section of this document, which describes the process that the Service uses to determine if exclusions are warranted. Generally, the process weighs whether the benefits of exclusion outweigh the benefits of inclusion. In the case of a management plan that details conservation measures, the Service would consider conservation measures sufficient if they would lead to conservation that meets or exceeds what we would anticipate occurring through designation of critical habitat.

(135) *Comment:* An issue was raised regarding large floods in the streams proposed for critical habitat and if the designation would make it more difficult to complete repair work since some funding will be from Federal agencies.

Our Response: Flooding, along with other activities, often does involve a Federal nexus that might trigger a section 7 consultation. Should flooding occur, Federal assistance may be used through programs such as the Natural Resource Conservation Service's Emergency Watershed Protection Program, which has been used in the past to provide assistance to landowners in protecting their property from flood damage. The Service has established emergency consultation procedures that allow for this type of Federal action to move forward quickly, with emphasis on protection of human life and property.

(136) *Comment:* The designation of critical habitat for these species is an attempt by the Service to gain additional control over the use of public and private land and resources.

Our Response: Critical habitat identifies geographic areas that contain features essential for the conservation of a threatened or endangered species and that may require special management considerations. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Critical habitat designation does not impose restrictions on private lands unless Federal funds, permits or activities are involved. Federal agencies that undertake, fund, or permit activities that may affect critical habitat are required to consult with the Service to ensure that such actions do not adversely modify or destroy designated critical habitat. Requirements for consultation on critical habitat do not apply to entirely private actions on private lands. Critical habitat designations apply only to Federal lands, or federally funded or permitted activities on non federal lands. Activities on private or State lands that are funded, permitted, or carried out by a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, will be subject to the

section 7 consultation process with the Service if those actions may affect critical habitat or a listed species.

(137) *Comment:* One commenter noted that the development of conservation agreements with agencies and private landowners to gain similar protection to that afforded by designation of critical habitat would preclude the need to designate critical habitat but that, as no such efforts were under way across the species' range during the 2010 proposed rule development, the Service rejected an alternative to accept conservation agreements in lieu of critical habitat designation. The commenter noted that conservation agreements would allow the Service to save money by putting a large part of the conservation burden on agencies and landowners, and that it may have been premature for the Service to reject this alternative. There may be potential for better results than through designation. Specifically, the AWSA offers opportunity to easily improve habitat for the loach minnow and spikedace.

Our Response: We agree that the use of conservation agreements may, in some instances, provide a conservation benefit equal to or greater than the designation of critical habitat. However, at the time that the critical habitat designation was proposed and subsequently finalized, no such conservation agreements were under way or in place. The Service has a court-determined deadline for designation of critical habitat. While we considered those conservation agreements that are under way, we are not able to delay the designation of critical habitat until such agreements are developed, and we are not able to exclude areas from critical habitat based on conservation agreements that might be developed in the future.

(138) *Comment:* In the past the Service has published information which states that designation of critical habitat provides little additional protection to species (69 FR 53182). The information states that in 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. Additionally, we have also found that comparable conservation can be achieved by implementation of laws and regulations obviating the need for critical habitat. This statement supports the preparation of an EIS.

Our Response: The Service has changed how it evaluates the value of critical habitat due to guidance provided by the Ninth Circuit Court. Formal consultation under section 7 of the Act concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or to destroy or adversely modify critical habitat (50 CFR 402.14[h]). In 2004, the Ninth Circuit Court determined through *Gifford Pinchot Task Force et al.* v. *United States Fish and Wildlife Service* (2004) that, while the jeopardy standard concerns the survival of a species or its risk of extinction, the adverse modification standard concerns the value of critical habitat for the recovery, or eventual delisting, of a species. As pointed out in the Ninth Circuit decision, survival of a species and recovery (or conservation) of a species are distinct concepts in the ESA. Implementation of the two standards, therefore, involves separate and distinct analyses based on these concepts.

In light of the *Gifford Pinchot* decision, the Service no longer relies on the regulatory definition of ''destruction or adverse modification'' of critical habitat at 50 CFR 402.02. Instead, the Service relies on the statutory provisions of the ESA to complete the analysis with respect to critical habitat. The potential for destruction or adverse modification of critical habitat by a Federal action is assessed under the statutory provisions of the ESA by determining whether the effects of the implementation of the proposed Federal action would allow the affected critical habitat to remain functional (or retain those PBFs that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species (75 FR 66519). This analysis provides the basis for determining the significance of anticipated effects of the proposed federal action on critical habitat. The threshold for destruction or adverse modification is evaluated in the context of whether the critical habitat would remain functional to serve the intended conservation role for the species. The direction provided by the Ninth Circuit Decision in *Gifford Pinchot* has changed the way the Service is analyzing the value of critical habitat.

(139) *Comment:* Under Section 7 ESA consultations, FWS should urge the reinitiation of extant consultations, including programmatic consultations, with the uplisted statuses of spikedace and loach minnow in mind as well as the expanded designated critical habitats. This includes the 18 BLM domestic livestock grazing allotments in the mid-Gila River Basin.

Our Response: Reinitiation of consultation is required if a new species or critical habitat designation may be affected by an identified Federal action. Any consultations for projects that are within the proposed critical habitat designation may need to be reinitiated to evaluate impacts on the critical habitat. However, it should be noted that the 2007 critical habitat designation remains in place until the 2012 designation is published, and many projects went through consultation under the 2007 designation. For projects that have been developed in the interim, preliminary consultation is under way in many areas.

(140) *Comment:* It is our understanding that FMC has not submitted a draft management plan for spikedace and loach minnow conservation on reaches of the San Francisco and Gila Rivers and Eagle Creek. Without management plans, FMC's contention that these stream reaches and their spikedace and loach minnow populations do not require special management is invalid. If FMC does submit management plans in support of a request for exclusion of their lands from the critical habitat, please send us copies for our information and review.

Our Response: Freeport-McMoRan developed two management plans. One plan addressees Eagle Creek and the San Francisco River in Arizona, while the other addresses the Gila River, Bear Creek, and Mangas Creek in New Mexico. A description of the management plans and our decision regarding exclusions can be found in the ''Exclusions'' section of the final rule. The management plans themselves are available on *http://www.regulations.gov* for public viewing.

(141) *Comment:* An earlier management plan by Phelps-Dodge (acquired by FMC) used to support the exclusion of their lands along the upper Gila River in the 2007 final critical habitat rule was vague and completely inadequate. It was primarily a study plan for the USFS's Rocky Mountain Research Station. This study plan received strong criticism from within the USFS and those comments were made available to the Service. We submitted a critical review of the Phelps-Dodge/Rocky Mountain Research Station management/study plan in a letter of October 14, 2006, to the Service. In our letter we also commented on the inadequacy of a similarly vague and insubstantial Phelps-Dodge management plan for Eagle Creek. Neither of these two defective plans should be considered in

this revision of the critical habitat, both are inadequate and out-of-date.

Our Response: Freeport-McMoRan provided updated management plans during the second comment period. The revised plans provide for the commitment of significant additional resources for construction of barriers to limit movement of nonnative fish into spikedace and loach minnow habitat, monitoring, and other conservation actions.

(142) *Comment:* In April 2007 the Service informed us they do not believe the 2003 Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) applies to critical habitat designations and so will not conform to it when assessing the quality and sustainability of management plans submitted in seeking critical habitat exclusions. The PECE is a strong and well constructed policy for assessing the value to species from proposed private conservation efforts, and regardless of whether or not it can be legally required, we urge the Service to use PECE in its analysis of management or conservation plans submitted in support of requested exclusions from critical habitat designation for spikedace and loach minnow. An analysis using PECE guidelines, and made available to the public, would be a worthwhile and informative method for documenting the Service's rationale and process for critical habitat exclusion decisions.

Our Response: The PECE Policy identifies criteria we use in determining whether formalized conservation efforts that have yet to be implemented or to show effectiveness contribute to making listing a species as threatened or endangered unnecessary. We believe that a recovery plan is the appropriate vehicle to provide guidance on actions necessary to delist a species.

(143) *Comment:* For the reasons set forth here and as explained in (a) prior filings with the Service by the Nation; and (b) in face-to-face meetings and other communications with the Service (all of which are incorporated in full here by reference), it remains the Nation's position that the Secretary of the Interior lacks legal authority to designate critical habitat on the Nation's lands. (See written comments of the Yavapai-Apache Nation, dated February 16, 2006, February 21, 2006, February 26, 2006, July 6, 2006, and December 27, 2010 specifically addressing prior and current proposals by the Service to designate critical habitat for the spikedace and loach minnow on the Yavapai-Apache Reservation.)

Our Response: We understand that it is the Tribe's position that a designation of critical habitat on its lands improperly infringes upon its Tribal sovereignty and the right to self-government. In recognition of the Nation's sovereignty, our working relationship with the Tribe, and the management efforts taken by the Yavapai-Apache Nation on their tribal lands that benefit spikedace and loach minnow, all proposed critical habitat has been removed from the final rule.

General Comments Issue 3: Economic Analysis Concerns

(144) *Comment:* There were several comments concerning the effects of the critical habitat designation on the operation of Ft. Huachuca, especially the economic costs and cumulative effects.

Our Response: The economic effects were analyzed in the draft economic analysis, however, the San Pedro River has been excluded based on national security issues related to the operation of Ft. Huachuca. See our discussion in the Exclusion section of this text.

(145) *Comment:* The cumulative impact of the endangered species program combined with critical habitat designations in Arizona and New Mexico over the last 9 years has been severe. More than a one-third reduction in the number of USFS permittees and a 33.8 percent reduction in the number of animal unit months occurred (AUMs) in the period 2000 to 2009. This information is from the USFS, Annual Grazing Statistical Reports.

Our Response: We agree with the commenter that the comparison of 2000 (USDA 2000, p. 31) to 2009 (USDA 2011, p. 33–34) data indicates an overall reduction in the number of permittees, head months (HMs), and animal unit months. However, these documents report the figures cited in the comment, without stating any conclusions as to the cause of the decline between 2000 to 2009, so it would be in error to conclude that the cumulative impact of the endangered species program and critical habitat designations in Arizona and New Mexico have led to this decline.

(146) *Comment:* We challenge the validity of the draft environmental assessment especially with its proposed exclusions of Federal lands managed by agencies like the USFS or BLM, just because they have paper plans in place that one would expect to protect designated critical habitat and promote the conservation and recovery of listed species like spikedace and loach minnow that are facing potential extinctions. Using the grazing allotment examples with which we are most familiar, paper Land and Resource Management Plans and Resource Management Plans do not guarantee the necessary protections and recovery under the Act for these two imperiled fish species. In fact, our field and legal work have proven how weak the paper promises are and how important enforcement of the Act and legal actions are for just conserving what remains of the 10 to 20 percent of the occupied habitats for the two cyprinids in the lands. By eliminating those from the final critical habitat rules, the Service will undermine the conservation and recovery without retardation of the natural rates of loach minnow and spikedace.

Our Response: At this time, we are not excluding Federal lands from the designation of spikedace and loach minnow critical habitat and are not including any Land and Resource Management Plans or Resource Management Plans as the means for any exclusions. Our rationale for excluding tribal and military lands are provided within the Exclusions section of this rule.

(147) *Comment:* The Communities have existing rights to groundwater and surface water within the Upper Verde River Watershed. Additionally, the Communities have invested in the development of additional water rights owned by the City of Prescott in the City's Big Chino Water Ranch in order to preserve and enhance the economic viability of the region.

Our Response: Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat.

(148) *Comment:* Participation in the National Resource Conservation Service (NRCS) program may be impacted by the critical habitat designation due to time delay impacts on NRCS activities, including those under the Environmental Quality Incentives Program (EQIP) that would require section 7 consultation. Also, NRCS programs might be affected because farmers could refuse federal funding to avoid a federal nexus that would require section 7 consultation.

Our Response: Exhibits ES–1 and ES–2 in the Economic Analysis recognize the potential for impacts to participation in NRCS funding and programs. However, considerable uncertainty exists surrounding the effect of critical habitat designation on the level of participation in the NRCS and other Federal programs. At this time, we are unaware of any instances where critical habitat designation has resulted in

delays to NRCS project implementation. Therefore, these impacts are not quantified. Section 3.6 of the final economic analysis does, however, discuss potential impacts of critical habitat on NRCS programs in more detail, including the potential for reduced farmer participation in these programs. Further, it should be noted that the Service and NRCS completed a programmatic consultation in 2011 which will facilitate the review of EQIP projects.

(149) *Comment:* The number of wells in the Virden Valley area of the Gila River is underestimated because the analysis only considers wells within critical habitat areas.

Our Response: The geographic scope of the final economic analysis was estimated using information provided in the proposed rule, in which the Service states that critical habitat designation extends 300 feet to either side of a stream's bank full width. While it is certainly possible that wells outside of this area draw water from critical habitat reaches, those particular wells were not easily identified. It should be noted that because groundwater withdrawals frequently do not involve a Federal nexus, groundwater issues have rarely been addressed through section 7 consultations in the past. The analysis therefore reports the number of groundwater wells in proposed critical habitat areas, but does not assign a cost associated with potential impacts to these wells.

(150) *Comment:* In the economic analysis for the critical habitat designation, the Service uses faulty logic by comparing projected dollar costs to the public weighed against projected biological benefits of protecting habitat for the endangered species. This is performed under the specious argument that conserving and recovering endangered and threatened species should not be reduced to dollars and cents. While this appears noble, it places portions of designated critical habitat at the great risk of being excluded for economic reasons, even when some of the economic costs can be countered with local or regional economic benefits. The Service totally ignores these benefits and weighs the full weight of the costs for their economic exclusion decisions.

Our Response: Section 2.3.3 of the final economic analysis recognizes that ''the published economics literature has documented that social welfare benefits can result from the conservation and recovery of endangered and threatened species. In its guidance for implementing Executive Order 12866, the OMB acknowledges that it may not be feasible to monetize, or even quantify, the benefits of environmental regulations due to either an absence of defensible, relevant studies or a lack of resources on the implementing agency's part to conduct new research. Rather than rely on economic measures, the Service believes that the direct benefits of the proposed rule are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking. Critical habitat designation may also generate ancillary benefits. Critical habitat aids in the conservation of species specifically by protecting the primary constituent elements on which the species depends. To this end, critical habitat designation can result in maintenance of particular environmental conditions that may generate other social benefits aside from the preservation of the species. That is, management actions undertaken to conserve a species or habitat may have coincident, positive social welfare implications, such as increased recreational opportunities in a region. While they are not the primary purpose of critical habitat, these ancillary benefits may result in gains in employment, output, or income that may offset the direct, negative impacts to a region's economy resulting from actions to conserve a species or its habitat.'' Section 11 qualitatively describes coincident benefits of the designation on water quality, stream flow levels, property values, and aesthetic and educational benefits. The Service considers these benefits while weighing the benefits of inclusion against the benefits of exclusion before excluding any area from the designation.

(151) *Comment:* Commenters recommend that the authors of the spikedace and loach minnow economic analysis and environmental analysis documents cite Dr. Rinne's publications that describe the increase in predatory nonnative fish and the disappearance of native fish on the Verde River after removal of livestock.

Our Response: Section 2.3.3 of the final economic analysis recognizes that ''the published economics literature has documented that social welfare benefits can result from the conservation and recovery of endangered and threatened species. In its guidance for implementing Executive Order 12866, the OMB acknowledges that it may not be feasible to monetize, or even quantify, the benefits of environmental regulations due to either an absence of defensible, relevant studies or a lack of resources on the implementing agency's part to conduct new research. Rather than rely on economic measures, the Service believes that the direct benefits of the proposed rule are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking. Critical habitat designation may also generate ancillary benefits. Critical habitat aids in the conservation of species specifically by protecting the primary constituent elements on which the species depends. To this end, critical habitat designation can result in maintenance of particular environmental conditions that may generate other social benefits aside from the preservation of the species. That is, management actions undertaken to conserve a species or habitat may have coincident, positive social welfare implications, such as increased recreational opportunities in a region. While they are not the primary purpose of critical habitat, these ancillary benefits may result in gains in employment, output, or income that may offset the direct, negative impacts to a region's economy resulting from actions to conserve a species or its habitat.'' Section 11 qualitatively describes coincident benefits of the designation on water quality, stream flow levels, property values, and aesthetic and educational benefits. The Service considers these benefits while weighing the benefits of inclusion against the benefits of exclusion before excluding any area from the designation.

(152) *Comment:* The commenter believes that economic benefits at the local, regional, and national levels exist, but are not included in the draft Economic Analysis.

Our Response: As stated in Section 2.3.3 of the final economic analysis, ''Critical habitat aids in the conservation of species specifically by protecting the primary constituent elements on which the species depends. To this end, critical habitat designation can result in maintenance of particular environmental conditions that may generate other social benefits aside from the preservation of the species. That is, management actions undertaken to conserve a species or habitat may have coincident, positive social welfare implications, such as increased recreational opportunities in a region. While they are not the primary purpose of critical habitat, these ancillary benefits may result in gains in employment, output, or income that may offset the direct, negative impacts to a region's economy resulting from actions to conserve a species or its habitat.''

(153) *Comment:* Rather than applying the 'but for' test for some of the projected costs, the costs attributed to

the designation of critical habitat for spikedace and loach minnow should be independent of other costs that would exist, whether there is designated critical habitat or not for spikedace and loach minnow. In other words, the coextensive framework used in the draft Economic Analysis is inappropriate.

Our Response: The estimation of incremental impacts is consistent with direction provided by the Office of Management and Budget to Federal agencies for the estimation of the costs and benefits of Federal regulations (see Office of Management and Budget, Circular A–4, 2003). It is also consistent with several recent court decisions, including *Cape Hatteras Access Preservation Alliance* v. *U.S. Department of the Interior,* 344 F. Supp. 2d 108 (D.D.C.) and *Center for Biological Diversity* v. *U.S. Bureau of Land Management,* 422 F. Supp. 2d 1115 (N.D. Cal. 2006). Those decisions found that estimation of incremental impacts stemming solely from the designation is proper. However, in order to address the divergent opinions of the courts and provide the most complete information to decision-makers, this economic analysis reports both the baseline impacts of protections afforded spikedace and loach minnow absent critical habitat designation; and the estimated incremental impacts precipitated specifically by the designation of critical habitat for the species. Summed, these two types of impacts comprise the fully co-extensive impacts of conservation in areas considered for critical habitat designation.

(154) *Comment:* The Economic Analysis and Environmental Assessment should cite Dr. Rinne's publications that describe the increase in predatory nonnative fish and the disappearance of native fish on the Verde River after removal of livestock.

Our Response: Section 4.1 of the final economic analysis now recognizes that studies by J. N. Rinne have suggested that current management has been successful at mitigating the negative effects of grazing on riparian habitat, that further limitation of grazing may create conditions conducive to non-native species, and that fencing could be detrimental to riparian species.

(155) *Comment:* Each addition of a species and/or critical habitat area takes its toll on the economic viability of ranching and this cumulative impact was not discussed in the critical habitat documents. A single additional restriction or requirement that decreases the profitability of an operation could be the one that causes the operator to go out of business.

Our Response: This concern is now reflected in Section 3 and Appendix A of the FEA.

(156) *Comment:* The NRCS agency is the best agency to provide current and accurate actual costs of conservation practices. The Economic Analysis states that the cost of fencing ranges from $1,690 to $16,900 per river mile of fence construction. NRCS costs, which are updated yearly to be as close to actual as possible, estimates the cost of fence construction at $3.05 per foot for level ground to $4.30 per foot for rough county and $5.75 per foot for rough county where materials must be packed in. This would make the cost of fence building to range from $16,104 to $30,360. The articles by Miller 1961, Platts 1990, Belsky 1999 referenced in the draft Economic Analysis are not the best commercially available information.

Our Response: In response to two public comments, the final economic analysis now incorporates updated fence construction and maintenance cost estimates, maintained and updated by NRCS for 2012. In Section 4.3.1 of the final economic analysis, fencing costs are estimated to range from $8,940 per mile fenced to $14,500 per mile fenced, with annual fence maintenance costs ranging from $179 to $725 per mile of fencing.

(157) *Comment:* The use of 2002 census data in the draft Economic Analysis and the draft Environmental Assessment is not compliant with requirements to use the best scientific and commercial data available. The Economic Analysis and Environmental Assessment need to be updated to use 2011 data.

Our Response: The final economic analysis and final environmental assessment now incorporate 2010 census data where possible throughout the report to more accurately estimate the magnitude and distribution of economic impacts.

(158) *Comment:* The draft Economic Analysis does not consider impacts to grazing related to the necessity for water in all livestock operations.

Our Response: As shown in Exhibit 4–3 of the final economic analysis, the Service has historically recommended that off-river water systems be used to supply water to cattle where possible, but has not disallowed watering areas.

(159) *Comment:* The designation of critical habitat for spikedace and loach minnow could possibly be the ''final straw'' for what Department of Defense is willing to spend on Fort Huachuca's support of the Act and it is significant as a cumulative impact. If one more element of critical habitat is added over and above the current cost of all the other management actions for endangered species the Fort is financing, it could be the factor that triggers the Fort to reduce its missions or close the Fort and move all the missions to other locations.

Our Response: The final economic analysis now recognizes the commenters concern in Section 3.5. In addition, please note that the San Pedro River has been removed from the designation. Additional detail is provided in the ''Exclusions'' section above.

(160) *Comment:* The commenter believes the draft Economic Analysis fails to consider three classes of small entities defined by the Small Business Administration as: businesses with an average income under $750,000, cities and towns with a population under 50,000 and local governments such as school districts.

Our Response: In the final economic analysis, Appendix A, Section A.1.2, details the types of small entities included in the analysis, and includes those categories of small entities identified in the comment. The analysis, as described in Exhibit A–1, considers small businesses on the basis of the Risk Management Association's Small Business Size Standards, including, for some industries, businesses with revenues under $750,000. In addition, Appendix A states, ''Section 601(5) of the Regulatory Flexibility Act defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000. Special districts may include those servicing irrigation, ports, parks and recreation, sanitation, drainage, soil and water conservation, road assessment, etc.''

(161) *Comment:* The Economic Analysis needs to consider impacts to operations falling into numerous NAICS codes: 111940 Hay Farming; 112111 Beef Cattle Ranching and Farming; 112112 Cattle Feedlots; 112120 Dairy Cattle and Milk Production; 112210 Hog and Pig Farming; 112410 Sheep Farming; 112920 Horses and Other Equine Production; 113110 Timber Tract Operations; 113210 Forest Nurseries and Gathering of Forest Products; 113310 Logging; 114210 Hunting and Trapping; 115112 Soil Preparation, Planting, and Cultivating; 115113 Crop Harvesting, Primarily by Machine; 115114 Postharvest Crop Activities (except Cotton Ginning); 115115 Farm Labor Contractors and Crew Leaders; 115116 Farm Management Services; 115210 Support Activities for Animal Production;

115310 Support Activities for Forestry; etc.

Our Response: Exhibit A–1 lists the NAICS codes used to identify potentially affected small entities in the industries most likely to incur impacts related to the critical habitat designation. The final economic analysis considers nine NAICS classifications in agricultural, ranching, and development sectors, including Hay Farming (111940) and Beef Cattle Ranching and Farming (112111). It is not clear why the commenter expects impacts to the remaining sectors listed.

(162) *Comment:* The commenter claims the economic analysis is flawed because it failed to coordinate development of the Proposed Rule changes with local government.

Our Response: As noted in Section 7.3, the analytic approach to the Economic Analysis is explained. Based on projected growth rates, the analysis identified counties that were likely to undergo high levels of development and were thus most likely to incur impacts to residential and commercial development activities. Based on this process, a subset of county and local government planning offices that were likely to incur costs to development was contacted. Due to time constraints, every county and local government could not be contacted.

(163) *Comment:* Appendix A recognizes that there will be economic impacts to small entities but underestimates the impacts due to the omission, throughout both the draft Environmental Assessment and the draft Economic Analysis, of not taking into account the potential restrictions to groundwater extraction and use in areas outside the actual critical habitat designation corridor. Similarly, the draft Economic Analysis and draft Environmental Assessment generally fail to address water and land uses outside the proposed critical habitat, focusing instead on impacts occurring within the proposed critical habitat—a corridor that extends 300 feet from each side of the stream edge at ''bank full discharge.'' As a consequence, the full range of impacts has not been considered.

Our Response: As noted in comment 149 above, the geographic scope of the final economic analysis was estimated using information provided in the Proposed Rule, in which the Service states that critical habitat designation extends 300 feet to either side of a stream's bank full width. However, the analysis is not limited to assessing impacts derived from activities occurring inside that area. For example, Section 5 of the final economic analysis focuses on mining activities which are not located in proposed critical habitat areas. The potential for impacts to groundwater users is discussed qualitatively.

(164) *Comment:* Because of differing court rulings in the Ninth and Tenth Circuit Courts, the Service must perform a full analysis of all of the economic impacts of the critical habitat designated in New Mexico, regardless of whether an impact is co-extensive with the species' listing, while for critical habitat proposed in Arizona, the Service may use the baseline approach. However, the different approaches adopted by the two circuits are relevant only where currently occupied areas are designated as critical habitat. In the absence of recent records of occupancy, the area should be treated as unoccupied and all impacts attributed to the designation.

Our Response: As stated in Section 2 of the final economic analysis, in order to address the divergent opinions of the courts and provide the most complete information to decision-makers, this economic analysis reports both the baseline impacts of protections afforded the two species absent critical habitat designation; and the estimated incremental impacts precipitated specifically by the designation of critical habitat for the species. When summed, these two types of impacts comprise the fully co-extensive impacts of conservation in areas considered for critical habitat designation.

(165) *Comment:* The draft economic analysis erroneously used an incremental impact approach for critical habitat proposed in New Mexico.

Our Response: Please see the comment above regarding use of the incremental versus baseline approaches for critical habitat designated in New Mexico.

(166) *Comment:* Smallmouth bass, along with channel catfish, are the primary sport fish in Eagle Creek, as well as other streams proposed as critical habitat, including the lower San Francisco River and the Verde River and its tributaries. The draft Economic Analysis fails to address the economic impacts of removing these warmwater sportfish, which in many locations are the primary sportfish.

Our Response: Section 6.3 of the final economic analysis states ''non-native fish species that could potentially impact spikedace and loach minnow include catfish, largemouth bass, smallmouth bass, green sunfish, brown trout, rainbow trout, and red shiner. Possible recovery actions include the installation of fish barriers, increased monitoring, and non-native fish removal.'' The AGFD identified planned or ongoing non-native fish removal activity on the Verde River, as noted in Exhibit 6–7, amounting to a one-time cost of $150,000 to $200,000 in undiscounted dollars between 2016 and 2031, with the possibility of an additional one-time cost of $50,000 (undiscounted) for follow-up activity over that period. However, neither the AGFD nor the NMDGF identified non-native fish removal activity as being planned on Eagle Creek or the lower San Francisco River.

(167) *Comment:* The volumes of water used at Morenci are so significant that sufficient quantities of substitute water sources may be impossible to obtain. The DEA should be revised to reflect the costs of restricting or preventing mining production and limiting expansion capabilities.

Our Response: Section 5 of the final economic analysis is focused exclusively on a discussion of potential impacts to the mining industry, and specifically focuses on facilities owned by FMC. The discussion includes data supplied by the commenters on the scope and scale of potential impacts to those operations. Information received as part of the comment above provided a value of potential lost water rights and associated replacement costs based. While we do not disagree that, should the water be lost to mining activities, such costs could occur, there remains considerable uncertainty as to the likelihood of such events. Nonetheless, the final economic analysis includes estimates of the cost of replacing water sources in Section 5 of the analysis, to provide additional context for understanding the potential magnitude of impacts, should they occur.

(168) *Comment:* The draft Economic Analysis does not address the impacts of critical habitat on water supplies for the communities of Morenci and Clifton.

Our Response: The final economic analysis now acknowledges this concern in Section 5.

(169) *Comment:* The critical habitat designation threatens rights of the Town of Sierra Vista, Cochise County, and the Coalition of New Mexico Counties to surface and groundwater.

Our Response: Impacts to municipal water use are discussed qualitatively in Section 3 of the final economic analysis. Considerable uncertainty surrounds the specific quantity of water, if any, that Service would request to be conserved for spikedace and loach minnow as part of a section 7 consultation. As such, this analysis does not quantify the probability or extent to which water use would need to be curtailed or modified

to remedy impacts on spikedace and loach minnow.

(170) *Comment:* The draft Economic Analysis states that 29 percent of the land in critical habitat is privately owned. This is a significant amount of private land, especially when you consider how little streamside acreage there is within the arid states of Arizona and New Mexico. For many purposes, land adjacent to flowing water is the most valuable land in the arid west. The draft Economic Analysis understates impacts to development on streamside land.

Our Response: As stated in Section 7 of the final economic analysis, potential modifications to development projects related to spikedace and loach minnow conservation activities depend on the scope of spikedace and loach minnow conservation activities, pre-existing land use and regulatory controls in the region, and the nature of regional land and real estate markets. In this case, consultations on development activities have been rare (one to date). In addition, riparian development buffers already exist in many areas, and some developments may not require any Federal permits. Further, the Service does not expect that conservation efforts related to future development activities in critical habitat areas are likely. The analysis nonetheless includes an estimate that assumes that all private parcels in the Verde unit are required to conduct conservation efforts for spikedace and loach minnow. Separate from that, Section 11 of the final economic analysis describes published studies that have examined increased property values associated with stream habitat. For example, Colby and Wishart estimated the value to property arising from proximity to open space provided by streambeds, arroyos, and dry washes in the city of Tucson, Arizona. The authors found that existence of permanent easements and other policies to protect these areas increased the property values of homes within one-half mile of the streambed by an average of five percent. However, compliance costs for development projects are not anticipated to be higher for streamside homes than in other areas.

(171) *Comment:* There are potential mathematical errors in the calculation of impacts. In the Executive Summary, it states that ''Incremental impacts are estimated to be $2.20 million to $8.79 million over twenty years ($194,000 to $776,000 annually) using a real rate of seven percent, or $2.77 million to $11.2 million over 20 years ($181,000 to $728,000 annually) using a real rate of three percent.'' However, $194,000 × 20 years = $3.88 million (not $2.2 million); 776,000 × 20 years = $15.52 million (not $8.79 million); $181,000 × 20 years = $3.62 million (not $2.77 million) and $728,000 × 20 = $14.56 million (not $11.2 million). Taking into account the 3 and 7 percent analysis does not fix this error.

Our Response: The Economic Analysis presents economic impacts that may be incurred in different time periods in present value terms and annualized terms. As described, annualized values are calculated to provide comparison of impacts across activities with varying forecast periods and distribution over time. For this analysis, activities employ a forecast period of 20 years. The discrepancies identified by the commenter appear to be related to the commenter's assumptions that reported costs are *annual* costs, rather than *annualized* costs.

(172) *Comment:* The draft Economic Analysis does not consider the costs of developing alternate water sources, reductions in the number of cattle the operator can run, or additional consultant and meeting costs for grazing activities.

Our Response: Based on a review of the consultation history, the economic analysis determined that the Service is not likely to request restrictions or reductions on water use for grazing activities during section 7 consultation. Therefore, water use impacts are not expected for grazing operations. It would be helpful if we can show that the consultation allowed watering areas too, since I think the issue is not having access to the water itself due to fencing.

(173) *Comment:* The cost of fish barrier installation used in the draft Economic Analysis is too low. The cost of building a fish barrier is between $800,000 and $1 million.

Our Response: Fish barrier costs are given in Exhibit 6–6 of the analysis. Undiscounted fish barrier costs range from $1 million on the low end to $10 million of the high end. These costs have been confirmed with Bureau of Reclamation officials responsible for fish barrier installation in Arizona and New Mexico.

(174) *Comment:* Transportation costs are too low and the economic analysts should consult with the affected entities.

Our Response: Section 9 of the final economic analysis reports costs associated with transportation projects that were estimated by the Arizona Department of Transportation related to a consultation for an endangered fish species.

(175) *Comment:* The fire management costs in the draft Economic Analysis are too low.

Our Response: Based on information received during the comment period, we have adjusted estimated impacts to fire management activities to include costs related to the 2011 Coronado Fire. The analysis estimates three total fire management activities throughout all of the critical habitat designation, one in Unit 3. Impacts to fire management are presented in Section 10.3. Impacts are estimated at $14,200 over the next 20 years ($1,250 on an annualized basis).

(176) *Comment:* The draft economic analysis should use more up-to-date administrative cost figures than the 2002 dollar figures from across the country. The cost figures used should be based on a review of consulting records from Arizona and New Mexico from 2010 through 2011.

Our Response: The draft Economic Analysis provided an incorrect citation in Exhibit 2–3. Data from the ''Federal Government Schedule Rates, Office of Personnel Management'' is from 2011, not 2008. The draft Economic Analysis and underlying cost models incorporated the most recent estimates of administrative effort during section 7 consultation, based on data from the Federal Government Schedule Rates, Office of Personnel Management, 2011, and a review of consultation records from several Service field offices across the country conducted in 2002. This citation error has been corrected in the final economic analysis.

(177) *Comment:* The commenter believes the administrative costs are too low.

Our Response: The commenter did not provide a basis for assuming the administrative costs estimated in this report are too low.

(178) *Comment:* The statement that the Service ''anticipates requesting few additional changes'' is nebulous.

Our Response: The commenter did not provide a basis for questioning the Service's statements.

(179) *Comment:* The **Federal Register** and the draft Economic Analysis give different total impacts estimates for incremental and coextensive costs.

Our Response: The information printed in the revised Proposed Rule and Notice of Availability released by the **Federal Register** on October 4, 2011 represents an error. The costs reported in the draft Economic Analysis posted to *www.regulations.gov* are correct.

(180) *Comment:* In Exhibit ES–1, the draft Economic Analysis underestimates or avoids stating the true impacts due to designation of the San Pedro River. Cochise County and the City of Sierra

Vista cannot withstand an impact of $3,240,000. An EIS is necessary to analyze the economic impacts of the proposed designation.

Our Response: Exhibits ES–1 and ES–2 summarize the expected administrative costs and project modification impacts developed in the analysis. These costs are detailed in Chapter 3 of the final economic analysis.

(181) *Comment:* The Service has failed to provide the requisite analysis required by law prior to designating critical habitat. This is evidenced by the fact that the spikedace and loach minnow economic analysis was done by IEc, the same firm that performed the cactus ferruginous pygmy-owl economic analysis.

Our Response: As described in detail in Section 2.1 of the final economic analysis, the analysis adheres to OMB Circular A–4 guidelines for providing assessments of the social costs and benefits of proposed regulatory actions. Also, in response to relevant rulings in both the U.S. Ninth and Tenth District Court of Appeals, in order to address the divergent opinions of the courts with respect to NEPA, and in order to provide the most complete information to decision-makers, this economic analysis reports both the baseline impacts of protections afforded the four invertebrates absent critical habitat designation and the estimated incremental impacts precipitated specifically by the designation of critical habitat for the species. Summed, these two types of impacts comprise the fully co-extensive impacts of conservation in areas considered for critical habitat designation.

(182) *Comments:* One section 7 consultation for a development project occurred in Yavapai County and considered potential impacts to the spikedace, loach minnow and the southwestern willow flycatcher on the lower Verde River. The Homestead Project consultation recommended the following conservation measures: Fencing; producing educational materials for homeowners; conducting scientific studies over 20 years; surveying and monitoring over 20 years; and off-setting mitigation (habitat set-asides). To ensure that the action would not adversely affect the spikedace and loach minnow, the following measures were added: developing a recreation and habitat monitoring plan; monitoring effects of recreation on habitat; implementing measures to ensure that habitat and streambanks are not degraded; reducing risk of exotic species reintroduction through educational programs, prohibiting backyard ponds, and prohibiting fishing and in-stream recreation in the 25-acre Conservation Area on the property; improving human barriers to entrance to the river area and preventing trespass; and increasing fence maintenance. The developer for this project stated that 95 percent of costs to accommodate threatened and endangered species stemmed from southwestern willow flycatcher needs, and that total costs to implement conservation measures would have been $4.4 million to $4.8 million. However, the Service states that this project did not go forward, and that the property has since been sold. Many developments do not go forward due to these types of onerous government restrictions that often add enormous costs, yet provide little benefit to the species. The true economic costs of the proposed critical habitat designation include the cost of foregone development opportunities because the developers and their consultants do not even have to ask the Service what the development restrictions will be. Instead, they choose to avoid the entire costly process of consultation with the Service.

Our Response: Section 7 of the final economic analysis addresses impacts to development activities. As discussed in that section, the analysis utilizes a range of assumptions to estimate the potential impact of critical habitat on development activities in these areas. Individual single-family home development has rarely been subject to consultation or habitat conservation planning requirements in Arizona. As noted in the comment, only one development has undergone a formal section 7 consultation related to development activities and impacts to multiple species, including spikedace and loach minnow, in the past, and this development was never, so no actual cost information is available.

A number of existing baseline requirements prohibit development in floodplain areas, which limits the likelihood of developments within the critical habitat designation. In addition to the rarity of consultations in the past, potential for baseline protections, as well as the potential lack of a Federal permit requirement for some development projects, the Service does not expect that conservation efforts related to future development activities in critical habitat areas are likely to occur. As a result, the low end scenario assumes that no future consultations or conservation efforts on development will occur related to spikedace and loach minnow over the next 20 years. However, because it is not certain that no consultations or conservation efforts for spikedace and loach minnow will occur related to development activities, the analysis also considers a high end scenario, where proposed critical habitat areas will be built out at a rate that is proportional to the county-wide housing unit growth rate within the next 20 years. To the extent that developers avoid critical habitat areas, this effect would be considered a stigma effect and is recognized in the analysis.

(183) *Comment:* Census data is compromised in areas of low population density due to Privacy Act considerations. In these areas the disclosure of economic activities by individuals and businesses would entail disclosing identifiable personal information. Such data needs to be determined by on-the-ground surveying to produce reliable information on potential impacts. To do anything less will result in failure to disclose impacts on the most vulnerable segments of the economy.

Our Response: The final economic analysis includes, to the extent possible, data sources that represent the most accurate population and demographic data publicly available. Performing an on-the-ground survey of undisclosed personal business is outside the scope of the final economic analysis.

(184) *Comment:* There is a total omission of the affected counties and other local government road and bridge maintenance and construction impacts. Had the Service properly contacted the affected counties and other local governments, they could have obtained numerous impacts that are not catalogued by the state departments of transportation. The failure to obtain and analyze these impacts renders this section deficient.

Our Response: As stated in the final economic analysis, county road and bridge construction and maintenance projects often require state Department of Transportation involvement on some level. Due to Federal funds accepted by most state Departments of Transportation, county road and bridge construction activity can be subject to a Federal nexus. The Arizona Department of Transportation and the New Mexico Department of Transportation were contacted and responded with information on all county and state road and bridge construction projects that required state Department of Transportation involvement. All county and state road construction projects that may potentially require section 7 consultation were captured in these communications and are presented in Section 9 of the final economic analysis. Those projects that do not require Department of Transportation

involvement lack a Federal nexus and would not be subject to section 7 consultation, and thus are not anticipated to incur costs associated with this rule.

(185) *Comments:* The draft Economic Analysis at Section 8–4 makes note of the fact that the Bureau of Indian Affairs provides technical assistance to the Tribes on forest-management planning and oversees a variety of programs on tribal lands. While the purpose of this statement is not made clear by the Service, any suggestion that the BIA presently has or will in the future have sufficient funding and/or programs to ''offset'' the increased administrative and other costs resulting from the designation of critical habitat on tribal lands such as the Yavapai-Apache Reservation is misplaced. In truth, federal funding for tribal programs and programs for technical assistance within the BIA are increasingly threatened in today's tough economic and budget climate. The Service simply cannot rely on the BIA as a means to potentially ''mitigate'' for the increased costs that the Nation will suffer if critical habitat is designated on the Nations lands.

Our Response: The draft Economic Analysis did not intend to imply that BIA involvement would mitigate costs to the Tribes, only that BIA involvement could potentially provide a Federal nexus for projects associated with BIA programs. This has been clarified in Section 8 of the final economic analysis.

(186) *Comment:* The draft environmental assessment states that ''As a result the Fort has reduced its water usage from 3,300 acre–feet per year (20 years ago) to 1,142 acre–feet currently.'' There is a difference between water usage and groundwater pumping volume. The values used in this sentence are groundwater pumping rather than water usage. This statement is inaccurate and needs to be revised.

Our Response: The language in the final economic analysis has been revised to reflect this comment.

(187) *Comment:* The **Federal Register** and DEA give different total impacts estimates for incremental and coextensive costs.

Our Response: The information printed in the proposed rule and NOA released by the **Federal Register** on October 4, 2011, represents an error. The costs reported in the draft economic analysis posted to *http://www.regulations.gov* are correct. Total incremental impacts for all of the above activities are estimated to be $2.29 to $47.2 million over 20 years ($202,000 to $4.16 million annually) using a real rate of seven percent. The final draft economic analysis values were $2.20 million to $8.79 million over twenty years ($194,000 to $776,000 annually) using a real rate of seven percent.

General Comments Issue 4: National Environmental Policy Act Concerns

(188) *Comment:* The mission of the Service is to conserve, protect and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people. This mission will work much better when done with full disclosure of agency analysis processes as is called for by NEPA. FWS should consider the impacts of their actions on the local citizens and should give due weight to feedback from those who will bear the direct burden of FWS actions.

Our Response: The Service has made available a draft economic analysis and a draft environmental assessment which considered the impacts of the critical habitat designation on local citizens. In addition, we completed two comment periods totaling 90 days, which included an open house and public hearing, during which comments were submitted by the public. The comment and response section of this document provides the feedback requested.

(189) *Comment:* There were several comments on the inadequacy of the draft environmental assessment, especially in respect to making a determination of negligible to minor impacts on the environment.

Our Response: We determined through the NEPA process that the overall effects of this action are insignificant. An EIS is required only if we find that the proposed action is expected to have a significant impact on the human environment. The completed studies, evaluations, and public outreach conducted by the Service have not identified impacts resulting from the proposed designation of critical habitat that are clearly significant. The Service has afforded substantial public input and involvement, with two comment periods and a public hearing. Based on our analysis and comments received from the public, we prepared a final EA and made a Finding of No Significant Impact (FONSI), negating the need for a preparation of an EIS. We have determined that our EA is consistent with the spirit and intent of NEPA. The final EA, FONSI, and final economic analysis provide our rationale for determining that critical habitat designation would not have a significant effect on the human environment. Those documents are available for public review (see **ADDRESSES**)

(190) *Comment:* A commenter requested that the actual size or distance of stream proposed as critical habitat be clarified. The information in the October 4, 2011, **Federal Register** notice, draft environmental assessment and draft economic analysis caused some confusion.

Our Response: Because fishes occupy stream habitat, we have determined that it is more appropriate to quantify the delineation in terms of stream miles rather than total acres. All mileage figures throughout the rule and in the tables have been checked for consistency and adjusted where necessary. In addition, see the discussion on lateral extent of the stream in the Criteria Used to Identify Critical Habitat section.

(191) *Comment:* Several comments asked why different alternatives were not evaluated in the environmental and economic analyses, including the 1994 critical habitat designation (with and without appropriate exclusions), evaluating only river and streams that are currently occupied, and, an alternative that evaluates the designation of critical habitat in light of the Service's policy of supporting and enhancing recreational fishing opportunities with the designation of critical habitat.

Our Response: 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.

We do not believe the area encompassed by the 1994 designation would include areas essential for the conservation of the species. In addition, if we were to limit critical habitat to the 257 km (159 mi) in the 1994 designation, any impacts to that limited amount of area would be much more difficult to minimize or offset, and the likelihood of reaching the adverse modification threshold would be substantially increased. Also, the goal for management of spikedace and loach minnow is to recover the two species so that they may be removed from the endangered species list, and recovery would not be possible within the confines of the limited area included in 1994. Finally, the Service is charged with using the best scientific and

commercial information available. New information has been gained about the species, their habitat requirements, and distribution, and the use of the 1994 rule would not reflect this information.

In addition, for a species that is currently limited to 10 to 20 percent of its range, recovery in the remaining occupied areas is impractical. Areas outside of the currently occupied areas will be needed to recover both species, and we have included these areas as essential to the conservation of the species.

Finally, with respect to conflicts with sportfishing opportunities, the Service is currently completing a sportfish stocking consultation that addresses management for native fish and sportfish. In addition, the Service coordinates closely with the Arizona Game and Fish Department on management of native fishes and sportfish.

(192) *Comment:* Hidalgo County officials and residents were not aware of the status of the critical habitat proposal until March of this year. We need to point out that the only published newspaper in Hidalgo County, the *Hidalgo County Herald,* was not included in the Service's contacts for publishing the notices.

Our Response: The *Hidalgo County Herald* was included in our notification list, and Hidalgo County officials are included in our interested parties mailing list. We believe the two comment periods allowed for adequate opportunity for public comment. A total of 90 days was provided for document review and for the public to submit comments. In addition, a public hearing was scheduled on October 17, 2001, as another venue for comment submission.

(193) *Comment:* The first paragraph of the discussion of Alternative A in the draft environmental assessment indicates that the current critical habitat designation includes an increase of up to 239 miles of designated critical habitat over the 2007 designation of 522 miles, and then states that addition would result in a small but unknown number of new or reinstated consultations and that the economic analysis projects at a similar rate and in similar units as the past. Considering the addition of 239 miles is approximately a 45 percent increase in habitat designation, the impacts are being understated. In addition, unoccupied habitat does not currently require consultation.

Our Response: The overall designation does include an increase in total mileage over that designated in 2007. The Service cannot predict the number of consultations that will occur as that number is dictated by as-yet-undefined projects that will occur within critical habitat and that have a Federal nexus. Therefore, we have made the best predictions possible based on existing information, which is the level of section 7 consultation that has occurred in the past.

(194) *Comment:* The use of introduction of nonnative predators and prolonged periods of low or no stream flow as catastrophic events in the draft environmental assessments ensures 100 percent chance of a ''catastrophic event'' as there is continued stocking of nonnative fish by State fish and wildlife agencies and because every year there are widespread and common ''prolonged periods of low or no stream flow'' along large portions of the Upper San Pedro River and a number of other stream and river segments proposed for critical habitat.

Our Response: The language in this comment comes from the ''Need for the Action'' section of the draft environmental assessment. Taken in context, the information in this section highlights the fact that habitat loss or alteration has occurred in the past, and that additional losses or further restrictions in the species' distributions increases their vulnerability to a variety of threats. The intent of this section was not to highlight any one threat or management concern, but to provide background information on the need for the critical habitat designation.

(195) *Comment:* To state that the impact of excluding an area due to economic, national security, or other needs would depend on issues not addressed in the environmental assessment is an admission that the environmental assessment is inadequate. The EA never analyzes conservation measures at Fort Huachuca or anywhere else except Ttribal and FMC lands. These facts continue to support the argument that all the major decisions were made before the environmental assessment was written. The EA is a post-decision document, in violation of NEPA.

Our Response: The draft environmental assessment was completed following the publication of the proposed rule, but prior to the development of a final rule for critical habitat. Comment letters, including management plans, can be accepted up through the closing of the second comment period, which follows the publication of the draft environmental assessment. Therefore, there is no possible way for the draft environmental assessment to address conservation measures, as its publication preceded receipt of comments and management plans detailing those conservation measures. The final rule describes several exclusion decisions that were made, including one for Fort Huachuca, following closure of the second comment period and review of all materials received.

(196) *Comment:* The word ''unknown'' was used at least 26 times in relation to impacts, which triggers an EIS. The primary purpose of preparing an environmental assessment under NEPA is to determine whether a proposed action would have significant impacts on the human environment. If significant impacts may result from a proposed action, then an EIS is required (40 CFR 1502.3). Whether a proposed action exceeds a threshold of significance is determined by analyzing the context and the intensity of the proposed action (40 CFR 1508.27). Under Council of Environmental Quality (CEQ) regulations, which are responsible for ensuring compliance with NEPA, intensity is determined by considering 10 criteria (CFR 40 1508.27[b]) including ''the degree to which the proposed action would impose unique, unknown, or uncertain risks (emphasis added).'' The proposed alternatives in the EA would impose at least 26 ''unknown'' risks including the risk of compromising national security by taking money away from the War on Global Terrorism. An EIS is required under 40 CFR 1508.27.

Our Response: If some of the impacts will occur in the future, the Federal agency still has an obligation to consider reasonably foreseeable future impacts. 40 CFR 1508.7 defines ''cumulative impact'' as the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions (*Custer County Action Ass'n* v. *Garvey,* 256 F.3d 1024 (10th Cir. 2001)). The record of decision must contain a ''useful analysis of the cumulative impacts of past, present, and future projects,'' which requires ''discussion of how [future] projects together with the proposed project will affect [the environment] (*Muckleshoot Indian Tribe* v. *U.S. Forest Serv., 177 F.3d 800, 810 (9th Cir. 1999)).''*

Nevertheless, NEPA does not require the government to do the impractical (*Kleppe* v. *Sierra Club,* 427 U.S. 390, 1976). Determining the environmental impacts of reasonably foreseeable actions does not mean that the Federal agency has to wait to make its decision on the current project until the details of other foreseeable actions are known

(*Kleppe* v. *Sierra Club, id.; Inland Empire Public Lands Council* v. *U.S. Forest Service,* 88 F.3d 754 (9th Cir. 1996). If a future action is foreseeable but not imminent and its details are not yet known, the Federal agency is not required to wait until the details of the other action are known before proceeding (*Kleppe* v. *Sierra Club, supra).* When further investigation would provide no definitive information to resolve the issues during the time frame for the decision on the project, further investigation in an EIS is not required (*Kleppe* v. *Sierra Club,* 427 U.S. 390 (1976); *Neighbors of Cuddy Mountain* v. *United States Forest Serv.,* 137 F.3d 1372, 1380 (9th Cir. 1998)).

(197) *Comment:* We strongly challenge the adequacy of the draft environmental assessment, especially in how it glosses over the serious and significant adverse effects to loach minnow and spikedace populations and adverse modifications to critical habitats that the livestock industry has imposed after a century of devastation and stream and riparian ecosystem destruction in the Gila River Basin.

Our Response: The proposed rule and final rule acknowledge the significant impact grazing has had on many watersheds in the West. We also acknowledge significant improvements on Federal lands due to restrictions in riparian and stream corridors and other management practices.

(198) *Comment:* The draft environmental assessment (and where relevant, draft economic analysis) fails, among other things, to accurately characterize (and therefore consider) (a) the substantive protections that already exist on the Yavapai-Apache Reservation for the spikedace and loach minnow; (b) the nature of surface water rights within the Verde River Subbasin, including the Federal reserved water rights that are held by the United States of America in trust for the Nation; and (c) the adverse impacts that the designation will have on the Nation's ability to preserve itself in its permanent tribal homeland as outlined by the Nation in prior comments and discussions with the Service on this matter.

Our Response: We appreciate the concerns of the Tribe and have excluded all lands of the Yavapai-Apache Nation in consideration of impacts to the Tribe, their sovereign nation status, existing management practices, and ongoing relationship with the Service. The Exclusions section of the final rule details our rationale for the exclusion.

(199) *Comment:* Furthermore, the draft environmental assessment fails to discuss (or even reference) those portions of the Nation's recent written comments submitted to the Service on December 27, 2010, which summarize the steps that the Nation has taken since enactment of Tribal Resolution No. 46–2006, to provide continuing protection for the habitat within the Verde River Conservation Corridor. See Draft EA at 141 (referencing only the Nation's comments from 2006 relative to the Verde River Conservation Corridor and ignoring recent comments updating the Service on this matter).

Our Response: The purpose of the draft environmental assessment is to reflect the impacts of the decision, as made by the Service, of the critical habitat designation. The Service does not make decisions on exclusions until both comment periods have been closed, in order to ensure that all parties have an opportunity to provide relevant information. Therefore, at the time the draft environmental assessment was published, the Service had not yet decided that the Yavapai-Apache Nation lands would be excluded from the designation. The comments regarding the steps the Nation has taken are most relevant to the Service's decision, which is then ultimately reflected in the draft environmental assessment.

(200) *Comment:* In reviewing the existing conditions of water resources of the Verde River, the draft environmental assessment discusses the ''water rights'' of the Salt River Project and other non-Indian users along the River, but fails to mention the important fact that the Yavapai-Apache Nation, and the United States as the trustee for the Nation, also hold present and perfected, high-priority water rights to the surface flows of the Verde River and its tributaries under principles of Federal law. See, e.g., *Arizona* v. *California,* 373 U.S. 546, 600 (1963); see also, *In Re The General Adjudication of All Rights to Use Water In the Gila River System and Source,* 201 Ariz. 307, 35 P.3d 68, 71–72 (2001) (''Gila V''). In addition, other tribes, including the Fort McDowell Yavapai Nation and the Salt River Pima-Maricopa Indian Community, hold high-priority water rights to the Verde River, yet the draft environmental assessment fails to mention this fact as well.

Our Response: The purpose of the draft environmental assessment is to reflect the impacts of the decision, as made by the Service on the critical habitat designation. The final environmental assessment will be updated where needed, in response to the two comment periods.

(201) *Comment:* In the ''Environmental Consequences'' section of the draft environmental assessment (3.9.2), the Service concludes, with almost no substantive analysis or discussion, that the impacts of designating critical habitat on the Nation's lands for the spikedace and loach minnow under Alternative B ''would be minor.'' Draft EA at pp. 145–146. The Nation disagrees.

Our Response: In the final rule, Yavapai-Apache lands have been excluded from the designation. Both the economic analysis and environmental assessment have been updated in response to these comments.

(202) *Comment:* The Service is requested to once again review the Nation's prior written and oral comments (2006 through 2010) regarding the potential designation of critical habitat on the Yavapai-Apache Reservation and to meaningfully discuss these concerns in the final environmental analysis (Alternative B) and in the final economic analysis.

Our Response: In the final rule, Yavapai-Apache lands have been excluded as we determined that the Yavapai-Apache Nation's resolution specifically addresses conservation of these species, and the benefits of exclusion outweighed the benefits of inclusion.

(203) *Comment:* It must also be noted that the draft environmental assessment wrongly states that the Tribal lands considered for critical habitat designation ''are primarily used for livestock grazing, fuelwood cutting, roads, and recreation.'' By lumping all Tribal lands together in its analysis, the draft environmental assessment misrepresents how the Yavapai-Apache Nation utilizes the lands within the Verde River Subbasin that are proposed for designation in this instance. These lands are used to satisfy the permanent tribal homeland needs of the Yavapai-Apache Nation. It should also be pointed out that contrary to the Draft EA, these lands are not utilized for livestock grazing and they remain protected pursuant to tribal law under tribal Resolution No. 46–2006. In addition, the Nation generally does not permit fuelwood cutting within this area and the Nation has only one minor access road across the River. Although the Nation does utilize the Verde River to satisfy the recreational needs of its tribal members, this does not involve large-scale recreational activities. In addition, it is important to understand the fundamental role that the Verde River and its habitat continues to play in the traditional, cultural, and religious practices of the Nation. Indeed, as the Nation has repeatedly explained to the Service, the Verde River is intertwined with the identity of the Yavapai and Apache people, including with regard to

certain ceremonial and religious practices that are deliberately conducted within the Verde River Corridor. None of these important points have been meaningfully considered in the Draft EA. The Nation respectfully requests that the Service address as part of the final environmental assessment and final economic analysis the Nation's previously stated concerns pertaining to the myriad of very real and specific impacts that are likely to stem from the proposed designation on the Nation's lands, which includes impacts on the Nations ability to preserve itself in its permanent tribal homeland.

Our Response: Thank you for the response. We note that the lands are used to satisfy the permanent tribal homeland needs of the Yavapai-Apache Nation. We further note that the Nation does not permit fuelwood cutting within certain areas, and that some portion of the land is used for certain ceremonial and religious practices.

(204) *Comment:* The summary for the August 26, 2011, draft environmental assessment indicates that two additional proposed stream segments were added for critical habitat designation in some places, and that three additional stream segments were added in other places within the document. The location and description of these two or three added stream segments are not described in the description of the alternatives found in Chapter 2 of the DEA.

Our Response: The Service has made changes to five stream segments proposed for critical habitat designation subsequent to publication of the proposed rule. These include: (1) Increasing the length of the San Francisco River critical habit segment for loach minnow only from 112.3 miles to 126.5 miles; (2) adding a 19.5-mile critical habitat segment of Bear Creek for loach minnow only; (3) reducing the Redfield Canyon critical habitat segment for spikedace and loach minnow from 14.0 miles to 4.0 miles; (4) reducing the Hot Springs Canyon critical habitat segment for spikedace and loach minnow from 11.8 miles to 5.8 miles; and (5) increasing the Fossil Creek critical habitat segment for spikedace and loach minnow from 4.7 miles to 13.8 miles. These changes are reflected in the final environmental assessment.

(205) *Comment:* The Service has failed to provide adequate information regarding the actual environmental impacts of critical habitat designation for spikedace and loach minnow. Statements in the draft environmental assessment explaining the requirements of the Act and the rationale for the Service to propose and then designate critical habitat for the spikedace and loach minnow may help the public understand the mindset of the Service, however they do little to provide information concerning the actual environmental effects of designating critical habitat for the species. The Service should revise the draft environmental assessment to remove much of the explanation language for the Act and replace it with analysis of the environment effects of designating SD/LM critical habitat. As stated in 40 CFR, Part 1500.1(b), ''Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.''

Our Response: The 2011 draft and 2012 final environmental assessment largely follow the format and methodology used to prepare the 2006 final environmental assessment. Additional information has been provided to the more recent environmental assessments, where needed, to refine habitat requirements (physical and biological features) essential to the conservation of the species, changes to stream segments proposed for critical habitat designation. Additional information has also been provided, where necessary, with respect to the affected environment and environmental consequences. The conclusions of the environmental consequence analysis have not substantially changed from the 2006 final environmental assessment to the 2012 final environmental assessment.

(206) *Comment:* In comparison to Alternatives A and B, the No Action Alternative includes three stream segments not in the 2010 proposed rule. These stream segments are now considered by the Service to be highly degraded and likely not occupied by spikedace or loach minnow. The ISC would like to know where those segments are located, what degradation supports removal from listing.

Our Response: The no action alternative is the 2007 final rule. When compared to the 2010 proposed rule, the no action alternative includes three stream segments not included in the 2010 proposed rule: (1) For spikedace only, the middle Gila River from Ashurst-Hayden Dam upstream to the confluence of the San Pedro River; (2) for spikedace only, the lower San Pedro River from the confluence with the Gila River to the confluence with Aravaipa Creek; and (3) for loach minnow only, the San Francisco River upstream of the confluence with the Tularosa River. The Service has re-evaluated the suitability of these three stream segments for critical habitat designation and now considers the middle Gila segment and the lower San Pedro segment to no longer meet the rule set for spikedace or loach minnow critical habitat. For loach minnow only, the 22.9 km (14.2 mi) segment of the San Francisco River segment upstream of the Tularosa River confluence is included in the final rule for critical habitat designation for loach minnow.

(207) *Comment:* The Statement in Chapter 4 of the draft environmental assessment states that the potential impacts on the quality of the environment are not likely to be highly controversial, which is not true, especially for the upper San Pedro River area.

Our Response: The Service has reviewed the comments submitted by Fort Huachuca regarding the potential impacts of the designation on national security activities conducted (in some cases exclusively) at Fort Huachuca and determined that the San Pedro River should be excluded based on potential impacts to national security.

(208) *Comment:* Under topics dismissed from detailed analysis in the draft environmental assessment, the last bullet at the bottom of the page on Urban quality and design of the built environment (1502.16) states that the proposed critical habitat segments are not located in urban or other built environments and would not affect the quality of such environments. While this is a true with respect to the actual critical habitat location, it is misleading when considering the location of the critical habitat with regard to the City of Sierra Vista and Fort Huachuca. Surface water flow in the San Pedro River includes a component referred to as base flow from the regional aquifer outside of the potential critical habitat designation. This is acknowledged at other points in the documents (see the top of page 85). Considering the possibility of future limitations on groundwater uses in these built-up areas, the effect on the quality of such environments needs to be analyzed as part of this environmental assessment.

Our Response: The Service has reviewed the comments submitted by Fort Huachuca regarding the potential impacts of the designation on national security activities conducted (in some cases exclusively) at Fort Huachuca and determined that the San Pedro River should be excluded based on potential impacts to national security. There is therefore no potential for the potential impacts discussed in this comment to occur as a result of the final critical habitat designation.

(209) *Comment:* The draft environmental assessment indicates that ''the stream channel at bank full width,

plus 300 feet on either side of bank full width * * *'' This would result in a designation of 600 feet lateral distance plus the stream channel. Throughout this draft environmental assessment the critical habitat designation is referred to as a 300-foot corridor and not a 600-foot corridor. Considering this discrepancy, if the analysis was actually done on a 300-foot width rather than a 600-foot width, it would seem that this draft environmental assessment would be significantly flawed and will need to be redone.

Our Response: The critical habitat designation includes the width of the stream (which will vary), and 300 feet on either side of bankfull width. This has been corrected in the final environmental assessment.

(210) *Comment:* Under alternative B, the draft environmental assessment states that there is a potential increase of 313 miles of designated critical habitat from the existing designation of 522 miles and again states there would be a small but unknown increase in section 7 consultations. When considering this is approximately a 65 percent increase in the critical habitat designation, the impacts are being understated.

Our Response: The increase in consultations is anticipated to be small based on historical information about past consultations. There is potential for new consultations not already covered by the Act in stream segments currently unoccupied by either spikedace or loach minnow.

(211) *Comment:* The Cumulative Impacts section should be revised to emphasis on the significance of the socioeconomics and water management impacts of the listings.

Our Response: The Service has evaluated the potential environmental consequences of the proposed critical habitat designation for spikedace and loach minnow and determined that the incremental impact of designating additional critical habitat for the spikedace and loach minnow when added to other past, present, and reasonably foreseeable future actions in the analysis area would be minor on water resources, wetlands and floodplains, natural resources, land use and management (including livestock grazing), wildlife fire management, and recreation. Tribal socioeconomics, tribal Trust resources, and tribal environmental justice may incur additional impacts if alternative B is selected. Fort Huachuca could also incur additional impacts on national security activities if alternative B is selected.

(212) *Comment:* Portions of the discussion on the San Pedro River center on adversely affecting livestock grazing but there is no discussion on the impacts associated with Fort Huachuca.

Our Response: The Service has reviewed the comments submitted by Fort Huachuca regarding the potential impacts of the designation on national security activities conducted (in some cases exclusively) at Fort Huachuca and determined that the San Pedro River should be excluded based on potential impacts to national security.

(213) *Comment:* While the draft environmental assessment discusses impacts such as drought, current and future market trends and fluctuations, and supplemental forage availability contribute to the cumulative impacts on livestock grazing. While the impacts from critical habitat designation are expected to have generally minor adverse effects on current livestock grazing conditions, an acknowledgment must be given to other factors that contribute to the cumulative impacts on grazing. Though the draft environmental assessment document acknowledges cumulative impacts in the above statement, it does not analyze them and it does not take into consideration that it is the incremental addition of species after species and critical habitat restriction upon critical habitat restriction that is killing the livestock industry. The cumulative impacts need to be identified and quantified.

Our Response: The 2011 draft and 2012 final environmental assessment largely follow the format and methodology used to prepare the 2006 final environmental assessment. Additional information has been provided to the more recent environmental assessments, where needed, to refine habitat requirements (physical and biological features) essential to the conservation of the species, changes to stream segments proposed for critical habitat designation. Additional information has also been provided, where necessary, with respect to the affected environment and environmental consequences. The conclusions of the environmental consequence analysis have not substantially changed from the 2006 final environmental assessment to the 2012 final environmental assessment, including the section of text that is referred to in the comment.

(214) *Comment:* Several commenters noted that, in order to be in compliance with various case law, policies, or regulations including Chapter 1 of NEPA, *Bennett* v. *Spear* 550 FW 1, the Citizens Guide to NEPA (2007); and page 16 of the 550 FW 1 and NEPA regulations in 40 CFR 1501.6, it is the continuing responsibility of the Federal government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources. The City of Sierra Vista, Cochise County, and affected counties within the Coalition respectfully request agency coordination.

Our Response: Local governments have been provided with adequate opportunity to comment on the proposed rule, draft environmental assessment, and draft economic analysis. As noted at comment 128, we believe the two comment periods allowed for adequate opportunity for public comment. A total of 90 days was provided for document review and the public to submit comments. In addition, an open house and public hearing were held on October 17, 2011, providing another opportunity for comment submission. Per our Regional Solicitor, there is no designation for ''Coordinator Status.'' However, in addition to the comment period we personally visited with these commenters on several occasions to ensure that their concerns were heard and considered. The Service met with representatives of Hidalgo County, Grant County, and Catron County in March of 2011; Apache County, Grant County, Hidalgo County, and Catron County in Springerville in July 2011; and with the City of Sierra Vista, Cochise County, the Hereford Natural Resource Conservation District, Hidalgo County, and Fort Huachuca in November of 2011. We held an additional conference call with Fort Huachuca in August of 2011. We concluded that cooperator status would be limited to New Mexico and Arizona Game and Fish Departments. Per our Regional Solicitor, there is no designation for ''Coordinator Status.'' However, in addition to the comment period we personally visited with these commenters on several occasions to ensure that their concerns were heard and considered.

(215) *Comment:* The Service must use the best scientific and commercial information available as required by the Act and the Data Quality Act of 2000 (Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), here forth referred to as Data Quality Act) standards. Had Service employees followed the requirements in the laws and regulations and used the best scientific and commercial information available and their internal agency guidelines contained in Chapter 1 of NEPA—Policy and Responsibilities—550 FW 1, the agency would have had the necessary

information to properly prepare the NEPA document and economic impact analysis.

Our Response: Under the Act, the Service must make decisions to designate critical habitat on the basis of the best available scientific and commercial data. When making critical habitat decisions, the Service consults with experts within and external to the Federal government and considers studies or data from Federal and state agencies, other stakeholders, and the general public. Proposed and final rules are reviewed by the Service at the field, regional, and national level to help ensure that the analysis is sound and conforms to the ''best available science'' requirement. Additionally, the Service also has a policy to ask at least three independent scientific experts in a relevant field to provide a ''peer review'' of the proposed decisions to ensure that best available science is considered. When considering a critical habitat proposal, the Service is also required to consider economic impacts through completion of an economic analysis.

(216) *Comment:* Impacts to surface flows in streams may also result from pumping of groundwater wells located outside of the proposed 300-foot critical habitat corridor. The groundwater–surface water interactions of each hydrologic system are unique and require site-specific analysis to fully understand potential interactions and impacts. The NEPA process requires decisionmakers be informed of impacts. It is unclear from the draft environmental assessment whether groundwater wells outside the 300 foot critical habitat boundary will be shut down if they are determined to impact surface flows. This impact needs to be made very clear. Significant economic impacts to well owners outside the 300 foot critical habitat boundary could occur if their wells are shut down. An Environmental Impact Statement is necessary to address this issue.

Our Response: While potential administrative costs and impacts to existing infrastructure are relatively predictable, potential impacts on water use that could result from spikedace and loach minnow conservation, particularly in areas that are currently unoccupied by the species are, in large part, uncertain. The majority of past consultations on water issues have not focused on water availability or water quantity issues. Instead, they have focused on nonnative species reintroduction issues for multiple native fish species, diversion repair and bank stabilization projects, and occasionally proposed water exchanges. To date there has been only one known example of a Section 7 consultation affecting water use and this affected a Federal entity (Fort Huachuca).

(217) *Comment:* The draft environmental assessment indicates that channelization of streams for purposes of flood control may increase the risk of flooding. This statement is confusing to the reader and it should be explained better or removed from the next version of the NEPA document.

Our Response: We refer the reader to page the October 28, 2010, proposed rule (page 66487). Language in the proposed rule states that sections of many Gila Basin Rivers and streams have been, and continue to be, channelized for flood control, which disrupts natural channel dynamics (sediment scouring and deposition) and promotes the loss of riparian plant communities. Various changes to stream channels occur through channelization, including increases in water velocity in the channelized section, subsequent increases in rates of erosion, and in some instances deposits of sediment in downstream reaches that may increase the risk of flooding. The final environmental assessment has been modified to provide clarification on this topic.

(218) *Comment:* The draft environmental assessment indicates that the effects on future water management activities and water resources from critical habitat designation are expected to be minor and are not anticipated to constrain any proposed water management activities because most all of the proposed segments are occupied by the spikedace and loach minnow. The impact of critical habitat designation on future water management activities was not addressed for unoccupied habitat, and this is a fatal flaw in the draft environmental assessment. The impacts to the Upper San Pedro River were not addressed because the draft environmental assessment is too general and fails to take a ''hard look'' at the impacts of designating critical habitat. No attempt has been made to analyze the full range of impacts resulting from the critical habitat designation, including water development and use outside the critical habitat boundary. Instead, impacts on agricultural, municipal and industrial water development projects are ''unknowable at this time,'' ''cannot be predicted with precision'' and are ''mostly uncertain.'' Similar statements appear throughout the document, indicating that the Service has failed to take the required ''hard look'' at the environmental consequences of the proposed alternatives.

Our Response: While potential administrative costs and impacts to existing infrastructure are relatively predictable, potential impacts on water use that could result from spikedace and loach minnow conservation, particularly in areas that are currently unoccupied by the species are, in large part, uncertain. The majority of past consultations on water issues have not focused on water availability or water quantity issues. Instead, they have focused on nonnative species reintroduction issues for multiple native fish species, diversion repair and bank-stabilization-type projects, and occasionally proposed water exchanges. To date there has been only one known example of a Section 7 consultation affecting water use and this affected a Federal entity (Fort Huachuca). The Service has reviewed the comments submitted by Fort Huachuca regarding the potential impacts of the designation on national security activities conducted (in some cases exclusively) at Fort Huachuca and determined that the San Pedro River should be excluded based on potential impacts to national security.

(219) *Comment:* The draft environmental assessment notes that some required Section 7 conservation measures could have minor to moderate adverse impacts on water management activities (e.g., groundwater pumping, surface water diversion, channelization). The term ''minor to moderate adverse impacts'' should be defined, as water is not a small matter. Every impact to water should be addressed in an EIS to the extent required by law.

Our Response: The NEPA and related supporting regulations require that an Environmental Impact Statement be prepared and approved when a proposed Federal action would cause significant impacts. The Service has determined through its completion of a NEPA environmental assessment that the proposed designation of critical habitat for spikedace and loach minnow would not result in significant impacts. This is not to say that there would be no impacts to water or other resources, but that the impacts are not anticipated to be significant based on the Service's analysis. At this time, the Service does not believe there is a legitimate basis for preparing an environmental impact statement.

(220) *Comment:* The draft environmental assessment states that adverse impacts of critical habitat designation on livestock grazing, however, are expected to be generally minor in part because livestock grazing operations typically occur on a large

scale, and designated critical habitat within any one allotment is likely to be small; and therefore, few grazing allotments are likely to be subject to consultation requirements based solely on the presence of the spikedace and loach minnow designated critical habitat. As required by *Bennett* v. *Spear* (1997), each agency must ensure that the Act not be implemented haphazardly, or on the basis of speculation or surmise. This statement in the draft environmental assessment shows a complete lack of understanding of western livestock grazing operations. There is a very limited amount of water in the arid west, and the portion of an allotment that is most valuable is the water source because without water you cannot graze livestock. To state that the impacts are expected to be generally minor because designated critical habitat (the water) is likely to be a small part of the allotment, is haphazard implementation of the Act.

Our Response: The 2011 draft environmental assessment and 2012 final environmental assessment are generally aligned in format and methodology with the 2006 final environmental assessment. The environmental consequence analysis has not substantially changed. This same text pertaining to livestock grazing appeared in the 2006 final environmental assessment (see p.72).

(221) *Comment:* The draft environmental assessment fails to distinguish the impact of critical habitat in areas that are presently unoccupied by spikedace and loach minnows. By erroneously assuming that ''most all'' of the proposed critical habitat is currently occupied, and will remain occupied over the next 20 years, the draft environmental assessment overlooks significant impacts on land and water users.

Our Response: This text is in error and has been updated in the draft environmental assessment. However, the analysis completed in the draft economic analyses and in the draft environmental assessment correctly reflects occupancy status for the river segments within this critical habitat designation.

(222) *Comment:* There are several additional alternatives that are consistent with the purpose and need of the proposed action and are not too remote, speculative or impractical for critical review as part of the NEPA process.

Our Response: The scope of reasonable alternatives to be considered is a function of the purpose and need of the proposed action. This environmental assessment generally follows the format and methodology of the 2006 final environmental assessment used to prepare the 2007 final rule, including the structure of alternatives. In the 2011 draft environmental assessment, alternative A included a number of stream segments being considered by the Service for exclusion. Additional stream segments have been considered by the Service for exclusion under this Alternative based on comments received subsequent to publication of the 2010 proposed rule, 2011 draft environmental assessment, and 2011 draft economic analysis.

(223) *Comment:* To ''occupy'' to us implies perennial, year-round and year after year occurrence, and we conclude that the Service, in the draft environmental assessment, was implying the same thing. To use occupy for any status other than permanent residence is misleading. If occupation is intermittent, such should be stated.

Our Response: Please see the discussion under the subheading ''Occupied Versus Unoccupied Areas in the final rule for our definition of occupied habitat and a discussion of the rationale for that definition.

(224) *Comment:* The environmental consequence determinations for each of the various resource categories that are presented throughout the draft environmental assessment are not environmental consequence determinations, but a listing of the changes in the Act's procedural requirements that would take place if the proposed critical habitat is implemented. In each of the ''Environmental Consequence'' section of the various resource categories there is a detailed description of how the section 7 consultation processes would change if the proposed spikedace and loach minnow critical habitat is implemented. The various ''Environmental Consequence'' sections also contain a listing of potential new management requirements for each resource category. These procedural changes and potential new management requirements do not give the public any idea of what changes will occur to ecosystem health or spikedace and loach minnow habitat if the proposed critical habitat is implemented. At best the current environmental consequences determinations infer that by implementing Service control over the management of the federal spikedace and loach minnow critical habitat units (or lands with a Federal nexus), the physical and biological features for the spikedace and loach minnow will improve to the point that the designated critical habitat areas will again somehow sustain a population of the two species. All of the vague environmental consequence language only serves to put local citizens on notice that the designation of the proposed critical habitat could impact their use of federal land and the future management of their private land, where their land is included in a proposed critical habitat unit.

Our Response: The 2011 draft and 2012 final environmental assessment largely follow the format and methodology used to prepare the 2006 final environmental assessment. Additional information has been provided to the more recent environmental assessment, where needed, to refine habitat requirements (physical and biological features) essential to the conservation of the species, changes to stream segments proposed for critical habitat designation. Additional information has also been provided, where necessary, with respect to the affected environment and environmental consequences. The conclusions of the environmental consequence analysis have not substantially changed from the 2006 final environmental assessment to the 2012 final environmental assessment.

(225) *Comment:* The draft environmental assessment contains the statement; ''It is not expected, based on past consultations in the Southwest that designation of critical habitat would result in the infringement of any existing water rights.'' This statement does not meet the standard of utility and objectivity required by the Data Quality Act.

Our Response: We believe the statement is accurate based on our past experience and section 7 consultation history in the southwest. However, if the commenter feels that the statement is not accurate, there is a defined process under the Data Quality Act for requesting a correction. The commenter can follow the process outlined on our Web site: *http://www.fws.gov/southwest/science/informationquality.html?region=5* under the U.S. Fish and Wildlife Service Information Quality Guidelines.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (Regulatory Planning and Review). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on

the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designations for spikedace and loach minnow will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., water use and management, grazing, mining, species management and recreational fishing, development, transportation, fire management, and tribal activities). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by these designations, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the spikedace or loach minnow. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification Standard''* section).

In our final economic analysis of the critical habitat designations, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the designations of critical habitat for spikedace and loach minnow. The analysis is based on the estimated impacts associated with the rulemaking as described in Chapters 3 through 10 and Appendix A of the analysis and evaluates the potential for economic impacts related to: (1) Mining; (2) Species Management; (3) Tribes; (4) Transportation; (5) Fire Management; (6) Water Management; and (7) Grazing. The final economic analysis indicates that incremental impacts are not expected to impact small entities for mining, species management, tribal, transportation, or fire management activities.

The final economic analysis indicates that incremental impacts associated with water management, grazing, and development may potentially be borne by small entities. The entities potentially affected under water management include cotton farming, hay farming, cotton ginning, and food manufacturing. The potential incremental costs to water management activities that may be borne by small entities are estimated at $125,000 to $252,000 on an annualized basis (discounted at seven percent) over the next 20 years. The final economic analysis indicates of the 312 entities in this sector, 47 (or 15 percent) that may be small entities may be affected. If each of them are small and each undergoes section 7 consultation, annualized impacts per small entity would be expected to range from 0.16 to 0.32 percent of annual revenues. Based on our analysis, we have determined that there will not be a significant impact to small businesses in this sector.

Grazing entities potentially affected by the critical habitat rule include beef cattle ranching and farming. The final economic analysis indicates of the 147 entities in this sector, 33 (or 22 percent) small entities may be affected. Incremental costs to small grazing entities are estimated at $20,300 to $295,000 on an annualized basis. Assuming that all 33 entities were to undergo section 7 consultation, and all of the entities are small, annualized impacts per small entity are expected to range from 0.08 to 1.18 percent of annual revenues. Based on our analysis, we have determined that there will not be a significant impact to small businesses in this sector.

Development entities potentially affected by the critical habitat designations could include new single-family housing, new multifamily housing construction, new housing operative builders, and land subdivision. The final economic analysis indicates of the 4,673 entities in this sector, that four (or 0.9 percent) entities could be affected. Incremental costs to small development firms are

estimated to range from $0 to $77,000 on an annualized basis. Assuming that impacts are borne by four small entities that undergo section 7 consultation, annualized impacts are anticipated to range from 0 to 0.30 percent of annual revenues. Based on our analysis, we have determined that there will not be a significant impact to small businesses in this sector.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the designations of critical habitat for spikedace and loach minnow would not have a significant economic impact on a substantial number of small business entities. Therefore, regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, there are no expected energy-related impacts associated with designations of critical habitat for spikedace and loach minnow. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities.

In the past, local county governments have indicated a concern in the perceived regulatory burden imposed by critical habitat designation on management issues within the county, and particularly in relation to public safety issues such as bridge and road repair or flood management. These counties have indicated that State agencies might opt not to complete necessary repairs or management activities, or would not pursue Federal funding to address these issues if such actions could trigger a section 7 consultation. We note that not all actions would necessarily trigger section 7 consultation unless a Federal nexus exists. Where a Federal nexus does exist, the county or state have options to facilitate the section 7 process. Programmatic consultations can provide the planning agency with a long-term ability to affect repairs as needed over a specified length of time, without repeating the section 7 process. In addition, the Service has emergency consultation procedures so that any management entity can carry out necessary actions in which lives or property are in danger without first completing section 7 consultation. Once the emergency is handled, section 7 consultation can be completed. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for spikedace and loach minnow in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that these designations of critical habitat for spikedace and loach minnow do not pose significant takings implications for

lands within or affected by the designations.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this 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 critical habitat designation with appropriate State resource agencies in Arizona and New Mexico. We received comments from both States and have addressed them in the Summary of Comments and Recommendations section of the rule. The designations of critical habitat in areas currently occupied by spikedace and loach minnow may impose few additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas that contain the physical and 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 designations 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 regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of spikedace and loach minnow 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 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 49534). 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 spikedace and loach minnow, 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 the critical habitat designations and notify the public of the availability of the draft environmental assessment for the critical habitat designations when it is finished.

We performed the NEPA analysis, and drafts of the environmental assessment were available for public comment on October 4, 2011 (76 FR 61330). The final environmental assessment has been completed and is available for review with the publication of this final rule. You may obtain a copy of the final environmental assessment online at *http://www.regulations.gov*, by mail from the Arizona Ecological Services Field Office (see **ADDRESSES**), or by visiting our Web site at *http://www.fws.gov/southwest/es/Arizona/*.

The final environmental assessment included a detailed analysis of the potential effects of the critical habitat designations on resource categories, including: Water resources; wetlands and floodplains, natural resources (fish, wildlife and plants), land use and management, Wildland fire management, recreation, socioeconomics, tribal trust resources, and environmental justice. The scope of the effects were primarily limited to those activities involving Federal actions, because critical habitat designation does not have any impact on the environment other than through the section 7 consultation process under the Act which is conducted for Federal actions. Private actions that have no Federal involvement are not affected by critical habitat designation.

Based on the review and evaluation of the information contained in the environmental assessment, we determined that the designations of critical habitat for spikedace and loach minnow do not constitute a major Federal action having a significant impact on the human environment under the meaning of section 102(2)(c) of NEPA.

Pursuant to the Council on Environmental Quality regulations for implementing NEPA, preparation of an environmental impact statement is required if an action is determined to significantly affect the quality of the human environment (40 CFR 1502.3). Significance is determined by analyzing the context and intensity of a proposed action (40 CFR 1508.27). Context refers to the setting of the proposed action and includes consideration of the affected region, affected interests, and locality (40 CFR 1508.27[a]). The context of both short- and long-term effects of critical habitat designations are the critical habitat units in Apache, Cochise, Gila, Graham, Greenlee, Pinal, and Yavapai Counties, Arizona, and Catron, Grant, and Hidalgo Counties, New Mexico, totaling about 1,168 km (726 mi) for spikedace, and (742 mi) for loach minnow. The effects of critical habitat designation at this scale, although long-term, would be small. Intensity refers to the severity of an impact and is evaluated by considering ten factors (40 CFR 1508.27[b]).

The intensity of potential impacts that may result from designations of critical habitat for the spikedace and loach minnow under the proposed action is not anticipated to be significant. This conclusion is reached based on the following findings in the environmental assessment:

(1) The potential impacts on environmental resources may be both beneficial and adverse, but would generally be minor.

(2) There would be negligible to minor impacts on public health or safety from designations of critical habitat.

(3) The increased risks of wildland fire or flooding was analyzed and determined to be minor.

(4) Potential impacts from critical habitat designations on the quality of the environment are unlikely to be highly controversial.

(5) Designation of critical habitat for spikedace and loach minnow is not a precedent-setting action with significant effects.

(6) Designation of critical habitat would not result in significant cumulative impacts.

(7) Designation of critical habitat is not likely to affect sites, objects, or structures of historical, scientific, or cultural significance because Federal and State laws enacted to protect and preserve those resources would address any such potential impacts.

(8) The critical habitat designations would have long-term, beneficial impacts for spikedace and loach minnow.

(9) Critical habitat designations would not violate any Federal, State, or local laws or requirements imposed for the protection of the environment.

The effects of critical habitat designations at this scale would be insignificant. Therefore, we found that the designations will not significantly affect the quality of the human environment and an environmental impact statement is not required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (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.

For spikedace and loach minnow, tribal lands associated with three tribes occur within the designations. The coordination efforts with the tribes are described below, and additional detail on the exclusions of each are provided above in the Exclusions section.

Yavapai-Apache Nation—We coordinated early with the Yavapai-Apache Nation on the proposed rule for spikedace and loach minnow critical habitat. A coordination meeting was held in October 2010 to gain a better understanding of Tribal positions and concerns regarding the designations. We have maintained contact with the Tribe through letters, phone calls, and emails, and have provided the Tribe with notice of publication dates of various documents. We received comments from the Tribe during the first open comment period. Their comment letter provided a copy of Tribal Resolution 46–2006, which details the development exclusion zone they have created for the 100-year floodplain of the Verde River, where it crosses their lands. In addition, in their comment letter, the Tribe detailed the actions they have taken in the past several years under the resolution for protection of the Verde River, as noted above in the Exclusions section. We have determined that the benefits of excluding lands on the Yavapai-Apache Nation outweigh the benefits of including these areas.

San Carlos Apache Tribe—The San Carlos Apache Tribe submitted comments during the second comment period. Within their comment letter the Tribe notes their adherence to TEK, which is an ecosystem-based approach to land and species management; their 2005 Fishery Management Plan; development of various codes and regulations that benefit the species and/or their habitat; and a commitment to no longer stocking nonnative sportfish in the Eagle Creek watershed.

As noted in the Exclusions section above, we find that the Tribe's lands should be excluded on the basis of our relationship with the Tribe, the goals of the FMP, and the information provided during the second comment period. The Tribe has focused on known areas of concern for the species management, and has discontinued stocking of nonnative fishes in the Bonita and Eagle Creek watersheds. The FMP contains goals of conserving and enhancing native fishes on the Reservation; restoring native fishes and their habitats; and preventing, minimizing or mitigating impacts to native fishes, among others. In addition, the Tribe has indicated that, through TEK, they practice an ecosystem-based approach to land and species based management and preservation.

White Mountain Apache Tribe—We coordinated early with the White Mountain Apache Tribe regarding the critical habitat designations. A coordination meeting was held in October 2010 to gain a better understanding of any concerns White Mountain Apache Tribe might have regarding the upcoming proposed rule for spikedace and loach minnow critical habitat. Representatives of the White Mountain Apache Tribe attended the public hearing in October of 2011. We subsequently received comments from White Mountain Apache Tribe on the proposed rule, including the request for a 4(b)(2) exclusion and a copy of their Loach Minnow Management Plan. Their comment letter and management plan detail various conservation measures that will benefit loach minnow, including adoption of various ordinances, hiring of key personnel, and contingency plans for disaster management.

After reviewing their comment letter and management plan, and in recognition of our special Tribal relationship with White Mountain Apache Tribe, we determined that benefits of exclusion of the mainstem White River and East Fork White River outweighed the benefits of including it in the designations of critical habitat for the species.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this rulemaking are the staff members of the Arizona Ecological Services Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entries for ''Minnow, loach'' and ''Spikedace'' under ''Fishes'' 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						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Minnow, loach	*Tiaroga cobitis*	U.S.A. (AZ, NM), Mexico.	Entire	E	247	17.95(e)	NA
*	*	*	*	*	*		*
Spikedace	*Meda fulgida*	U.S.A. (AZ, NM), Mexico.	Entire	E	236	17.95(e)	NA
*	*	*	*	*	*		*

■ 3. In § 17.44, remove and reserve paragraphs (p) and (q).

■ 4. In § 17.95, amend paragraph (e) by revising the entries for ''Loach Minnow (Tiaroga cobitis)'' and ''Spikedace (Meda fulgida),'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Loach Minnow (*Tiaroga cobitis*)

(1) Critical habitat units are depicted for Apache, Cochise, Gila, Graham, Greenlee, Pinal, and Yavapai Counties, Arizona, and for Catron, Grant, and Hidalgo Counties, New Mexico, on the maps below.

(2) Within these areas, the primary constituent elements (PCE) of the physical or biological features essential to the conservation of loach minnow consist of six components:

(i) Habitat to support all egg, larval, juvenile, and adult loach minnow. This habitat includes perennial flows with a stream depth of generally less than 1 m (3.3 ft), and with slow to swift flow velocities between 0 and 80 cm per second (0.0 and 31.5 in. per second). Appropriate microhabitat types include pools, runs, riffles, and rapids over sand, gravel, cobble, and rubble substrates with low or moderate amounts of fine sediment and substrate embeddedness. Appropriate habitats have a low stream gradient of less than 2.5 percent and are at elevations below 2,500 m (8,202 ft). Water temperatures should be in the general range of 8.0 to 25.0 °C (46.4 to 77 °F).

(ii) An abundant aquatic insect food base consisting of mayflies, true flies, black flies, caddis flies, stoneflies, and dragonflies.

(iii) Streams with no or no more than low levels of pollutants.

(iv) Perennial flows or interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

(v) No nonnative aquatic species, or levels of nonnative aquatic species that are sufficiently low to allow persistence of loach minnow.

(vi) Streams with a natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, a flow regime that allows for adequate river functions, such as flows capable of transporting sediments.

(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. We have determined that all designated areas contain at least one PCE for loach minnow.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 7.5′ quadrangles along with shapefiles generated by the Arizona Land Resource Information Service for land ownership, streams, counties, and the Public Land Survey System. Information on species locations was derived from databases developed by the Arizona Game and Fish Department, the New Mexico Department of Game and Fish, and Arizona State University.

(5) **Note:** Index map follows:

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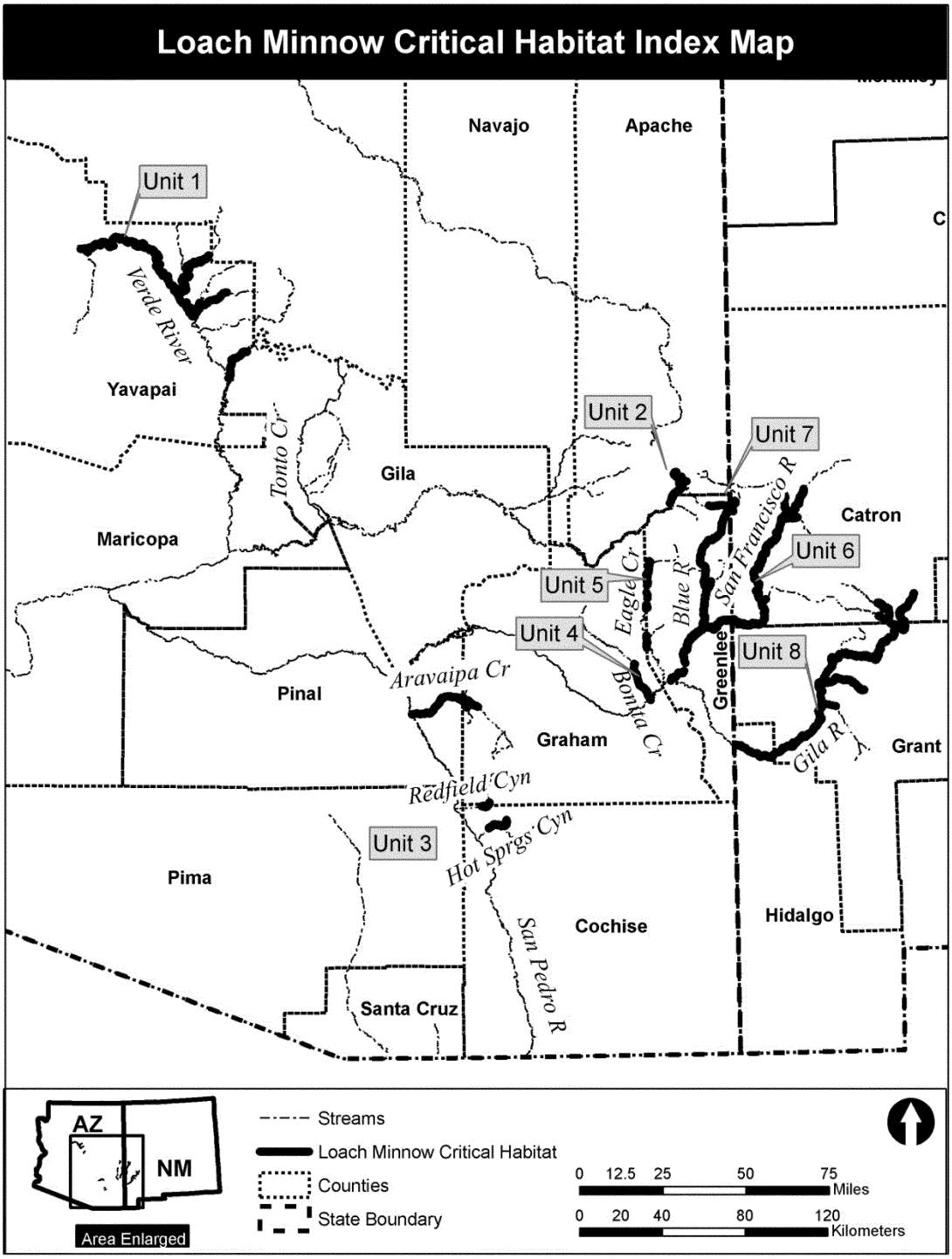


(6) Unit 1: Verde River Subbasin, Yavapai County, Arizona.

(i) Verde River for approximately 118.5 km (73.6 mi), extending from the confluence with Beaver and Wet Beaver Creek in Township 14 North, Range 5 East, southeast quarter of section 30 upstream to Sullivan Dam in Township 17 North, Range 2 West, northwest quarter of section 15. This mileage does not include the 1.2 km (0.8 mi) belonging to the Yavapai-Apache Nation, which is excluded from this designation.

(ii) Granite Creek for approximately 3.2 km (2.0 mi), extending from the confluence with the Verde River in Township 17 North, Range 2 West, northeast quarter of section 14 upstream to a spring in Township 17 North, Range 2 West, southwest quarter of the southwest quarter of section 13.

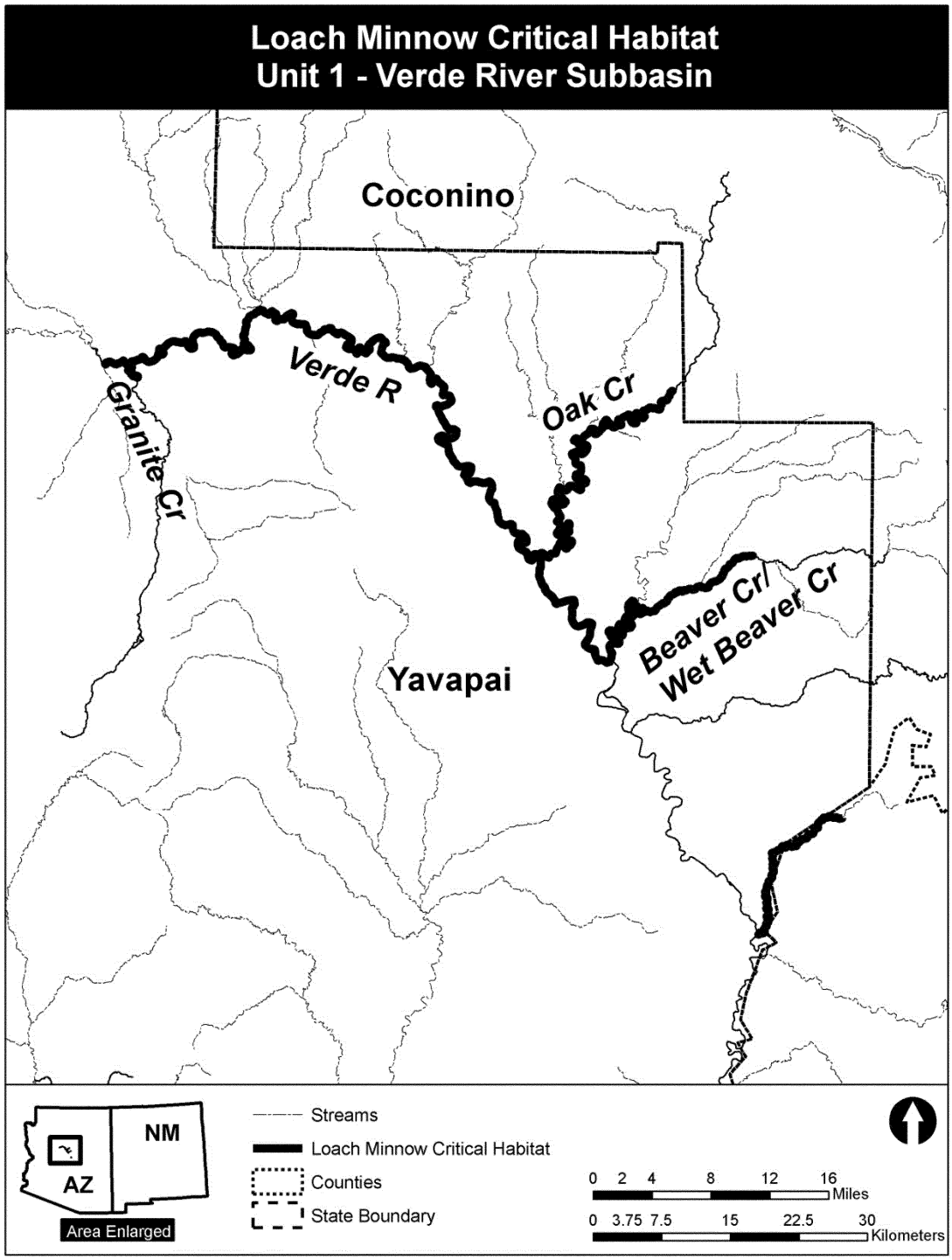
(iii) Oak Creek for approximately 54.3 km (33.7 mi), extending from the confluence with the Verde River in Township 15 North, Range 4 East, southeast quarter of section 20 upstream to the confluence with an unnamed tributary from the south in Township 17 North, Range 5 East, southeast quarter of the northeast quarter of section 24.

(iv) Beaver Creek and Wet Beaver Creek for approximately 33.3 km (20.7 mi), extending from the confluence with the Verde River in Township 14 North, Range 5 East, southeast quarter of

section 30 upstream to the confluence with Casner Canyon in Township 15 North, Range 6 East, northwest quarter of section 23. This mileage does not include the 0.2 km (0.1 mi) belonging to the Yavapai-Apache Nation, which is excluded from this designation.

(v) Fossil Creek for approximately 22.2 km (13.8 mi) from its confluence with the Verde River at Township 11 North, Range 6 East, northeast quarter of section 25 upstream to the old Fossil Diversion Dam site at Township 12 North, Range 7 East, southeast quarter of section 14.

(vi) **Note:** Map of Unit 1, Verde River Subbasin follows.



(7) Unit 2: Salt River Subbasin, Apache and Gila Counties, Arizona.

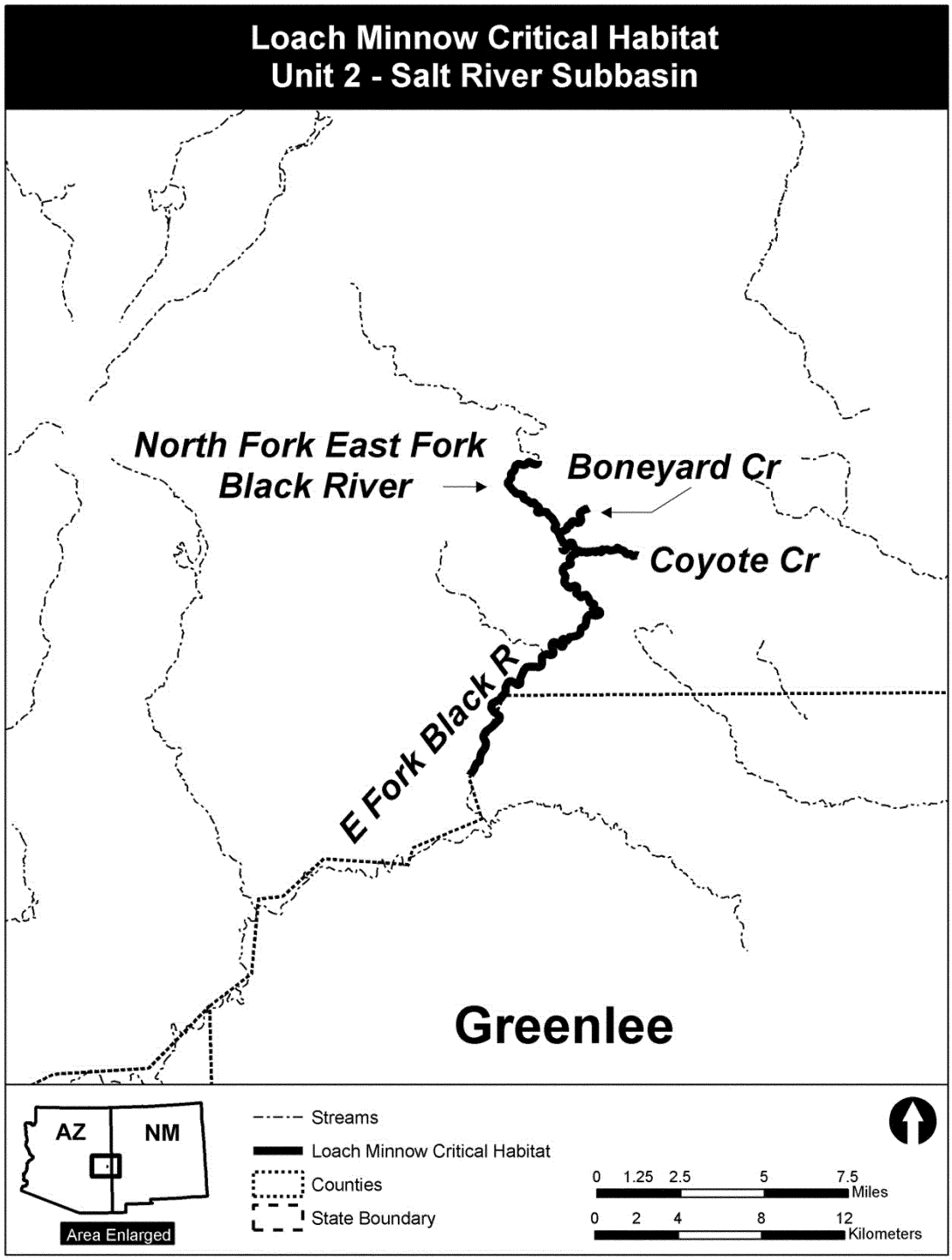
(i) East Fork Black River for approximately 19.1 km (11.9 mi) from the confluence with the West Fork Black River at Township 4 North, Range 28 East, southeast quarter of section 11 upstream to the confluence with an unnamed tributary approximately 0.82 km (0.51 mi) downstream of the Boneyard Creek confluence at Township 5 North, Range 29 East, northwest quarter of Section 5.

(ii) North Fork East Fork Black River for approximately 7.1 km (4.4 mi) of the North Fork East Fork Black River extending from the confluence with East Fork Black River at Township 5 North, Range 29 East, northwest quarter of section 5 upstream to the confluence with an unnamed tributary at Township 6 North, Range 29 East, center of Section 30.

(iii) Boneyard Creek for approximately 2.3 km (1.4 mi) extending from the confluence with the East Fork Black River at Township 5 North, Range 29 East, SW quarter of section 5 upstream to the confluence with an unnamed tributary at Township 6 North, Range 29 East, southeast quarter of section 32.

(iv) Coyote Creek for approximately 3.4 km (2.1 mi) from the confluence with East Fork Black River at Township 5 North, Range 29 East, northeast quarter of section 8 upstream to an unnamed confluence at Township 5 North, Range 29 East, northwest quarter of section 10.

(v) **Note:** Map of Unit 2, Salt River Subbasin follows.



(8) Unit 3: San Pedro River Subbasin, Cochise, Pinal, and Graham Counties, Arizona.

(i) Aravaipa Creek for approximately 44.9 km (27.9 mi) extending from the confluence with the San Pedro River in Township 7 South, Range 16 East, center of section 9 upstream to the confluence with Stowe Gulch in Township 6 South, Range 19 East, southeast quarter of the northeast quarter of section 35.

(ii) Deer Creek—3.7 km (2.3 mi) of the creek extending from the confluence with Aravaipa Creek at Township 6 South, Range 18 East, section 14 upstream to the boundary of the Aravaipa Wilderness at Township 6 South, range 19 East, section 18.

(iii) Turkey Creek—4.3 km (2.7 mi) of the creek extending from the confluence with Aravaipa Creek at Township 6 South, Range 19 East, section 19 upstream to the confluence with Oak Grove Canyon at Township 6 South, Range 19 east, section 32.

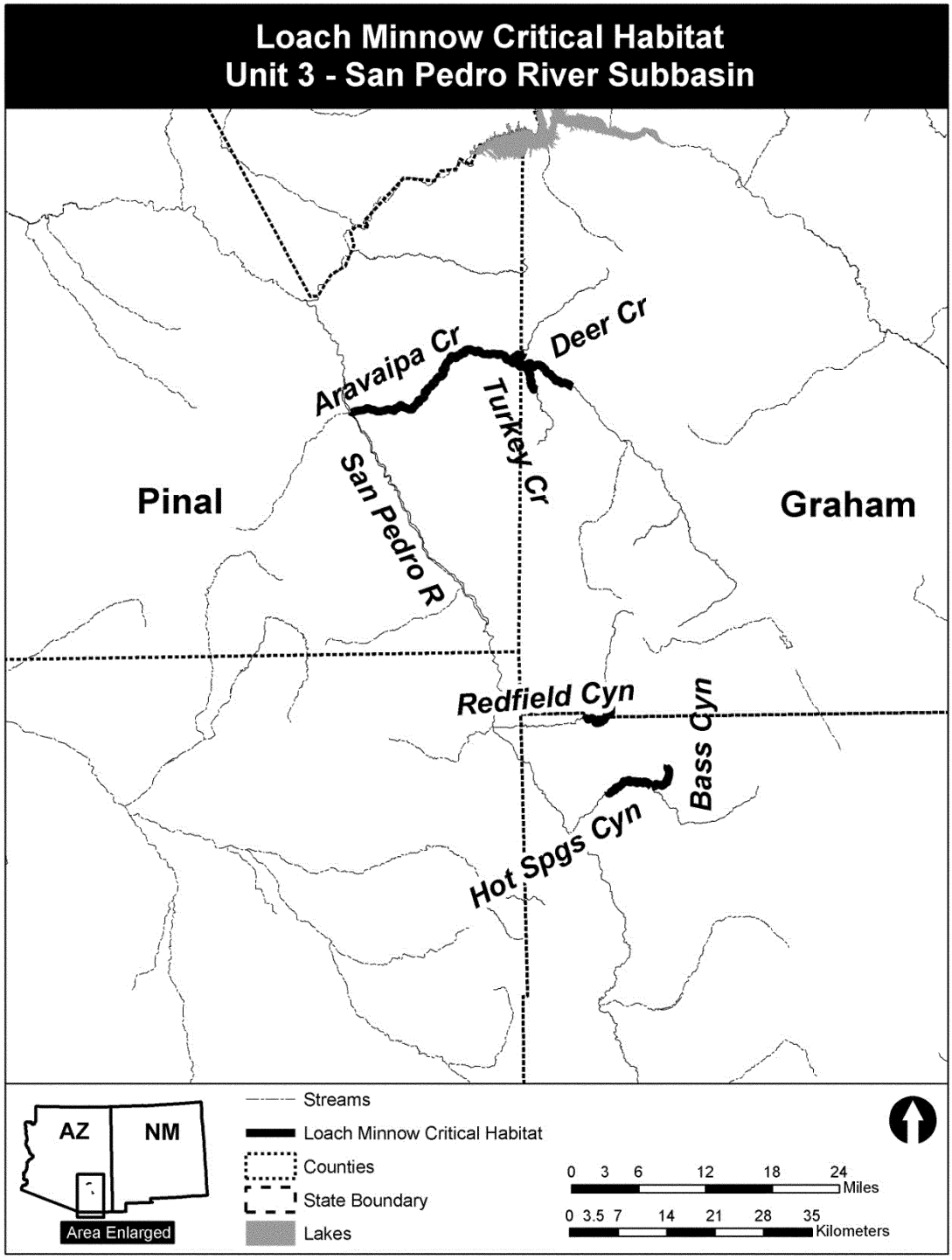
(iv) Hot Springs Canyon for approximately 9.3 km (5.8 mi) extending from the confluence with Bass Canyon in Township 12 South, Range 20 East, northeast quarter of section 36 downstream to Township 12

South, Range 20 East, southeast quarter of section 32.

(v) Redfield Canyon for approximately 6.5 km (4.0 mi) extending from Township 11 South, Range 19 East, northeast quarter of section 36 upstream to the confluence with Sycamore Canyon in Township 11 South, Range 20 East, northwest quarter of section 28.

(vi) Bass Canyon for approximately 5.5 km (3.4 mi) from the confluence with Hot Springs Canyon in Township 12 South, Range 20 East, northeast quarter of section 36 upstream to the confluence with Pine Canyon in Township 12 South, Range 21 East, center of section 20.

(vii) **Note:** Map of Unit 3, San Pedro River Subbasin follows.

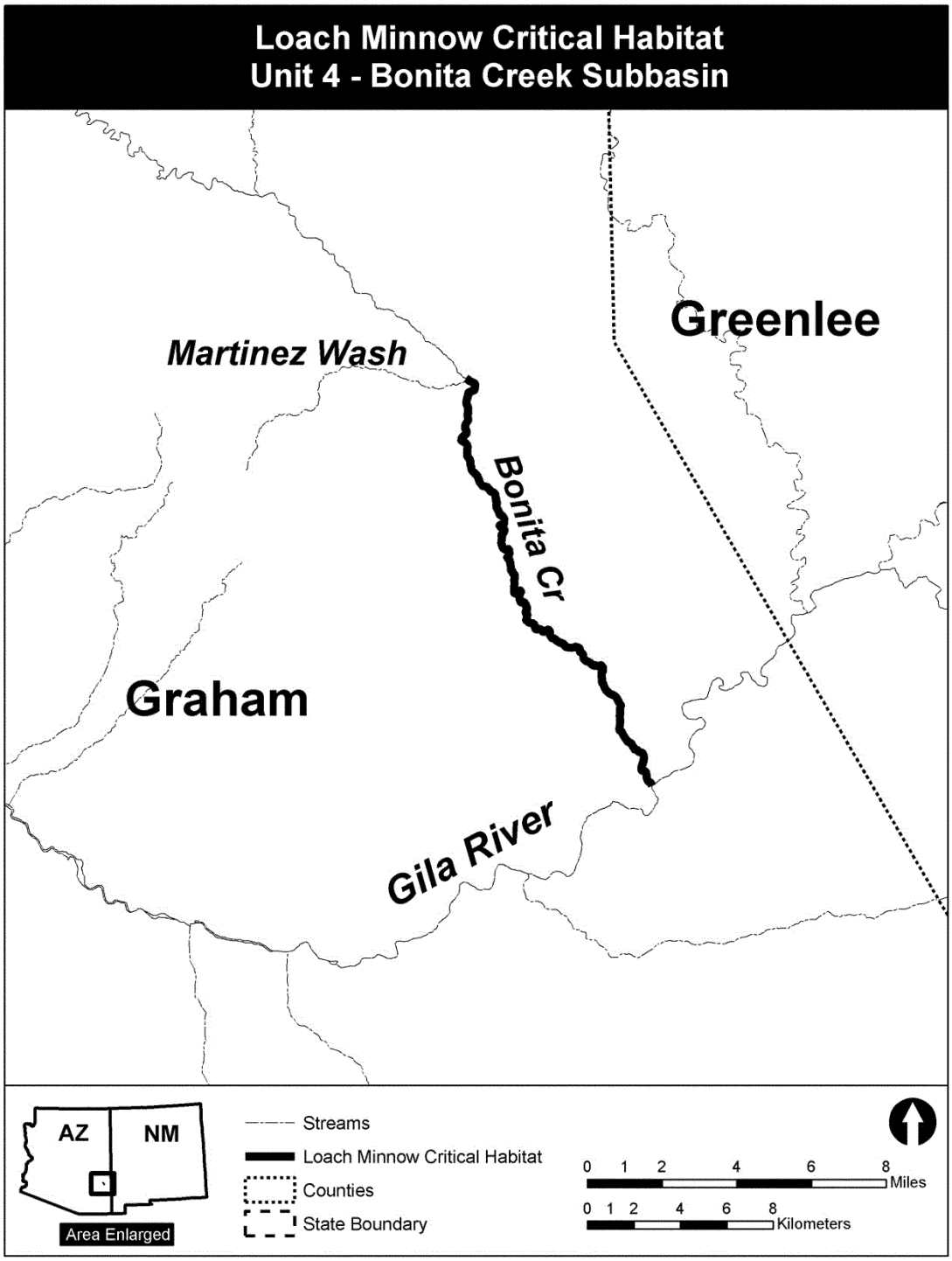


(9) Unit 4: Bonita Creek Subbasin, Graham County, Arizona.

(i) Bonita Creek for approximately 23.8 km (14.8 mi) from the confluence with the Gila River in Township 6 South, Range 28 East, southeast quarter

of section 21 upstream to the confluence with Martinez Wash in Township 4 South, Range 27 East, southeast quarter of section 27.

(ii) **Note:** Map of Unit 4, Bonita Creek Subbasin follows.

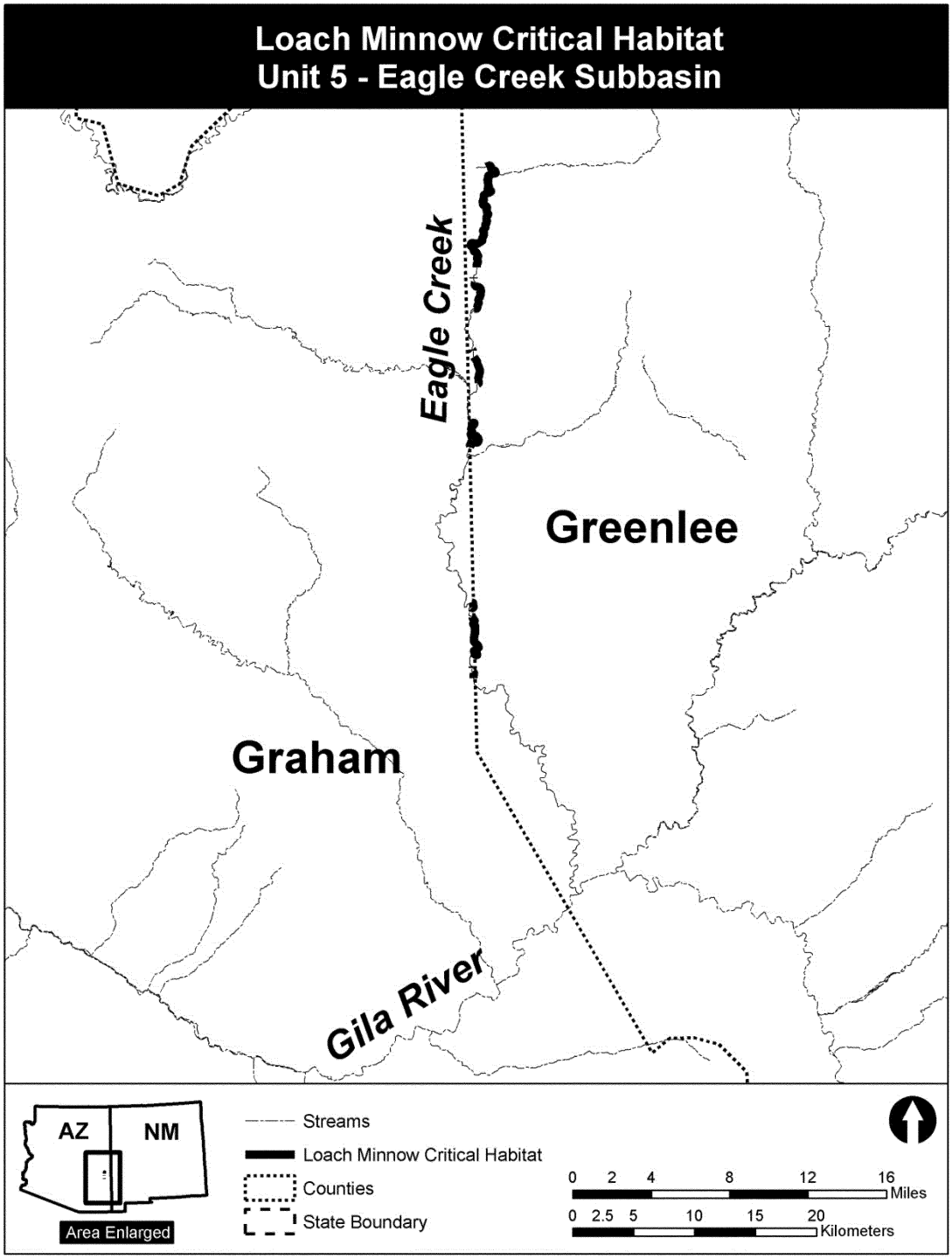


(10) Unit 5: Eagle Creek Subbasin, Graham and Greenlee Counties, Arizona.

(i) Eagle Creek for approximately 26.5 km (16.5 mi) from the Freeport-McMoRan diversion dam at Township 4 South, Range 28 East, southwest quarter of the northwest quarter of section 23 upstream to the confluence of East Eagle Creek in Township 2 North, Range 28 East, southwest quarter of section 20.

This mileage does not include approximately 21.4 km (13.3 mi) of Eagle Creek on lands belonging to Freeport-McMoRan, which is excluded from this designation.

(ii) **Note:** Map of Unit 5, Eagle Creek Subbasin follows.



(11) Unit 6: San Francisco River Subbasin, Greenlee County, Arizona and Catron County, New Mexico.

(i) San Francisco River for approximately 189.5 km (117.7 mi) of the San Francisco River extending from the confluence with the Gila River in Township 5 South, Range 29 East, southeast quarter of section 21 upstream to the northern boundary of Township 6 South, Range 19 West, section 2. This mileage includes approximately 14.1 km (8.8 mi) of the San Francisco River on lands belonging to Freeport-McMoRan, which is excluded from this designation.

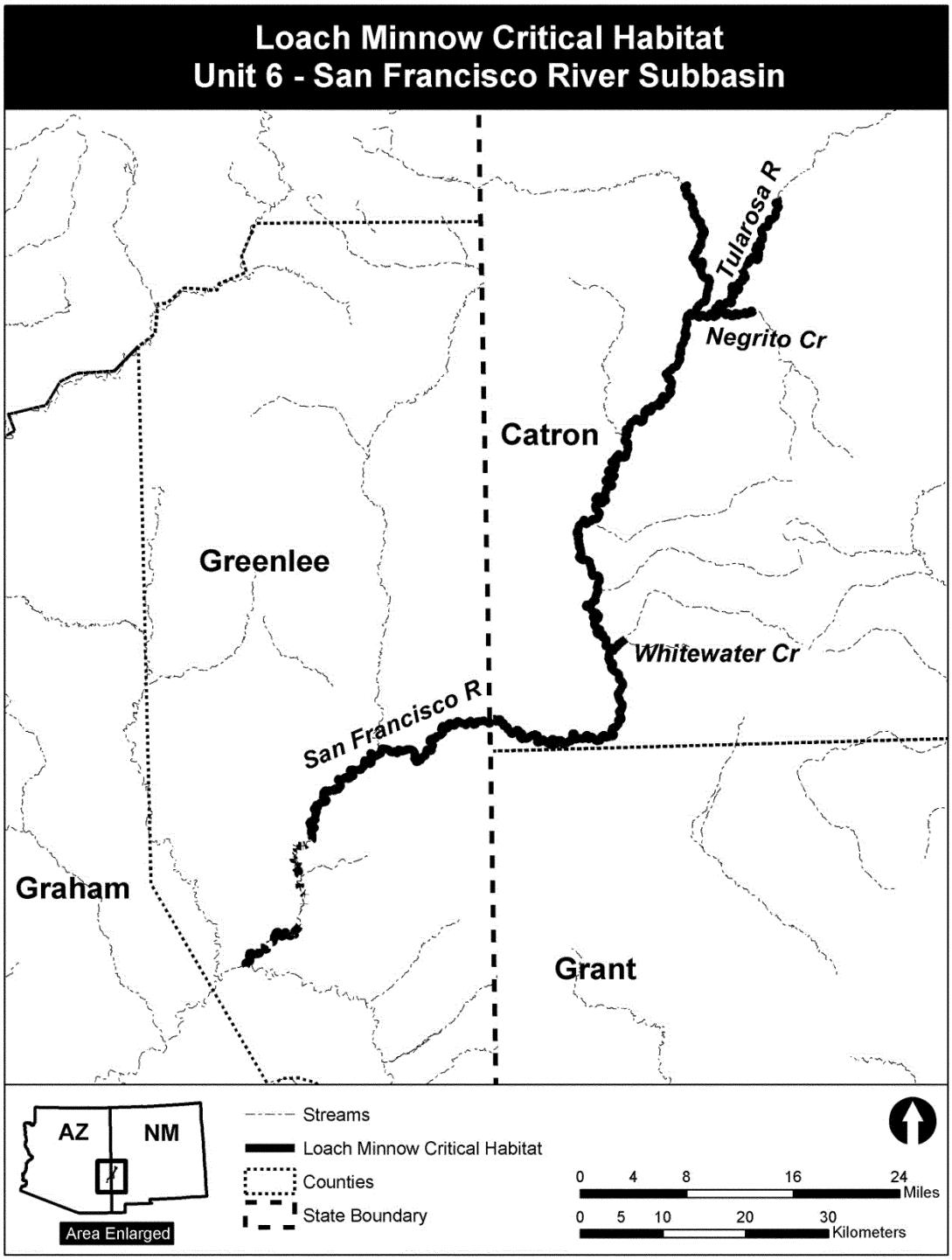
(ii) Tularosa River for approximately 30.0 km (18.6 mi) from the confluence with the San Francisco River at Township 7 South, Range 19 West, southwest quarter of section 23 upstream to the town of Cruzville at Township 6 South, Range 18 West, southern boundary of section 1.

(iii) Negrito Creek for approximately 6.8 km (4.2 mi) extending from the confluence with the Tularosa River at Township 7 South, Range 18 West, southwest quarter of the northwest quarter of section 19 upstream to the confluence with Cerco Canyon at Township 7 South, Range 18 West, west boundary of section 22.

(iv) Whitewater Creek for approximately 1.9 km (1.2 mi) from the confluence with the San Francisco River

at Township 11 South, Range 20 West, Section 27 upstream to the confluence with Little Whitewater Creek at Township 11 South, Range 20 West, southeast quarter of section 23.

(v) **Note:** Map of Unit 6, San Francisco River Subbasin follows.



(12) Unit 7: Blue River Subbasin, Greenlee County, Arizona, and Catron County, New Mexico.

(i) Blue River for approximately 81.4 km (50.6 mi) from the confluence with the San Francisco River at Township 2 South, Range 31 East, southeast quarter of section 31 upstream to the confluence of Campbell Blue and Dry Blue creeks at Township 7 South, Range 21 West, southeast quarter of section 6.

(ii) Campbell Blue Creek for approximately 12.4 km (7.7 mi) from the confluence of Dry Blue and Campbell Blue Creeks at Township 7 South, Range 21 West, southeast quarter of section 6 to the confluence with Coleman Canyon in Township 4.5 North, Range 31 East, southwest quarter of the northeast quarter of section 32.

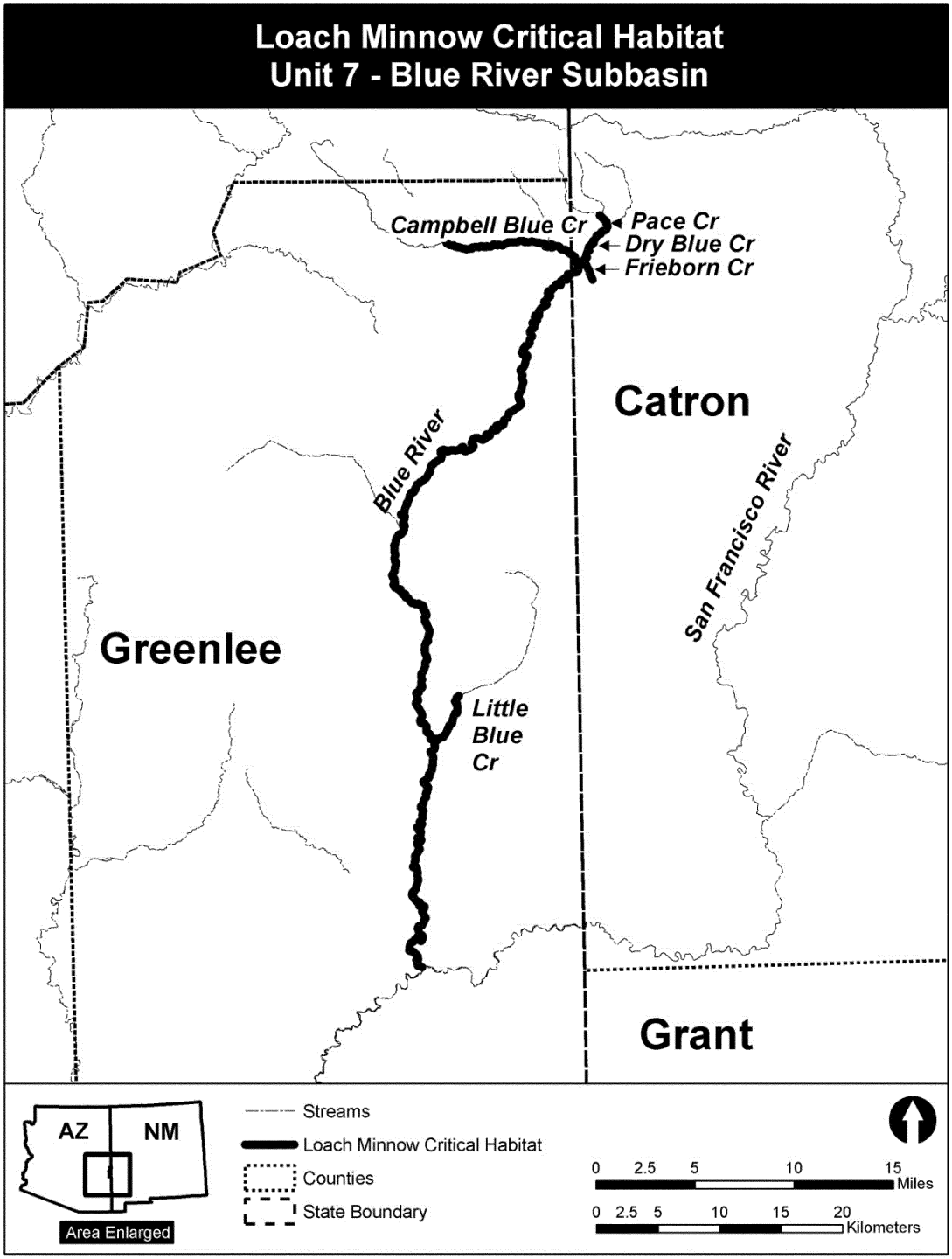
(iii) Little Blue Creek for approximately 5.1 km (3.1 mi) from the confluence with the Blue River at Township 1 South, Range 31 East, center of section 5 upstream to the mouth of a canyon at Township 1 North, Range 31 East, northeast quarter of section 29.

(iv) Pace Creek for approximately 1.2 km (0.8 mi) from the confluence with Dry Blue Creek at Township 6 South, Range 21 West, southwest quarter of section 28 upstream to a barrier falls at Township 6 South, Range 21 West, northeast quarter of section 29.

(v) Frieborn Creek for approximately 1.8 km (1.1 mi) from the confluence with Dry Blue Creek at Township 7 South, Range 21 West, southwest quarter of the northwest quarter of section 5 upstream to an unnamed tributary flowing from the south in Township 7 South, Range 21 West, northeast quarter of the southwest quarter of section 8.

(vi) Dry Blue Creek for approximately 4.7 km (3.0 mi) from the confluence with Campbell Blue Creek at Township 7 South, Range 21 West, southeast quarter of Section 6 upstream to the confluence with Pace Creek in Township 6 South, Range 21 West, southwest quarter of section 28.

(vii) **Note:** Map of Unit 7, Blue River Subbasin follows.



(13) Unit 8: Gila River Subbasin, Catron, Grant, and Hidalgo Counties, New Mexico.

(i) Gila River for approximately 153.5 km (95.4 mi) from the confluence with Moore Canyon at Township 18 South, Range 21 West, southeast quarter of the southwest quarter of section 32 upstream to the confluence of the East and West Forks of the Gila River at Township 13 South, Range 13 West, center of section 8. This mileage does not include approximately 11.5 km (7.2 mi) of the Gila River on lands owned by Freeport-McMoRan, which is excluded from this designation.

(ii) West Fork Gila River for approximately 13.0 km (8.1 mi) from the confluence with the East Fork Gila River at Township 13 South, Range 13 West, center of Section 8 upstream to the confluence with EE Canyon at Township 12 South, Range 14 West, east boundary of Section 21.

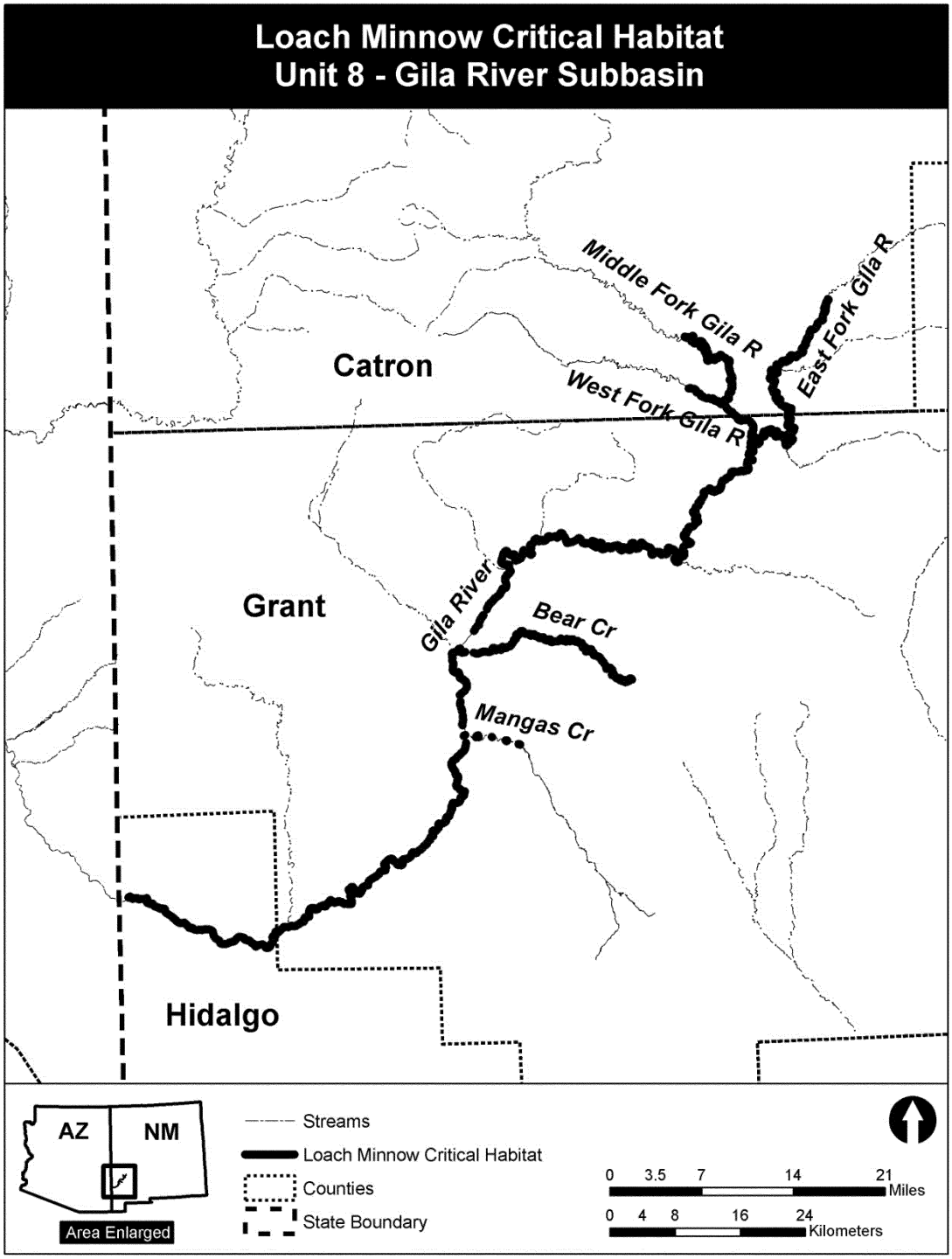
(iii) Middle Fork Gila River for approximately 19.1 km (11.9 mi) of the Middle Fork Gila River extending from the confluence with West Fork Gila River at Township 12 South, Range 14 West, southwest quarter of section 25 upstream to the confluence of Brothers West Canyon in Township 11 South, Range 14 West, northeast quarter of section 33.

(iv) East Fork Gila River for approximately 42.1 km (26.2 mi) extending from the confluence with West Fork Gila River at Township 13 South, Range 13 West, center of section 8 upstream to the confluence of Beaver and Taylor Creeks in Township 11 South, Range 12 West, northeast quarter of section 17.

(v) Mangas Creek for approximately 1.2 km (0.8 mi) extending from Township 17 South, Range 17 West, at the eastern boundary of section 3 upstream to the confluence with Blacksmith Canyon at Township 17 South, Range 17 West, northwest quarter of section 3. This mileage does not include approximately 7.9 km (4.9 mi) of Mangas Creek on lands belonging to Freeport-McMoRan, which are excluded from the designation.

(vi) Bear Creek for approximately 29.5 km (18.4 mi) extending from Township 15 South, Range 17 West, eastern boundary of section 33 upstream to the confluence with Sycamore and North Fork Walnut Creek at Township 16 South, Range 15 West, eastern boundary of section 15. This designation does not include approximately 1.9 km (1.2 mi) of Bear Creek on lands belonging to Freeport-McMoRan, which are excluded from this designation.

(vii) **Note:** Map of Unit 8, Gila River Subbasin follows.


Loach Minnow Critical Habitat
Unit 8 - Gila River Subbasin
Middle Fork Gila R
East Fork Gila R
Catron
West Fork Gila R
Grant
Gila River
Bear Cr
Mangas Cr
Hidalgo
AZ
NM
Area Enlarged
Streams
Loach Minnow Critical Habitat
Counties
State Boundary
0 3.5 7 14 21 Miles
0 4 8 16 24 Kilometers

Spikedace (*Meda fulgida*)

(1) Critical habitat units are depicted for Cochise, Gila, Graham, Greenlee, Pinal, and Yavapai Counties, Arizona, and for Catron, Grant, and Hidalgo Counties, New Mexico, on the maps below.

(2) Within these areas, the primary constituent elements (PCE) of the physical or biological features essential to the conservation of spikedace consist of six components:

(i) Habitat to support all egg, larval, juvenile, and adult spikedace. This habitat includes perennial flows with a stream depth generally less than 1 m (3.3 ft), and with slow to swift flow velocities between 5 and 80 cm per second (1.9 and 31.5 in. per second). Appropriate stream microhabitat types include glides, runs, riffles, the margins of pools and eddies, and backwater components over sand, gravel, and cobble substrates with low or moderate amounts of fine sediment and substrate embeddedness. Appropriate habitat will have a low gradient of less than approximately 1.0 percent, at elevations below 2,100 m (6,890 ft). Water temperatures should be in the general range of 8.0 to 28.0 °C (46.4 to 82.4 °F).

(ii) An abundant aquatic insect food base consisting of mayflies, true flies, black flies, caddis flies, stoneflies, and dragonflies.

(iii) Streams with no or no more than low levels of pollutants.

(iv) Perennial flows, or interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

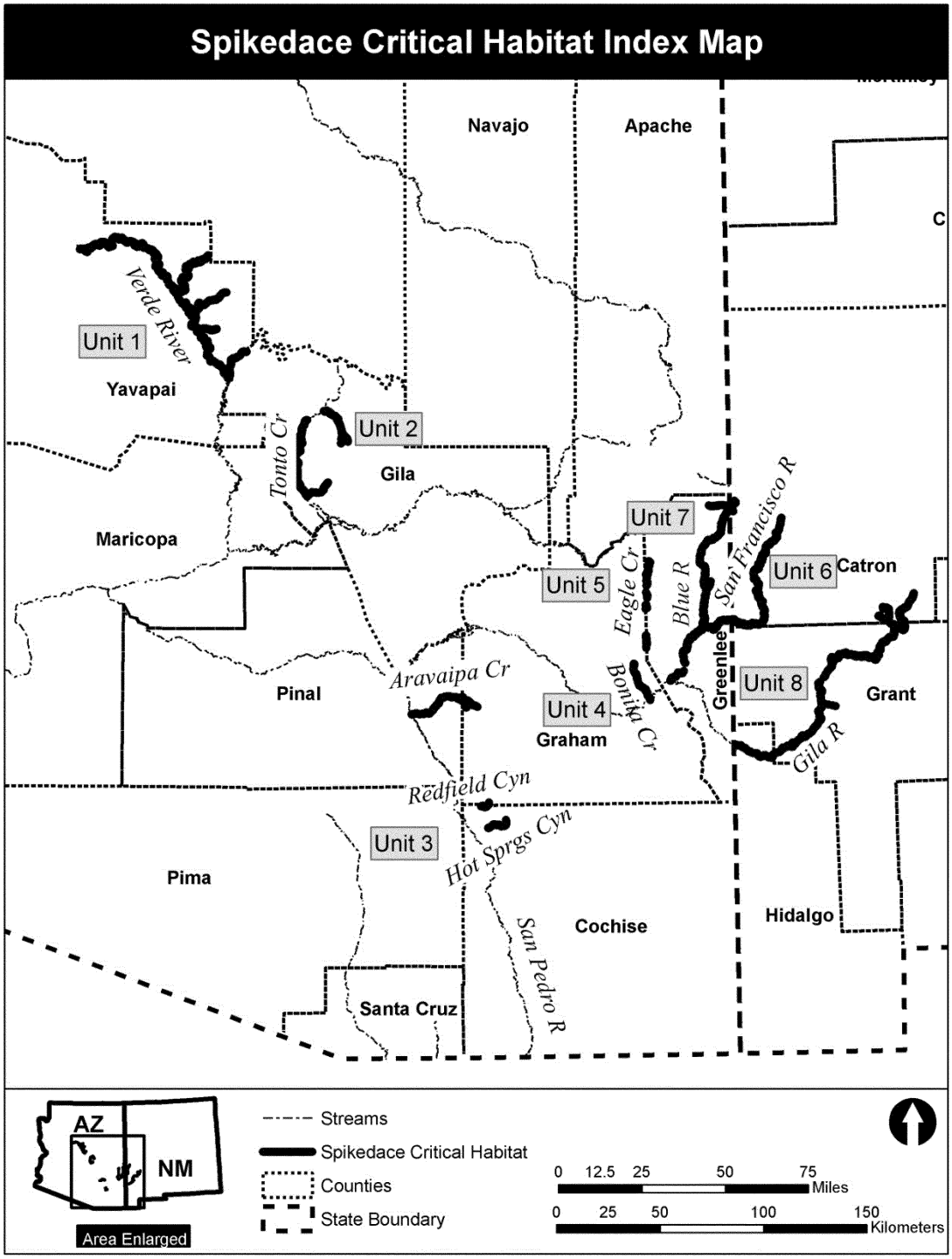
(v) No nonnative aquatic species, or levels of nonnative aquatic species that are sufficiently low as to allow persistence of spikedace.

(vi) Streams with a natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, a flow regime that allows for adequate river functions, such as flows capable of transporting sediments.

(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. We have determined that all designated areas contain at least one PCE for spikedace.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 7.5′ quadrangles along with shapefiles generated by the Arizona Land Resource Information Service for land ownership, streams, counties, and the Public Land Survey System. Information on species locations was derived from databases developed by the Arizona Game and Fish Department, the New Mexico Department of Game and Fish, and Arizona State University.

(5) **Note:** Index map follows:



(6) Unit 1: Verde River Subbasin, Yavapai County, Arizona.

(i) Verde River for approximately 170.6 km (105.9 mi), extending from the confluence with Fossil Creek in Township 11 North, Range 6 East, northeast quarter of section 25 upstream to Sullivan Dam in Township 17 North, Range 2 West, northwest quarter of section 15. This mileage does not include the 1.2 km (0.8 mi) belonging to the Yavapai-Apache Nation, which is excluded from this designation. Granite Creek for approximately 3.2 km (2.0 mi), extending from the confluence with the Verde River in Township 17 North, Range 2 West, northeast quarter section 14 upstream to a spring in Township 17 North, Range 2 West, southwest quarter of the southwest quarter of section 13.

(ii) Oak Creek for approximately 54.3 km (33.7 mi), extending from the confluence with the Verde River in Township 15 North, Range 4 East, southeast quarter section 20 upstream to the confluence with an unnamed tributary from the south in Township 17 North, Range 5 East, southeast quarter of the northeast quarter of section 24.

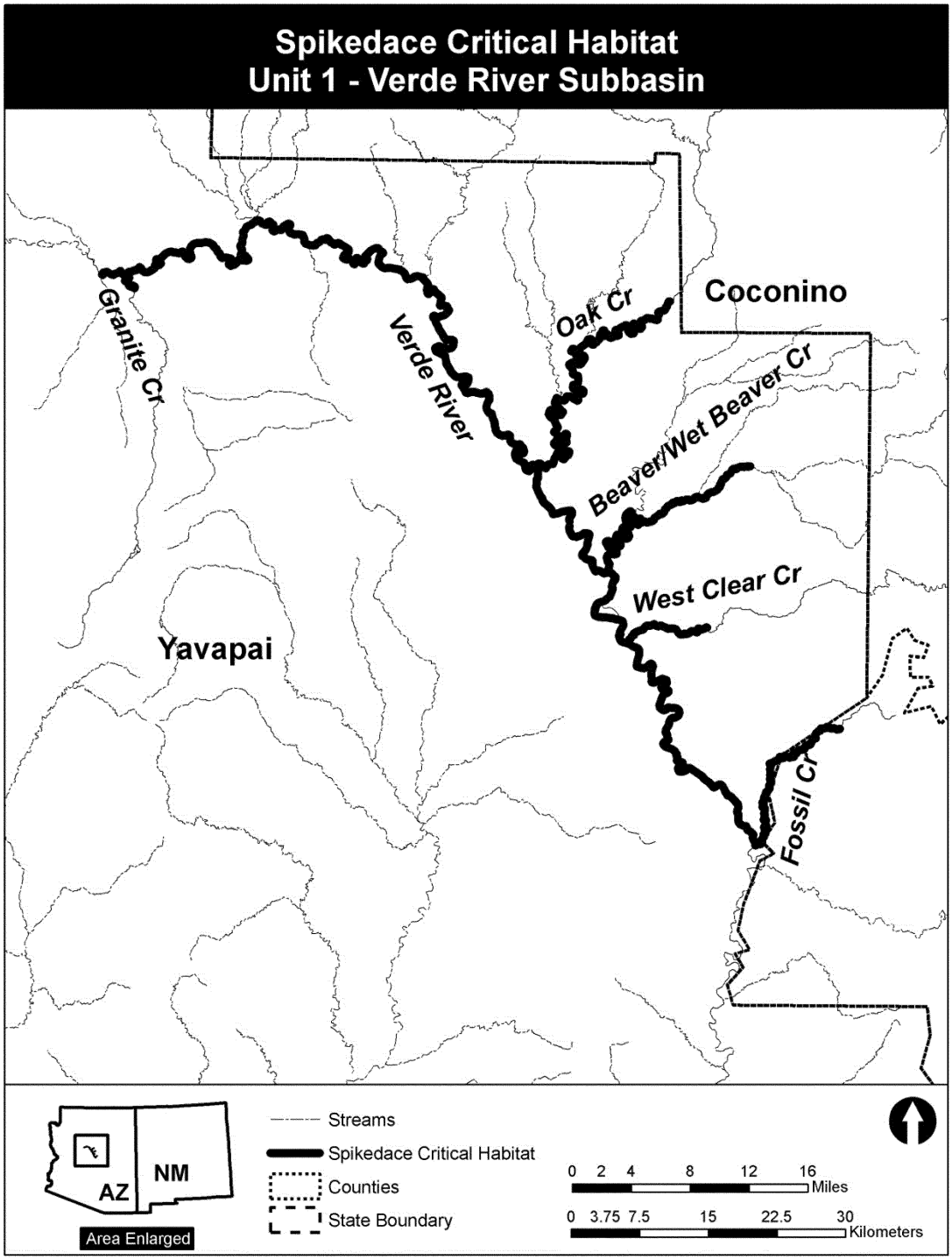
(iii) Beaver Creek/Wet Beaver Creek for approximately 33.3 km (20.7 mi), extending from the confluence with the Verde River in Township 14 North, Range 5 East, southeast quarter of section 30 upstream to the confluence with Casner Canyon in Township 15

North, Range 6 East, northwest quarter of section 23. This mileage does not include the 0.2 km (0.1 mi) belonging to the Yavapai-Apache Nation and excluded from these designations.

(iv) West Clear Creek for approximately 10.9 km (6.8. mi), extending from the confluence with the Verde River in Township 13 North, Range 5 East, center section 21, upstream to the confluence with Black Mountain Canyon in Township 13 North, Range 6 East, southeast quarter of section 17.

(v) Fossil Creek for approximately 22.2 km (13.8 mi) from its confluence with the Verde River at Township 11 North, Range 6 East, northeast quarter of section 25 upstream to the old Fossil Diversion Dam site at Township 12 North, Range 7 East, southeast quarter of section 14.

(vi) **Note:** Map of Unit 1, Verde River Subbasin follows.



(7) Unit 2: Salt River Subbasin, Gila County, Arizona.

(i) Tonto Creek for approximately 47.8 km (29.7 mi) extending from the confluence with Greenback Creek in Township 5 North, Range 11 East, northwest quarter of section 8 upstream to the confluence with Houston Creek in Township 9 North, Range 11 East, northeast quarter of section 18.

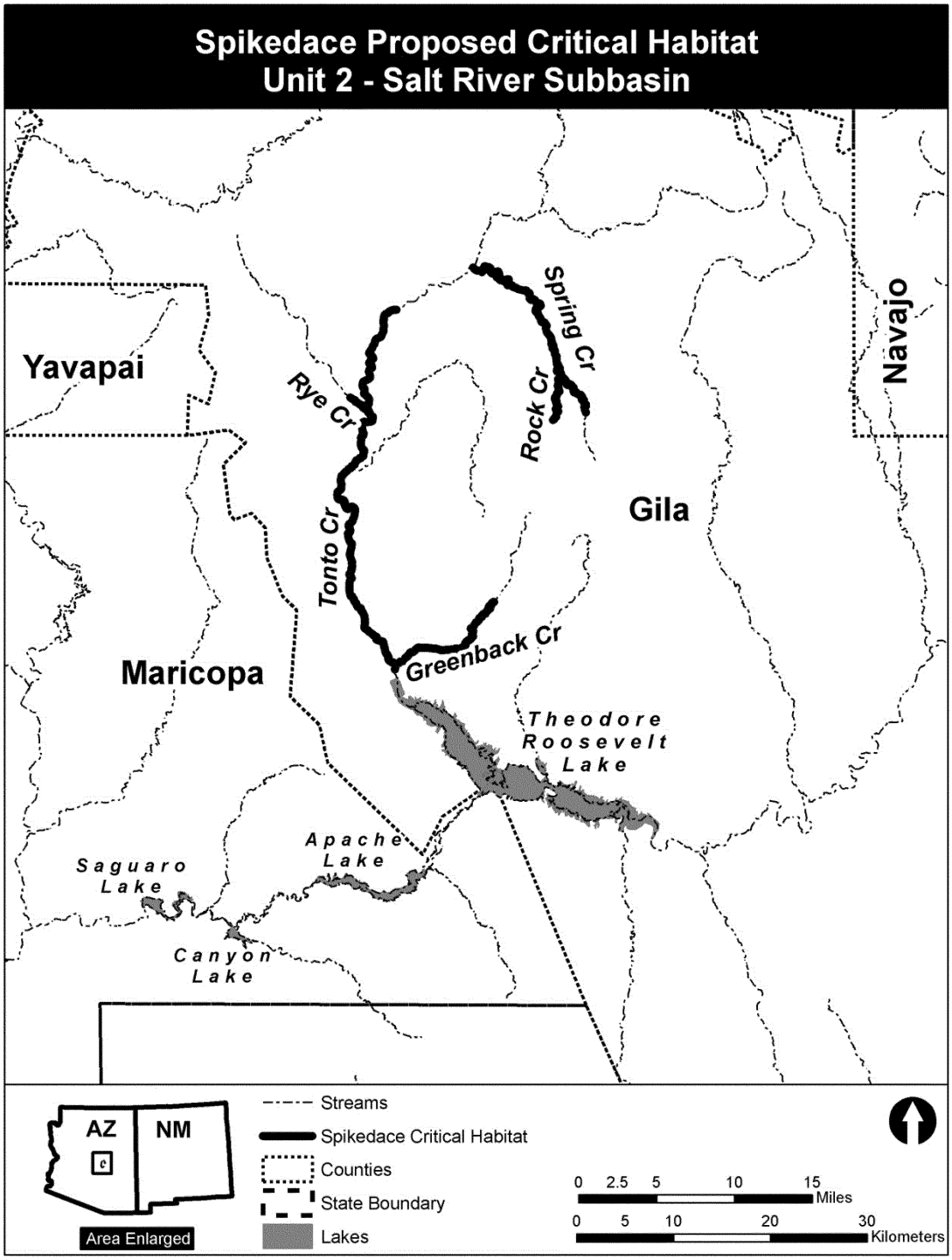
(ii) Greenback Creek for approximately 15.1 km (9.4 mi) from the confluence with Tonto Creek in Township 5 North, Range 11 East, northwest quarter of section 8 upstream to Lime Springs in Township 6 North, Range 12 East, southwest quarter of section 20.

(iii) Rye Creek for approximately 2.8 km (1.8 mi) extending from the confluence with Tonto Creek in Township 8 North, Range 10 East, northeast quarter of section 24 upstream to the confluence with Brady Canyon in Township 8 North, Range 10 East, northwest quarter of section 14.

(iv) Spring Creek for approximately 27.2 km (16.9 mi) extending from the confluence with the Tonto River at Township 10 North, Range 11 East, southeast quarter of section 36 upstream to the confluence with Sevenmile Canyon at Township 8 North, Range 13 East, northern boundary of section 20.

(v) Rock Creek for approximately 5.8 km (3.6 mi) extending from the confluence with Spring Creek at Township 8 North, Range 12 East, southeast quarter of section 1 upstream to the confluence with Buzzard Roost Canyon at Township 8 North, 12 East, center of section 24.

(vi) **Note:** Map of Unit 2, Salt River Subbasin follows.



(8) Unit 3: San Pedro River Subbasin, Cochise, Graham, and Pinal Counties, Arizona.

(i) Aravaipa Creek for approximately 44.9 km (27.9 mi) extending from the confluence with the San Pedro River in Township 7 South, Range 16 East, center of section 9 upstream to the confluence with Stowe Gulch in Township 6 South, Range 19 East, southeast quarter of the northeast quarter of section 35. Deer Creek—3.7 km (2.3 mi) of the creek extending from the confluence with Aravaipa Creek at Township 6 South, Range 18 East, section 14 upstream to the boundary of the Aravaipa Wilderness at Township 6 South, Range 19 East, section 18.

(ii) Turkey Creek—4.3 km (2.7 mi) of the creek extending from the confluence with Aravaipa Creek at Township 6 South, Range 19 East, section 19 upstream to the confluence with Oak Grove Canyon at Township 6 South, Range 19 east, section 32.

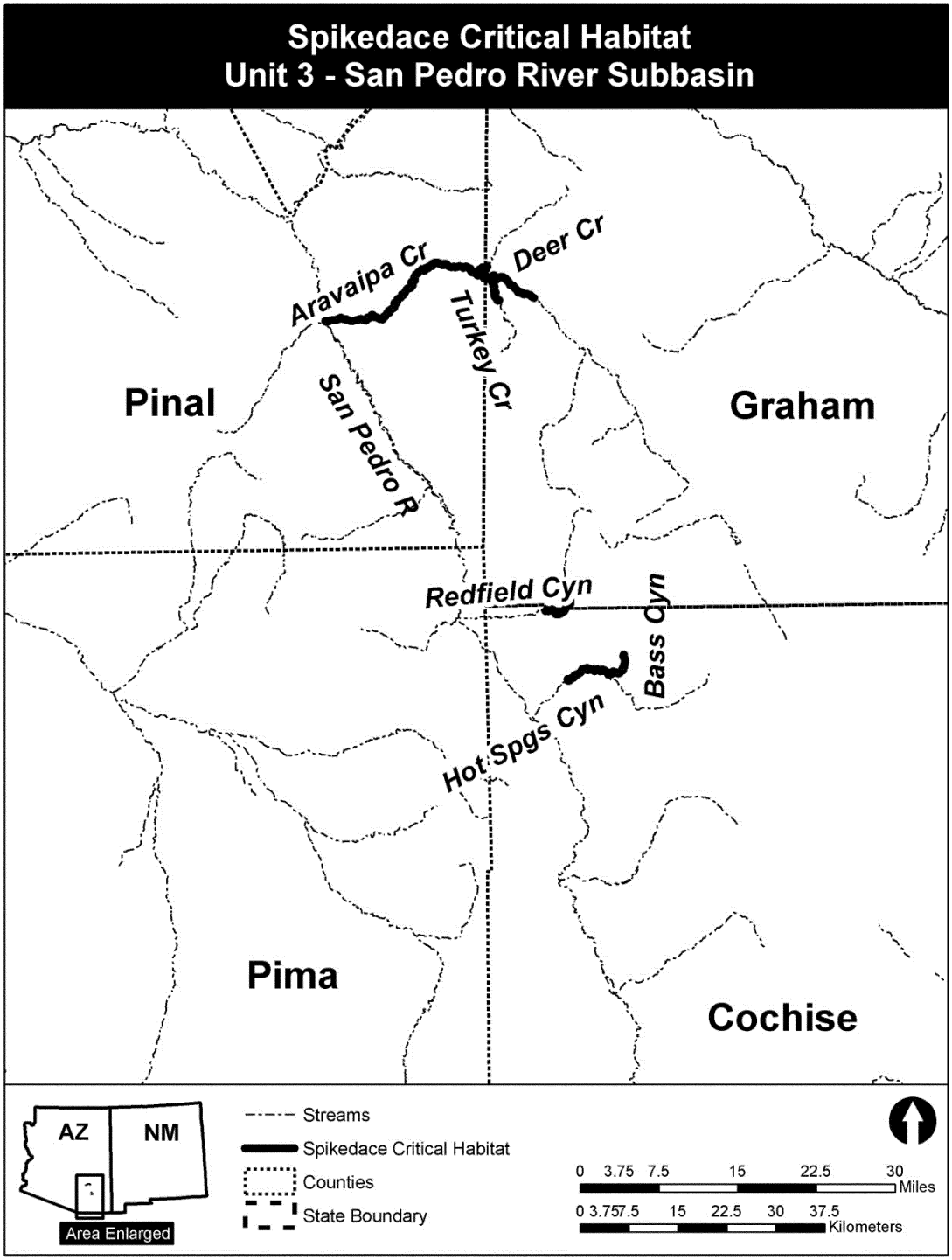
(iii) Hot Springs Canyon for approximately 9.3 km (5.8 mi) extending from the confluence with Bass Canyon in Township 12 South, Range 20 East, northeast quarter of section 36 downstream to Township 12 South, Range 20 East, southeast quarter of section 32.

(iv) Redfield Canyon for approximately 6.5 km (4.0 mi)

extending from Township 11 South, Range 19 East, northeast quarter of section 36 upstream to the confluence with Sycamore Canyon in Township 11 South, Range 20 East, northwest quarter of section 28.

(v) Bass Canyon for approximately 5.5 km (3.4 mi) from the confluence with Hot Springs Canyon in Township 12 South, Range 20 East, northeast quarter of section 36 upstream to the confluence with Pine Canyon in Township 12 South, Range 21 East, center of section 20.

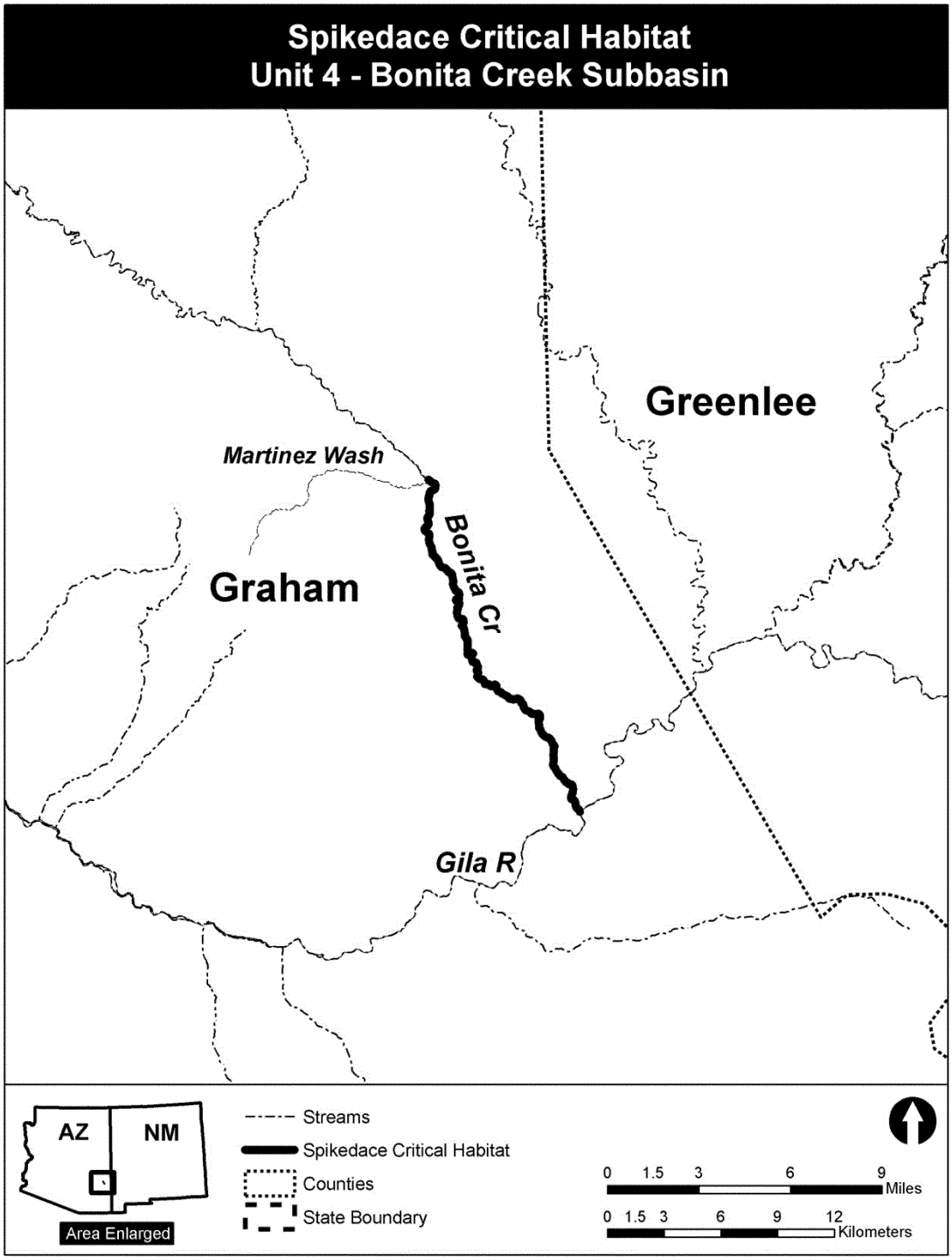
(vi) **Note:** Map of Unit 3, San Pedro River Subbasin follows.



(9) Unit 4: Bonita Creek Subbasin, Graham County, Arizona.

(i) Bonita Creek for approximately 23.8 km (14.8 mi) from the confluence with the Gila River in Township 6 South, Range 28 East, southeast quarter of section 21 upstream to the confluence with Martinez Wash in Township 4 South, Range 27 East, southeast quarter of Section 27.

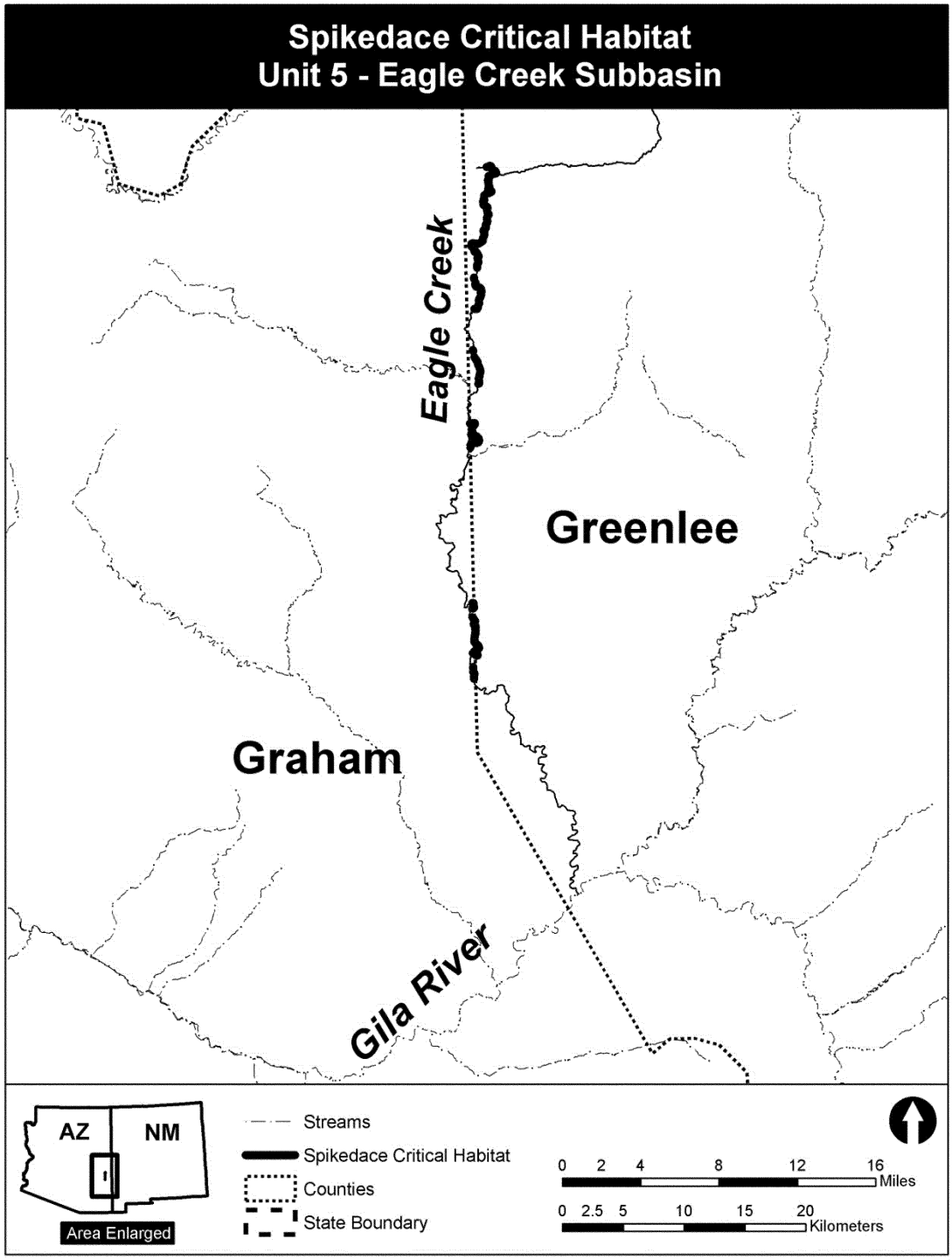
(ii) **Note:** Map of Unit 4, Bonita Creek Subbasin follows.



(10) Unit 5: Eagle Creek Subbasin, Graham and Greenlee Counties, Arizona.

(i) Eagle Creek for approximately 26.5 km (16.5 mi) from the Freeport-McMoRan diversion dam at Township 4 South, Range 28 East, southwest quarter of the northwest quarter of section 23 upstream to the confluence of East Eagle Creek in Township 2 North, Range 28 East, southwest quarter of section 20. This mileage does not include approximately 21.4 km (13.3 mi) of Eagle Creek on lands belonging to Freeport-McMoRan, which is excluded from this designation.

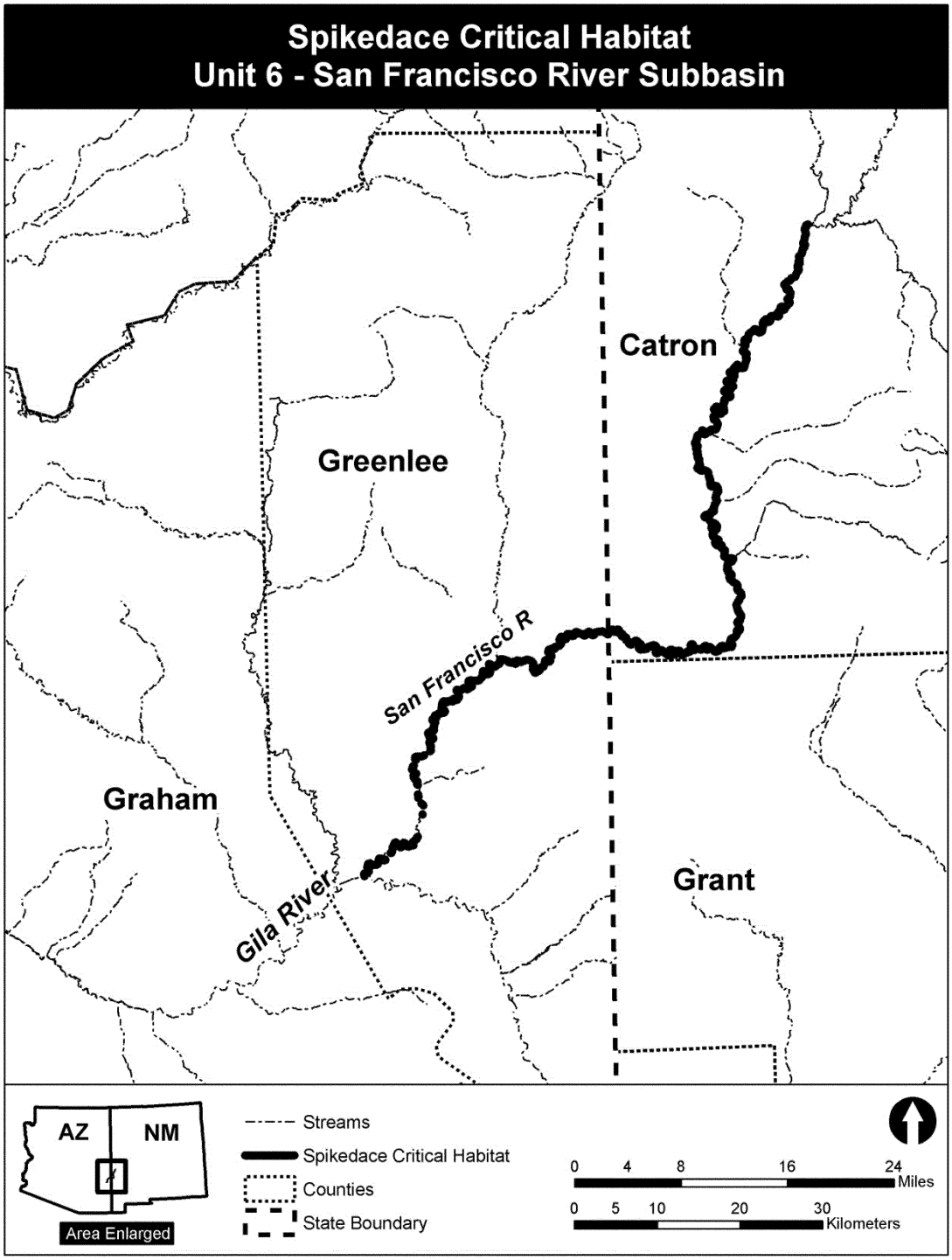
(ii) **Note:** Map of Unit 5, Eagle Creek Subbasin follows.



(11) Unit 6: San Francisco River Subbasin, Greenlee County, Arizona, and Catron County, New Mexico.

(i) San Francisco River for approximately 166.7 km (103.5 mi) of the San Francisco River extending from the confluence with the Gila River in Arizona in Township 5 South, Range 29 East, southeast quarter of section 21 upstream to Township 6 South, Range 19 West, section 2 in New Mexico. This mileage does include approximately 14.1 km (8.8 mi) of the San Francisco River on lands belonging to Freeport-McMoRan, which is excluded from this designation.

(ii) **Note:** Map of Unit 6, San Francisco River Subbasin follows.



(12) Unit 7: Blue River Subbasin, Greenlee County, Arizona, and Catron County, New Mexico.

(i) Blue River for approximately 81.4 km (50.6 mi) from the confluence with the San Francisco River at Township 2S., Range 31 East, southeast quarter of section 31 upstream to the confluence of Campbell Blue and Dry Blue Creeks at Township 7 South, Range 21 West, southeast quarter of section 6.

(ii) Campbell Blue Creek for approximately 12.4 km (7.7 mi) from the confluence of Dry Blue and Campbell Blue Creeks at Township 7 South, Range 21 West, southeast quarter of section 6 to the confluence with Coleman Canyon in Township 4.5 North, Range 31 East, southwest quarter of the northeast quarter of section 32.

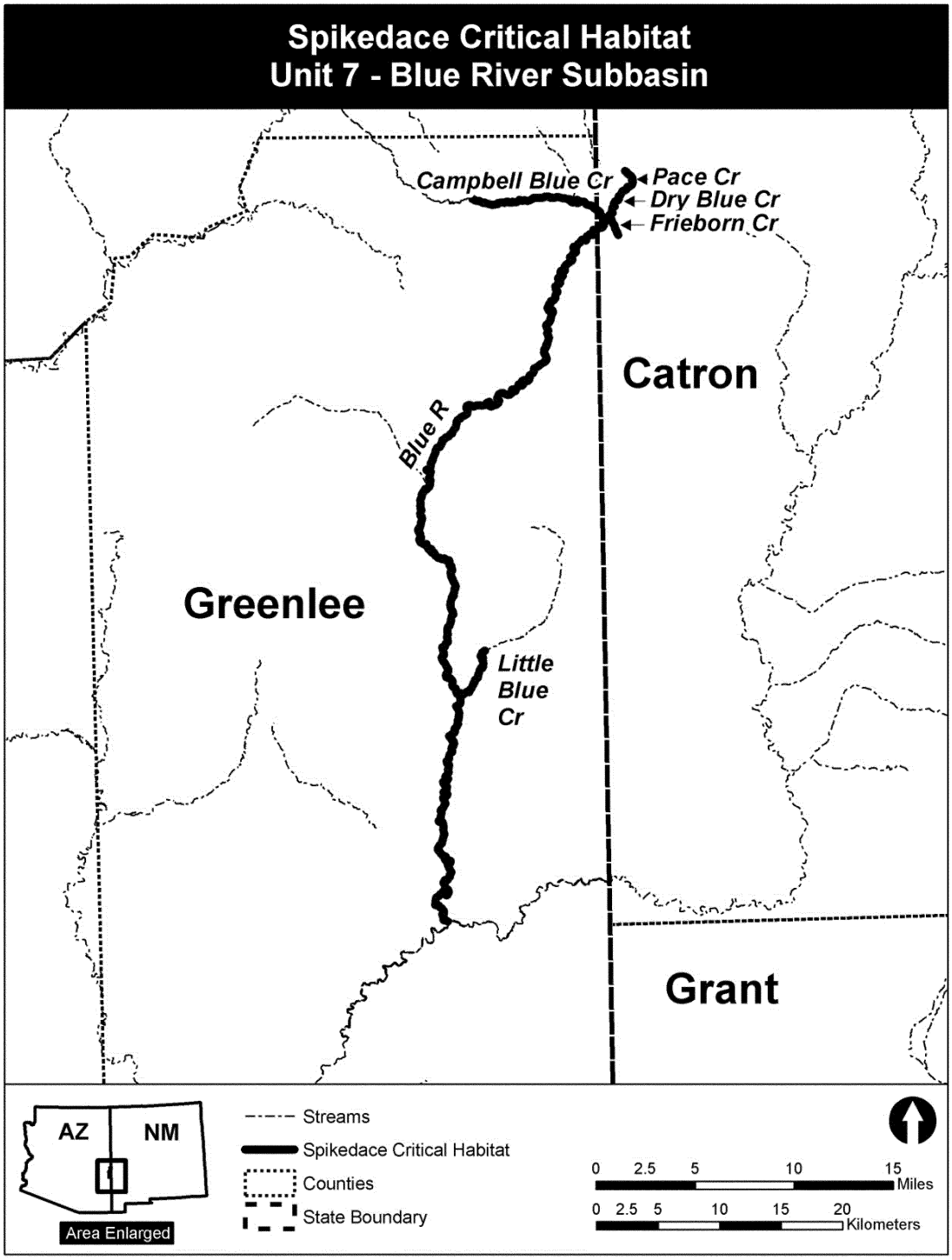
(iii) Little Blue Creek for approximately 5.1 km (3.1 mi) from the confluence with the Blue River at Township 1 South, Range 31 East, center Section 5 upstream to the mouth of a canyon at Township 1 North, Range 31 East, northeast quarter of section 29.

(iv) Pace Creek for approximately 1.2 km (0.8 mi) from the confluence with Dry Blue Creek at Township 6 South, Range 21 West, southwest quarter of Section 28 upstream to a barrier falls at Township 6 South, Range 21 West, northeast quarter of section 29.

(v) Frieborn Creek for approximately 1.8 km (1.1 mi) from the confluence with Dry Blue Creek at Township 7 South, Range 21 West, southwest quarter of the northwest quarter of section 5 upstream to an unnamed tributary flowing from the south in Township 7 South, Range 21 West, northeast quarter of southwest quarter of section 8.

(vi) Dry Blue Creek for approximately 4.7 km (3.0 mi) from the confluence with Campbell Blue Creek at Township 7 South, Range 21 West, southeast quarter of Section 6 upstream to the confluence with Pace Creek in Township 6 South, Range 21 West, southwest quarter of section 28.

(vii) **Note:** Map of Unit 7, Blue River Subbasin follows.



(13) Unit 8: Gila River Subbasin, Catron, Grant, and Hidalgo Counties, New Mexico.

(i) Gila River for approximately 153.5 km (95.4 mi) from the confluence with Moore Canyon at Township 18 South, Range 21 West, southeast quarter of the southwest quarter of section 32 upstream to the confluence of the East and West Forks of the Gila River at Township 13 South, Range 13 West, center of section 8. This mileage does not include approximately 11.5 km (7.2 mi) of the Gila River on lands owned by Freeport-McMoRan, which is excluded from this designation.

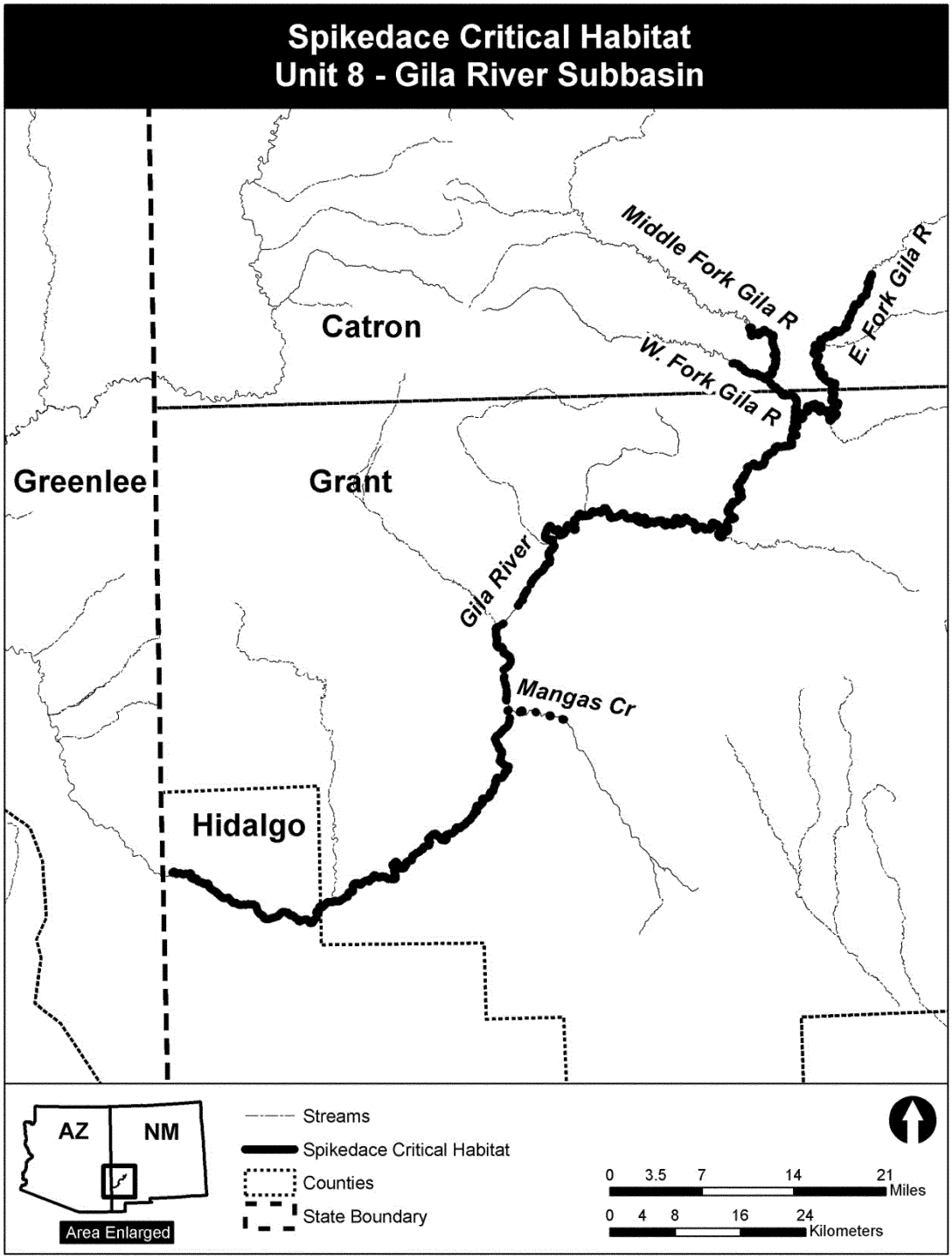
(ii) West Fork Gila River for approximately 13.0 km (8.1 mi) from the confluence with the East Fork Gila River at Township 13 South, Range 13 West, center of section 8 upstream to the confluence with EE Canyon at Township 12 South, Range 14 West, east boundary of Section 21.

(iii) Middle Fork Gila River for approximately 12.5 km (7.7 mi) of the Middle Fork Gila River extending from the confluence with West Fork Gila River at Township 12 South, Range 14 West, southwest quarter of section 25 upstream to the confluence of Big Bear Canyon in Township 12 South, Range 14 West, southwest quarter of section 2.

(iv) East Fork Gila River for approximately 42.1 km (26.2 mi) extending from the confluence with West Fork Gila River at Township 13 South, Range 13 West, center of section 8 upstream to the confluence of Beaver and Taylor Creeks in Township 11 South, Range 12 West, northeast quarter of section 17.

(v) Mangas Creek for approximately 1.2 km (0.8 mi) extending from Township 17 South, Range 17 West, at the eastern boundary of section 3 upstream to the confluence with Blacksmith Canyon at Township 17 South, Range 17 West, northwest quarter of section 3. This mileage does not include approximately 7.9 km (4.9 mi) of Mangas Creek on lands belonging to Freeport-McMoRan, which are excluded from the designation.

(vi) **Note:** Map of Unit 8, Gila River Subbasin follows.



* * * * *

Dated: February 7, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–3591 Filed 2–22–12; 8:45 am]

BILLING CODE 4310–55–C

FEDERAL REGISTER

Vol. 77 Thursday,

No. 36 February 23, 2012

Part III

The President

Memorandum of February 17, 2012—Maximizing the Effectiveness of Federal Programs and Functions Supporting Trade and Investment

Federal Register
Vol. 77, No. 36
Thursday, February 23, 2012

Presidential Documents

Title 3—

The President

Memorandum of February 17, 2012

Maximizing the Effectiveness of Federal Programs and Functions Supporting Trade and Investment

Memorandum for the Heads of Executive Departments and Agencies

Winning the future and creating an economy that's built to last will require the Federal Government to wisely allocate scarce resources to maximize efficiency and effectiveness so that it can best support American competitiveness, innovation, and job growth. Creating good, high-paying jobs in the United States and ensuring sustainable economic growth are the top priorities of my Administration. To accomplish these goals, we must ensure that U.S. businesses increase their exports of goods, services, and agricultural products, and that foreign companies recognize the United States as an attractive place to invest and to open businesses. While this growth will be fueled by the private sector, the Federal Government must do its part to facilitate trade and investment.

Executive Order 13534 of March 11, 2010, established the Export Promotion Cabinet to coordinate the development and implementation of the National Export Initiative (NEI) to improve conditions that directly affect the private sector's ability to export and to help meet my Administration's goal of doubling exports over 5 years. Pursuant to the terms of the Executive Order, the Export Promotion Cabinet conducts its work in coordination with the Trade Promotion Coordinating Committee (TPCC). The TPCC, chaired by the Secretary of Commerce, was authorized by statute in 1992 (15 U.S.C. 4727) and established by Executive Order 12870 of September 30, 1993. The NEI has used Government resources and policies to increase exports at a pace consistent with the goal of doubling exports by the end of 2014. The NEI has accomplished this by opening up foreign markets for U.S. exports, enhancing enforcement of our trade laws, providing needed export financing, advocating on behalf of U.S. firms, and otherwise facilitating U.S. exports. But we must do more.

On January 13, 2012, I announced that I would submit a legislative proposal seeking the authority to reorganize the Federal Government in order to reduce costs and consolidate agencies (Consolidation Authority), and outlined the first use I would make of such authority: to streamline functions currently dispersed across numerous agencies into a single new department to promote competitiveness, exports, and American business. The new department would integrate and streamline trade negotiation, financing, promotion, and enforcement functions currently housed at half a dozen executive departments and agencies, and would include an office dedicated to expanding foreign investment and assisting businesses that are considering investing in the United States. In addition to the trade and investment functions, the new department would include integrated small business, technology, innovation, and statistics programs and services from a number of departments and agencies, thereby creating a one-stop shop for businesses that want to grow and export. We cannot afford to wait until the Congress acts, however, and must do all we can administratively to make the most efficient and effective use of the Federal Government's trade, foreign investment, export, and business programs and functions.

Accordingly, to further enhance and coordinate Federal efforts to facilitate the creation of jobs in the United States and ensure sustainable economic growth through trade and foreign investment, and to ensure the effective

and efficient use of Federal resources in support of these goals, I hereby direct the following:

(1) *Program Coordination*. In coordination with the TPCC, the Export Promotion Cabinet shall develop strategies and initiatives in support of my Administration's strategic trade and investment goals and priorities, including the specific measures outlined in this memorandum. The Assistant to the President and Deputy National Security Advisor for International Economics shall coordinate the activities of the Export Promotion Cabinet pursuant to this memorandum. Measures and progress shall continue to be reported in the annual National Export Strategy report of the TPCC. The TPCC will continue to function as it has, consistent with its statutorily mandated duties.

(2) *Improving Customer Service for Exporters*. Consistent with my memorandum of October 28, 2011 (Making it Easier for America's Small Businesses and America's Exporters to Access Government Services to Help Them Grow and Hire), the Export Promotion Cabinet shall support the Steering Committee established pursuant to that memorandum in its efforts to create BusinessUSA, a common, open, online platform and web service that will, among other things, enable exporters to seamlessly access information about export-related Government programs, resources, and services regardless of which agency provides them.

(3) *Trade Budget*. The Export Promotion Cabinet shall, in consultation with the TPCC:

(a) evaluate the allocation of Federal Government resources to assist with trade financing, negotiation, enforcement, and promotion, as well as the encouragement of foreign investment in the United States, and identify potential savings from streamlining overlapping or duplicative programs, as well as areas in need of additional resources;

(b) make recommendations to the Director of the Office of Management and Budget (OMB) for more effective resource allocation to these functions, consistent with my Administration's strategic trade and investment goals and priorities, including recommendations to streamline overlapping and duplicative programs and reallocate those resources; and

(c) present to the Director of OMB for consideration in the annual process for developing the President's Budget, a proposed unified Federal trade budget, consistent with my Administration's strategic trade and investment goals and priorities.

(4) *Coordination of Offices and Staff*. The Export Promotion Cabinet, in consultation with the TPCC, shall take steps to ensure the most efficient use of its members' domestic and foreign offices and distribution networks, including: co-locating offices wherever appropriate; cross-training staff to better serve business customers at home and abroad by promoting exports to foreign countries and foreign investment in the United States; and considering the effectiveness of commercial diplomacy, cross-training, and referrals, as appropriate, when evaluating employee performance.

(5) *Enhancing Business Competitiveness*. Pending passage of legislation providing Consolidation Authority, the Export Promotion Cabinet shall work with the National Economic Council to develop and coordinate administrative initiatives to align and enhance programs that enable and support efforts by American businesses, particularly small businesses, to innovate, grow, and increase exports.

(6) *General Provisions* (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

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

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Director of OMB is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, February 17, 2012

[FR Doc. 2012–4438
Filed 2–22–12; 11:15 am]
Billing code 3110–01–P

Reader Aids

Federal Register

Vol. 77, No. 36

Thursday, February 23, 2012

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