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Federal Register

8–6–03 Wednesday
Vol. 68 No. 151 August 6, 2003

Pages 46433–46918

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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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–00–304]

Grapefruit and Oranges (Texas and States Other Than Florida, California and Arizona); Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is adopting as a final rule, without change, an interim final rule regarding the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California and Arizona) and the United States Standards for Grades of Oranges (Texas and States other than Florida, California and Arizona). These standards are issued under the Agricultural Marketing Act of 1946.

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: David Priester, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 2065 South Building, STOP 0240, Washington, DC 20250–0240; Fax (202) 720–8871.

SUPPLEMENTARY INFORMATION:

Background

AMS received a request to revise the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California and Arizona), and the United States Standards for Grades of Oranges (Texas and States other than Florida, California and Arizona) from members of the Texas fruit and vegetable industry. Members of the Texas industry requested that these standards be revised to reflect current cultural and marketing practices and give industry greater flexibility in marketing and packaging using developing technologies. The major changes requested revised the standard pack sections of the grapefruit and orange standards, and the standard sizing section of the orange standard by redefining the requirements in each section.

AMS issued an interim final rule with request for comments on September 24, 2001 (66 FR 48785). A comment period of 60 days was provided for interested persons to respond. The comment period ended on November 23, 2001, and no comments were received.

Executive Order 12988 and 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small entities.

There are approximately 315 producers of grapefruit and oranges in the production area and 16 handlers who would be affected by this amendment. Starting August 6, 2001, small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. Under this definition, the majority of grapefruit and orange producers and handlers using the grade standards in this regulation may be classified as small entities.

Using an average f.o.b. price of $8.00 per carton, 11 handlers (69 percent) could be considered small businesses. Of the approximately 315 producers within the production area, few have sufficient acreage to generate sales in excess of $750,000; therefore, a majority of producers of oranges and grapefruit who will be affected by this rule may be classified as small entities.

The main purpose of the changes was to bring the standards into conformity with current packaging and marketing practices and technologies. This rule specifically revises the standard pack sections of the grapefruit and orange standards and the standard size section of the orange standard by redefining the requirements. This rule will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

The alternative option to this rule would be to leave the standards unchanged. This is not a viable alternative because amendments reflect current industry practices and are consistent with the regulations under the Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas Marketing Order (7 CFR Part 906).

This rule contains no new information or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seg.). The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

PART 51—[AMENDED]

■ According, the interim final rule amending CFR part 51 which was published at 66 FR 48785 on September 24, 2001, is adopted as a final rule without change.

Dated: July 31, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–19970 Filed 8–5–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Foods for Use in the United States, its Territories and Possessions and Areas Under its Jurisdiction

CFR Correction

■ In Title 7 of the Code of Federal Regulations, parts 210 to 299, revised as of January 1, 2003, on page 466, § 250.30 is corrected by reinstating paragraph (f)(1) introductory text. The reinstated text reads as follows:

§ 250.30 State processing of donated foods.

* * * * *

(f) * * *

(1) The processing contract may provide for substitution of donated foods as defined in § 250.3 except that donated beef and donated pork shall not be substitutable. Any substitution of commercial product for commodities other than beef, pork, or poultry is subject to a 100–percent yield requirement. Under the 100–percent yield requirement, the processor is responsible for any manufacturing losses.

* * * * *

[FR Doc. 03–55519 Filed 8–5–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. 03–038–1]

Introductions of Plants Genetically Engineered to Produce Industrial Compounds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending our regulations regarding genetically engineered organisms to require that introductions of plants genetically engineered to encode compounds for industrial use be conducted only under permit. Prior to this interim rule, such introductions could be accomplished under notification, an expedited permitting procedure. This action is necessary to strengthen our regulations for introductions of this small subgroup of genetically engineered plants.

DATES: This interim rule is effective August 6, 2003. We will consider all comments that we receive on or before October 6, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–038–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–038–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–038–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Policy Division, BRS, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737–1238; (301) 734–8365.

SUPPLEMENTARY INFORMATION:

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe are Plant Pests'' (referred to below as the regulations), govern the introduction (importation, interstate movement, or release into the environment) of any organism or product altered or produced through genetic engineering that is a plant pest or that there is reason to believe is a plant pest, or any product which contains such an organism that is unclassified and/or whose classification is unknown. The regulations refer to such organisms as ''regulated articles.''

With certain limited exceptions, the introduction of any regulated article is prohibited unless that introduction is authorized by a permit or, for specific classes of regulated articles, the Administrator of the Animal and Plant Health Inspection Service (APHIS) has been notified of the introduction in accordance with § 340.3 of the regulations, which provides for the use, under certain circumstances, of an expedited permitting procedure called notification.

The notification option was added to the regulations in 1993 (58 FR 17044–53043, Docket No. 92–156–02) in order to expedite introductions for certain types of low risk plants with which APHIS had considerable regulatory experience. Under the notification procedure, the regulated article to be introduced must be a plant, and the types of genetic modifications to the plant must meet the eligibility criteria described in § 340.3(b). Development of those criteria was based upon the types of genetic modifications that APHIS had reviewed and evaluated many times over the preceding years of issuing permits.

At the time the regulations were amended to provide for the use of notification, the types of genetically engineered plants that had industrial uses were typically those in which nutritional components, such as oil content, were being engineered. Since APHIS had significant regulatory experience with the types of traits then being introduced into these plants, industrial plants were eligible for the notification option. In contrast, the notification regulations in § 340.3(b)(4)(iii) prohibited the use of notification for introductions of plants genetically engineered to encode compounds for pharmaceutical use, thus continuing to require a permit for such introductions, because of our lack of regulatory experience and scientific familiarity with these types of introduced traits.

Recently, a number of introductions of plants engineered to produce compounds intended for industrial use have been for traits different than what we were seeing in 1993. The more recent introductions have been for non-food, non-feed traits with which APHIS has little regulatory experience or scientific familiarity. For purposes of this rule, plants engineered to produce industrial compounds include those

plants that meet the following three criteria: (1) The plants are engineered to produce compounds that are new to the plant; (2) the new compound has not been commonly used in food or feed; and (3) the new compound is being expressed for non-food, non-feed industrial uses. Industrial uses include, but are not limited to, detergent manufacturing, paper production, and mineral recovery.

Based on the expansion of the technology and the new non-food, non-feed uses of industrial plants being developed, we believe it is prudent and necessary to remove the notification option for all industrials pending the completion of our ongoing review of part 340.

With this interim rule, which will be in effect only until December 31, 2004, we amend the regulations in part 340 to remove the notification options for such plants. Therefore, for the remainder of the 2003–2004 growing seasons all introductions of plants genetically engineered to produce industrial compounds will be conducted pursuant to APHIS' rigorous permit system. We are continuing our review of this and other issues and of the regulations in part 340 generally and will announce our plans in a document published in the **Federal Register** within the next year.

Immediate Action

Immediate action is necessary to strengthen our regulations with regard to the introductions of genetically engineered plants that encode compounds intended for industrial use because of our lack of regulatory experience and scientific familiarity with the kinds of traits in current and planned introductions. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

This interim rule amends the regulations regarding genetically engineered organisms to require that introductions of plants genetically engineered to encode compounds for industrial use be conducted only under permit. Prior to this interim rule, such introductions could be accomplished under notification, an expedited permitting procedure.

Since 1993, only five companies and two public sector organizations have submitted notifications or applied for permits to introduce plants producing industrial compounds. From 1993 to 2001, 10 notifications of introductions of plant-made industrials (by 2 companies and 1 public sector entity) were received by APHIS. One notification was withdrawn; nine were acknowledged. In 2003, five permit applications for introductions of plant-made industrials have been received by APHIS (by three companies and one public sector entity).

It is difficult to predict how many organizations will apply for permits to introduce genetically engineered plants producing industrial compounds under the regulations in the future. Many unknowns will affect growth of the sector, including: Scientific/technological advances, consumer acceptance, market demand, production economics, the regulatory environment, intellectual property rights, and other critical factors.

Under the current notification procedure, when APHIS receives a notification, it is usually reviewed by a biotechnologist within 10 to 30 days, is forwarded to the State for further review, then returned to the applicant as either acknowledged or denied. Under the current permit procedures, it could take up to 3 months longer for each plant-made industrial compound introduction to be approved. When a permit application is received by APHIS, scientists review the application for deficiencies. If deficiencies are found, the applicant is required to respond to the noted deficiencies and the permit is either issued or denied within 120 days. The permit and proposed conditions are then sent to the State in which the introduction would occur. The State may concur or add conditions and concur.

Authorizations under notification require compliance with the performance standards described in § 340.3(c). For each notification, the responsible person must describe the procedures they will take to meet the performance standards. APHIS reviews those procedures and approves or denies the notification request. Authorizations under permit require compliance with standard permit conditions and supplemental conditions based on the risks involved in each case.

The requirement to introduce plants genetically engineered to produce industrial compounds under permit will result in an increased paperwork burden for applicants. Permits require the applicant to answer three more questions. The time per response is estimated to be 5 hours, so the total additional paperwork burden per permit could be somewhere in the neighborhood of 15 hours.

It is unlikely that the additional time for processing permits or the additional paperwork requirement would discourage applicants from applying for permits for the introduction of plants producing industrial compounds. Data on applications to introduce plants producing industrial compounds under the notification system (1993–2001) versus the permit system (2003) suggest that voluntary compliance with the permit system has not discouraged applicants thus far.

TABLE 1.—APPLICATIONS TO INTRODUCE PLANTS PRODUCING INDUSTRIAL COMPOUNDS

	Total applications	Applications per year
Notification system (1993–2001)	10	Slightly more than 1 per year.
Permit system (2003)	5	Five in the first 6 months.

Market research studies [1] indicate that approximately 60 companies and 60 research institutes are involved in biopharming (both pharmaceutical and industrial) product research and development worldwide. A subset of this group involved only in industrial or industrial/pharmaceutical biopharming research and development could be affected by this interim rule. It is unclear at this time exactly how many of them will be affected, or how many of them will qualify for consideration as small entities. The Small Business Association (SBA) defines small entities engaged in research and development in the life sciences as those with no more than 500 employees.

As of May 2003, only five companies and two research institutes had filed notifications or applied for permits to introduce plants genetically engineered to produce industrial compounds. Of the seven entities, two met the SBA criteria for small entities. Two were presumed small, and the remaining three were large organizations.

Strengthening the conditions under which plants genetically engineered to produce industrial compounds are regulated is expected to provide some benefits to all affected biotechnology companies and organizations. While it is possible that a small entity would be affected by this interim rule, the number of such entities, if any, would be few. Regardless of the number of small entities affected, however, the rule is unlikely to have any significant economic impact on them. Costs of complying with the conditions set forth in this interim rule are expected to be negligible. All currently affected entities are already in voluntary compliance with the interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

[1] (1) *Biopharming: The Emerging World Market of Plant-Based Therapeutics,* Theta Reports, November 2002; (2) *The Transgenic Plant Market—Profits from New Products and Novel Drugs,* Drug and Market Development Corp., August 2002; (3) *World Agricultural Biotechnology: Transgenic Crops,* Freedonia Industry Study, March 2002.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0216.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 340

Administrative practice and procedure, Biotechnology, Genetic engineering, Imports, Packaging and containers, Plant diseases and pests, Transportation.

■ Accordingly, we are amending 7 CFR part 340 as follows:

PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

■ 1. The authority citation for part 340 is revised to read as follows:

Authority: 7 U.S.C. 1622n and 7701–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

§ 340.3 [Amended]

■ 2. In § 340.3, paragraph (b)(4)(iii) is amended by adding the words ''or industrial'' immediately after the word ''pharmaceutical''.

§ 340.4 [Amended]

■ 3. Section 340.4 is amended by adding an OMB control number citation at the end of the section to read as follows: ''(Approved by the Office of Management and Budget under control number 0579–0216)''.

Done in Washington, DC, this 31st day of July 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–19877 Filed 8–5–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV03–993–4 IFR]

Dried Prunes Produced in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 2003–04 and subsequent crop years from $2.60 to $2.00 per ton of salable dried prunes. The Committee locally administers the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: August 7, 2003. Comments received by October 6, 2003, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2003–04 and subsequent crop years from $2.60 per ton to $2.00 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–03 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 26, 2003, and unanimously recommended 2003–04 expenditures of $341,000 and an assessment rate of $2.00 per ton of salable dried prunes. In comparison, last year's budgeted expenditures were $384,370. The recommended assessment rate is $0.60 lower than the rate currently in effect. The Committee was able to recommend a lower assessment rate this year because salable prune production this year is expected to be 170,500 tons, 15,500 tons higher than production last year. With a larger 2003–04 prune crop and lower budget, an assessment rate of $2.00 per ton will provide sufficient funds for Committee operations this year.

The following table compares major budget expenditures recommended by the Committee on June 26, 2003, and major budget expenditures in the 2002–03 budget.

Budget expense categories	2002–03	2003–04
Total Personnel Salaries	$232,575	$220,540
Total Operating Expenses	136,850	103,750
Reserve for Contingencies	14,945	16,710

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by the estimated salable tons of California dried prunes. Production of dried prunes for the year is estimated at 170,500 salable tons, which should provide $341,000 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. Interest income also would be available if assessment income is reduced for some reason. The Committee is authorized to use excess assessment funds from the 2002–03 crop year (currently estimated at $78,947) for up to 5 months beyond the end of the crop year to meet 2003–04 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Eight of the 21 handlers (38%) shipped over $5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62%) shipped under $5,000,000 of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3% of the 1,205 total producers, would be considered large growers with annual income over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent crop years from $2.60 per ton to $2.00 per ton of salable dried prunes. The Committee unanimously recommended 2003–04 expenditures of $341,000 and an assessment rate of $2.00 per ton of salable dried prunes. The recommended assessment rate is $0.60 lower than the current rate. The quantity of assessable dried prunes for the 2003–04 crop year is now estimated at 170,500 salable tons. Thus, the $2.00 rate should provide $341,000 in assessment income and be adequate to meet this year's expenses. Interest income also would be available to cover budgeted expenses if the 2003–04 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 26, 2003, and major budget expenditures in the 2002–03 budget.

Budget expense categories	2002–03	2003–04
Total Personnel Salaries	$232,575	$220,540
Total Operating Expenses	136,850	103,750
Reserve for Contingencies	14,945	16,710

Prior to arriving at its budget of $341,000, the Committee considered information from various sources, such as the Committee's Executive Subcommittee. An alternative to this action would be to continue with the $2.60 per ton assessment rate. However, an assessment rate of $2.60 per ton in combination with the estimated crop of 170,500 salable tons would generate monies in excess of that needed to fund all the budget items for 2003–04. The assessment rate of $2.00 per ton of salable dried prunes was determined by dividing the total recommended budget by the estimated salable dried prunes. The Committee is authorized to use excess assessment funds from the 2002–03 crop year (currently estimated at $78,947) for up to 5 months beyond the end of the crop year to fund 2003–04 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)). Anticipated assessment income and interest income during 2003–04 would be adequate to cover authorized expenses.

The grower price for the 2003–04 season is expected to average about the same as the estimated 2002–03 average grower price of about $800 per salable ton of dried prunes. Based on an estimated 170,500 salable tons of dried prunes, assessment revenue during the 2003–04 crop year is expected to be less than 1 percent of the total expected grower revenue.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 26, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2003–04 crop year began on August 1, 2003, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such crop year; (2) this rule decreases the assessment rate for assessable prunes beginning with the 2003–04 crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and Recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 993.347 is revised to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 2003, an assessment rate of $2.00 per ton is established for California dried prunes.

Dated: July 31, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–19969 Filed 8–5–03; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AH14

Revision of Fee Schedules; Fee Recovery for FY 2003; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on June 18, 2003 (68 FR 36714) amending the licensing, inspection, and annual fees charged by the NRC to its applicants and licensees. This action is necessary to correct typographical errors and mislabeled fee types in the Schedule of Materials Fees.

EFFECTIVE DATE: August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Ann Norris, telephone 301–415–7807, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

■ In rule FR Doc. 03–14960 published June 18, 2003 (68 FR 36714) make the following corrections:

■ 1. On page 36716, third column, C. Specific Part 171 Issues, the last sentence of the first paragraph reads ''* * * is recovered through annuals fees'' and is corrected to read ''is recovered through annual fees.''

§170.31 [Corrected]

■ 2. On page 36731, § 170.31, Category 3, Byproduct material, paragraph P is corrected to read ''P. All other specific byproduct material licenses, except those in Categories 4A through 9D: Application * * * $1,200.''

■ 3. On page 36731, § 170.31, Category 3, Byproduct material, paragraph Q is corrected to read ''Q. Registration of a device(s) generally licensed under part 31 of this chapter: Registration * * * $620.''

§171.16 [Corrected]

■ 4. On pages 36734 and 36735, § 171.16 (c), the header for the second column of the small entity fee table is corrected to read ''Maximum annual fee per licensed category.''

Dated at Rockville, Maryland, this 30th day of July, 2003.

For the Nuclear Regulatory Commission.

Alzonia W. Shepard,

Federal Register Liaison Officer.

[FR Doc. 03–19888 Filed 8–5–03; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Interest Rates

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The current 18 percent per year federal credit union maximum loan rate is scheduled to revert to 15 percent on September 9, 2003, unless otherwise provided by the NCUA Board (Board). A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of federal credit unions. At the same time, prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the Board hereby continues an 18 percent federal credit union loan rate ceiling for the period September 9, 2003 through March 8, 2005. The Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

DATES: Effective September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Daniel Gordon, Senior Investment Officer, Office of Strategic Program Support and Planning, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone 703–518–6620.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96–221, enacted in 1980, raised the loan interest rate ceiling for federal credit unions from one percent per month (12 percent per year) to 15 percent per year. 12 U.S.C. 1757(5)(A)(vi). The law also authorized the Board to set a higher limit, after consulting with Congress, the Department of Treasury and other federal financial agencies, for a period not to exceed 18 months, if the Board determined that: (1) money market interest rates have risen over the preceding six months; and (2) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in growth, liquidity, capital, and earnings.

On December 3, 1980, the Board determined that the foregoing conditions had been met. Accordingly, the Board raised the loan ceiling to 21 percent. In the unstable environment of the first half of the 1980s, the Board lowered the loan rate ceiling from 21 percent to 18 percent, effective May 18, 1987. This action was taken in an environment of falling market interest rates from 1980 to early 1987. The ceiling has remained at 18 percent to the present. The Board believes retaining the 18 percent ceiling will permit credit unions to continue to meet their current lending programs and permit the necessary flexibility for credit unions to react to any adverse economic developments.

The Board would prefer not to set loan interest rate ceilings for federal credit unions. Credit unions are cooperatives and establish loan and share rates consistent with the needs of their members and prevailing market interest rates. The Board supports free lending markets and the ability of federal credit union boards of directors to establish loan rates that reflect current market conditions and the interests of their members.

Congress, however, has imposed loan rate ceilings since 1934, and, as stated previously, in 1980, Congress set the ceiling at 15 percent but authorized the Board to set a ceiling in excess of 15 percent, if conditions warrant. The following analysis justifies a ceiling above 15 percent, but at the same time does not support a ceiling above the current 18 percent. The Board is prepared to reconsider this action at any time should changes in economic conditions warrant.

Money Market Interest Rates

Although money market interest rates have generally declined, the Board of Governors of the Federal Reserve System's (the FRB's) aggressive monetary policy and larger anticipated federal budget deficits suggest money market rates will rise in the months

ahead. Recent statements by the FRB Chairman Alan Greenspan and other FRB officials suggest they anticipate stronger growth in the remaining months of 2003. This growth also would lead to higher money market interest rates.

These expectations are revealed in the implied forward yield curve for the United States Treasury securities. As of July 11, 2003, the forward yield curve anticipates that: the one-year Treasury yield will rise 51 basis points; the two-year Treasury will rise 63 basis points; and the five-year Treasury will rise 57 basis points by July 11, 2004. In addition, recently there has been an increase in current interest rates, as follows in Table 1:

TABLE 1.—CHANGE IN U.S. GOVERNMENT YIELDS

June 13, 2003–July 11, 2003

Maturity	Rate 6/13/03 (percent)	Rate 7/11/03 (percent)	Change (percent)
3-month	.85	.88	.03
6-month	.94	.94	.10
2-year	1.08	1.33	.25
3-year	1.31	1.66	.35
5-year	1.03	2.52	.49
10-year	3.11	3.67	.57

Lowering the ceiling now, only to revise it upward in several months, would be disruptive to credit unions, as discussed below.

Financial Implications for Credit Unions

For at least 499 federal credit unions, representing 8.5 percent of reporting federal credit unions, the most common rate on unsecured loans was above 15 percent at year-end 2002. While the bulk of credit union lending is below 15 percent, small credit unions and credit unions that have implemented risk-based lending programs require interest rates above 15 percent to maintain liquidity, capital, earnings, and growth. Loans to members who have not yet established credit histories or have weak credit histories have more credit risk. Credit unions must charge rates to cover the potential of higher than usual losses for such loans.

There are undoubtedly more than 499 federal credit unions charging over 15 percent for unsecured loans to such members. Many credit unions have ''credit builder'' or ''credit rebuilder'' loans but report only the most common unsecured loan rates on NCUA Call Reports. Lowering the interest rate ceiling for federal credit unions would discourage these credit unions from making certain loans and many of the affected members would have no alternative but to turn to other lenders who charge higher rates.

Small credit unions would be particularly affected by lower loan rate ceilings since they tend to have higher levels of unsecured loans, typically with lower loan balances. Table 2 shows the number of federal credit unions in each asset group where the most common rate is more than 15 percent for unsecured loans.

TABLE 2.—ACTIVE FEDERAL CREDIT UNIONS WITH MOST COMMON UNSECURED LOAN RATES GREATER THAN 15 PERCENT

December 2002

Peer group by asset size (in millions)	Total all FCUs	Number of FCUs with greater than 15 percent
$0–2	1,271	106
2–10	1,897	204
10–50	1,742	124
50+	990	65
Total	5,900	499

Should the interest rate charged on loans be subject to a 15 percent ceiling, a number of federal credit unions, where the majority of members are low-income, will incur significant financial strain. Approximately 15 percent of federal credit unions with low-income designation report loan interest rates greater than 15 percent. In contrast, only 8.5 percent of all credit unions report rates above 15 percent. Approximately 17 percent of low-income credit unions with assets less than $10 million would be affected.

These credit unions offset the cost of generating low-balance loans by charging increased interest rates. These credit unions generally are not able to provide credit card loans and, instead, grant closed-ended and open-ended loans with the prerequisite underwriting documentation. Further, these smaller credit unions generally maintain a higher expense ratio, since many are involved with high-transaction accounts requiring higher personnel costs and related operational expenses, and lack economies of scale.

Further, among the 499 federal credit unions where the most common rate is more than 15 percent for unsecured loans, 83 have 20 percent or more of their assets in this category and all but three credit unions have assets of less than $10 million. For these credit unions, lowering the rates would threaten their liquidity, capital, earnings, and growth.

The Board has concluded that conditions exist to retain the federal credit union interest rate ceiling of 18 percent per year for the period September 8, 2003 through March 8, 2005. Loans and line of credit balances existing on or before March 8, 2005 may continue to bear interest at their contractual rate, not to exceed 18 percent. Finally, the Board is prepared to reconsider the 18 percent ceiling at any time during the extension period should changes in economic conditions warrant.

Regulatory Procedures

Administrative Procedure Act

The Board has determined that notification and public comment on this rule are impractical and not in the public interest. 5 U.S.C. 553(b)(3)(B). Due to the need for a planning period before the September 9, 2003 expiration date of the current rule, and the threat to the safety and soundness of individual credit unions with insufficient flexibility to determine loan rates, final action on the loan rate ceiling is necessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (those under ten million dollars in assets). This final rule provides added flexibility to all federal credit

unions regarding the permissible interest rate that may be used in connection with lending. The NCUA Board has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

NCUA has determined that this rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interest. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule applies only to federal credit unions and, thus, will not have substantial direct effects on the states, on the relationship between the national government and the states, nor materially affect state interests. The NCUA has determined that the rule does not constitute a policy that has any federalism implication for purposes of the executive order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this is not a major rule.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Loan interest rates.

By the National Credit Union Administration Board on July 31, 2003.

Becky Baker,

Secretary to the Board.

■ Accordingly, NCUA amends 12 CFR chapter VII as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS (AMENDED)

■ 1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Section 701.21(c)(7)(ii)(C) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(7) * * *

(ii) * * *

(C) *Expiration.* After March 8, 2005, or as otherwise ordered by the NCUA Board, the maximum rate on federal credit union extensions of credit to members shall revert to 15 percent per year. Higher rates may, however, be charged, in accordance with paragraph (c)(7)(ii)(A) and (B) of this section, on loans and line of credit balance existing on or before March 8, 2005.

* * * * *

[FR Doc. 03–19988 Filed 8–5–03; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–34–AD; Amendment 39–13257; AD 2003–16–04]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Pratt & Whitney Canada (PWC) engine models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines. This amendment requires replacing certain Stewart Warner part number (P/N) fuel heaters, installed on PWC engines, with redesigned fuel heaters. This amendment is prompted by several field incidents in which one or more of the three studs that attach the fuel filter bowl to the fuel heater have been partially or completely pulled free of the fuel heater housing. We are issuing this AD to prevent the separation of the fuel filter bowl from the fuel heater, which could result in a pressurized fuel leak and possible engine fire.

DATES: Effective September 10, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney Canada Corp., 1000, Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; Telephone 450–677–9411. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that applies to PWC engine models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines was published in the **Federal Register** on July 3, 2002 (67 FR 44578). That action proposed to require replacing certain Stewart Warner P/N fuel heaters, installed on PWC engines, with redesigned fuel heaters.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request for Stewart Warner Cross-Referenced Vendor Part Number

Three commenters request that we call out the specific Stewart Warner fuel heater cross-referenced vendor P/N

series associated with each PWC ''Interchangeable Control'' (IC) P/N. The commenters feel that the intent of PWC service bulletin (SB) PW100–72–21100, Revision 3, dated May 1, 2001, was to remove only those Stewart Warner fuel heaters P/N series 10718 from service and not all vendor P/Ns associated with the PWC IC P/N.

The FAA agrees. We agree that the use of the PWC IC P/N is confusing and does not achieve the intent of the SB to remove only the faulty Stewart Warner part. The details in the Proposed Requirements of this AD section are not repeated in the final rule; therefore no changes will be made to that section in the AD. However, Compliance paragraphs (a) and (b) in the AD are changed as a result of this comment.

Request for Reference to PWC Service Bulletin

One commenter requests that PWC SB PW100–72–21100, Revision 3, dated May 1, 2001, be included in the AD because it introduces P/N 3039798 fuel heaters. The commenter believes that the SB reference should be included as a means of compliance with the AD.

The FAA does not agree. We agree that the reference to the SB would be helpful; however, we clarify the Steward Warner P/N series fuel heaters in the AD. We feel that the SB would unnecessarily limit the acceptable replacement parts to only those listed in the SB.

Request To Rewrite the ''Applicable to'' Statement

One commenter requests that we rewrite the ''applicable to'' statement in the **SUMMARY** preamble from ''* * * applicable to Pratt & Whitney Canada (PWC) models'' to ''* * * applicable to Pratt & Whitney (PWC) engine models'' for clarity.

The FAA agrees. The ''applicable to'' statement is changed in the AD in the **SUMMARY**, the **SUPPLEMENTARY INFORMATION**, and the Applicability sections.

Request To Rewrite the ''Would Require'' Statement

One commenter requests that we rewrite the ''would require'' statement in the **SUMMARY** preamble from ''* * * certain part number (P/N) fuel heaters with redesigned fuel heaters'' to ''* * * certain Stewart Warner part number (P/N) fuel heaters installed on PWC engines, with redesigned fuel heaters'' for clarity.

The FAA agrees. The ''would require'' statement is changed in the **SUMMARY**, the **SUPPLEMENTARY INFORMATION**, and the Applicability sections in the AD.

Request To Rewrite the Discussion Section

One commenter requests that we rewrite the first sentence in the Discussion preamble from ''* * * notified the FAA that an unsafe condition may exist on PWC models * * *'' to ''* * * notified the FAA that an unsafe condition may exist on PWC engine models * * *'' for clarity.

The FAA agrees. However, the Discussion section details are not repeated in the final rule after an NPRM, and therefore, the AD remains unchanged as a result of this comment.

The same commenter requests that we add a new sentence at the end of the Discussion preamble for clarity. The sentence would read ''Stewart Warner is the manufacturer of the fuel heaters involved in the reported field incidents and the only manufacturer of fuel heaters affected by this AD.''

The FAA agrees. However, the Discussion section details are not repeated in the final rule after an NPRM, and therefore, the AD remains unchanged as a result of this comment.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–16–04 Pratt & Whitney Canada: Amendment 39–13257. Docket No. 2001NE–34–AD.

Applicability

This airworthiness directive (AD) applies to Pratt & Whitney Canada (PWC) engine models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines. These engines are installed on, but not limited to the following airplanes: Aerospatiale ATR–42 and –72; Bombardier DHC–8 series 100, 200, and 300, CL–215T and –415; Construcciones Aeronautics, S.A. (CASA) C–295; Empresa Brasileira de Aeronautica S.A. (EMBRAER) EMB–120; Fairchild Dornier 328, Fokker 50 and 60; Ilyushin IL–114–100; BAE Systems (Operations) Ltd. ATP; and XIAN MA–60.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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.

To prevent the separation of the fuel filter bowl from the fuel heater, which could result in a pressurized fuel leak and possible engine fire, do the following:

(a) Replace, on PWC engines, Stewart Warner fuel heater part number (P/N) series

10718, with fuel heater P/N series 10839 or other acceptable parts identified under the PWC Interchangeable Control Part Number, at the next removal of the engine low pressure fuel filter, but not later than 90 days after the effective date of this AD.

(b) Do not install on PWC engines any Stewart Warner fuel heater P/N series 10718, after the effective date of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Note 3: The subject of this AD is addressed in Transport Canada airworthiness directive CF–2000–34, dated November 23, 2000.

Effective Date

(e) This amendment becomes effective on September 10, 2003.

Issued in Burlington, Massachusetts, on July 30, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–19840 Filed 8–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–02–AD; Amendment 39–13251; AD 2003–15–08]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, B1, B2, B3, BA, and D Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters that requires replacing the main gearbox (MGB) opening neoprene cowling seals (seals) with airworthy glass/silicone seals. This amendment is prompted by the discovery that neoprene seals currently installed on the MGB opening cowlings do not provide the fire protection required by the airworthiness standards. The actions specified by this AD are intended to prevent a fire in the engine compartment from reaching the MGB compartment that contains parts that are not fire resistant and subsequent loss of control of the helicopter.

DATES: Effective September 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified ECF model helicopters was published in the **Federal Register** on April 22, 2003 (68 FR 19759). That action proposed to require replacing the neoprene seals with glass/silicone seals.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on the specified ECF Model helicopters delivered before July 1, 2002. The DGAC advises that neoprene seals bonded to the MGB mobile cowlings have low fire resistance, which does not meet the certification criteria. In the event of an uncontrolled fire in the engine compartment, the fire could spread to the MGB compartment.

ECF has issued Alert Service Bulletin No. 53.00.31, dated July 11, 2002 (ASB), which specifies replacing the MGB neoprene seals with glass/silicone seals that have increased fire-resistance. The DGAC classified this ASB as mandatory and issued AD 2002–537–094(A), dated October 30, 2002, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that this AD will affect 583 helicopters of U.S. registry, that it will take approximately 2 work hours per helicopter to install the seals, and that the average labor rate is $60 per work hour. Required parts will cost approximately $98. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $127,094.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–15–08 Eurocopter France: Amendment 39–13251. Docket No. 2003–SW–02–AD.

Applicability: Model AS350B, B1, B2, B3, BA, and D helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 200 hours time-in-service, unless accomplished previously.

To prevent a fire in the engine compartment from reaching the main gearbox (MGB) compartment that contains parts that are not fire resistant and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace the MGB opening neoprene cowling seals with glass/silicone seals in accordance with the Accomplishment Instructions, paragraph 2.B., of Eurocopter Alert Service Bulletin No. 53.00.31, dated July 11, 2002.

(b) Replacing the MGB opening neoprene cowling seals with glass/silicone seals is terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Safety Management Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Safety Management Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Safety Management Group.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) Replacing the MGB opening neoprene seals shall be done in accordance with Eurocopter Alert Service Bulletin No. 53.00.31, dated July 11, 2002. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 10, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France), AD 2002–537–094(A), dated October 30, 2002.

Issued in Fort Worth, Texas, on July 24, 2003.

Kim Smith,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–19575 Filed 8–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–28–AD; Amendment 39–13252; AD 2003–15–09]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. This AD is prompted by several reports of low power surges. We are issuing this AD to prevent a possible dual-engine in-flight surge, which could result in loss of control of the airplane.

DATES: Effective August 21, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 21, 2003.

We must receive any comments on this AD by August 21, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You may get the service information referenced in this AD from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245–418.

You may examine the AD docket by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, suit 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority, (CAA), which is the airworthiness authority for the U.K., recently notified the FAA that an unsafe condition may exist on Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. The CAA advises that engines that have larger than anticipated high pressure compressor (HPC) tip clearances can lead to a corresponding loss of surge margin, resulting in low power surges.

Relevant Service Information

We have reviewed Rolls-Royce plc Service Bulletin (SB) No. RB.211–71-D509, Revision 2, dated April 17, 2002. The SB describes procedures for performing low power surge margin testing. The CAA classified this SB as mandatory and issued CAA airworthiness directive, AD 005–09–2001, dated April 17, 2002, to ensure the continued airworthiness of these airplanes in the U.K.

FAA's Determination and Requirements of This AD

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines of the same type design, this AD is being issued to prevent a possible dual-engine in-flight surge, which could result in loss of control of the airplane. This AD requires initial and repetitive surge margin testing of engines. You must do these

actions in accordance with the service bulletin described previously.

Bilateral Airworthiness Agreement

This engine model is manufactured in the U.K., and is type certificated for operation in the United States under section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of these Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Interim Action

Surge margin testing is considered an interim action. Rolls-Royce plc may introduce redesigned parts in the future to resolve the cause of the surge problem.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–28–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.plainlanguage.gov.*

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

3. Will not 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–28–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–15–09 Rolls-Royce plc: Amendment 39–13252. Docket No. 2003–NE–28–AD

Effective Date

(a) This airworthiness directive (AD) becomes effective August 21, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. These engines are installed on, but not limited to Airbus 330 series airplanes.

Unsafe Condition

(d) This AD is prompted by several reports of low power surges. We are issuing this AD to prevent a possible dual-engine in-flight surge, which could result in loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times and cycles specified in paragraphs (f) and (g) of this AD, unless the actions have already been done.

Initial Surge Margin Testing

(f) Perform initial surge margin testing. Use paragraph 3. Accomplishment Instructions of Rolls-Royce plc Service Bulletin No. RB.211–71–D509, Revision 2, dated April 17, 2002 for testing, at the following intervals:

(1) Before further flight, for engines that have accumulated more than 2,000 cycles-since-new on the effective date of this AD; and for engines that have accumulated more than 1,000 cycles-since-overhaul of the high pressure compressor casings and blades.

(2) At or before engines accumulating 2,000 cycles-since-new; and for engines that have had level 3 overhaul of the high pressure compressor casings and blades, at or before the engine accumulating 1,000 cycles-since-overhaul.

Repetitive Surge Margin Testing

(g) Perform repetitive surge margin testing at intervals not to exceed 130 cycles-since-last surge margin test. Use paragraph 3 of the Accomplishment Instructions of Rolls-Royce plc Service Bulletin No. RB.211–71–D509, Revision 2, dated April 17, 2002, for testing.

Alternative Methods of Compliance (AMOCs)

(h) You must request AMOCs as specified in 14 CFR part 39.19. All AMOCs must be approved by the Manager, Engine Certification Office, FAA.

Material Incorporated by Reference

(i) Rolls-Royce plc Service Bulletin No. RB.211–71–D509, Revision 2, dated April 17, 2002. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax; 011–44–1332–245–418. You may review copies at FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, suite 700, Washington, DC.

Related Information

(j) CAA airworthiness directive 005–09–2001, dated April 17, 2002, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on July 24, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–19475 Filed 8–5–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Corrections to order.

SUMMARY: This document contains corrections to the Order that was published in the **Federal Register** of July 1, 2003 (68 FR 39006). The Order, issued pursuant to Commission Rule 30.10, granted an exemption to firms designated by the ASX Futures Exchange Proprietary Limited (''ASXF'') from the application of certain of the Commission's foreign futures and options rules based on substituted compliance with Australia's comparable regulatory and self-regulator regime.

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Esq., Deputy Director, Susan A Elliott, Esq., Staff Attorney, or Andrew V. Chapin, Esq., Staff Attorney, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st St., NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

Background

Commission Rule 30.4 requires that persons that solicit or accept orders, and funds related thereto, from customers located in the U.S. for trading on futures exchanges located outside the U.S. must register as futures commission merchants. Commission Rule 30.10 permits persons to petition for exemption from any Part 30 rule. Under Rule 30.10, the Commission has issued numerous orders to foreign futures exchanges that petition, on behalf of their members, for relief from compliance with the Commission's Part 30 rules based on the members' substituted compliance with their home country regulatory framework. The Commission's Order under Rule 30.10 as published in the **Federal Register** incorrectly identified the order recipient, ASXF, as the ASX Futures Exchange Party Limited. ASXF has informed the Commission that the abbreviation ''Pty'' stands for ''Proprietary'' and not ''Party.''

Need for Correction

As published, the Order contains errors that may be misleading and need clarification.

Correction of Publication

Accordingly, the publication on July 1, 2003 of an Order, which was the subject of FR Doc. 03–16516, is correct as follows:

On page 39006, in the first column, in the Summary, line 5, and in the second column, in the Supplementary Information, second paragraph, line 3, the word ''Party'' is corrected to read ''Proprietary'' in both instances.

Issued in Washington, DC, on July 30, 2003 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–19948 Filed 8–5–03; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–48272; File No. S7–48–02]

RIN 3235–AI68

Broker-Dealer Exemption From Sending Certain Financial Information to Customers

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Final rule.

SUMMARY: We are adopting amendments to a rule under the Securities Exchange Act of 1934 that provide a conditional exemption from the rule's requirement that a broker-dealer that carries customer accounts send its full balance sheet and certain other financial information to each of its customers twice a year. Under the amendments, the broker-dealer can send its customers summary information regarding its net capital, as long as it also provides customers with a toll-free number to call for a free copy of its full balance sheet, makes its full balance sheet available to customers over the Internet, and meets other specified requirements. The amendments are intended to reduce the cost of doing business for a broker-dealer while providing customers of the broker-dealer with easy access to the information they need to evaluate the financial soundness of the broker-dealer.

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 942–0132; Thomas K. McGowan, Assistant Director, at (202) 942–4886; or Rose Russo Wells, Attorney, at (202) 942–0143; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: We are amending Rule 17a–5(c) [1] under the Securities Exchange Act of 1934 (''Exchange Act''). We proposed these amendments for comment in November 2002.[2]

I. Background

A broker-dealer that carries customer accounts must generally send its full balance sheet to each of its customers twice a year under section 17(e)(1)(B) of the Exchange Act and Exchange Act Rule 17a–5(c). Rule 17a–5(c) requires the broker-dealer to send an audited balance sheet within 105 days of the date of the audited balance sheet and an unaudited balance sheet (dated six months after the date of the audited balance sheet) within 65 days of the date of the unaudited balance sheet. The full balance sheet includes footnote disclosures required by generally accepted accounting principles (''GAAP'') and a footnote disclosing the amount of net capital the broker-dealer held as of the balance sheet date and the minimum amount of net capital we required the broker-dealer to hold as of that date.[3] There are currently

[1] 17 CFR 240.17a–5(c).

[2] Exchange Act Release No. 46920 (Nov. 26, 2002), 67 FR 71909 (Dec. 3, 2002) (''Proposing Release'').

[3] Exchange Act Rule 15c3–1 defines net capital and sets minimum net capital requirements for a broker-dealer. Rule 15c3–1 is designed to ensure that each broker-dealer maintains sufficient liquid assets (those assets that can be readily converted

approximately 400 broker-dealers subject to the rule that carry a total of approximately 103 million public customer accounts.[4]

When we adopted Rule 17a–5(c) on June 30, 1972,[5] our goal was for broker-dealers to ''directly'' send a customer essential information so that a customer could ''judge whether his broker or dealer is financially sound.''[6] We adopted the Rule in response to the failures of many broker-dealers holding customer funds and securities in the period between 1968 and 1971. When first adopted, Rule 17a–5(c) required a broker-dealer to send its balance sheet to its customers five times a year. We later reduced this to two times a year.[7]

In a letter of February 26, 2001, the staff of the Commission's Division of Market Regulation (''Division'') provided no-action relief to allow a broker-dealer to send its balance sheet with its next mailing of quarterly customer account statements after the expiration of the time limits prescribed by Rule 17a–5(c), provided that the broker-dealer also sent certain updated net capital information.[8] Further, the Commission has provided that, with the consent of the customer, a broker-dealer may send its balance sheet electronically.[9]

II. Pilot Program Granting Exemptive Relief

In July 1998, the Securities Industry Association (''SIA'')[10] requested additional relief on behalf of broker-dealers due to the cost of sending a full balance sheet to each customer.[11] Full balance sheets for large broker-dealers may be six or more pages long, primarily due to the footnote disclosures required by GAAP.

In response to the request for relief, we issued a conditional exemptive order establishing a two-year pilot program ending December 31, 2001 that permitted a broker-dealer that elected to take advantage of the exemption to send only a ''financial disclosure statement'' to its customers containing summary information regarding its net capital when it otherwise would have had to send its customers its full balance sheet, as long as it also provided customers with a toll-free number to call for a free copy of its full balance sheet and made its full balance sheet available to customers on its Internet Web site.[12] The exemptive order required that the financial disclosure statement include certain of the broker-dealer's net capital information as of the balance sheet date and information on how to obtain the broker-dealer's full balance sheet, at no cost to customers, by accessing the broker-dealer's Internet Web site or by calling a toll-free telephone number to promptly obtain the customer's choice of either a paper copy or an electronic copy. The no-action relief allowing a broker-dealer to send its financial information with its next mailing of quarterly customer account statements after the expiration of the Rule 17a–5(c) time limits as long as it also sent certain updated net capital information also applied to broker-dealers taking advantage of the exemption. These broker-dealers would therefore send customers net capital information as of the balance sheet date, as required by the exemptive order, and updated net capital information, as required by the no-action relief.

A broker-dealer taking advantage of the exemption and the no-action relief could send its financial disclosure statement with the updated net capital information to its customers and publish its balance sheet on its Web site at the time of its next mailing of quarterly customer account statements after the expiration of the Rule 17a–5(c) time limits. For example, a broker-dealer with a fiscal year end of November 30 is required by Rule 17a–5(c) to send an audited balance sheet to customers by March 15 (105 days after November 30). The broker-dealer would use a calendar year for its mailings of quarterly customer account statements. If the broker-dealer sends its first quarterly customer account statements at the beginning of April, the no-action relief allows it to send its audited balance sheet with certain updated net capital information to its customers with those first quarterly account statements. If the broker-dealer takes advantage of the exemption and the no-action relief, it could send its financial disclosure statement and updated net capital information to its customers with the first quarterly account statements at the beginning of April and publish its November 30 audited balance sheet on its Web site at the same time.

The pilot program was designed to reduce the cost to broker-dealers of complying with Rule 17a–5(c) while making it as easy as possible for customers to get the information they need to evaluate the financial soundness of a broker-dealer that may be holding their cash and securities. Participation in the pilot program was voluntary, and broker-dealers that participated in the pilot program were the firms that were likely to benefit most from taking advantage of the exemption.

In December 2001, we extended the pilot program for one year, until December 31, 2002.[13] As of July 2002, 29 broker-dealers holding a total of about 40 million customer accounts participated in the pilot program. In November 2002, we extended the pilot program to June 30, 2003.[14] As of June 2003, 3 additional broker-dealers holding a total of approximately 300,000 customer accounts were taking advantage of the exemption.

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into cash) in excess of liabilities to promptly satisfy the firm's liabilities, including those to customers. A broker-dealer that fails to meet the minimum net capital requirements must cease conducting a securities business.

[4] These numbers are based on reports broker-dealers are required to file with the Commission on Form X–17a–5, ''Financial and Operational Combined Uniform Single Report'' (commonly referred to as FOCUS Reports).

[5] We adopted Rule 17a–5(c) pursuant to Exchange Act sections 17(a), 10(b), 15(c)(1), (2) and (3), and 23(a). In 1975, Congress passed the Securities Acts Amendments, Pub. L. No. 94–29, 89 Stat. 97, which gave the Commission explicit authority, pursuant to Exchange Act section 17(e), over the accounting practices of broker-dealers. Section 17(e) provides:

(1)(A) Every registered broker or dealer shall annually file with the Commission a balance sheet and income statement certified by a registered public accounting firm, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Commission specifies, be certified) and information concerning its financial condition as the Commission, by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Every registered broker and dealer shall annually send to its customers its certified balance sheet and such other financial statements and information concerning its financial condition as the Commission, by rule, may prescribe pursuant to subsection (a) of this section.

(C) The Commission, by rule or order, may conditionally or unconditionally exempt any registered broker or dealer, or class of such brokers or dealers, from any provision of this paragraph if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may prescribe the form and content of financial statements filed pursuant to this title and the accounting principles and accounting standards used in their preparation.

[6] Exchange Act Release No. 9658 (June 30, 1972).

[7] Exchange Act Release No. 11187 (Jan. 17, 1975).

[8] Letter of February 26, 2001 from Michael Macchiaroli, Associate Director, to Cheryl M. Kallem, Chairperson, Securities Industry Association (2001 SEC No-Act. LEXIS 523).

[9] Exchange Act Release No. 37182 (May 15, 1996).

[10] The 600 member firms of the SIA include investment banks, broker-dealers, and mutual fund companies.

[11] Letter of July 17, 1998 from Mark Holloway, Chairman, SIA Capital Committee to Michael A. Macchiaroli, Associate Director.

[12] Exchange Act Release No. 42222 (Dec. 10, 1999).

[13] Exchange Act Release No. 45179 (Dec. 20, 2001), 66 FR 67341 (Dec. 28, 2001).

[14] Exchange Act Release No. 46921 (Nov. 26, 2002), 67 FR 72005 (Dec. 3, 2002).

III. Proposing Release and Comments

Based upon our experience with the pilot program, we proposed to amend Rule 17a–5(c) to codify the relief we granted in the pilot program.[15] At the same time, we extended the pilot program to June 30, 2003 to allow us time to receive and consider comments on the proposed amendments.

Specifically, the proposed amendments would have permitted a broker-dealer that elected to take advantage of the exemption to send only a ''financial disclosure statement'' to its customers when it otherwise would have had to send its customers its full balance sheet. This financial disclosure statement consisted of the amount of the broker-dealer's net capital as of the date of the balance sheet the broker-dealer would have sent absent the exemption, the amount of the broker-dealer's required net capital as of that date, and information on how to obtain the broker-dealer's full balance sheet, at no cost to customers, by accessing the broker-dealer's Internet Web site or by calling a toll-free telephone number to promptly obtain the customer's choice of either a paper copy or an electronic copy.

The proposed amendments would have required that the financial information be ''given prominence in the materials delivered to customers'' and also would have required that, when posting its balance sheet to its Web site, the broker-dealer place a prominent link directly to the balance sheet on any Web page that a customer would typically use to enter the Web site.[16]

The proposed amendments would not have allowed a broker-dealer to take advantage of the relief if, during the year prior to the date of the broker-dealer's balance sheet, the broker-dealer was required to provide notice to the Commission of the occurrence of any disqualifying event specified in the rule. Disqualifying events would have included net capital deficiencies, net capital early warning deficiencies, books and records failures, and internal control or financial disclosure inadequacies.

In the Proposing Release, we solicited comment on whether we should codify the no-action relief to allow a broker-dealer taking advantage of the exemption to send its financial disclosure statement with its next mailing of quarterly customer account statements after the expiration of the time limits prescribed by Rule 17a–5(c) and whether a broker-dealer taking advantage of the exemption should be required to place its balance sheet on its Web site sooner than it is required to send the financial disclosure statement to customers.

We received six comments in response to the proposed rule amendments: four comments from individuals, a comment from an industry representative, and a comment from a broker-dealer that is taking advantage of the exemption.[17] Three individuals were opposed to the proposed amendments. Two of them stated that investors need more information. The third stated that having the full balance sheet sent to each customer was a more ''up-front trustworthy approach.'' One of them suggested that broker-dealers distribute their balance sheets to customers electronically in PDF format. The fourth individual supported the amendments but was concerned that some mutual fund companies might try to use the amendments to raise fund expenses.

The industry representative and broker-dealer taking advantage of the exemption strongly supported the proposed amendments. Both were in favor of codifying the no-action relief to allow a broker-dealer taking advantage of the exemption to send its financial disclosure statement with its next mailing of quarterly customer account statements after the expiration of the time limits under Rule 17a–5(c). The industry representative also proposed requiring a broker-dealer taking advantage of the exemption to place its full balance sheet on its Web site within 90 calendar days after the date of the balance sheet. Under this proposal, the broker-dealer with a fiscal year end of November 30 in the example above that takes advantage of the exemption would be required to place its audited balance sheet on its Web site by February 28.

Since the financial disclosure statement typically consists of less than a half-page of printed material, we also requested comment on whether the statement should be required to be on a separate page, to help make customers aware that the financial information is included in the materials (which generally include the customer's quarterly account statement) sent to them by their broker-dealer. The only comments we received on that issue were from the industry representative and the broker-dealer taking advantage of the exemption, both of whom were opposed to requiring that broker-dealers taking advantage of the exemption send the financial disclosure statement on a separate page from other materials sent to customers. The industry representative stated that the requirement that the financial information be ''given prominence in the materials delivered to customers'' provides sufficient guidance for broker-dealers. The broker-dealer taking advantage of the exemption stated that requiring the financial information to be reported on a separate page would add to the expense and paperwork burden on firms taking advantage of the exemption.

IV. Final Rule Amendments

After considering the comment letters, we are adopting rule amendments substantially as proposed. Specifically, pursuant to amended Rule 17a–5(c), a broker-dealer that elects to take advantage of the exemption must send only a ''financial disclosure statement'' to its customers when it otherwise would have had to send its customers its full balance sheet. The financial disclosure statement consists of the amount of the broker-dealer's net capital as of the date of the balance sheet the broker-dealer would have sent absent the exemption, the amount of the broker-dealer's required net capital as of that date, and information on how to obtain the broker-dealer's full balance sheet, at no cost to customers, by accessing the broker-dealer's Internet Web site or by calling a toll-free telephone number to promptly obtain the customer's choice of either a paper copy or an electronic copy. We are adding a requirement that a broker-dealer taking advantage of the exemption place its full audited balance sheet on its Web site within 90 days after the date of the audited balance sheet and its full unaudited balance sheet on its Web site within 75 days after the date of the unaudited balance sheet.

We solicited comment on whether a broker-dealer taking advantage of the exemption should be required to post its balance sheet on its Web site sooner than it is required to send the financial disclosure statement to customers. In its comments, the industry representative proposed requiring a broker-dealer

[15] Exchange Act Release No. 46920 (Nov. 26, 2002), 67 FR 71909 (Dec. 3, 2002).

[16] Proposed paragraphs (c)(5)(ii) and (iii) of Rule 17a–5.

[17] Division staff has prepared a summary of the comment letters received on the proposed rule amendments entitled ''Comment Summary, Broker-Dealer Exemption From Sending Certain Financial Information to Customers'' (''Comment Summary''). Copies of the comment letters and Comment Summary have been placed in Public Reference File No. S7–48–02 and are available for inspection in the Commission's Public Reference Room. The commenters are as follows: *Individuals* Carolyn Allen, James Marolda, Keith McCallion, Fred Winkler; *Broker-Dealer* Merrill Lynch, Pierce, Fenner & Smith; *Industry Representative* Securities Industry Association Capital Committee.

taking advantage of the exemption to place its full balance sheet on its Web site within 90 calendar days after the date of the balance sheet. We have concluded that it would be feasible for a broker-dealer taking advantage of the exemption to place its full audited balance sheet on its Web site within 90 days of the date of the audited balance sheet and, since unaudited financial statements can be published more quickly than audited financial statements, to place its full unaudited balance sheet on its Web site within 75 days of the date of the unaudited balance sheet. These time limits will allow broker-dealers sufficient time to prepare the statements and to place them on their Web sites and will enable customers with Internet access to obtain the most recent audited balance sheet of a broker-dealer taking advantage of the exemption more quickly than customers would obtain such information from the broker-dealer under the existing rule.

In addition, as discussed below, we have eliminated certain of the disqualifying events included in the proposed amendments. Finally, we have codified the no-action relief, with the addition of time limits, to allow a broker-dealer to send its audited balance sheet 30 days after the 105-day time limit has expired and to send its unaudited balance sheet 70 days after the 65-day time limit has expired, if the broker-dealer sends the balance sheets with its next mailing of quarterly customer account statements. In order to take advantage of this provision, the broker-dealer must include a footnote with the mailing containing the amount of the broker-dealer's net capital and its required net capital as of a fiscal month end that is within the 75-day period immediately preceding the date the statements are sent to customers. We chose the 30- and 70-day time limits because they provide the minimum amount of time needed, based on an analysis of broker-dealers' year-ends, for a broker-dealer with a November 30 fiscal year-end to send its financial information with the next mailing of quarterly customer account statements. There are approximately 15 broker-dealers that carry customer accounts that have November 30 fiscal year-ends.

Individual customers of broker-dealers need timely access to reliable information. We believe that these amendments will not compromise that access. Interested customers of broker-dealers taking advantage of the exemption can call a toll-free number to have a full balance sheet sent to them promptly after it is requested at no cost. The toll-free number, along with net capital and other information, will be sent to customers when they would have received the full balance sheet of the broker-dealer absent the exemption. Customers with Internet access can obtain the most recent audited balance sheet of broker-dealers taking advantage of the exemption within 90 days after the date of the audited balance sheet—sooner than broker-dealers not taking advantage of the exemption would be required to send their audited balance sheets to customers.[18]

The amendments add paragraph (5) to Rule 17a–5(c). The new paragraph provides an exemption from the Rule's requirement that broker-dealers carrying customer accounts send their full balance sheets to their customers twice a year.[19] In order to take advantage of the exemption, broker-dealers must meet six conditions.

First, a broker-dealer taking advantage of the exemption must send a financial disclosure statement to each customer twice a year at the times that it otherwise would have been required by Rule 17a–5(c) to send its full balance sheet to each customer. The financial disclosure statement must include the amount of the broker-dealer's net capital as of the date of that full balance sheet and the amount of the broker-dealer's required net capital as of that date.

Second, the financial disclosure statement must be ''given prominence'' in the materials delivered to the broker-dealer's customers and must include information on how to obtain the full balance sheet of the broker-dealer via a toll-free number or on the broker-dealer's Web site. After considering the comment letters, we have determined that requiring the financial disclosure statement to be on a separate page would add unnecessary additional costs of complying with Rule 17a–5(c) and therefore we have not included such a requirement in the amendments.

Third, a broker-dealer taking advantage of the exemption must place its full audited balance sheet on its Web site not later than 90 days after the date as of which the audited balance sheet is prepared and must place its full unaudited balance sheet on its Web site not later than 75 days after the date as of which the unaudited balance sheet is prepared. The broker-dealer must place separate, prominent links to the balance sheet on its Web site Home page and at each Internet location from which a customer can enter or log on to the broker-dealer's Web site.

Fourth, a broker-dealer taking advantage of the exemption must maintain a toll-free telephone number that customers can call to request a copy of the full balance sheet.

Fifth, if a customer requests a copy of the full balance sheet, the broker-dealer must send it promptly at no cost to the customer.

Finally, a broker-dealer cannot take advantage of the exemption if, during the year prior to the date of the broker-dealer's balance sheet, the broker-dealer was required to provide notice to the Commission under Exchange Act Rule 17a–11(e) of the existence of any ''material inadequacy'' in certain of its internal controls, its accounting system, or certain of its practices and procedures. These practices and procedures include, for example, periodic net capital computations and periodic counts of securities. In such a situation, it is appropriate that a broker-dealer be required to send all mandated financial information directly to customers because material inadequacies in its internal controls or accounting systems directly impact the accuracy and reliability of the broker-dealer's past financial statements. In that case, it is important that customers receive a full description of the broker-dealer's current financial statements. In the proposed amendments, certain net capital deficiencies and certain books and records failures that the firm is required to report to the Commission under Exchange Act Rule 17a–11 were included as disqualifying events.

After further consideration, the staff has concluded that to include these occurrences in the events that would disqualify a broker-dealer from taking advantage of the exemption could create many triggers that would not actually be indicia of broker-dealers in financial difficulty. The Commission believes that in the vast majority of instances in which broker-dealers eligible for the relief notify the Commission of such occurrences, the firms are not in danger of insolvency.

V. Paperwork Reduction Act

As set forth in the Proposing Release, the amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction

[18] We note that reporting companies must meet certain criteria for accelerated filing of their financial statements. See, for example, 17 CFR 240.13a–10(j). These amendments do not alter or affect those requirements.

[19] In addition to requiring that a broker-dealer send audited and unaudited statements to customers, Rule 17a–5(c)(1) requires that the broker-dealer file the statements with the Commission and with each national securities exchange and registered national securities association of which it is a member. These amendments do not affect the requirement to make those filings.

Act of 1995 (''PRA'').[20] We have submitted the collection of information requirements of the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[21] The OMB has approved the amended PRA collection and assigned control number 3235–0199 to them. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

As stated in the Proposing Release, we estimate that the amendments will reduce the existing paperwork burden on broker-dealers taking advantage of the exemption. The Proposing Release solicited comments on the proposed collections of information. We received no comments that addressed the PRA submission. However, we did receive comments on other aspects of the proposed amendments. After carefully considering the comments received, we are not changing our collection of information burden estimate.

As discussed above, today we are adopting amendments to Rule 17a–5(c) that are substantially similar to the proposed amendments. We note, however, that the rule amendments as adopted and changed from the proposal do not change the PRA estimate. The amendments allow a broker-dealer that elects to take advantage of the exemption, instead of sending its full balance sheet, to send a financial disclosure statement, consisting of certain net capital information and information on how to obtain its full balance sheet, to its customers twice a year, as long as the broker-dealer also posts its balance sheet on its Web site and promptly sends its balance sheet to its customers who request it via a toll-free number. We estimate that the amendments will reduce the existing paperwork burden on broker-dealers taking advantage of the exemption.

The previous PRA burden for Rule 17a–5(c) was 542,222 hours and $19.52 million. The hour burden was based on an estimated average of 10 seconds to send each balance sheet times 97.6 million public customer accounts times two balance sheets per year (195,200,000 responses * 10 seconds /60 seconds/60 minutes = 542,222 hours per year). The cost burden was based on an estimated average of 10 cents per response for postage and printing costs (195,200,000 responses * $.10 = $19.52 million).

Since the time of the previous calculation of the PRA burden, the number of public customer accounts has increased to 103 million. Further, industry sources represented that it now costs approximately 11 cents to mail a full balance sheet to a customer, primarily due to the additional postage required to mail the approximately six pages of footnotes required by GAAP, and that few customers agreed to accept the balance sheets electronically. We are now using that estimate of 11 cents instead of the 10 cents per balance sheet we had used previously.

Since the inception of the pilot program on December 10, 1999, to July 1, 2002, 29 broker-dealers, carrying a total of approximately 40 million customer accounts, have taken advantage of the relief. Now that the Commission has adopted the proposed amendments, some additional firms may take advantage of the exemption. Because these firms have not yet taken advantage of the relief and because they may be smaller firms than some of the firms that have already taken advantage of the relief, these firms may realize fewer benefits from the exemption than those firms already taking advantage of the exemption.

Broker-dealers currently taking advantage of the exemption send the financial disclosure statement, instead of their full balance sheet, twice a year. Some broker-dealers print the financial disclosure statement, which is typically about one paragraph in length, on a separate page, and some broker-dealers print it on the account statement.

We estimate that the 29 broker-dealers currently taking advantage of the exemption will spend 222,000 hours per year sending the financial disclosure statements to their customers. This estimate is based on an estimated average of 10 seconds to send each statement times 40 million customers times 2 financial disclosure statements per year. We have estimated in previous PRA filings that it requires 10 seconds to send a full balance sheet to a customer. Sending the financial disclosure statement instead of the full balance sheet may require less time.

We estimate that broker-dealers taking advantage of the exemption will save up to 11 cents each on postage and printing to send the financial disclosure statement instead of the full balance sheet to their customers. We estimate that the 29 firms currently taking advantage of the exemption have reduced their postage and printing costs by up to $8.8 million per year (40 million accounts * 2 mailings * up to 11 cents).

Broker-dealers that take advantage of the exemption must send balance sheets to customers who request them via a toll-free number. Based on requests received by broker-dealers participating in the pilot program, we estimate that the firms that take advantage of the exemption will send approximately 550 balance sheets per year to customers who request them via the firms' toll-free numbers (1384 requests from December 31, 1999 to July 1, 2002/30 months * 12 months = 554).[22] Even if it takes 10 minutes to send each balance sheet, the total annual burden would be small (10 minutes * 550 balance sheets/ 60 = 92 hours). In addition, we estimate that it will cost approximately 74 cents in postage to mail the balance sheet (two 37-cent stamps to mail six pages) for a total of $407 and that there may be small printing costs, which we are not able to quantify. We believe that the firms that will take advantage of the exemption already maintain a toll-free number for their customers and already have an Internet Web site.

We therefore estimate the total burden for broker-dealers who take advantage of the exemption to be 222,000 hours and less than $10,000.

We estimate the burden for broker-dealers who do not take advantage of the exemption (383 broker-dealers carrying approximately 63 million customer accounts) to be about 350,000 hours per year and $13.9 million per year. The hour burden was calculated by multiplying the estimated number of balance sheets to be sent annually (63 million customers times two balance sheets sent per year) by the estimated average amount of time required to send each balance sheet (10 seconds). The cost burden was calculated by multiplying the number of balance sheets sent per year (126 million) by estimated postage and printing costs for each balance sheet (11 cents).

We therefore estimate that, with the amendments, the total annual hour burden for Rule 17a–5(c) will be approximately 572,000 hours (350,000 hours for firms not taking advantage of the exemption and 222,000 hours for firms taking advantage of the exemption), and the total annual cost burden will be approximately $13.9 million. The hour burden will increase by 29,778 hours from our previous estimate (572,000 hours − 542,222 hours). All of this increase is due to an increase in the total number of public customer accounts since the time of the last submission. The estimated cost

[20] 44 U.S.C. section 3501 *et seq.*

[21] 44 U.S.C. section 3507(d) and 5 CFR 1320.11.

[22] Customers, when requesting that the full balance sheet be sent to them, have not requested that the balance sheet be sent electronically.

burden is $2.38 million higher due to an increase in the number of public customer accounts and an increase in estimated average postage and printing costs and is $8 million lower due to the amendments. The cost burden is therefore lower by $5.62 million ($8 million − $2.38 million = $5.62 million).

VI. Costs and Benefits of the Amendments

The amendments are intended to reduce the cost of doing business to a broker-dealer while providing customers of the broker-dealer with easy access to the information they need to evaluate the financial soundness of the broker-dealer. No costs to customers are expected. The amendments provide regulatory relief for those broker-dealers that take advantage of the exemption. The broker-dealers who take advantage of the exemption will do so because they believe that the benefits of doing so outweigh the costs.

There are currently approximately 400 broker-dealers that carry customer accounts. These firms carry a total of approximately 103 million accounts. Since the inception of the pilot program on December 10, 1999, to July 1, 2002, 29 broker-dealers, carrying a total of approximately 40 million customer accounts, had taken advantage of the relief. Now that the Commission has adopted the amendments, some additional firms may take advantage of the exemption. Because these firms have not yet taken advantage of the relief and because they may be smaller firms than some of the firms that have already taken advantage of the relief, these firms may realize fewer benefits from the exemption than those firms already taking advantage of the exemption.

The amendments reflect our view that subject to certain conditions it is not necessary for a broker-dealer to send its balance sheet two times a year to customers to keep them informed of the financial condition of the broker-dealer if customers receive the broker-dealer's net capital information twice a year and if the full balance sheet is available on the Web site of the broker-dealer or by a call to a toll-free number. In fact, customers with Internet access will be able to obtain the full balance sheet of broker-dealers taking advantage of the exemption within minutes at any time and will be able to obtain the most recent audited balance sheet of those broker-dealers within 90 days after the date of the balance sheet—sooner than broker-dealers not taking advantage of the exemption would be required to send their audited balance sheets to customers. Customers without Internet access can call at any time to be promptly sent a free copy of the full balance sheet.

We expect that the amendments will provide benefits to broker-dealers and to their customers. We expect that broker-dealers taking advantage of the exemption will reduce their cost of compliance with Rule 17a–5(c). As discussed above, we estimate that the 29 firms taking advantage of the exemption as of July 2002 have reduced their postage and printing costs by up to $8.8 million per year. Larger broker-dealers are likely to realize greater benefits than smaller firms as larger firms carry more customer accounts. As election of the exemption is voluntary, we would expect a broker-dealer to elect the exemption only if the firm would be able to conduct business at a lower cost than under current Commission rules. The amendments could reduce overall costs to broker-dealers. In general, to the extent that costs to broker-dealers are reduced, such cost reductions may ultimately be passed on to consumers.

We estimate that the amendments will result in certain costs to broker-dealers. Firms taking advantage of the exemption must have and maintain a toll-free telephone line and must have and maintain Web sites containing their balance sheets. We expect, however, that firms taking advantage of the exemption will already have a toll-free number for their customers and will already have a Web site, as these tend to be the larger firms. Firms taking advantage of the exemption must also send their full balance sheet to customers who request it via the toll-free telephone number. However, as election of the relief is voluntary, any new associated costs only reduce the net benefit of the election and do not impose a new burden.

VII. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act,[23] the Commission has certified that the amendments would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the Proposing Release. We received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

[23] 5 U.S.C. section 605(b).

VIII. Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act[24] requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[25] requires us to consider the anticompetitive effects of any rules that we adopt under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission believes the amendments should improve efficiency, competition, and capital formation by decreasing the costs of doing business for a broker-dealer that carries customer accounts and elects to take advantage of the relief. Additional firms taking advantage of the relief, however, may be smaller firms that may realize fewer benefits from taking advantage of the exemption than larger firms currently taking advantage of the relief. In addition, the amendments should have no anticompetitive effects. Any broker-dealer, providing it can meet the conditions, may use the exemption.

IX. Statutory Basis

The amendments contained in this release are being adopted under the Exchange Act, particularly section 17 and section 23(a).

List of Subjects in 17 CFR part 240

Brokers, Customers, Dealers, Reporting and recordkeeping.

Text of Rule

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–l, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

[24] 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78w(a)(2).

■ 2. Section 240.17a–5 is amended by:
■ a. Revising the phrase ''except if the activities'' to read ''except as provided in paragraph (c)(5) of this section or if the activities'' in the introduction text of paragraph (c)(1);
■ b. Revising the introduction text of paragraph (c)(2);
■ c. Revising paragraph (c)(3); and
■ d. Adding paragraph (c)(5).
■ The revisions and addition read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(c) * * *

(2) *Audited statements to be furnished.* Audited statements shall be furnished within 105 days after the date of the audited financial statements required by paragraph (d) of this section. The statements may be furnished 30 days after that time limit has expired if the broker or dealer sends them with the next mailing of the broker's or dealer's quarterly customer statements of account. In that case, the broker or dealer must include a statement in that mailing of the amount of the broker's or dealer's net capital and its required net capital in accordance with § 240.15c3–1, as of a fiscal month end that is within the 75-day period immediately preceding the date the statements are sent to customers. The audited statements shall include the following:

* * * * *

(3) *Unaudited statements to be furnished.* Unaudited statements dated 6 months from the date of the audited statements required to be furnished by paragraphs (c)(1) and (2) of this section shall be furnished within 65 days after the date of the unaudited statements. The unaudited statements may be furnished 70 days after that time limit has expired if the broker or dealer sends them with the next mailing of the broker's or dealer's quarterly customer statements of account. In that case, the broker or dealer must include a statement in that mailing of the amount of the broker's or dealer's net capital and its required net capital in accordance with § 240.15c3–1, as of a fiscal month end that is within the 75-day period immediately preceding the date the statements are sent to customers. The unaudited statements shall contain the information specified in paragraphs (c)(2)(i) and (ii) of this section.

* * * * *

(5) *Exemption from sending certain financial information to customers.* A broker or dealer is not required to send to its customers the statements prescribed by paragraphs (c)(2) and (c)(3) of this section if the following conditions are met:

(i) The broker or dealer semi-annually sends its customers, at the times it otherwise is required to send its customers the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, a financial disclosure statement that includes:

(A) The amount of the broker's or dealer's net capital and its required net capital in accordance with § 240.15c3–1, as of the date of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section;

(B) To the extent required under paragraph (c)(2)(ii) of this section, a description of the effect on the broker's or dealer's net capital and required net capital of the consolidation of the assets and liabilities of subsidiaries or affiliates consolidated pursuant to Appendix C of § 240.15c3–1; and

(C) Any statements otherwise required by paragraphs (c)(2)(iii) and (iv) of this section.

(ii) The financial disclosure statement is given prominence in the materials delivered to customers of the broker or dealer and includes an appropriate caption stating that customers may obtain the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, at no cost, by:

(A) Accessing the broker's or dealer's Web site at the specified Internet Uniform Resource Locator (URL); or

(B) Calling the broker's or dealer's specified toll-free telephone number.

(iii) Not later than 90 days after the date of the audited statements prescribed by paragraph (c)(2) of this section and not later than 75 days after the date of the unaudited statements prescribed by paragraph (c)(3) of this section, the broker or dealer publishes the statements on its Web site, accessible by hyperlinks in either textual or button format, which are separate, prominent links, are clearly visible, and are placed in each of the following locations:

(A) On the broker's or dealer's Web site home page; and

(B) On each page at which a customer can enter or log on to the broker's or dealer's Web site; and

(C) If the Web sites for two or more brokers or dealers can be accessed from the same Home page, on the Home page of the Web site of each broker or dealer.

(iv) The broker or dealer maintains a toll-free telephone number that customers can call to request a copy of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section.

(v) If a customer requests a copy of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, the broker or dealer sends it promptly at no cost to the customer.

(vi) During the year prior to the date of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, the broker or dealer was not required by paragraph (e) of § 240.17a–11 to give notice and transmit a report to the Commission.

* * * * *

By the Commission.

Dated: August 1, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20077 Filed 8–5–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. PL03–4–000; Order No. 635]

Policy Statement on Consultation With Indian Tribes in Commission Proceedings

Issued: July 23, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; policy statement.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this policy statement to articulate its commitment to promote a government-to-government relationship between itself and federally-recognized Indian tribes. The policy statement recognizes the sovereignty of tribal nations and the Commission's trust responsibility to Indian tribes. The policy statement also establishes a tribal liaison position. Finally, the policy statement establishes certain actions specific to the hydroelectric program.

EFFECTIVE DATE: The rule will become effective September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Molloy, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8771.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

I. Introduction

1. To encourage and facilitate involvement by Indian tribes in the areas over which the Commission has jurisdiction, the Commission is issuing this policy statement to articulate its

commitment to promote a government-to-government relationship between itself and federally-recognized Indian tribes. The policy statement recognizes the sovereignty of tribal nations and the Commission's trust responsibility to Indian tribes. The policy statement also establishes a tribal liaison position. Finally, the policy statement establishes certain actions specific to the hydroelectric program. Part 2 of the Commission's regulations will be amended to implement the policy.

II. Background

2. This policy statement evolved out of the recent rulemaking proceeding to develop an improved process to prepare and review license applications for non-federal hydropower projects.[1] To ensure that tribal issues were addressed in the rulemaking, the Commission held special tribal forums in October and November 2002. As a result of several requests at those forums, the Chairman appointed a tribal liaison for the rulemaking proceeding.[2]

3. After the Notice of Proposed Regulation (NOPR) was issued in February 2003, Commission staff held regional public and tribal outreach meetings in March and April 2003 to discuss the NOPR.[3] The Commission also held drafting sessions, including a special tribal session (Tribal Group), to attempt to reach consensus on a number of issues raised in the NOPR. The final rule is being issued concurrently with this policy statement.[4]

4. In written comments and meetings on the hydro rule,[5] Indian tribes discussed the Commission's trust responsibility as it relates to treaty rights, legislation, and executive orders. Several tribes stated that as sovereign entities, they have government-to-government consultation rights that differ from those applicable to agencies and the general public, because they must be determined by mutual agreement between the Commission and individual tribes in a case-specific and issue-specific context.[6] However, the tribes also stated that the Commission should specifically establish its tribal consultation process in its regulations.[7]

5. The Commission, in its NOPR, proposed to establish a tribal liaison for the hydroelectric licensing program. This proposal was supported by all of the commenting tribes and the Advisory Council on Historic Preservation.[8] One commenter recommended that the liaison should be available not only for hydro matters, but also for other Commission programs.[9] There was a consensus among the commenters that the liaison should not be a clerical position, but should be a staff person with substantive knowledge of the process that will be followed.[10]

6. In addition, commenters suggested various roles and responsibilities for a Tribal Liaison. These include facilitating government-to-government consultation by directing tribes to the right person or persons to deal with substantive or policy issues; ensuring that communications are maintained between tribal representatives and Commission staff throughout the proceeding;[11] assisting tribal knowledge of and participation in the Commission's processes;[12] educating Commission staff about tribes and the trust responsibility and treaty obligations,[13] assisting tribes in learning how to access and effectively use the informational resources of the Commission's Web site;[14] and informing tribes of activities at a project during licensing and throughout the term of a license that may affect tribal resources on or off the reservation.[15]

7. GLIFWC and Menominee stated that, because the process for government-to-government consultation needs to be developed in agreement with each tribe, the roles and responsibilities of the tribal liaison cannot be fully determined at the outset, but must evolve in response to the development of tribal-specific agreements.

8. The Tribal Group essentially endorsed all of these proposed roles and added several others, including: coordinating with tribal liaisons at other agencies; becoming educated about the rights of Indians; assisting tribes in making known their issues and views on compliance with treaties; ensuring that tribes are informed of studies and information with cultural-resource or treaty-rights implications; managing communications between the Commission and tribes when the *ex parte* regulations are applicable; facilitating communications between applicants and tribes; facilitating informal dispute resolution between applicants and tribes; helping to determine which tribes may be affected by likely future hydropower relicensing applications or original license applications; and informing potentially affected tribes about potential future relicensing applications.

9. While most commenters recommended that the tribal liaison should be non-decisional staff, Skokomish and NW Indians proposed that the tribal liaison should play an active role in the substantive resolution of licensing proceedings. NW Indians recommended that the tribal liaison or liaisons should be educated about individual tribes and their interests in specific proceedings and should act as their advocate within the Commission.

10. Various commenters indicated that there are too many tribes and too many tribe-specific, case-specific, and interrelated regional or watershed issues for one person to understand and act upon. Some suggested appointing multiple liaisons based on regions of the country, watersheds or river basins, or sub-regions within a state.[16] Pacific Legacy suggested that the efforts of the Commission's liaison should be complemented by a liaison from each tribe for each project, to be funded by the applicant. The Tribal Group stated that the tribal liaison should be a regional position, with an overall coordinator position at the Commission's headquarters.

III. Discussion

11. The Commission recognizes the unique relationship between the United States and Indian tribes as defined by treaties, statutes, and judicial decisions. Indian tribes have various sovereign authorities, including the power to make and enforce laws, administer justice, and manage and control their

[1] Hydroelectric Licensing under the Federal Power Act, RM02–16–000, 68 FR 13988 (Mar. 21, 2003); IV FERC Stats. & Regs. ¶ 32,568 (Feb. 20, 2003).

[2] Letter dated January 10, 2003, to Tribal Leaders from Chairman Pat Wood, III.

[3] These regional meetings were held in Portland, Oregon; Sacramento, California; Charlotte, North Carolina; Manchester, New Hampshire; and Milwaukee, Wisconsin.

[4] Hydroelectric Licensing under the Federal Power Act, Docket No. RM02–16–000; Final Rule.

[5] A list of commenters and their abbreviations is attached as Appendix A.

[6] S–B, S–P, CRITFC, NW Indians, Nez Perce, Umatilla, GLIFWC, NF Rancheria.

[7] Nez Perce, Menominee, NF Rancheria, S–B, Maidu, NW Indians, CRITFC, S–P, NHA, and Interior agreed.

[8] S–P, Nez Perce, NW Indians, CRITFC, Umatilla, GLIFWC, HRC, ACHP, Menominee, Skokomish, Interior, NF Rancheria.

[9] NW Indians.

[10] S–P, Nez Perce, NW Indians, CRITFC, Umatilla, GLIFWC, Menominee, Tribal Group.

[11] NW Indians, Nez Perce, Umatilla, GLIFWC, Menominee. They indicate that the correct person would depend on the issues under consideration; *e.g.*, a technical issue dealing with a fisheries study would be dealt with by a fishery biologist, while an issue concerning the appropriate elements of government-to-government consultation with the tribe might be directed to senior Commission staff. We agree.

[12] SCE.

[13] GLIFWC, Menominee.

[14] GLIFWC.

[15] Interior.

[16] Pacific Legacy, GLIFWC, Menominee, CRITFC, S–P, California, Interior.

lands and resources. Through several Executive Orders and a Presidential Memorandum,[17] departments and agencies of the Executive Branch have been urged to consult with Federally-recognized Indian tribes in a manner that recognizes the government-to-government relationship between these agencies and tribes. In essence, this means that consultation should involve direct contact between agencies and tribes and should recognize the status of the tribes as governmental sovereigns.

12. We are including in Part 2 of the Commission's regulations, ''General Policy and Interpretations,'' a statement of our policy on these matters.[18] It applies to all of the Commission's program areas.[19] For the hydroelectric licensing program, the policy applies to all licensing proceedings, regardless of which process is used. The policy statement was developed from our review of the written policies of other Federal agencies concerning the trust responsibility and government-to-government consultation.[20]

13. The policy statement recognizes the unique relationship between the Federal government and Indian tribes as defined by treaties, statutes, and judicial decisions. It acknowledges the Commission's trust responsibilities. It states that the Commission will endeavor to work with the tribes on a government-to-government basis and will seek to address the effects of proposed projects on tribal rights and resources through consultation pursuant to trust responsibilities, the statutes governing the Commission's authority,[21] and in the Commission's environmental and decisional documents. It notes that the Commission functions as a neutral, quasi-judicial body and as such is bound by the Administrative Procedure Act and Commission rules regarding off-the-record communications.[22] It states that the Commission will assure tribal issues and interests are considered in making decisions. The policy statement also establishes a tribal liaison position. For the hydroelectric program, it states that the Commission will notify tribes before or at the time the licensee files its notice of intent, and will consider comprehensive plans prepared by tribes or intertribal organizations.

14. The tribal liaison will seek to educate Commission staff about tribal governments and cultures and to educate tribes about the Commission's various statutory functions and programs. The tribal liaison will work with the tribes during Commission proceedings, to ensure that the tribes' views are appropriately considered at every step of the process. The tribal liaison will act as a guide for the tribes to Commission processes, and will strive to ensure that consultation requirements are met.

IV. Environmental Analysis

15. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have significant adverse effect on the human environment.[23] The Commission has categorically excluded certain actions from this requirement because they would have no significant effect on the human environment.[24] Included among the exclusions are rules that are clarifying, corrective, or procedural, or that do not substantively change the effect of the regulations being amended.[25] This policy statement is procedural in nature and therefore falls under this exception. Consequently, no environmental analysis is necessary.

V. Regulatory Flexibility Act

16. The Regulatory Flexibility Act of 1980 (RFA)[26] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[27] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this policy statement will not have a significant economic impact on a substantial number of small entities.

VI. Information Collection Statement

17. The OMB requirements require that OMB approve certain information collection requirements imposed by agency rules.[28] However, this policy statement contains no information reporting requirements, and therefore is not subject to OMB approval.

VII. Document Availability

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

19. From the Commission's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document

[17] Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (issued November 6, 2000); Executive Order 13084, Consultation and Coordination with Indian Tribal Governments (issued May 14, 1998); Presidential Memorandum, Government-to-Government Relations with Native American Tribal Governments (issued April 29, 1994), reprinted at 59 FR 22,951; Executive Order 12875, Enhancing the Intergovernmental Partnership (issued October 26, 1993).

[18] 18 CFR 2.1(c)(2003).

[19] The Commission's program areas include hydroelectric, oil pipeline, electric power, and natural gas programs. The Commission issues licenses and oversees compliance with those licenses for non-federal hydroelectric projects pursuant to Part I of the Federal Power Act (FPA), the Public Utility Regulatory Policies Act (PURPA), and the Energy Policy Act of 1992 (EPAct). Under the Interstate Commerce Act and the EPAct, the Commission regulates the rates and practices of oil pipeline companies engaged in interstate transportation. The Commission's electric power authority is outlined by Part II of the FPA, the PURPA, and the EPAct. The Commission's electric power responsibilities include: approving rates for wholesale electric sales of electricity and transmission in interstate commerce for private utilities, power marketers, power pools, power exchanges and independent system operators; overseeing the issuance of certain stock and debt securities, assumption of obligations and liabilities, and mergers; reviewing the holding of officer and director positions between top officials in utilities and certain other firms they do business with; reviewing rates set by the federal power marketing administrations; conferring exempt wholesale generator status; and certifying qualifying small power production and cogeneration facilities. The Natural Gas Act (NGA) of 1938, the Natural Gas Policy Act of 1978, the Outer Continental Shelf Lands Act, the Natural Gas Wellhead Decontrol Act of 1989, and the EPAct are the primary laws the Commission administers to oversee the natural gas pipeline industry. Under the NGA, the Commission regulates both the construction of pipeline facilities and the transportation of natural gas in interstate commerce.

[20] We reviewed the policies of other independent agencies, including the Federal Communications Commission, FCC No. 00–207 (June 8, 2000), 16 FCC Rcd 4078; 2000 FCC LEXIS 3245; 20 Comm. Reg. (P&F) 1316; the Federal Emergency Management Agency, ''Final Agency Policy for Government-to-Government Relations with American Indian and Alaska Native Tribal Government'' (Sept. 25, 1998), 64 FR 2096 (Jan. 12, 1999); the Environmental Protection Agency, Memorandum to all EPA Employees from Christine Todd Whitman, EPA Administrator, dated July 12, 2001; and the Nuclear Regulatory Commission, Memorandum to NRC Commissioners from William D. Travers, Executive Director for Operations, dated February 2, 2001. These documents may be found on FERRIS in Docket No. RM02–16–000.

[21] These are primarily the Federal Power Act, the Natural Gas Act, the Public Utilities Regulatory Policies Act of 1978, the Interstate Commerce Act, the Outer Continental Shelf Lands Act, National Environmental Policy Act, and Section 106 of the National Historic Preservation Act.

[22] 18 CFR 385.2201 (2003).

[23] National Environmental Policy Act, 42 U.S.C. 4321–4370a, 7101–7352.

[24] 18 CFR 380.1, *et seq.*

[25] 18 CFR 380.4(a)(2)(ii).

[26] 5 U.S.C. 601–612 (2000).

[27] Section 601(c) of the RFA defines a ''small entity'' as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A ''small business'' is defined by reference to Section 3 of the Small Business Act as an enterprise which is ''independently owned and operated and which is not dominant in its field of operation'' 15 U.S.C. 632(a).

[28] 5 CFR 1320.

is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number of this docket, excluding the last three digits, in the docket number field. User assistance is available for FERRIS and the Commission's Web site during regular 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.

VIII. Effective Date

20. These regulations are effective September 5, 2003. The provisions of 5 U.S.C. 801 regarding Congressional review of final rules does not apply to this final rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

List of Subjects in 18 CFR Part 2

General policy and interpretation.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 2, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

PART 2—GENERAL POLICY AND INTERPRETATIONS

■ The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

Section 2.1c is added to read as follows:

§ 2.1c Policy statement on consultation with Indian tribes in Commission proceedings

(a) The Commission recognizes the unique relationship between the United States and Indian tribes as defined by treaties, statutes, and judicial decisions. Indian tribes have various sovereign authorities, including the power to make and enforce laws, administer justice, and manage and control their lands and resources. Through several Executive Orders and a Presidential Memorandum, departments and agencies of the Executive Branch have been urged to consult with federally-recognized Indian tribes in a manner that recognizes the government-to-government relationship between these agencies and tribes. In essence, this means that consultation should involve direct contact between agencies and tribes and should recognize the status of the tribes as governmental sovereigns.

(b) The Commission acknowledges that, as an independent agency of the federal government, it has a trust responsibility to Indian tribes and this historic relationship requires it to adhere to certain fiduciary standards in its dealings with Indian tribes.

(c) The Commission will endeavor to work with Indian tribes on a government-to-government basis, and will seek to address the effects of proposed projects on tribal rights and resources through consultation pursuant to the Commission's trust responsibility, the Federal Power Act, the Natural Gas Act, the Public Utility Regulatory Policies Act, section 32 of the Public Utility Holding Company Act, the Interstate Commerce Act, the Outer Continental Shelf Lands Act, section 106 of the National Historic Preservation Act, and in the Commission's environmental and decisional documents.

(d) As an independent regulatory agency, the Commission functions as a neutral, quasi-judicial body, rendering decisions on applications filed with it, and resolving issues among parties appearing before it, including Indian tribes. Therefore, the provisions of the Administrative Procedure Act and the Commission's rules concerning off-the-record communications, as well as the nature of the Commission's licensing and certificating processes and of the Commission's review of jurisdictional rates, terms and conditions, place some limitations on the nature and type of consultation that the Commission may engage in with any party in a contested case. Nevertheless, the Commission will endeavor, to the extent authorized by law, to reduce procedural impediments to working directly and effectively with tribal governments.

(e) The Commission, in keeping with its trust responsibility, will assure that tribal concerns and interests are considered whenever the Commission's actions or decisions have the potential to adversely affect Indian tribes or Indian trust resources.

(f) The Commission will seek to engage tribes in high-level meetings to discuss general matters of importance, such as those that uniquely affect the tribes. Where appropriate, these meetings may be arranged for particular tribes, by region, or in some proceedings involving hydroelectric projects, by river basins.

(g) The Commission will strive to develop working relationships with tribes and will seek to establish procedures to educate Commission staff about tribal governments and cultures and to educate tribes about the Commission's various statutory functions and programs. To assist in this effort, the Commission is establishing the position of tribal liaison. The tribal liaison will provide a point of contact and a resource for tribes for any proceeding at the Commission.

(h) Concurrently with this policy statement, the Commission is issuing certain new regulations regarding the licensing of hydroelectric projects. In this connection, the Commission sets forth the following additional policies for the hydroelectric licensing process.

(i) The Commission believes that the hydroelectric licensing process will benefit by more direct and substantial consultation between the Commission staff and Indian tribes. Because of the unique status of Indian tribes in relation to the Federal government, the Commission will endeavor to increase direct communications with tribal representatives in appropriate circumstances, recognizing that different issues and stages of a proceeding may call for different approaches, and there are some limitations that must be observed.

(j) The Commission will seek to notify potentially-affected tribes about upcoming hydroelectric licensing processes, to discuss the consultation process and the importance of tribal participation, to learn more about each tribe's culture, and to establish case-by-case consultation procedures consistent with our *ex parte* rules.

(k) In evaluating a proposed hydroelectric project, the Commission will consider any comprehensive plans prepared by Indian tribes or inter-tribal organizations for improving, developing, or conserving a waterway or waterways affected by a proposed project. The Commission will treat as a comprehensive plan, a plan that:

(1) Is a comprehensive study of one or more of the beneficial uses of a waterway or waterways;

(2) Includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and

(3) Is filed with the Secretary of the Commission. *See generally* 18 CFR 2.19.

Note: The following Appendix will not be published in the Code of Federal Regulations.

Appendix A

List of Commenters

Indian Tribes

Affiliated Tribes of Northwest Indians—Economic Development Corporation (NW Indians)

Confederated Tribes of the Umatilla Indian Reservation (Umatilla)

Columbia River Inter-Tribal Fish Commission (CRITFC)
Shoshone-Paiute Tribes of Nevada and Idaho, Duck Valley Reservation (S–P)
Shoshone-Bannock (S–B)
Great Lakes Indian Fish and Wildlife Commission (GLIFWC)
Maidu-Enterprise Tribe (Maidu)
Menominee Tribe of Wisconsin (Menominee)
Nez Perce Tribe
North Fork Rancheria of Mono Indians of California (NF Rancheria)
Skokomish Indian Tribe (Skokomish)

Licensees

National Hydropower Association (NHA)
Southern California Edison Company (SCE)

Non-governmental Organizations

Hydropower Reform Coalition (HRC)

Federal Agencies

Advisory Council on Historic Preservation (Advisory Council)
Dept. of the Interior (Interior)

States/State Agencies

California Resources Agency, California EPA, State Water Resources Control Board, Department of Fish and Game, State of California Office of the Attorney General (California)

Other

Pacific Legacy

[FR Doc. 03–19608 Filed 8–5–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket Nos. RM02–4–001 and PL02–1–001; Order No. 630–A]

Critical Energy Infrastructure Information

Issued: July 23, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: On February 21, 2003, the Commission issued a final rule amending its regulations to establish a procedure for gaining access to critical energy infrastructure information (CEII) that would otherwise not be available under the Freedom of Information Act (FOIA). The Commission herein is denying the petition for rehearing filed by the Transmission Access Policy Study Group (TAPS), amending the final rule to increase the numbers of copies filed, and clarifying the filing process for submitting CEII, and one provision of the regulation regarding requests for CEII.

EFFECTIVE DATE: The revisions implemented in this order on rehearing of the final rule will become effective September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Carol C. Johnson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Phone (202) 502–6457.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

I. History

1. On February 21, 2003, the Federal Energy Regulatory Commission (Commission) issued a final rule in Order No. 630 establishing procedures for the public to use to submit and request access to critical energy infrastructure information (CEII) that would otherwise not be available to them under the Freedom of Information Act, 5 U.S.C. 552 (FOIA). Order No. 630 is the most recent step the Commission has taken to protect information regarding critical energy infrastructure since the September 11, 2001 terrorist attacks on the United States. On October 11, 2001, the Commission took the initial step of issuing a policy statement in Docket No. PL02–1–000 removing from easy public access certain previously public documents.[1] On January 16, 2002, the Commission issued a notice of inquiry in Docket No. RM02–4–000 to determine what regulatory changes, if any, should be made to restrict unfettered general public access to CEII.[2] Later that year, the Commission issued a notice of proposed rulemaking and statement of revised policy in the same docket, proposing procedures for submitting and requesting CEII and the creation of a new position of CEII Coordinator.[3] The Commission issued the final rule in Order No. 630 approximately five months later.[4]

2. On March 21, 2003, the Transmission Access Policy Study Group (TAPS) filed a timely request for rehearing of Order No. 630. The Commission granted rehearing for the limited purpose of further reconsideration on April 21, 2003. TAPS filed a motion on May 27, 2003 seeking to supplement its prior request for rehearing, and asking that the Commission consider comments filed by TAPS and the American Public Power Association (APPA) regarding the notice of proposed rulemaking in Docket No. RM03–6–000, Amendments to Conform Regulations with Order No. 630, IV FERC Stats. & Regs. ¶ 32,569 (2003).[5]

3. As discussed in more detail below, the Commission denies TAPS's request for rehearing. Nevertheless, the Commission is revising Order No. 630 to reflect its experience in implementing the final rule. Specifically, this order revises Order No. 630 to change the CEII filing instructions, the CEII request procedures, and the instructions for requesting rehearing of the CEII Coordinator's decision.

II. Discussion

A. TAPS's Request for Rehearing

4. In its request for rehearing, TAPS claims that the CEII rule creates ''a conflict between deadlines placed on intervenors in Commission proceedings * * * and the time frames for the release of CEII.'' TAPS Request at p. 1. TAPS cites as an example rate filings under section 205 of the Federal Power Act. According to TAPS, the Commission's CEII request process would likely take at least 20 business days to complete, thus preventing an intervenor from gaining access to relevant CEII until after the 21-calendar day limit for filing interventions and protests had passed. The Commission disagrees. Initially, a potential intervenor would typically not require access to CEII in order to file a notice of intervention or motion to intervene. As for a protest, as discussed in Order No. 630, it is unlikely that there will be CEII contained in a section 205 filing, which typically must be acted on within 60 days, or any other filing with statutory deadlines, and in the unusual case where there is such information, it is likely that there will be enough publicly available information to enable an intervenor to respond to the filing.[6] Moreover, in the unlikely event that there is need for an intervenor to obtain access to CEII, the intervenor may request a reasonable extension of time to file a protest. Separately, as most intervenors in section 205 rate cases, the typical cases where statutory deadlines are relevant, have ongoing relationships

[1] *See* 66 FR 52917 (Oct. 18, 2001), 97 FERC ¶ 61,030 (Oct. 11, 2001).

[2] *See* 67 FR 3129 (Jan. 23, 2002), IV FERC Stats. & Regs. ¶ 35,542 (Jan. 16, 2002).

[3] *See* 67 FR 57994 (Sept. 13, 2002), IV FERC Stats. & Regs. ¶ 32,564 (Sept. 5, 2002).

[4] 68 FR 9857 (Mar. 3, 2003), III FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003).

[5] The Commission will consider TAPS's supplemental comments, but notes that the comments were filed after the statutory deadline for filing rehearing requests, and thus are not preserved for consideration on appeal. *See, e.g.*, 16 U.S.C. 825*l*.

[6] 68 FR at p. 9866; III FERC Stats. & Regs. ¶ 31,140 at P 55.

with the filing utility, they can always contact the filing utility directly.

5. Moreover, as noted in Order No. 630, the issue is not new. Prior to enactment of the CEII rule, a company could make a filing with a request for confidential treatment under 18 CFR 388.112. To date the Commission is unaware of this right preventing someone from filing a timely intervention or protest, or participating meaningfully in a Commission rate proceeding. There is no reason to think that the issue is any more acute under the CEII rule.

6. TAPS notes that the Commission has found portions of Form No. 715 data to be CEII, and TAPS claims that ''geographic markets cannot be properly defined without assessing transmission capability and constraints.'' [7] While knowledge of transmission capacity and constraints may better enable intervenors to participate effectively in merger and market rate proceedings, Order No. 630 should not prevent intervenors from getting such information. Form No. 715 is an annual filing that may be obtained through the CEII request procedures by those with a need for the information. In addition, nothing in Order No. 630 affects the requirement in Part 37 of the Commission's regulations regarding Open Access Same-Time Information Systems (OASIS). Under 18 CFR 37.6, transmission providers are required to post transmission capability, transmission service products and prices, ancillary service offerings and prices, specific transmission and ancillary services requests and responses, transmission service schedules information, and other transmission-related communications. Neither this rule, nor the changes proposed in the NOPR in Docket No. RM03–6–000, affects the obligations of transmission providers to continue to provide this information. Accordingly, interested parties should have adequate information on hand to respond to filings made pursuant to sections 203, 205 and 206 of the Federal Power Act, 16 U.S.C. 824b, 824d, and 824e.

7. Finally, TAPS's supplemental filing indicates a concern that the Commission's CEII access procedures have somehow supplanted other mechanisms for obtaining CEII. For example, TAPS notes that ''[r]egional reliability councils, RTOs and OASIS sites have procedures in place today that provide market participants with secure access to CEII,'' and goes on to state that ''[t]he Commission should not interfere with these existing mechanisms—and indeed should build upon them to ensure secure access to CEII.'' [8] The Commission does not intend to interfere with these mechanisms. Order No. 630 deals exclusively with the way in which information is submitted to and disseminated by the Commission; it is not intended to limit the ability of companies, reliability councils, RTOs and others to share CEII with those with a need for it. In fact, the Commission recognizes that these entities are often in the best position to judge the legitimacy of such requesters, and the Commission encourages these entities to provide information to legitimate requesters, reducing the number of CEII requests that the Commission itself must process.

B. Changes to 18 CFR 388.112

1. Changes to Instructions Regarding Non-Internet Public Information

8. The Commission is making several changes to the instructions in 18 CFR 388.112 regarding submission of CEII. The first change is to add an instruction in § 388.112(a)(3) regarding the filing of non-Internet public (NIP) information.[9] In Order No. 630, the NIP instructions appeared only in the preamble text. The Commission has decided for the sake of clarity to integrate NIP into the instructions in § 388.112 of its regulations. It is easier for filers to be able to rely on instructions in the regulations themselves without having to look at the preamble language in order to get complete instructions on preparing a filing. Accordingly, in order to include NIP in 18 CFR 388.112, the title of the section is changed from ''Requests for privileged treatment of documents submitted to the Commission'' to ''Requests for special treatment of documents submitted to the Commission.'' The instructions in § 388.112(b) of the Commission's regulations are being revised to specify that NIP information should be segregated from other public information, and to direct filers to file the same number of NIP volumes that they file of other public volumes. This is because NIP is circulated to staff in the same manner that public information is circulated. The only difference at the Commission between NIP information and public information is that NIP information is not available to the public through the on-line Federal Energy Regulatory Records Information System (FERRIS). NIP information is available, however, in the Commission's Public Reference Room.

2. Changes to the Number of Copies for Public Documents and CEII

9. The instructions in Order No. 630 regarding submission of CEII were incorporated largely into the Commission's then-existing regulation at 18 CFR 388.112 regarding requests for privileged treatment of documents. That existing regulation specified that an original and fourteen copies of public documents should be filed. This requirement was based on the Commission's generic filing regulation found at 18 CFR 385.2004, which states that ''[a]ny person filing under this chapter must provide an original of the filing and fourteen exact copies, unless otherwise required by statute, rule or order.'' Unfortunately, however, unlike 18 CFR 385.2004, the regulation at 18 CFR 388.112 did not allow for situations where fewer or more than fourteen copies are required.[10] The language in § 388.112 of the Commission's regulations therefore is being revised to require for public volumes, an original plus the requisite number of copies for that particular type of filing.

10. Order No. 630 specified that one version of CEII material be filed, mirroring the existing requirement for only one version of privileged information. Generally, in order to ensure tight control over privileged information such as trade secret information, the Commission prefers to receive only one version of such information. However, staff has found that having only one version of CEII material makes it difficult to process filings. The Commission has therefore determined that having two additional copies of CEII material will facilitate more efficient processing of filings containing CEII. Consequently, the filing provisions at §§ 388.112(b)(2)(A)(ii) and (B)(ii) of the Commission's regulations are being revised to require an original and two copies of material containing CEII. The rule regarding the number of privileged filings will remain the same, requiring that one be filed.

[7] TAPS March 21, 2003 Rehearing Request at p. 4.

[8] TAPS May 27, 2003 Motion to Supplement at p. 3.

[9] NIP information includes location maps and diagrams that don't rise to the level of CEII. Order No. 630 provided the following examples of NIP: ''(1) USGS 7.5 minute topographic maps showing the location of pipelines, dams, or other aboveground facilities, (2) alignment sheets showing the location of pipeline and aboveground facilities, right of way dimensions, and extra work areas; (3) drawings showing site or project boundaries, footprints, building locations and reservoir extent; and (4) general location maps.'' 68 FR at p. 9862, IV FERC Stats. & Regs. at P 30.

[10] *See, e.g.*, 18 CFR 157.6(a) (requiring an original and 7 copies of applications for certificates of public convenience and necessity).

3. Changes to Other Filing Instructions

11. The Commission is also revising the filing instructions in 18 CFR 388.112(b) to remove language directing filers to segregate CEII and privileged material wherever practical into separate documents or appendices, and instead directing filers to file CEII, privileged, and NIP in separate ''volumes.'' Since Order No. 630 became effective, the Commission has received numerous filings that have been difficult to process because of confusion regarding which portions are public, which are NIP, which are CEII, and which are privileged. The staff in the Office of the Secretary and the staff in the Office of the Executive Director who process filings and are responsible for placing documents into FERRIS are not the same staff that review the documents for substantive content. The processing staff does not have the time to read each filing page-by-page to see where materials may be marked for special treatment in the middle of a document. By using the term ''volume,'' the Commission is specifying that materials for which special treatment is sought be physically separate from other portions of the filing, making for easier processing, with less of a chance for NIP, CEII, or privileged information to inadvertently be logged in as standard public information. The Commission is also deleting parallel filing instructions that allowed filers to redact material from a filing instead of using the separate volume approach. The redaction approach results in numerous versions of the same material being filed, increasing filer costs, staff processing time, and the possibility of confusion. For this reason, the regulation will no longer include a redaction option in 18 CFR 388.112.

12. In addition, the Commission is revising the filing provisions to reflect that filings should be marked and packaged according to instructions provided by the Secretary's Office. In Order No. 630, the Commission provided detailed instructions in 18 CFR 388.112(b) regarding the marking, packaging, and filing of CEII. The Commission has now determined to provide general instructions in the regulatory text with more detailed information provided in instructions from the Secretary's Office. This allows the Commission more flexibility and will permit the details to be modified as the need arises. Key elements, such as the numbers of copies required, are still covered by the regulation itself.

4. Changes to Effect and Notification Provisions

13. The Commission is revising the language in paragraphs (c), (d), and (e) of § 388.112 of its regulations to specifically reference CEII requests. In Order No. 630, the language in these provisions refers to both traditional privileged information and CEII as privileged information. To eliminate the potential for confusion, the Commission believes it is necessary to clearly distinguish between CEII and materials that companies have traditionally submitted with requests for privileged treatment, such as confidential information or Privacy Act information. Accordingly, the Commission is amending § 388.112(c) of its regulations to clarify that it applies to claims for CEII status as well as privileged claims. Similarly, the Commission is amending 18 CFR 388.112(d) to include language to clarify that it is relevant to CEII requests. The Commission also is amending § 388.112(e) of its regulations to clarify that the Commission will notify submitters prior to releasing information for which the submitter has requested CEII treatment. In addition, language is added in both 388.112(d) and (e) to clarify that the five days referred to in each are calendar days.

C. Changes to 18 CFR 388.113 CEII Request Procedures

14. After several months of experience processing CEII requests, the Commission is changing 18 CFR 388.113 to make certain minor changes to its CEII request procedures. The Commission is amending § 388.113(d)(3)(i) of its regulations to require that CEII requesters sign their CEII. Although 18 CFR 385.2005(a) already requires that any filing made with the Commission be signed, the Commission is revising § 388.113(d)(3)(i) to specify that CEII requests should be signed. As with § 385.2005, the purpose of the signature is to verify that the signer knows the contents of the filing and that ''the contents are true as stated to the best knowledge and belief of the signer.''[11] In addition, the Commission is amending that same section to require requesters to provide their birth name and any other names that they may have had or been known by in addition to their current name. This will help the Commission verify the identity of the requester where the birth name or other names do not match the requester's current name. Finally, 18 CFR 388.113(d)(3)(i) is being revised to read that requests ''must'' contain specific information listed in the regulation.[12] This will make it more clear that the information is mandatory.

15. In response to requests from Federal agencies, the Commission is also revising the CEII request regulations at § 388.113(d)(3)(i) to require less personal information from a Federal agency requester who requests information in an official capacity. Employees at Federal agencies are subject to background checks as a condition of their Federal employment. Consequently, Federal employees require less screening prior to gaining access to CEII. The Commission, therefore, is adding a sentence to 18 CFR 388.113(d)(3)(i) to clarify that ''Federal agency employees making requests on behalf of Federal agencies may omit their social security number, and date and place of birth.''

16. The Commission also is adding language at the end of § 388.112(d)(ii) of its regulations to direct that ''[C]opies of requests for rehearing of the CEII Coordinator's decision should be served on the CEII Coordinator and the Associate General Counsel for General Law.'' This will facilitate the Commission's processing of rehearing requests by ensuring that relevant staff is notified of the request as soon as possible.

D. Clarification Regarding LNG Environmental Resource Reports

17. Order No. 630 listed information that the Commission considers to be CEII because it provides more than simply location information. In error, that listing included ''environmental resource reports for LNG facilities.''[13] It should have read ''environmental resource report 13 for LNG facilities,'' which contains engineering and design information for liquified natural gas facilities.[14]

E. Review of Effectiveness of CEII Process

18. This rule, as well as the final rule in RM03–6, represents the Commission's best efforts to achieve a delicate balance between the due process rights of interested persons to participate fully in its proceedings and its responsibility to protect public safety by ensuring that access to CEII does not facilitate acts of terrorism. The Commission believes that it has struck an appropriate balance; however, it

[11] *See* 18 CFR 385.2005(2)(ii)(2003).

[12] The original language in Order No. 630 stated that a request ''shall'' contain the listed information in 18 CFR 388.113(d)(3)(i).

[13] 68 FR 9857 at p. 9862, III FERC Stats. & Regs. P31.

[14] *See* 18 CFR 380.12(o).

intends to monitor the experiences under these two rules to ensure that it has done so. Therefore, in six months the Commission will solicit public comment to determine whether submitters or requesters of CEII are experiencing any problems with the new processes.

III. Information Collection Statement

19. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule.[15] OMB approved the final rule issued in Order No. 630 on May 2, 2003. Two changes have been made to the information collection requirements in this order on rehearing. The number of copies of CEII have been changed from one original to an original plus two copies in order to facilitate staff review of filings. This requirement does not exceed OMB's restriction against requiring more than an original plus two copies and does not change the burden estimates.[16] In addition, the revised rule requires requesters to identify any other names by which they have been known, and to give the dates they used such names. This requirement is intended to verify the identity of the requester. OMB regulations provide an exemption where a person is required to provide only facts that are necessary for identification.[17] Again, this change does not change the burden estimates. Although the Commission believes these changes are not substantive or material changes requiring OMB approval, a courtesy copy is being submitted to OMB.

IV. Environmental Analysis

20. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[18] Included in the exclusions are rules that are clarifying, corrective, or procedural or that do not substantively change the effect of the regulations being amended. This rule is clarifying and procedural in nature and therefore falls under the exceptions; consequently, no environmental consideration is necessary.

[15] 5 CFR part 1320(2003).

[16] *See* 5 CFR 1320.5(d)(2)(iii).

[17] 5 CFR 1320.3(1).

[18] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986-1990 ¶30,783 (1987).

V. Regulatory Flexibility Act Certification

21. The Regulatory Flexibility Act of 1980 (RFA)[19] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this rule does not have such an impact on small entities.

VI. Document Availability

22. 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.

23. From FERC's Home Page on the Internet, this information is available in the Elibrary or the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

24. User assistance is available for FERRIS and the FERC's Web site during normal business hours via e-mail at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659, or through the Public Reference Room at (202) 502–8371 Press 0.

VII. Effective Date

25. The revisions implemented in this order on rehearing of the rule are effective September 5, 2003.

26. The provisions of 5 U.S.C. 801 regarding Congressional review of final rules do not apply to this final rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

List of Subjects in 18 CFR Part 388

Confidential business information, Freedom of information.

[19] 5 U.S.C. 601–612.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 388, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 388—INFORMATION AND REQUESTS

■ 1. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

■ 2. In § 388.112, the heading is revised, paragraph (a)(3) is added, and paragraphs (b) through (e) are revised, to read as follows:

§ 388.112 Requests for special treatment of documents submitted to the Commission.

(a) *Scope.* * * *

(3) Any person submitting documents containing maps or diagrams that reveal the location of critical energy infrastructure as defined in § 388.113 but do not rise to the level of CEII should follow the procedures for filing non-Internet public (NIP) information.

(b) *Procedures.* A person claiming that information warrants special treatment as NIP, CEII, or privileged must file:

(1) A written statement requesting NIP, CEII or privileged treatment for some or all of the information in a document, and the justification for special treatment of the information; and

(2) The following, as applicable:

(i) An original plus the requisite number of copies of both the public and NIP volumes, if any, filed and marked in accordance with instructions issued by the Secretary;

(ii) An original plus two copies of the CEII volume, if any, filed and marked in accordance with instructions issued by the Secretary; and

(iii) An original only of the privileged volume, if any, filed and marked in accordance with instructions issued by the Secretary.

(c) *Effect of privilege or CEII claim.* (1) For documents filed with the Commission:

(i) The Secretary of the Commission will place documents for which privileged or CEII treatment is sought in accordance with paragraph (b) of this section in a nonpublic file while the request for privileged or CEII treatment is pending. By placing the documents in a nonpublic file, the Commission is not making a determination on any claim of privilege or CEII status. The Commission retains the right to make

determinations with regard to any claim of privilege or CEII status, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.

(ii) The Secretary of the Commission will place the request for privileged or CEII treatment and a copy of the original document without the privileged or CEII information in a public file while the request is pending.

(2) *For documents submitted to Commission staff.* The notification procedures of paragraphs (d), (e), and (f) of this section will be followed by staff before making a document public.

(d) *Notification of request and opportunity to comment.* When a FOIA or CEII requester seeks a document for which privilege or CEII status has been claimed, or when the Commission itself is considering release of such information, the Commission official who will decide whether to release the information will notify the person who submitted the document and give the person an opportunity (at least five calendar days) in which to comment in writing on the request. A copy of this notice will be sent to the requester.

(e) *Notification before release.* Notice of a decision by the Commission, the Chairman of the Commission, the Director, Office of External Affairs, the General Counsel or General Counsel's designee, a presiding officer in a proceeding under part 385 of this chapter, or any other appropriate official to deny a claim of privilege, in whole or in part, or to make a limited release of CEII, will be given to any person claiming that the information is privileged or CEII no less than 5 calendar days before disclosure. The notice will briefly explain why the person's objections to disclosure are not sustained by the Commission. A copy of this notice will be sent to the FOIA or CEII requester.

* * * * *

■ 3. In § 388.113 paragraphs (d)(3)(i) and (d)(3)(ii) are revised to read as follows:

§ 388.113 Accessing critical energy infrastructure information.

* * * * *

(d) *Optional procedures for requesting critical energy infrastructure information.*

* * * * *

(3) * * *

(i) File a signed, written request with the Commission's CEII Coordinator. The request must contain the following: requester's name (including any other name(s) which the requester has used and the dates the requester used such name(s)), date and place of birth, title, address, and telephone number; the name, address, and telephone number of the person or entity on whose behalf the information is requested; a detailed statement explaining the particular need for and intended use of the information; and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. Requesters are also requested to include their social security number for identification purposes. Federal agency employees making requests on behalf of Federal agencies may omit their social security number, and date and place of birth.

(ii) Once the request is received, the CEII Coordinator will determine if the information is CEII, and, if it is, whether to release the CEII to the requester. The CEII Coordinator will balance the requester's need for the information against the sensitivity of the information. If the requester is determined to be eligible to receive the information requested, the CEII Coordinator will determine what conditions, if any, to place on release of the information. Where appropriate, the CEII Coordinator will forward a non-disclosure agreement (NDA) to the requester for execution. Once the requester signs any required NDA, the CEII Coordinator will provide the requested critical energy infrastructure information to the requester. The CEII Coordinator's decisions regarding release of CEII are subject to rehearing as provided in § 385.713 of this chapter. Copies of requests for rehearing of the CEII Coordinator's decision must be served on the CEII Coordinator and the Associate General Counsel for General Law.

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[FR Doc. 03–19607 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[MT–023–FOR]

Montana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving, with certain exceptions and additional requirements, a proposed amendment to the Montana regulatory program (the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposed revisions to and additions of rules and statutes about: definitions; ownership and control; baseline information; maps; prime farmland; reclamation plan; ponds and embankments; transportation facilities plan; coal processing plants and support facilities; permit applications, conditions, revisions, and renewal; backfilling and grading; small depressions; burial and treatment of exposed mineral seams; storage and disposal of garbage; disposal of off-site generated waste and fly ash; contouring; buffer zones; thick overburden and disposal of excess spoil; permanent cessation of operations; roads and railroad loops; soil removal; blasting schedule; sealing of drilled holes; water quality performance standards; reclamation of drainages; sedimentation ponds and other treatment facilities; discharge and outflow structures; permanent and temporary impoundments; groundwater and surface water monitoring; wells and underground operations; redistribution and stockpiling of soil; establishment of vegetation; soil amendments and other management techniques; other revegetation comparison standards; vegetation production, cover, diversity, density, and utility requirements; measurement standards for trees, shrubs, and half-shrubs; postmining land use; alternate reclamation; general performance standards; subsidence controls; disposal of underground development waste; disposal of coal processing waste; information and monthly reports; renewal and transfer of prospecting permits; prospecting drill holes; prospecting roads and other transportation facilities; removal of prospecting equipment; prospecting test pits; prospecting bond release procedures; notice of intent to prospect; bonding; reassertion of jurisdiction; areas where coal mining is prohibited; designation of lands unsuitable; small operator assistance program; certification of blasters; and blaster training courses. Montana also proposed to recodify its program rules in the Administrative Rules of Montana (ARM) from Title 26 Chapter 4 to Title 17 Chapter 24. Montana revised its program to be consistent with the corresponding Federal regulations and SMCRA, and provide additional safeguards and clarify ambiguities.

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307.261.6550, Internet address: *gpadgett@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letter dated May 7, 2002, Montana sent us an amendment (SATS No. MT–023-FOR, Administrative Record No. MT–20–01) to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment: (1) In response to letters dated March 29, 1990; June 5, 1996; January 13, 1997; and June 26, 1997 (Administrative Record Nos. MT–60–07, MT–60–09, MT–60–10, and MT–60–11) that we sent to Montana in accordance with 30 CFR 732.17(c), (2) in response to the required program amendments at 30 CFR 926.16(e)(9), and (3) to include the changes made at its own initiative.

We announced receipt of the proposed amendment in the July 15, 2002, **Federal Register** (67 FR 46434). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. MT–20–06). We did not hold a public hearing or meeting because one was not requested. The public comment period ended on August 14, 2002. We received comments from one private citizen.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment with exceptions and additional requirements as described below.

A. Minor Revisions to Montana's Rules and Statutes

Montana proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules and statutes.

We note that as a result of the reorganization of the natural resources function of the Montana State Government in 1995, which transferred the authority to regulate coal mining under SMCRA from the Department of State Lands to the Department of Environmental Quality (Department), all of the Montana program rules were recodified from Title 26 Chapter 4 to Title 17 Chapter 24 of the Administrative Rules of Montana.

ARM 17.24.301(34)–(141) Definitions (recodified).
ARM 17.24.301(46) Definition of ''habit or characteristic pattern'' [relocated from ARM 17.24.634].
ARM 17.24.301(79) Definition of ''owned or controlled.''
ARM 17.24.301(111) Definition of ''soil survey.''
ARM 17.24.302(6) Permit application format.
ARM 17.24.303(15)(a)(ii) Permit applications; legal, financial, compliance, and related information.
ARM 17.24.306 Permit applications; prime farmland investigation.
ARM 17.24.313(6) Permit applications; reclamation plan.
ARM 17.24.324 Permit applications; prime farmland special application requirements.
ARM 17.24.327(2) Permit applications; coal processing plants, special application requirements.
ARM 17.24.401 Processing of permit applications; filing of application.
ARM 17.24.403 Processing of permit applications; informal conference.
ARM 17.24.405(8) Processing of permit applications; findings and notice of decision.
ARM 17.24.413 Processing of permit applications; conditions of permit.
ARM 17.24.415 Processing of permit applications; permit revisions.
ARM 17.24.507 Storage and final disposal of garbage and other debris.
ARM 17.24.510(2) Disposal of offsite-generated waste and fly ash.
ARM 17.24.518 Buffer zones.
ARM 17.24.520(3) (recodification) Thick overburden and excess spoil.
ARM 17.24.601(3), (4), (5), (7), (8) General requirements for roads.
ARM 17.24.605 recodification, (3)(d)(iii), (f) [delete ''or road''], hydrologic impact of roads.
ARM 17.24.606 Surfacing of roads [moved to ARM 17.24.601(7)].
ARM 17.24.607(2) (intro), (2)(c), Maintenance of roads.
ARM 17.24.625 Seismograph measurements.
ARM 17.24.632 Permanent sealing of drilled holes.
ARM 17.24.634 (1) (intro), replacement of ''stream'' and ''drainage'' by ''channel'' throughout; reclamation of drainages.
ARM 17.24.639(6), (9), (15)(a), (b) Sediment Ponds.
ARM 17.24.640 Discharge structures.
ARM 17.24.642(1)(f), (2), (3) Permanent and temporary impoundments.
ARM 17.24.645(5) Groundwater monitoring.
ARM 17.24.647 Transfer of wells.
ARM 17.24.652 Wells and underground openings; safety.
ARM 17.24.702(1), (2) Redistribution and stockpiling of soil.
ARM 17.24.711(6)(b) Establishment of vegetation.
ARM 17.24.716(1), (5)(a) Method of revegetation.
ARM 17.24.718 Soil amendments.
ARM 17.24.724 Use of revegetation comparison standards.
ARM 17.24.733 (recodification of (3)–(5)) Measurement standards for woody plants.
ARM 17.24.762 Postmining land use.
ARM 17.24.815(2)(c)–(e), (h) Prime farmlands; revegetation.
ARM 17.24.821 Alternate reclamation; submission of plan.
ARM 17.24.823 Alternate reclamation; approval of plan and review of operation.
ARM 17.24.825 Alternate reclamation; alternate revegetation.
ARM 17.24.903 Underground mining, general performance standards.
ARM 17.24.924 (Recodification (15)–(20)) Underground mining, disposal of underground development waste.
ARM 17.24.925 Underground mining, disposal of underground development waste; durable rock fills.
ARM 17.24.927 Underground mining, disposal of underground development waste; valley fill.
ARM 17.24.1001(1), (2)(b)–(k), (2)(m)–(4) Prospecting, permit requirements.
ARM 17.24.1005 Prospecting, drill holes.
ARM 17.24.1006 Prospecting, roads and other transportation facilities, ARM 17.24.1010 Prospecting, removal of equipment.
ARM 17.24.1014(1)–(3) Prospecting, test pits; application requirements, etc.
ARM 17.24.1017 Prospecting, bond release procedures for drilling operations.
ARM 17.24.1018(5)–(9) Prospecting, notice of intent to prospect.
ARM 17.24.1108 Bonding, certificate of deposit.
ARM 17.24.1116, 1116A Bonding, criteria for bond release, reassertion of jurisdiction.
ARM 17.24.1132 Areas upon which coal mining is prohibited; definitions and standard for measurement of distances.
ARM 17.24.1143 Designation of lands unsuitable; prospecting on designated lands.

Montana Code Annotated (MCA) 82–4–205 (recodification) and (1) Administration by department.

MCA 82–4–241(1) Receipts paid into general fund.

MCA 82–4–254 (3, last sentence), (4) Violation, penalty, waiver.

Because these changes are minor, we find that they will not make Montana's rules or statutes less effective than the corresponding Federal regulations or less stringent than SMCRA. We approve the proposed revisions.

B. Revisions to Montana's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Montana proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

ARM 17.24.301(34) (30 CFR 701.5), Definition of ''domestic water supply.''

ARM 17.24.301(39) (30 CFR 701.5), Definition of ''excess spoil.''

ARM 17.24.301(64) (30 CFR 701.5), Definition of ''material damage.''

ARM 17.24.301(71) (30 CFR 701.5), Definition of ''non-commercial building.''

ARM 17.24.301(73) (30 CFR 701.5), Definition of ''occupied residential dwelling.''

ARM 17.24.301(76) (30 CFR 701.5), Definition of ''other treatment facilities.''

ARM 17.24.301(103) (30 CFR 701.5), Definition of ''replace adversely affected domestic water supply.''

ARM 17.24.301(110) (30 CFR 701.5), Definition of ''soil horizon.''

ARM 17.24.304(5) (30 CFR 780.21(c)(1)/784.14(c) (1)), Baseline information; environmental resources.

ARM 17.24.315(1)(b) (30 CFR 780.25(a)(2), (f)/784.16(a)(2), (f)), Plan for ponds and embankments.

ARM 17.24.324(2), (3) (30 CFR 785.17(d), (e)), Prime farmlands, application requirements.

ARM 17.24.505(2) (30 CFR 816/817.102(f)), Burial and treatment of waste materials.

ARM 17.24.639(7)(b), (c) (30 CFR 816/817.49(c)(2)), Sediment ponds, containment requirements.

ARM 17.24.639(8) (30 CFR 816/817.49(a)(6)(i)); 17.24.639(14) (30 CFR 816/817.46(c)(1)(iii)(H)); and 17.24.639(16) (30 CFR 816/817.49(a)(4)) Sediment ponds, foundation stability and embankment stability.

ARM 17.24.639(17) (30 CFR 816/817.49(a)(3)), Sediment ponds, design standards.

ARM 17.24.639(21) (30 CFR 816/817.49(a)(5), (a)(9)(ii)(A)), Sediment ponds, freeboard and spillway capacity.

ARM 17.24.639(23) (30 CFR 816/817.49(a)(12)), Sediment ponds, inspections.

ARM 17.24.642(6) (30 CFR 816/817.49(a)(12)), Permanent and temporary impoundments, inspections.

ARM 17.24.725(1) (30 CFR 816/817.116(c)(3)(i)), Period of responsibility.

ARM 17.24.726(2) (30 CFR 816/817.111), Vegetation production, etc.

ARM 17.24.728 (30 CFR 816/817.111), Composition of vegetation.

ARM 17.24.815(2)(f)(i) (30 CFR 823.15(b)(3)), Prime Farmlands, revegetation.

ARM 17.24.823(2) (30 CFR 785.17(d)), Alternate reclamation; approval of plan.

ARM 17.24.826 [replaces 17.24.1103] (30 CFR 816.111(d), 816.116(c)(3)), Alternate reclamation; period of responsibility.

ARM 17.24.1002 (30 CFR 772.10 & 772.12), Prospecting, information & monthly reports.

ARM 17.24.1003 (30 CFR 774.15 & 774.17), Prospecting, renewal & transfer of permits.

ARM 17.24.1014(4) (30 CFR 772.12 & 772.14), Prospecting test pits, application requirements, etc.

ARM 17.24.1104 (30 CFR 817.121(c)(5)), Bonding; adjustment of amount.

ARM 17.24.1111 (30 CFR 800.40(a)(3)), Bonding; bond release application.

ARM 17.24.1221 (30 CFR 795.3), Small operator assistance program (SOAP), program services.

ARM 17.24.1222 (30 CFR 795.6), SOAP, eligibility.

ARM 17.24.1223 (30 CFR 795.7), SOAP, filing for assistance.

ARM 17.24.1224 (30 CFR 795.8), SOAP, application approval.

ARM 17.24.1225 (30 CFR 795.9), SOAP, data requirements.

ARM 17.24.1226 (30 CFR 795.10), SOAP, qualification of laboratories & consultants.

ARM 17.24.1228 (30 CFR 795.12), SOAP, applicant liability.

ARM 17.24.1261 (30 CFR 850.15), Certification of blasters.

ARM 17.24.1262 (30 CFR 850.13), Blaster training courses.

MCA 82–4–254(3) (SMCRA 518(b)), Violation penalty and hearing.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations. We approve the proposed revisions.

C. Revisions to Montana's Rules and Statutes That Are Not the Same as the Corresponding Provisions of the Federal Regulations and Statutes

C.1. ARM 17.24.301(13) Definition of ''Approximate original contour'' (SMCRA Sec. 701(2) & 30 CFR 701.5)

Montana proposed to revise its definition of ''approximate original contour'' to: (1) Eliminate the phrase which includes terracing or access roads in the reclaimed area; (2) change ''refuse'' to ''waste;'' (3) add the requirement that depressions, except as provided at ARM 17.25.503(1), are eliminated; and (4) eliminate the statement which reads ''Permanent water impoundments may be permitted where the department determines that they are in compliance with ARM 17.24.504.''

The Federal statute at SMCRA Sec. 701(2) and the Federal regulation at 30 CFR 701.5 include the phrase concerning terracing or access roads in the reclaimed area. The Federal regulations use the term ''coal refuse piles.'' The Federal statute and regulations do not specify the elimination of depressions. The Federal regulatory definition of ''approximate original contour'' (AOC) contains the phrase concerning the option of permitting of permanent water impoundments; SMCRA does not.

Montana states that it does not need to specify terracing or access roads as part of the reclaimed area, as elsewhere in the State program (ARM 17.24.501 and 17.24.501A), all affected areas must be graded to AOC. The reclamation and grading of roads to be returned to AOC is specifically addressed at ARM 17.24.605 in the Montana program. Both the Federal statute and regulations address grading to achieve AOC for the reclamation of disturbed areas and roads (30 CFR 816.102/817.102; 816.150(b), (c), & (f)/817.150(b), (c), & (f); and Sec. 515(b)(3) of SMCRA), in addition to the definition of AOC. The preamble does not address the need or reason to repeat this reclamation guidance in both sections. Therefore, because Montana contains the requirement to regrade and reclaim all disturbed areas to AOC elsewhere in the State program other than the definition of AOC, OSM finds the Montana proposal to be no less effective than the Federal regulations and no less stringent than SMCRA.

Concerning use of the term ''waste'' instead of ''refuse,'' Montana stated that ''waste'' is defined in the state program whereas ''refuse'' is not. Some States prefer to use the term ''waste'' instead of ''refuse,'' with New Mexico's program as an example. Because Montana has chosen to use and define the term ''waste'' instead of ''refuse,'' OSM approves Montana's revision as being no less effective than the Federal regulations.

Montana proposed to add the statement that depressions, except as provided in ARM 17.24.503(1), be eliminated. This requirement is not contained in the Federal definition of AOC but rather at 30 CFR 816.102(h). Montana also contains this requirement in its program at ARM 17.24.503. OSM finds no conflict with also including this requirement in the definition of AOC. OSM finds the Montana proposal to be no less effective than the Federal regulations.

Montana proposed to eliminate the phrase concerning the option of permitting permanent water impoundments if they are in compliance with ARM 17.24.504. This phrase is not an integral part of the definition of AOC and is only contained in the Federal regulatory definition of AOC, not in SMCRA. The preamble does not require this phrase for the definition of AOC. Both 30 CFR 816.49(b)/817.49(b) and ARM 17.24.504 allow permanent impoundments in reclaimed areas providing certain conditions are met. Therefore, OSM finds this revision to be no less effective than the Federal regulations.

C.2. ARM 17.24.301(47), (133) Definition of ''Head of Hollow Fill'' and ''Valley Fill'' (30 CFR 701.5)

Montana did not propose any revisions to these definitions. However, in the narrative included in the submittal, Montana addressed a required program amendment at 30 CFR 926.16(e)(9) that was imposed in a final rule dated August 19, 1992 (57 FR 37436). The amendment required Montana to delete the modifier ''non-coal'' from the organic materials prohibited in these fills. Under the Federal definitions, these fills may consist of ''any material, other than organic material.'' The Montana definitions allow ''any material other than non-coal organic material.''

In its narrative, Montana stated that under its definitions, the same materials are allowed, and excluded, as under the Federal definitions. It references earlier arguments in a letter to OSM dated February 19, 1993. The differences in the Montana and OSM positions on this issue stem from whether the terms ''coal'' and ''organic'' are used in an engineering sense or in a general natural-science sense. In an engineering sense, OSM considers coal to be rock, not an organic material, and ''organic'' to indicate biological materials that have undergone little decomposition (and hence are, from an engineering point of view, unstable). Montana uses ''organic'' in a general natural-science sense, to indicate that the material consists of molecules with a carbon framework. Montana argues that, as understood in the natural-science sense, its definitions exclude all organic materials other than those derived from coal, including all of the engineering-unstable materials excluded by the Federal regulations. Further, Montana's definitions allow only coal-derived materials, which are also allowed under the Federal regulations.

Based on this discussion, we agree with Montana that its definitions are not inconsistent with the Federal definitions, and that the Montana program definitions need not be revised. The required program amendment will be further addressed in a finding below regarding another part of the required amendment (applying to permit application requirements), at ARM 17.24.305.

C.3. Ownership and Control (ARM 17.24.301(79), 17.24.303(14), and 17.24.404) (30 CFR Parts 701, 724, 750, 773, 774, 775, 778, 785, 795, 817, 840, 842, 843, 846, 847)

Montana has proposed various revisions to its ownership and control (O&C) regulations. Montana previously proposed various programmatic revisions to ownership and control in MT–003–FOR. However, in the final rule notice on MT–003–FOR dated February 12, 2002 (67 FR 6395), OSM deferred on Montana's ownership and control regulations. This was because OSM revised the Federal regulations in response to recent legal challenges contesting the validity of OSM's regulations. OSM published a final rule **Federal Register** notice dated December 19, 2000 (65 FR 79663), on revised ownership and control regulations. A new 30 CFR part 732 letter concerning ownership and control will be sent to the States in the future to advise them of changes they need to make to their program in order to be no less effective than the newly revised Federal regulations. Until such time as OSM issues revised O&C guidance concerning necessary programmatic revisions to the States, OSM defers on the proposed Montana revisions concerning ownership and control.

C.4. ARM 17.24.305(2)(b) Preparation and Certification of Maps, Plans, and Cross-Sections (30 CFR 780.14(c))

Montana proposed to revise this rule (1) To delete the term ''professional geologist,'' (2) to change ''registered professional engineer'' to ''licensed professional engineer,'' and (3) to allow licensed professional land surveyors to prepare and certify materials except for maps, plans, and cross-sections for sedimentation ponds and spoil disposal facilities.

In the August 19, 1992, **Federal Register** notice (57 FR 37436), OSM placed a required program amendment (30 CFR 926.16(e)(9)) on Montana to submit proposed revisions to remove parts of the State program which the OSM Director could not approve, but which had been promulgated by Montana. Those parts of the State program that OSM requested be removed included the phrases ''registered land surveyor,'' and ''or a registered land surveyor'' at ARM 26.4.305(2)(b) and 26.4.321(3) (now ARM 17.24.305(2)(b) and 17.24.321(3)). ARM 17.24.321(3) was revised as required in program amendment MT–003–FOR which was approved in a final rule published on February 12, 2002 (67 FR 6395). ARM 17.24.305(2)(b) and ARM 17.24.924(15) are addressed in this submittal, MT–023–FOR.

In its May 7, 2002, submittal, Montana proposed that maps, plans, and cross-sections required under certain sections of ARM 17.24.305 must be prepared by, or under the direction of, and certified by a qualified licensed professional engineer with assistance from experts in related fields, except that: (1) Maps and cross-sections required under certain sections of ARM 17.24.305 may be prepared by, or under the direction of, and certified by a qualified licensed professional land surveyor with assistance from experts in related fields, and (2) maps, plans, and cross-sections for sedimentation ponds and spoil disposal facilities may be prepared only by a qualified licensed, professional engineer. Montana states that MCA 37–67–101(6) provides that licensed professional land surveyors can prepare and certify mine maps and cross-sections but not plans. Montana has deleted the undefined term of ''professional geologist.'' Montana has also replaced ''registered'' with ''licensed'' which reflects current State practices.

OSM placed the required program amendment on the Montana program as OSM did not interpret the MCA as authorizing registration procedures for registered land surveyors to perform such tasks as preparing and certifying plans and cross-sections for: Mineral storage, cleaning and loading areas; storage areas for soil, spoil, coal waste, and garbage or other debris; water diversions and facilities for collection, conveyance, treatment, storage, and discharge of water; and explosives storage and handling facilities. In this submission, Montana maintains that the MCA does allow licensed professional land surveyors to prepare and certify mine maps and cross-sections, but not plans. Therefore, Montana has revised the language to reflect these duties.

We agree with Montana that many of the materials required by this rule may be prepared by surveyors, particularly descriptive maps and cross-sections of existing features, or cross-sections that interpolate between sections of plans prepared by an engineer. But Montana also notes that surveyors may not design and plan many structures. In addition to the provision here at (2)(b)(ii) specifying

certain materials that must be prepared by engineers, we reviewed the performance standards in Chapters 5 through 10 (*i.e.*, ARM 17.24.501–17.24.1018). We found that in those Chapters, where the exact plans, cross-sections, and maps are specified, preparation and certification by an engineer (as opposed to a surveyor) is specified where required. Therefore, we agree with Montana that qualified licensed professional land surveyors may prepare and certify some of these materials, and those they may not are adequately specified by subsection (2)(b)(ii) of this rule and the specific performance standards of Chapters 5–10 of the rules. Therefore, we approve Montana's proposal.

As noted above, we earlier required Montana to remove this language in a required program amendment codified at 30 CFR 926.16(e)(9). Based on this approval, that requirement is no longer applicable. In addition, 30 CFR 926.16(e)(9) required Montana to revise: (1) The definitions of ''head-of-hollow fill'' and ''valley fill'' at ARM 17.24.301; (2) 17.24.321(3) regarding surveyors; and (3) delete an alternate underdrain variance at 17.24.924(14) (now (15)). We note that in this final rule, we have removed the requirement to revise the fill definitions (*see* Finding C.2. above). Further, the Montana program at 17.24.321 and 17.24.924 was revised as required in a final rule published on February 12, 2002 (67 FR 6395). Therefore, all of the changes required by 30 CFR 926.16(e)(9) have been completed or removed. Accordingly, we are removing the required program amendment.

C.5. ARM 17.24.321 Transportation Facilities Plan (30 CFR 780.37/784.24)

In the May 7, 2002, submittal, Montana proposed revisions to combine the requirements for railroad systems (now labeled ''railroad loops'') with the requirements for roads at ARM 17.24.301, 17.24.321, 17.24.601, 17.24.603, 17.24.605, and 17.24.607. Also, Montana has prescribed that roads performance standards are applicable to haul roads and access roads. In this section concerning transportation facilities plans, Montana has made many editorial revisions to reflect these programmatic changes. In addition, Montana has specified that plans for low-water crossings of perennial and intermittent stream channels must be submitted and demonstrate that protection will be maximized in accordance with the performance standards of the ARM 17.25.600 series. Montana also specifies that ramp roads will be shown on the maps.

The Montana revisions have Federal counterparts at 30 CFR 780.37 (784.24 for underground mines) which require that such information be included in roads systems plans and drawings. The Federal regulations do not specify that railroad systems be included on road systems maps, so Montana is adding an extra requirement. The Federal requirements contain specifications for low-water crossings and intermittent stream channels at 30 CFR 780.37(a) relating to the hydrology performance standards. The Federal regulations at 30 CFR 780.37/784.24 contain the requirement that primary roads be certified by a qualified registered professional engineer with experience in the design and construction of roads. Secondary roads (access roads) need only be shown on road systems maps, and not certified. The Federal definition of ''road'' at 30 CFR 701.5 excludes ''ramp roads.''

Therefore, the Director finds that the Montana revisions are no less effective than the Federal counterpart and approves them.

C.6. ARM 17.24.405 Findings and Notice of Decision (30 CFR 926.30)

Montana proposed to delete the requirement that, when an application concerns Federal lands, the Department issue its findings on the same day that the Federal regulatory authority issues its findings. Montana explained that they consider the language proposed for deletion to be obsolete, because the Federal regulatory authority (OSM) no longer prepares written findings on Federal lands, that being the sole responsibility of the State.

Under the Federal Land Program at 30 CFR part 740, and the State-Federal Cooperative Agreement at 30 CFR 926.30, Montana has sole responsibility for findings related to permit approval or denial under SMCRA and OSM retains some responsibilities related to other Federal laws. Further, since the language proposed for deletion did not include the defined term ''Federal coal regulatory authority,'' but rather the undefined term ''federal regulatory authority,'' the language proposed for deletion might possibly refer to other Federal agencies.

Nevertheless, we find that the deleted language was directory, not mandatory. Further, there is no corresponding Federal requirement. This deletion does not affect the authority or jurisdiction of any Federal agency. In particular, we note that under the State-Federal Cooperative Agreement at 30 CFR 926.30 VI.C.3., the Department may approve a SMCRA mining permit prior to Secretarial approval of a mining plan document, provided that the applicant is advised that authorization to mine is not complete. For these reasons, we find that the deletion is not inconsistent with any Federal requirement, and we approve the deletion.

C.7. ARM 17.24.416 (formerly 26.4.410) Permit renewal (30 CFR 774.15)

Montana proposed to: (1) Move former ARM 17.24.416(2)(c) to (1)(d); (2) eliminate (2)(b) concerning the extension of permit boundaries beyond the existing permit; (3) revise the cross-reference at proposed (2)(c); and (4) make other grammatical revisions.

Montana states that the elimination of (2)(b) concerning amendments to permits is due to its coverage under major permit revisions: All the provisions of ARM 17.24.401–405 and the performance standards of subchapters 3, 5, 6, 7, 8, 9, and 10. Montana reasons that permit renewals and major permit revisions are distinct processes and should be differentiated. The Federal regulations require that any extension to the area covered by the permit, except incidental boundary revisions, shall be made by a new permit application. This is addressed by Montana at ARM 17.24.417(1).

At 30 CFR 774.15 concerning permit renewals, the Federal regulations allow the renewal form to be set by the regulatory authority (RA) with certain minimum requirements necessary for submission. Montana addresses permit application criteria at ARM 17.24.401 to 17.24.405.

Montana states that the revised cross-reference at (2)(c), from the statutes at MCA 82–4–225 and 82–4–232 to ARM 17.24.1104(1), is a correction. This subsection requires that prior to approving a permit renewal, the Department shall require any additional performance bond. The Federal regulations at 30 CFR 774.15(b)(2)(v) contain a similar provision. The other revisions proposed by Montana to ARM 17.24.416 are non-substantive revisions. We believe that the Montana program contains permit renewal and permit revision provisions substantively identical to the Federal regulations. Thus, we find the proposed Montana revisions are no less effective than the Federal regulations and approve the revisions.

C.8. ARM 17.24.501 & 17.24.501A General Backfilling and Grading, Final Grading (30 CFR 816/817.100, .102, 816.101)

Montana proposed to delete rule ARM 17.24.501A, altering and moving some of its provision to rule 17.24.501, and deleting others. Revisions, deletions,

and additions were also proposed for 17.24.501. Revisions not discussed below are minor editorial or codification changes.

At 17.24.501(1), Montana proposed to delete an allowance for an operator to obtain more time for backfilling and grading; a similar provision was proposed to be added at paragraph (6) and will be discussed below. Montana also proposed to delete a provision that required additional bond in cases of extended time allowance. We note, however, that ARM 17.24.1104(1) would still allow the Department to adjust the bond amount ''as standards of reclamation change.'' The Federal regulations do not have any specific provision requiring additional bonding for extended backfilling and grading times, except for the general bond adjustment clause at 30 CFR 800.30(a). Therefore, we find that this proposed deletion is not inconsistent with the Federal requirements.

At paragraph (4)(intro), Montana proposed to add a new provision incorporating a part of existing 17.24.519A(1)(a), requiring that all final grading be to approximate original contour, that final slopes be graded to prevent slope failure, may not exceed the angle of repose, and must have a static safety factor of 1.3. This is substantively the same as the Federal requirements at 30 CFR 816/817.102(a)(1) and (3).

At subparagraph (4)(a), Montana proposed to delete the requirement to eliminate all spoil piles and depressions. We note that these requirements have been added to the definition of ''approximate original contour'' at 17.24.301(13) (*see* Finding C.1. above). Therefore, this proposed deletion does not render the Montana program less effective than the Federal requirements.

At paragraph (6), Montana proposed revised standards for contemporaneous reclamation, that were moved in part from existing 17.24.501A(3). Montana proposed that, for strip mining, there must not be more than four consecutive spoil ridges and backfilling and grading to AOC must be complete within two years after coal removal. For ''other excavations'' (which presumably would include underground mines), backfilling and grading must be ''kept current as departmental directives dictate for each set of field circumstances.'' It is unclear whether ''departmental directives'' refers to written policies or to instructions and/or permit conditions assigned ad hoc to each operation. The Montana proposal also provides for case-specific variances from these standards when approved by the Department based on demonstrations by the operator. The Federal regulations establishing time and distance standards for the evaluation of contemporaneous reclamation at 30 CFR 816.101 have been suspended indefinitely (July 31, 1992; 57 FR 33875). Therefore each regulatory authority may define ''as contemporaneously as practicable'' for itself in accordance with its State processes. The Federal requirement for contemporaneous reclamation for underground mines at 30 CFR 817.100 also allows regulatory authorities to establish their own schedules. Therefore, we find that Montana's proposals are not inconsistent with the Federal requirements.

At 17.24.501A(1)(a), Montana proposed to delete a statement that the final surface need not have the exact elevations as the premining surface, and a requirement that no slope be steeper than 20 percent without departmental approval. No Federal counterparts exist for these requirements, so their deletion is not inconsistent with the Federal requirements.

At 17.24.501A(1)(b) and (c), Montana proposed to delete requirements for (1) Measuring methods for slopes pre- and post-mining, and (2) an upper limit for postmining slopes based on either the premining slope or lesser slopes specified by the Department. There are no Federal provisions for the measurement of slopes, and no limits on slope steepness beyond those incorporated by Montana at new 17.24.501(4). Therefore, these deletions do not render the Montana program inconsistent with the Federal requirements.

For the reasons discussed above, we approve the revisions proposed for ARM 17.24.501 and .501A.

C.9. ARM 17.24.503 Small Depressions (30 CFR 816/817.102(h))

Montana has proposed revisions to the rule on small depressions to: (1) Add the promotion of wildlife use to the approvable uses for small depressions by the Department of Environmental Quality; (2) delete the phrase that small depressions may not be inappropriate substitutes for construction of lower grades on reclaimed lands; and (3) delete the sentence that small depressions have a holding capacity of less than 1 cubic yard of water.

The Federal regulation at 30 CFR 816/817.102(h) allows the construction of small depressions to enhance wildlife habitat. Therefore, this proposal by Montana addressing wildlife use is no less effective than the Federal counterpart.

The phrase concerning ''inappropriate substitutes for the construction of lower grades'' comes from the original language in the Federal regulations at 30 CFR 816/817.102(c)(3). This phrase is no longer in the Federal regulations. Therefore, the Montana deletion would make the rules no less effective than the Federal counterpart.

Lastly, the proposed deletion of the size limit would leave it to the Department's discretion to define ''small'' in various circumstances. The Federal program has no size guidelines for small depressions. We find that the deletion would not be inconsistent with the Federal regulations.

C.10. ARM 17.24.510 Disposal of Offsite-Generated Waste and Fly Ash (30 CFR 816/817.81, 816/817.89)

Montana proposed to revise ARM 17.24.510 to allow waste produced outside the permit area to be used for ''other purpose or disposed of on the mine site,'' in addition to use as fill material, if the permittee can demonstrate that the disposal will be conducted in accordance with sections of the Montana program concerning hydrologic requirements, soil redistribution and stockpiling, the establishment of vegetation, ''and any other applicable provisions of the Act and rules.'' One included requirement is the performance standards at ARM 17.24.505, which governs the disposal of wastes generated on-site. All waste material used on the permit area must receive prior approval by the Department. Montana's explanatory note indicates that wastes might in the future be used for purposes other than fill or disposal (*e.g.*, for road base material or road sanding in winter).

The counterpart Federal regulations for coal mine waste (30 CFR 816.81(b)/817.81(b)) require that coal mine waste material from activities located outside a permit area may be disposed of in the permit area only if approved by the RA. Approval shall be based upon a showing that such disposal will be in accordance with those section's standards concerning coal mine waste disposal. This language is substantively similar to the Montana proposed revision. The Federal requirements for disposal of noncoal wastes (30 CFR 816.89/817.89) do not address off-site generated wastes or the use of wastes for beneficial purposes like those suggested by Montana. Thus, Montana's proposal to regulate these materials according to the performance standards for hydrology, coal waste disposal, soil protection, revegetation, and all other applicable requirements, is not inconsistent with the Federal requirements.

Since both the Federal regulation and the Montana rule allow for disposal of coal mine waste materials generated off the permitted area when approved by the RA and based a showing that performance standards will be met, we find the Montana revision to be no less effective than the Federal requirements. We approve the proposed rule.

C.11. ARM 17.24.514 Contouring (30 CFR 816.102(j))

Montana proposed to delete ARM 17.24.514 concerning contouring, stating it to be ''redundant.'' ARM 17.24.514 states that final grading and surface preparation, before soil replacement, must be done along the contour to minimize subsequent erosion and instability unless approved otherwise by the RA. Surface preparation must be performed to minimize erosion and provide a surface for the replacement of soil that will minimize slippage.

At ARM 17.24.501(4), (5), and (6) and ARM 17.24.702(4) and (5), Montana addresses all or parts of the requirements to restore lands to approximate original contour; to grade to prevent slope failure, slippage and erosion; and to scarify on the contour. The Federal regulations address these requirements at 30 CFR 816/817.102(a), (j), and (k). Therefore, we agree that ARM 17.24.514 is redundant in the Montana program as it is covered at ARM 17.24.501 and 17.24.702. We approve the proposed deletion as being no less effective than the Federal regulations.

C.12. ARM 17.24.519A and .520 Thick Overburden and Excess Spoil (30 CFR 816.104)

At 17.24.519A, Montana proposed to move the requirements with revisions to 17.24.520. We note that Montana, in an earlier program amendment (MT–003-FOR; Administrative Record Nos. MT–12–01 and MT–12–5; February 1 and 28, 1995), proposed deletions in this rule on which OSM deferred a decision (February 12, 2002; 67 FR 6395, 6400; see Finding L). We must address that deferral before we address the current proposals.

The earlier deletions were (1) the requirement that all highwalls and spoil piles be eliminated with spoil and suitable waste materials; and (2) a variance from that requirement, based on highwall retention and alternate reclamation rules at ARM 26.4.313(3)(b) and 26.4.821–824. We further note that this second provision, *i.e.,* the variance, had been deferred by OSM in a still earlier amendment (MT–001 and MT–002; Administrative Record No. MT–5–1; December 21, 1988; *see* final rule dated May 11, 1990; 55 FR 19728, 19730; *see* Finding 3). Since this variance provision had never been approved by OSM, we have no objection to its deletion. The deletion of the first provision was deferred until it could be established, by the Montana rule making that is the subject of the current program amendment, that the requirement for the elimination of highwalls and depressions existed elsewhere in the revised Montana program. We note that the currently proposed ARM 17.24.501, referencing the currently proposed definition of ''approximate original contour,'' does indeed contain this requirement. Hence, we find the earlier-proposed deletion of this requirement, on which we earlier deferred a decision, to be not inconsistent with the Federal requirements. Since the remainder of 17.24.519A is being moved to 17.24.520, we find that the deletion of 17.24.519A does not substantively alter the Montana program, and we approve it.

At 17.24.520(1) and (2), Montana proposed new provisions taken in part from 17.24.519A. Paragraph (1) defines thick overburden according to a factor of 1.2. At paragraph (2), Montana adds the performance standard that for thick overburden, highwall elimination must be accomplished by backfilling (rather than highwall reduction) before any excess spoil disposal would be allowed. The Federal regulations at 30 CFR 816.104 do not place a numerical value on overburden thickness. Rather, thick overburden is defined more generally as those situations where the postmining (bulked) overburden depth so exceeds the premining depth (*i.e.*, the sum of overburden and coal depth) that backfilling and grading would not achieve AOC. The Federal performance standard for thick overburden is to restore AOC, then use remainder to attain the lowest possible grade, or dispose of it as excess spoil. We find the Montana proposal to be consistent with these requirements, and we approve it.

C.13. ARM 17.24.522 Permanent Cessation of Operations (30 CFR 773.4(a))

OSM advised Montana in an October 17, 1995, issue letter on MT–003-FOR (Administrative Record No. MT–12–16) that the Montana program needed to address situations where a permit is terminated, revoked, or suspended. In this submittal, Montana proposed a revision clarifying that an operator who permanently ceases strip or underground mining operations in all or part of the permit area must permanently reclaim all affected areas regardless of whether the permit has expired, been revoked, or suspended. Additionally, Montana added an editorial clarification that this provision addresses mining operations not only in all of the permit area, but also when operations cease in only a part of the permit area. Therefore, Montana has made the revisions required by OSM. We find this revision to be no less effective than the Federal regulations and approve the proposed revision.

C.14. ARM 17.24.601 General Requirements for Road and Railroad Loop Construction (30 CFR 816/817.150, 816/817.151, and 816/817.181)

Montana proposed numerous changes to this rule. In several sections, Montana proposed to apply these requirements to railroad loops in addition to roads. Under OSM's rules, railroads are considered ''support facilities.'' Their performance standards at 30 CFR 816/817.181 are similar to, but less specific than, the performance standards for roads. We find that applying road performance standards to railroad loops is not inconsistent with the Federal requirements.

In paragraph (1), Montana proposed to expand the conditions under which roads would be allowed to traverse otherwise reclaimed areas, with justification based on the needs of the operation. OSM's regulations do not address any limitation on road location in regard to any potential delay of other reclamation. Thus, we find that this proposed revision is not inconsistent with the Federal requirements.

At paragraph (2)(a) and (b), Montana proposed to delete some requirements for ramp roads. In OSM's regulations, ramp roads are excluded from the definition of ''road'' at 30 CFR 701.5, and hence OSM has no requirements for ramp roads. At subparagraph (c), Montana proposed to delete several requirements for specific grades, and to delete former (2)(e) regarding horizontal and vertical alignment of roads. New (2) would require that access and haul roads be graded, constructed, and maintained according to sound engineering and construction practices to incorporate appropriate limits for grade, width, surface material, surface-drainage control, culvert placement, and any other design criteria established by the Department. The Federal provisions at 30 CFR 816.150(c) similarly require that the design and construction of roads incorporate ''appropriate'' limits for grade, without specific numeric grade limits. For the reasons discussed here, we find the proposed revisions at paragraph (2) to be consistent with the OSM regulations.

Montana proposed at paragraph (6) to delete the last sentence regarding the applicability of State and Federal legal limitations on runoff from roads and railroad loops. As Montana notes, this provision is redundant with ARM 17.24.633(4).

At paragraph (9), Montana proposed to add a requirement for Departmental approval of dust-control methods. The Federal requirements at 30 CFR 816.150(b)(1) only require compliance with current prudent engineering practice. We find Montana's proposal to be consistent with the OSM requirement.

At paragraph (10), Montana proposed to delete some specific road reclamation requirements and state that roads must be reclaimed in accordance with the approved plan (under ARM 17.24.321(1)(g), the road reclamation plan must be in accordance with the standards of subchapters 5 through 8). Montana's narrative explained that the intent was to simplify the language while retaining the meaning. Proposed for deletion was the phrase ''graded to approximate original contour and ripped, subsoiled or otherwise tilled.'' We note that under ARM 17.24.501(4), all affected lands are required to be regraded to approximate original contour, and ARM 17.24.702(4)(b) requires that all regraded areas must be scarified to a minimum of 12,'' and the operator must also achieve revegetation success (which may require deeper ripping). Also proposed for deletion was a sentence requiring reclaimed roads to be resoiled, conditioned, and seeded in accordance with subchapter 7 and a sentence indicating reclaimed roads must be abandoned in accordance with the Act and its rules. We note that subchapter 7, the Act, and the Act's rules are applicable with or without this language. Also proposed for deletion was a list of suggested measures to control erosion on reclaimed roads. The requirement to control erosion remains. We note that the suggested list is directory, not mandatory. Based on the above discussion, we find that the proposed revisions to paragraph (10) only eliminate redundant language and do not change any fundamental requirements.

For these reasons, we approve the revisions proposed for ARM 17.24.601.

C.15. ARM 17.24.603 Road and Railroad Loop Embankments (30 CFR 816/817.150, 816/817.151, and 816/817.181)

Montana proposed numerous changes to this rule. Previously, this rule also applied to embankments that impound water. In several sections, Montana proposed to delete requirements for such embankments, adding a new statement at proposed paragraph (5) that embankments which impound water must be designed and constructed in accordance with ARM 17.24.639. We agree with moving the requirements for water-impounding embankments to ARM 17.24.639. They will be discussed in a separate finding below.

In the introductory paragraph, Montana proposed to delete language requiring that road/railroad embankments be designed and certified by a registered professional engineer. We note that this requirement still exists at ARM 17.24.321(3).

At previous paragraphs p(1)–(8) and (10)–(12), Montana proposed to delete numerous specific design, construction, and performance standards. Following the deletions, the remaining standards would be: at (1), removal of all organic material from embankment foundations; at (2), embankment material must meet some suitability standards; at (3), embankment layers must be compacted as necessary; and at (4), minimum seismic safety factor of 1.2 and static safety factor of 1.5 must be met.

OSM requirements for road embankments at 30 CFR 816/817.151(b) apply only to primary roads, and provide that each primary road embankment shall have a minimum static factor of 1.3 (or meet the requirements established under Sec. 780.37(c), which allow for regulatory authorities to establish design standards in lieu of the static safety factor). The Federal regulations for support facilities (which includes railroads) at 30 CFR 780.38/784.30 and 816/817.181 have no embankment or stability requirements. Therefore, we find that the proposed deletion of the more specific design, construction, and performance standards is not inconsistent with the Federal requirements.

For the reasons discussed above, we approve the proposed revisions to ARM 17.24.603.

C.16. ARM 17.24.604 Soil Removal (From Road Areas) (30 CFR 816/817.22, 816/817.150, 816/817.151, and 816/817.181)

Montana proposed to delete this rule, which required removal of soil before road or railroad construction, including a distance of 10 feet (or other distance approved by the regulatory authority) from the edge of the road, and to prevent contamination or degradation of soil. In its explanatory note, Montana indicates that all of these requirements are duplicated at ARM 17.24.701, except the 10 feet distance. They note that the 10 feet distance is arbitrary and impractical.

OSM's rules regarding roads and support facilities at 30 CFR 816/817.150, 816/817.151, and 816/817.181 do not address soil handling for roads; instead, soil handling requirements for all mining operations, including roads, are addressed in 30 CFR 816/817.22. There is no requirement for soil removal beyond the edges of roads or railroads. We find that Montana's proposed deletion of ARM 17.24.604 is not inconsistent with the Federal requirements, and we approve the deletion.

C.17. ARM 17.24.605 Hydrologic Impact of Roads and Railroad Loops (30 CFR 816/817.150, 816/817.151, and 816/817.181)

Montana proposed numerous changes to this rule. In several sections, Montana proposed to apply these requirements to railroad loops in addition to roads. Under OSM's rules, railroads are considered ''support facilities.'' Their performance standards at 30 CFR 816/817.181 are similar to, but less specific than, the performance standards for roads. We find that applying road performance standards to railroad loops is not inconsistent with the Federal requirements.

At paragraph (1), Montana proposed to delete the requirement that contributions of sediment not exceed the limits of State or Federal law. As Montana noted in its explanation, this requirement also exists at ARM 17.24.633(4). Therefore, the deletion of this language does not eliminate the requirement.

At paragraph (2), Montana proposed to delete some detailed requirements for locations of road drainage ditches, particularly with regard to cut and fill slopes. Similar language existed in OSM's initial permanent program rules at then-existing 30 CFR 816.153(b)(1), but was subsequently deleted. Currently, at 30 CFR 816/817.151(d)(3), there are no corresponding requirements for road ditches. Montana also proposed to delete the last sentence of paragraph (2), which addressed ditch slope. As Montana notes, this is redundant with paragraph (3) (intro), which requires all roads to be adequately drained. Therefore, we find that these proposed deletions are not inconsistent with Federal requirements.

At paragraph (3), Montana proposed to exclude ramp roads from road drainage control requirements. As noted above, in OSM's regulations ramp roads are excluded from the definition of ''road'' at 30 CFR 701.5, and hence OSM has no requirements for ramp roads

beyond the general sediment controls required in the pit area. Montana also proposed to add culverts and bridges to the non-exhaustive list of drainage control structures that may be used. The Federal provision at 30 CFR 816/817.151(d)(1) similarly suggests culverts and bridges. Therefore, we find that these proposed revisions are not inconsistent with the Federal requirements.

At new subparagraph (3)(a), Montana proposed to delete the restriction that discharge capacity of road water-control structures may not rely on hydraulic head (*i.e.*, impoundment at the entrance). Instead, Montana proposed that the discharge must ''safely'' pass the required design event. Montana notes in its explanation that use of hydraulic head to increase discharge rates can be safe in some cases. The OSM requirement at 30 CFR 816/817.151(d)(1) only requires that the drainage-control system be designed to ''safely pass'' the design event. We find the Montana revision to be consistent with the Federal requirement. Montana also proposed to add a provision that the Department may require a greater design event for culverts than the 10-year storm. This revision matches language in the Federal rule.

At new subparagraph (3)(b), Montana proposed to delete a requirement that certain large culverts be designed for a 25-year storm event. Similar language existed in OSM's initial permanent program rules at then-existing 30 CFR 816.153(c)(1), but was subsequently deleted. Current OSM rules require, for primary roads, that the drainage control system be designed for a 10-year storm ''or greater event'' as specified by the regulatory authority (which was also added by Montana at new subparagraph (3)(a)). We find that Montana's proposed revision is consistent with the Federal requirement.

At new subparagraph (3)(c), Montana proposed to delete culvert requirements for trash racks and fill cover depths. Similar language existed in OSM's initial permanent program rules at then-existing 30 CFR 816.153(c)(1), but was subsequently deleted. OSM's current regulations at 30 CFR 816/817.151(d)(2) require only that culverts be maintained in a free and operating condition. Montana has retained language requiring that culverts be constructed to avoid plugging. We find Montana's proposed deletion to be consistent with the Federal requirements.

Also in this subparagraph, Montana has proposed to delete a provision specifying culvert spacing. Again, similar language existed in OSM's initial permanent program rules at then-existing 30 CFR 816.153(c)(2), but was subsequently deleted. OSM's current regulations at 30 CFR 816/817.151(d)(1) require only that the drainage control system be designed to safely pass the runoff from the design storm event. A similar requirement exists in the Montana program at subparagraph (3)(a). We find Montana's proposed deletion to be consistent with the Federal requirements.

At new subparagraph (3)(f), Montana proposed to delete a cross-reference requiring soil removal to be consistent with ARM 17.24.604. As noted in the finding above, we are approving deletion of the Montana rule at ARM 17.24.604. As noted above, OSM regulations do not impose any soil-removal requirements specific to roads. We find Montana's proposed deletion of this cross-reference to be consistent with the Federal requirements.

For the reasons discussed above, we approve Montana's proposed revisions to ARM 17.24.605.

C.18. ARM 17.24.607 Maintenance of Roads and Railroad Loops (30 CFR 816/817.150, 816/817.151, and 816/817.181)

Montana proposed to make the following revisions concerning the maintenance of roads: (1) Montana proposed to include railroad loops with the performance standards for roads and eliminate the differentiation of ''access and haul'' roads; (2) at new subsection (2)(a), Montana proposed to eliminate the phrase ''resulting from sudden runoff events'' concerning wet field conditions; (3) at new subsection (2)(c), Montana proposed to specify that runoff and sediment are contained ''in accordance with the approved drainage control plan;'' and (4) Montana proposed to make other editorial revisions and to recodify some provisions.

At ARM 17.24.607, as well as other sections in this submittal, Montana proposed to add ''railroad loops,'' and to eliminate the differentiation of access and haul roads in favor of ''roads.'' OSM has approved Montana's definition of ''railroad loops'' in another technical finding. Under OSM's rules, railroads are considered ''support facilities.'' Their performance standards at 30 CFR 816/817.181 are similar to, but less specific than, the performance standards for roads. We find that applying road performance standards to railroad loops is not inconsistent with the federal requirements.

At paragraph (1), Montana's proposal would apply maintenance requirements to all roads. Since Montana's definition of roads includes more travel ways than does the Federal definition, the maintenance requirement is being applied to all roads covered by the Federal requirement at 30 CFR 816/817.150. Therefore, we find Montana's proposed revision to be consistent with the Federal requirement.

At ARM 17.24.607(2)(a), Montana proposed to eliminate the phrase ''resulting from sudden runoff events'' concerning the operator's inability to maintain ditches, culverts, drains, trash racks, debris basins and other drainage structures due to wet field conditions. Montana has proposed this deletion to broaden the rule and to consider all wet field conditions, not only those caused by sudden runoff events. For example, this may apply to spring snow melt. As previously approved, the provision in essence allows temporary deferral of maintenance on drainage-control structures under wet conditions, but the deferral is only allowed when there is no environmental or public risk and when all sediment is controlled. There is no corresponding OSM provision. Given the limits on the applicability of the deferral, we find that extending the deferral to other wet field conditions is not inconsistent with the Federal requirements.

Based on the discussions above, we approve Montana's proposed revisions to this rule.

C.19. ARM 17.24.623 Blast Schedule (30 CFR 816/817.64)

Montana proposed to delete the requirement that the blasting period may not exceed an aggregate of 8 hours in any one day and that the Department may impose more restrictive conditions pursuant to ARM 17.24.624.

The Federal equivalent at 30 CFR 816.64(a)(1) states that the operator shall conduct blasting operations at times approved by the RA and that the RA may limit the area covered, timing, and sequence of blasting as listed in the schedule if such limitations are necessary and reasonable in order to protect the public health and safety or welfare. The provision which Montana proposed for deletion falls within the State's discretion to specify, according to the Federal regulations. There is no exact Federal equivalent. Therefore, we find the proposed revisions are not inconsistent with the applicable Federal provisions and we approve them.

C.20. ARM 17.24.633 Water Quality Performance Standards (30 CFR 816/817.42, 816/817.46)

At paragraph (3), Montana proposed to extend the requirement that sediment ponds be constructed prior to mining to all sediment controls and add a cross-reference requiring compliance with

ARM 17.24.638 (sediment control measures). As revised, all sediment controls must be constructed before mining operations, and comply with ARM 17.24.638 and 17.24.639. Similarly, OSM's rules at 30 CFR 816/817.46(b)(3) and (4) require all siltation structures to be constructed prior to mining operations, and impoundments to be in compliance with the impoundments rule. We find Montana's proposed revisions to be consistent with the Federal requirements.

At paragraph (4), Montana proposed to delete language specifying under which circumstances effluent limits apply, but the deleted language is replaced by the added language ''all discharges which include * * * [water from disturbed areas].'' Similarly, Montana proposed to delete a non-exhaustive list of effluent parameters which must be met, but also proposed to replace the deletion with language stating that discharges must be in compliance with all Federal and State laws and regulations and ''all applicable effluent limitations.'' The Federal requirement at 30 CFR 816.42 requires that discharges of water from disturbed areas meet effluent limits promulgated by the U.S. Environmental Protection Agency. We find Montana's proposed revisions to be consistent with the Federal requirement. At subparagraph (4)(b), Montana proposed to delete language requiring that ''when BTCA practices result in a point discharge, the discharge must meet applicable effluent limitations.'' Montana's explanation notes that this language is redundant. We agree that the deleted language is repetitive (''discharges must be in compliance with all federal and state laws and regulations and all applicable effluent limitations''). We also note that this deletion would not affect any legal requirements under the Montana counterparts to the Clean Water Act.

At paragraph (6), Montana proposed to delete a provision requiring that ''BTCA [Best Technology Currently Available''] practices must be installed, operated, and maintained to treat any water discharged from the disturbed area to ensure compliance with all federal and state laws and regulations and the limitations of this rule.'' We agree with Montana that this provision was redundant, repeating other language in the rule as noted above.

For the reasons discussed above, we find that Montana's proposed revisions are no less effective than the Federal requirements, and we approve the proposed revisions.

C.21. ARM 17.24.634 Reclamation of Drainages (30 CFR 816/817.43)

At paragraph (2), Montana proposed to delete the requirement for operators to submit design modifications at least 120 days prior to reclamation of a drainage. However, the designs would still be required to be approved by the Department before construction begins. We note that reclaimed drainages meet the definition of ''diversion'' at ARM 17.24.301(33), and in particular are permanent diversions. Hence, under ARM 17.24.317, initial designs must be included in the initial permit application. Further, Montana proposed to delete language requiring the operator to notify the Department when construction begins, and to require Departmental inspection and approval of regraded drainages prior to resoiling and seeding. We agree with Montana that the explicit timeframe for submission of revised designs is not needed, so long as regulatory authority approval is obtained prior to construction. We further agree with Montana's explanatory note that operational efficiencies of both the mine operator and the Department are unnecessarily limited by the notification and pre-soiling inspection and approval requirements. The Federal regulations at 30 CFR 816/817.43 contain no such specific requirements.

Also at paragraph (2), Montana proposed to delete the word ''detailed,'' used to describe the required designs. We agree that the specific requirements for the designs are specified elsewhere. Also proposed for deletion was the requirement that the designs ''represent the state of the art in reconstruction of geomorphically stable channels.'' We agree that ''state of the art'' is a subjective standard difficult to enforce fairly, and that geomorphically stable channels are in any case required under paragraph (1) of the rule.

Montana further proposed to delete language requiring that drainage reclamation designs be certified by a qualified registered professional engineer. Montana's explanatory note indicates that the requirement ''is unnecessary, because there does not appear to be more of a rationale for having such designs certified compared to any other work submitted by an operator that does not currently require certification. There is nothing particularly unique or critical (*e.g.*, public safety) about drainage designs that requires certification. Thus, this requirement is proposed for deletion.'' We disagree with this position. Like diversions in general, reclaimed stream channels require the calculation of runoff volumes, peak flows, channel-flow velocities, and erosive potential. In this case, there is a particular need to address ''geomorphic habit or characteristic pattern,'' geomorphic stability, and riffle-pool sequences. Therefore, we find adequate need for professional engineer design and certification. We note that the Federal rules at 30 CFR 816/817.43(b)(4) require stream channel diversions of intermittent and perennial streams to be designed and certified by a registered professional engineer. However, we note that in this case deletion of this language does not in fact delete the requirement that reclaimed drainages be designed and certified by a registered professional engineer. As discussed above, these reclaimed drainages meet the Montana definition of ''diversion'' at ARM 17.24.301(33). Hence, under ARM 17.24.635(5), design and certification by a registered professional engineer is still required for any diversion of a stream channel.

At paragraph (3), Montana proposed to remove subparagraph (1)(a) from the requirements for which alternative reclamation techniques might be approved. This deletion would restrict the allowed variance to a greater extent than is currently approved. There is no exact Federal counterpart to this rule. The regulations at 30 CFR 780.21(h), 816.41(a) and (d), and 816/817.43(b) require that diversions protect the hydrologic balance, water quality, and channel volume. We find Montana's proposed deletion to be consistent with those requirements.

For the reasons discussed above, we find that Montana's proposed revisions are no less effective than the Federal requirements, and we approve the proposed revisions. As noted above, approval of the proposed deletion in paragraph (2) of the requirement for engineer design and certification of designs for drainage channel reclamation does not effectively eliminate that requirement, as it is duplicated in ARM 17.24.635(5).

C.22. ARM 17.24.639 Sedimentation Ponds and Other Treatment Facilities (30 CFR 816/817.46, 816/817.49)

At subparagraph (1)(c), Montana proposed to delete a requirement that sediment storage in sediment ponds be determined using the universal soil loss equation (with some specified parameters), the sediment density method, or other empirical method derived from regional studies. The revision would instead require only that the sediment storage volume be determined by a method approved by the Department. One currently-

approved alternative to this, to provide 0.035 acre-feet per disturbed acre, was proposed to be revised by reducing the required volume to 0.02 acre-feet per acre and excluding acres of well-established reclamation. Lesser sediment storage would be allowed upon site-specific demonstration, but greater sediment volume may be required if necessary. The corresponding Federal regulation at 30 CFR 816/817.46(c)(1)(iii)(A) only requires sediment ponds to provide adequate sediment storage volume. The preamble to this regulation (48 FR 44032, 44041–2; 9/26/83) states that the determination of actual sediment storage volume is left to the professional engineer, and that in approving the design the regulatory authority must be satisfied that the storage volume is adequate. Montana has long-term experience in working with sediment volume estimates in its coal fields. Under the proposed revision, Montana must approve the method of storage volume calculation. Montana has also determined that 0.02 acre-feet of storage per acre of disturbed area is adequate. Montana also retains the ability to require greater storage volumes when necessary. Therefore, this proposed revision is no less effective than the corresponding Federal regulation.

At paragraph (2), Montana proposed to delete a requirement that the permittee may be required to conduct annual bathymetric studies of some sediment ponds. There is no such requirement in the Federal regulations. Therefore, the proposed deletion is not inconsistent with the Federal requirements.

At existing paragraph (6), Montana proposed to delete a statement that compliance with this rule does not eliminate operator responsibility for compliance with the effluent limits of ARM 17.24.633. The earlier rule, as discussed above, requires that all discharges must be in compliance with all effluent limits. We agree with Montana that the language proposed for deletion duplicates the requirements of ARM 17.24.633. Therefore, the proposed deletion is not inconsistent with the Federal requirements.

At existing paragraph (9), Montana proposed to delete a requirement that embankments for sediment ponds be constructed in compliance with ARM 17.24.603. As discussed above, Montana is moving such requirements from ARM 17.24.603 to this rule at paragraphs (11)–(17). Therefore, this proposed deletion does not remove any applicable requirements.

At existing paragraphs (12), (14), and (15), Montana proposed to delete requirements that (1) Embankment heights be increased to allow for settlement; (2) specified embankment slopes; and (3) specified foundation scarification. There are no such requirements in the Federal regulations. Therefore, the proposed deletions are not inconsistent with the Federal requirements.

At new paragraphs (13) and (15)(c), Montana proposed to add requirements for embankment foundation construction on steeper slopes and embankment compaction standards. There are currently no such Federal requirements, though similar detailed design specification were earlier included in OSM's first permanent program regulations in 1979. These requirements are not inconsistent with the Federal requirements for impoundment stability at 30 CFR 816/817.49(a)(4) and foundation stability at 816/817.49(a)(6).

At paragraph (18), Montana proposed to add a requirement for temporary sediment controls during sediment pond construction. There is no such requirement in the Federal regulations, but this is not inconsistent with the requirement at 30 CFR 816/817.46(b) that additional contributions of sediment be prevented to the extent possible.

At paragraph (22)(b), Montana proposed a new requirement that, for ponds containing (rather than passing) design storms, the design certification indicate that safe dewatering will occur within appropriate times. Montana proposed this revision in response to our letter of July 10, 1997 (Item 10b), in which we identified issues in a previous program amendment submittal. The proposed addition is substantively the same as the Federal requirement at 30 CFR 816/817.49(c)(2).

At paragraph (27)(a), Montana proposed to delete a requirement that, for excavated sediment ponds, the perimeter slopes must not be steeper than 33 percent. Montana's explanatory note indicates that steeper slopes would help minimize the amount of land disturbed and increase operational efficiency. The Federal regulations at 30 CFR 816/817.46 and 816/817.49 do not specifically address excavated impoundments, nor their perimeter slopes. The vertical portion of any remaining highwall is required at 816/817.49(a)(10) to be far enough below water line to provide adequate safety for water users. Impoundment designs must be certified as meeting current, prudent engineering practices, which would include stable slopes; this would still be required by the Montana rule. We find the proposal to be consistent with these requirements.

For the reasons discussed above, we approve these proposed revisions.

C.23. ARM 17.24.645(6) and 17.24.646(6) Ground Water Monitoring and Surface Water Monitoring (30 CFR 816/817.41(c), (e))

Montana proposed to revise these paragraphs to update references to standard water quality analysis methods that may be used for ground water monitoring. Most of the revisions are editorial clarifications. One of the standard references proposed for approval is the Department's ''Circular WQB–7'' (November 1998 edition). In a final rule dated February 12, 2002 (67 FR 6395, 6401; *see* Finding P), we deferred a decision whether to approve an earlier proposed revision to these paragraphs that referenced an earlier (April 1994) edition of ''Circular WQB–7.'' We deferred then because Montana informed us that ''Circular WQB–7'' was being revised, and we could not approve the revised rule until the new edition of ''Circular WQB–7'' was reviewed by OSM to ensure that it did not conflict with 40 CFR part 136.

We have not yet been able to review the revised ''Circular WQB–7.'' However, we note that the current proposed revision requires groundwater analyses to comply with both 40 CFR part 136 and ''Circular WQB–7.'' Hence, if any conflict exists, the discrepancy would have to be resolved in favor of the more stringent requirements. Therefore, we find that the proposed revisions are not inconsistent with the Federal requirement, and we approve the revisions. This action supercedes the earlier deferral.

C.24. ARM 17.24.702(6) Redistribution and stockpiling of soil (30 CFR 816/817.22(d))

Montana proposed to delete the requirement that soil redistribution achieve ''approximate uniform'' thicknesses. Montana's explanatory note indicates that the intent is ''to allow varying soil substrate thicknesses conducive to plant diversity and specific revegetation needs.''

We note that ARM 17.24.701 requires removal of soil from all areas disturbed by mining operations. Hence, ''redistribution'' would imply that all such areas receive at least some soil during resoiling operations. Similarly, ARM 17.24.702(1) and (2) require soil to be distributed on all graded areas. Taken together with paragraph (6) as proposed for revision, all of these requirements would imply that no area disturbed by mining operations could be left without

any soil. So the question is whether the disturbed area must all be resoiled to the same thickness.

The preamble to the Federal regulation (48 FR 22100; May 16, 1983) included a discussion of this issue. Concern was expressed by a commenter that uniform soil depths might lead to monocultures and be incompatible with reclamation objectives. In response, OSM modified the final rule to add that redistribution would be to an approximately uniform thickness ''consistent with the approved postmining land use'' and final graded contour. We note that native undisturbed soils exhibit a great range of depths within small areas, reflecting both topographic impacts and biotic influences, and soil depth range contributes to the premine plant communities and landscape diversity. Efforts to reconstruct the premining ecosystem should thus also include varying replaced soil depths to reflect topography, the various plant communities to be obtained by revegetation, and postmining land use. The Montana rules at ARM 17.24.313(4)(c)(ii) require such soil replacement depths to be specified in the permit application. We note that the majority of reclamation in Montana is directed to the postmining land uses of grazing and wildlife habitat, with the goal of achieving diverse plant communities, for which varying soil depths are appropriate. On lands with postmining land uses where approximately uniform soil replacement depths are appropriate (such as cropland or pasture), Montana would retain the authority to require such approximately uniform depths.

Because Montana has retained the requirement that soil be redistributed in a manner that achieves thicknesses consistent with soil resource availability and appropriate for the postmining vegetation, land uses, contours, and surface water drainage patterns, we find that the proposed deletion of the requirement for approximate uniform thickness does not render the Montana program less effective than the Federal requirements in achieving the purposes of SMCRA.

C.25. ARM 17.24.711(1) Establishment of vegetation (30 CFR 816/817.111)

Montana proposed to move from ARM 17.24.716(2) two requirements: that the revegetation consist of predominantly native species and that the revegetation be capable of self-regeneration. We agree with Montana that those requirements make more sense in this rule, stating general performance standards, than in the latter rule about revegetation methods. Accordingly, we approve this revision.

Montana also proposed to add exceptions to the ''predominantly native'' requirement as provided in MCA 82–4–233(4) or 82–4–235(2). The first of these is a provision that, for some operations (those seeded between SMCRA's initial regulatory date and January 1, 1984), introduced species are considered by Montana to be necessary and desirable to achieve the postmining land use and may constitute a major or dominant component of the revegetation. This provision was approved by OSM on June 12, 2001 (66 FR 31530, 31531; Finding 3). The provision at MCA 82–4–235(2) provides a similar allowance, and supplemental planting without restarting the bond liability period, for areas disturbed prior to SMCRA regulation. It was approved by OSM on January 22, 1999 (64 FR 3604, 3608; Finding 8). The revision proposed at ARM 17.24.711(1) implements these previously-approved statutory exemptions, and is therefore not inconsistent with the Federal requirements. Therefore, we approve this revision.

C.26. ARM 17.24.716(2), (5) Method of revegetation (30 CFR 816/817.111)

As noted in the finding above, Montana proposed to move two requirements from paragraph (2) of this rule to ARM 17.24.711: that the revegetation consist of predominantly native species and that the revegetation be capable of self-regeneration. This revision was approved in that finding. Other descriptors proposed for deletion here (*e.g.* permanent, diverse) are duplicated in the earlier rule, and we also approve those deletions.

Montana also proposed in paragraph (2) to: (1) Change a requirement for Department approval of seeding other than on the contour to a requirement that seeding be done on the contour whenever possible; and (2) delete an allowance for drill seeding in separate rows according to Soil Conservation Service (now known as Natural Resources Conservation Service) guidelines. These existing requirements provided more detail than is contained in the Federal requirements at 30 CFR 816/817.22 and .111–.114. Therefore, deletion of these more specific provisions is not inconsistent with the Federal requirements and we approve them.

At subparagraph (5)(b), Montana proposed to add two allowances for introduced species intended to implement two statutory revisions previously approved by OSM. For the same reasons discussed in the finding above on ARM 17.24.711, we approve the revisions proposed here.

C.27. ARM 17.24.733(3) Measurement Standards for Woody Plants (30 CFR 816/817.116(b)(3))

Montana proposed to delete a provision requiring that, when counting woody plants with multiple stems, only the tallest stem may be counted. There is no Federal counterpart for the provision proposed for deletion.

We agree with Montana's statement that it is often difficult to determine which multiple stems constitute one individual, and hence difficult to obey the provision. Further, as long as the same techniques are used for both determining success standards and measuring success against those standards, determination of revegetation success is not hindered. Therefore, we find that the proposed deletion does not render the Montana program less effective than the Federal regulations and we approve the revision.

C.28. ARM 17.24.825(3) Alternate Reclamation: Alternate Revegetation (30 CFR 816/817.116(b)(2))

In this paragraph, Montana proposed to revise one method of determining revegetation success standards for non-prime farmland cropland from target yields under ARM 17.24.815(2) to technical standards from historical data under 17.24.724(5). We note that success standards for prime farmlands are those specified at ARM 17.24.815(2). The success standards addressed in this revision are for non-prime cropland, and need not address the requirements for prime farmland.

The Federal regulations at 30 CFR 816/817.116(b)(2) require only that, in determining whether revegetation meets the premining vegetation, either a reference area or other success standards be specified by the regulatory authority. We find that the reference to technical standards derived from historic data meets these requirements. Therefore, we approve the revision.

C.29. ARM 17.24.901 and .911 Underground Mining, General Application Requirements and Subsidence Control (30 CFR 784.20, 817.121, 817.41(j))

Montana proposed revisions to these sections in response to OSM's letter (June 5, 1996) in accordance with 30 CFR part 732, which informed Montana of changes needed to its program to implement the provisions of the Energy Policy Act for subsidence protection and water supply restoration in connection with underground mines.

Montana notes that it interprets its statutory language at 82–4–231(10)(f) to require that (except where planned subsidence is used) subsidence be prevented, rather than merely minimized or mitigated. For this reason, it has altered certain Federal counterparts in these proposed revisions, as will be discussed below.

At subparagraph ARM 17.24.901(1)(c)(i)(G), Montana proposed to require a survey of the condition of all residences (and related structures) and all non-commercial buildings within the area of the pre-subsidence survey (*i.e.*, the permit area and adjacent area). We consider this area to be at least as extensive as the area initially required by the Federal regulation at 30 CFR 784.20(a)(3) (*i.e.*, the angle of draw). However, the areal extent of the Federal requirement is in any case under suspension by court order.

At subparagraph 17.24.901(1)(c)(iii)(A)(II) and (III), Montana proposed (for the subsidence control plan) to require a description of measures to be taken underground and on the surface to prevent subsidence and material damage to structures and lands. These proposals reflect Montana's statutory interpretation noted above that the rules must prevent subsidence. The counterpart Federal requirements at 30 CFR 784.20(b)(5) require descriptions of measures to prevent or minimize subsidence and material damage. We find Montana's proposal to be no less effective than the Federal requirements.

At subparagraph 17.24.911(2), for operations with planned and controlled subsidence, Montana proposed to require that all necessary measures be taken to prevent material damage to protected structures. The only exception is if the operator has written consent from the owners. This proposal again reflects Montana's statutory interpretation noted above that the rules must prevent subsidence. The counterpart Federal requirements at 30 CFR 817.121(a)(2) require measures to minimize damage ''to the extent technologically and economically feasible,'' and an additional exception is allowed for cost-benefit considerations. We find Montana's proposal to be no less effective than the Federal requirements.

At subparagraph 17.24.911(7)(d), Montana proposed to add a requirement that the operator must replace any adversely affected domestic water supply. This paragraph applies only when underground mining has resulted in subsidence that causes material damage or reduces the value or use of surface lands. So, by adding the new provision to this particular paragraph, Montana appears to be limiting the water-replacement requirement to instances where subsidence has occurred and that subsidence has caused material damage or reduced the value or use of surface lands. The Federal requirement at 30 CFR 817.41(j) is not so limited, and applies to water supply contamination, diminishment, or interruption by any underground mining activities, regardless whether or not subsidence has occurred.

Additionally, there is an ambiguity on this point in Montana's statutory provision for water replacement for underground mines, at MCA 82–4–243. This statutory provision was submitted by Montana in a previous program amendment (Administrative Record MT–17–01; July 20 and August 17, 2000; approved by OSM on June 12, 2001 (66 FR 31530; see Finding No. 4)). The sentence requiring water replacement does not contain any limitation to subsidence (''The permittee of an underground coal mining operation shall * * * promptly replace any drinking, domestic, or residential water supply from a well or spring that was in existence prior to the application for the permit pursuant to 82–4–222 and that has been affected by contamination, diminution, or interruption resulting from the underground coal mining operation''). However, the entire section 82–4–243 is titled ''Subsidence.'' Therefore, it is unclear whether Montana intends the statute to limit water replacement for underground mines to instances where subsidence has occurred.

Under standard canons of legal analysis, by proposing in this amendment to add the water replacement requirement at subparagraph ARM 17.24.911(7)(d), which applies only when subsidence has occurred, Montana may be understood to be resolving the statutory ambiguity by interpreting the statutory provision to be limited only to instances of subsidence. And were we to approve the proposal, we could be approving that limiting interpretation; such approval would render the statutory provision less stringent than SMCRA 720(a)(2). Additionally, under standard canons of legal analysis, a specific requirement for water replacement in one circumstance (where subsidence has occurred), as proposed here, while remaining silent on other circumstances (*i.e.*, where no subsidence has occurred) may be interpreted as a deliberate exclusion of the alternate (silent) circumstance. Therefore, Montana's proposed rule might be interpreted as requiring water replacement only when subsidence has occurred and has caused material damage or reduced the value or use of surface lands. Such an interpretation would render the Montana rules less effective than the Federal requirement at 30 CFR 817.41(j), which is not so limited.

For these reasons, we do not approve the proposed addition of ARM 17.24.911(7)(d). Since the rule has already been promulgated, we are requiring Montana to amend its program by removing this provision. Further, in order to resolve the ambiguity in its statutory provision at 82–4–243, MCA (discussed above), we are requiring that Montana further amend its rules to require the prompt replacement of any drinking, domestic or residential water supply that is contaminated, diminished, or interrupted by underground mining activities, regardless of the occurrence of subsidence or whether subsidence has caused material damage or reduced the value or use of surface lands, to be no less effective in meeting the requirements of SMCRA 720(a)(2) than is 30 CFR 817.41(j).

At paragraph ARM 17.24.911(8), Montana proposed to add provisions establishing a rebuttable presumption of causation of damage by subsidence, and standards for rebutting the presumption. The proposal closely resembles the equivalent Federal counterparts at 30 CFR 817.121(4). However, these Federal requirements were suspended on December 22, 1999 (64 FR 71653). Montana's proposal provides another means for citizens to establish that damage to their buildings and/or residences was caused by subsidence (and hence subject to compensation or repair as discussed above). Even where the presumption is not applicable, citizens have other, though more difficult, means of proving causation. Protecting surface owners and those with legal interests in non-commercial buildings from the adverse effects of mining operations is one of the purposes of the Act specified at SMCRA 102(b). Therefore, providing the rebuttable presumption results in more stringent land use controls and regulation of mining operations than does the Federal regulations under the suspension. Therefore, under 30 CFR 730.11(b), we find that the proposal is not inconsistent with the Federal requirements.

Except as discussed above, the revisions proposed for ARM 17.24.901 and .911 are either minor editorial or recodification changes, or contain language that is the same as or similar to the corresponding Federal regulations promulgated to implement the Energy

Policy Act on March 31, 1995 (60 FR 16722). We find that they are no less effective than the corresponding Federal regulations. Except as discussed above regarding ARM 17.24.911(7)(d), and for the reasons discussed above, we approve the revisions proposed for these two sections.

C.30. ARM 17.24.932(5)(b) Underground Mining, Disposal of Underground Development Waste: Durable Rock Fill (30 CFR 816/817.73)

Montana proposed only a minor editorial revision to this rule, to revise a cross-reference to 17.24.924(18)(b). This cross-reference was created during an earlier program amendment (MT–003–FOR; Administrative Record Nos. MT–12–01 and MT–12–5; February 1 and 28, 1995). In the final rule addressing that amendment, OSM deferred on whether to approve the cross-reference, stating that the cross-reference should be to all of rule 17.24.924 and not to just one paragraph or subparagraph (*see* February 12, 2002; 67 FR 6395, 6404; see Finding Y). In this submittal, Montana has revised the cross-reference to reflect a recodification of 17.24.924, but has not revised the cross-reference in a way to resolve the problems identified earlier by OSM. For the reasons stated in the February 12, 2002 rule, we continue to defer a decision on this revision.

C.31. ARM 17.24.1001(2)(l) Prospecting, Permit Requirements; ARM 17.24.1018(3), (4) Prospecting, Notice of Intent (30 CFR 772.12(b)(11), (13), (c), 772.11)

Montana proposed to add at ARM 17.24.1001(2)(l) a new requirement that applications for prospecting permits include documentation that the owners of the land to be affected have been notified and understand that the Department has a right of entry for inspection and enforcement purposes.

There is no exact Federal counterpart to this proposed requirement. The Federal regulations noted above require that exploration permit applications contain the names and addresses of owners of both surface and mineral estates in the areas to be affected and, if the applicant does not own the land, a description of the legal basis for the right to explore. Additionally, as is true of the Montana program, a public newspaper advertisement of the application is required. The Montana proposal is similar to these Federal requirements, but would require more exacting and documented notification of land owners. One of the purposes of SMCRA is to assure that the rights of surface landowners and others with a legal interest are fully protected (SMCRA 102(b)). We find the Montana proposal to be consistent with this goal, and we approve the proposal.

Similarly, Montana proposed to add at ARM 17.24.1018(3) and (4) new requirements that prospecting notices of intent include (1) Copies of documents providing legal right to prospect, and (2) documentation of notice to landowners similar to that discussed above. Again, there are no exact Federal counterparts at 30 CFR 772.11. However, for the reasons discussed above in regard to ARM 17.24.1001(2)(l), we approve the proposal.

C.32. ARM 17.24.1112 Bonding, Release Applications and Objections (30 CFR 800.40(f))

At ARM 17.24.1112(h), Montana proposed to specify that ''any affected person'' may submit written comments, objections, and requests for public hearing or informal conference to the Department of Environmental Quality concerning the filing for bond release by the permittee. This information would be included in an advertisement in a newspaper of general circulation in the locality of the permit area.

The Federal regulations at 30 CFR 800.40(f) state that ''Any person with a valid legal interest which might be adversely affected by release of the bond, or responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the regulatory authority * * *.''

Montana's use of the term, ''any affected person,'' would include persons with a valid legal interest and those without a valid legal interest but affected in some other way. This interpretation is similar to the Federal regulations which address both those persons with a valid legal interest which might be adversely affected by release of the bond, and the responsible officer or head of agencies which have jurisdiction by law or special expertise with respect to environmental, social, or economic impact involved in the operations. Therefore, Montana has included in its rules a term with a substantively identical interpretation to the Federal regulations. We find the Montana revision to be no less effective than the Federal regulations and approve it.

C.33. MCA 82–4–205(2) and 206 Administration by Department and Procedure for Contested Case Hearings (SMCRA 201(c), 514(c), 525)

Montana proposed to delete an existing provision at subparagraph MCA 82–4–205(10) that stated the Department may conduct hearings under ''this part'' (*i.e.*, title 82. Minerals, Oil, And Gas; chapter 4. Reclamation; part 2. Coal and Uranium Mine Reclamation). Montana proposed to add a new paragraph (2) to provide that the board (*i.e.*, the Board of Environmental Quality) shall conduct contested hearings under the part. The effect of these revisions would be to transfer the authority to conduct contested case hearings from the Department to its overseeing board. Montana also proposed a new provision at MCA 82–4–206(1) stating that a person aggrieved by a final decision of the Department may within 30 days request a hearing before the board.

SMCRA is silent on the issue of which body should conduct contested case hearings. A provision addressing permit disputes at SMCRA 514(c) forbids anyone who presided at an informal conference from presiding at a formal hearing. SMCRA 525 establishes administrative review by the Secretary of the Interior, although under SMCRA 701(22), the Secretary is also the regulatory authority (RA). SMCRA 201(c) states that the Secretary, acting through OSM, shall be responsible for both program decisions and administrative review. In practice, however, administrative review under Federal programs is conducted by a panel answerable to the Secretary but independent from OSM. The Federal regulations at 30 CFR 732.15(b)(14) require that State programs provide for administrative review in accordance with SMCRA 525 and 30 CFR parts 840–847 (which implies the panel noted above). The 30-day period proposed by Montana is consistent with the time frames set forth in the Federal requirements. We find these Montana proposals to be consistent with the Federal requirements and we approve them.

C.34. MCA 82–4–231(8) Action on Reclamation Plan (SMCRA 503(a)(6), 510)

Montana proposed several revisions to this statutory section to alter the timing of mining permit application review in coordination with reviews under the Montana Environmental Policy Act. The revisions do not amend any substantive requirements for reviewing mining permit applications.

SMCRA does not directly address the review of permit applications under the Federal National Environmental Policy Act. However, SMCRA 503(a)(6) does require that State programs include a process for coordinating the review and issuance of coal mining permits with any other State permit process applicable to the operation. We find the proposed revisions to be consistent with the Federal provisions and we approve them.

D. Revisions to Montana's Rules With No Corresponding Federal Regulation

D.1. Definition of ''Railroad Loop'', ARM 17.24.301(95)

Montana proposed to define the term ''railroad loop'' in its program as meaning any rail transportation system within the mine permit area, whether in the form of a loop or a straight line. Montana's program currently uses the term ''railroad loop'' in its definition of ''operation'' and does not provide for straight rail configurations. Montana states that at the time the Act was passed (1973), most rail configurations were loops. In order to assure that the Department of Environmental Quality has jurisdiction over all rail configurations, Montana decided to define ''railroad loop.''

There is no direct Federal counterpart to Montana's proposed definition. At 30 CFR 816.180/817.180, OSM uses the term ''railroad'' in the discussion of utility installations. OSM does not differentiate among railroad configurations since that is not critical to SMCRA. Rather, it is the classification of railroads as utility installations and their regulation which is important. Therefore, OSM finds Montana's proposed definition to be consistent with the Federal regulations, and we approve it.

D.2. MCA 82–4–241(2) Receipts Paid Into General Fund (30 CFR 800.50)

Montana proposed to add two new provisions. At new paragraph (2), Montana proposed that bond forfeiture money not addressed in existing paragraph (1), be used for expenses pursuant to MCA 82–4–240, which addresses bond forfeiture reclamation. At new paragraph (3), Montana proposed a disposition of excess bond forfeiture funds when Montana cannot locate the funds' owners.

SMCRA does not specifically address these issues. The Federal regulations at 30 CFR 800.50 at (b)(2) require forfeiture receipts to be used for reclamation. At 30 CFR 800.50(2)(c), excess funds are to be returned to the party from whom they were collected, but the regulation is silent about disposition of the funds when that party cannot be located. We find the Montana proposals to be consistent with the Federal provisions and we approve them.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. MT–20–06). We received a comment letter from one individual, with several comments as discussed below.

The commenter expressed a concern about the proposed removal of blasting restrictions. We interpret this as a reference to ARM 17.24.623, where Montana proposed to delete the requirement that the blasting period may not exceed an aggregate of 8 hours in any one day. We note that under ARM 17.24.624, blasting is still restricted to daylight hours. As discussed in Finding C.19 above, the Federal rules do not provide for any more strict limitation.

An additional concern was expressed regarding the proposal to allow steeper slopes on the insides of ponds and the possibility that under the proposal, cattle and wildlife would be more likely to drown in winter. We interpret this as a reference to ARM 17.24.639(27)(a) where Montana proposed to delete a requirement that, for excavated sediment ponds, the perimeter slopes must not be steeper than 33 percent. As discussed in Finding C.22. above, there is no more stringent Federal requirement, so Montana's proposal is not inconsistent with the Federal regulations. We note that at ARM 17.24.642(1)(d), permanent impoundments may be approved only on a demonstration of adequate safety and access for water users. However, this does not apply to temporary impoundments (nor does the corresponding Federal requirement at 30 CFR 816/817.49(b)(4)). We note that in Montana, where a given mining operation may exist in an area for decades, ''temporary'' may also mean decades. We note further the availability of the option under 30 CFR 700.12 to submit a petition for rulemaking, in case the commenter or other persons believe that the Federal rules should be revised to include long-term ''temporary'' impoundments under the category of permanent impoundments.

Another comment addressed the allowance to build excavations without spillways. We interpret this as a reference to ARM 17.24.639(7)(a), where Montana proposed to add a statement that excavated ponds need no spillway. We note that this provision was actually submitted to OSM as part of an earlier program amendment that was approved (Administrative Record No MT–12–25, approved February 12, 2002; 67 FR 6395, 6401; *see* Finding N). However, in this current amendment Montana, in its narrative following Rule 639, indicated its intent in promulgating the provision saying that excavated ponds by their nature have no spillway. We interpret this as a reference to a dictionary definition of ''spillway,'' which indicates that a spillway is a channel to rout excess water around an obstruction such as a dam. If the pond is totally excavated, there is no obstruction to route water around. We note that most of the spillway requirements in the Federal regulations are designed to prevent failure of pond embankments, which would allow all of the stored water in the pond, as well as incoming water, to threaten downstream areas. In excavated ponds, there is no danger of embankment failure, and the stored water will stay where it is. It is true that once the pond is filled, additional inflow will result in outflow from the pond. This will happen at one location of the pond's perimeter where the ground surface is lowest. Montana in its narrative recognizes this, and states that the outflow area below the excavation may require stabilization against erosion under ARM 17.24.640. That rule requires that discharge from ponds must be controlled by engineer-designed and certified structures or vegetation (open-channel spillways may also be stabilized by vegetation if the engineering design allows). Thus, if an engineer is designing outflow erosion control measures below an excavated pond, the resulting structure would be little different than a spillway. It just would not be bypassing an obstruction, and hence might not be called a spillway.

The commenter also noted Montana's proposal at ARM 17.24.634(2) to delete language requiring that drainage reclamation designs be certified by a qualified registered professional engineer. The commenter appears to have misinterpreted this rule to apply to impoundments, when it applies to reclaimed drainages that serve as diversions. As discussed in Finding C.21. above, although Montana is deleting the requirement that designs be certified by a qualified registered professional engineer, the requirement still exists at ARM 17.24.635(5). We further note that under ARM 17.24.639(22), all impoundments must be designed, inspected, and certified by a qualified registered professional

engineer experienced in the construction of impoundments. The commenter further addresses ARM 17.24.634(2), where Montana proposed to delete the requirement that the regraded channel not be resoiled or seeded until inspected and approved by the Department. In particular, the commenter expressed skepticism that Montana would make an operator redo deficient work if it were already resoiled and seeded. As discussed in our finding, we agree with Montana that operational efficiencies of both the mine operator and the Department are unnecessarily limited by the notification and pre-soiling inspection and approval requirements. The commenter's concern would apply equally to all phases of reclamation, and if justified would be a greater problem for general postmining surface configuration than for drainages. If the commenter's concern is justified, it would be a problem to be addressed in program oversight, particularly reviewing permit revisions approving ''as-built'' grading changes or drainage designs. In any case, we note that the Federal regulations at 30 CFR 816/817.43 contain no such specific pre-resoiling inspection and approval requirements, so we cannot find Montana's deletion to be inconsistent with the Federal requirements.

The commenter further observes that many provisions proposed for deletion in this program amendment have already been deleted in rule packages Montana makes available to the public. As we note below (see ''Effect of OSM's Decision''), Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In our oversight of State programs, we recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We require Montana to enforce only approved provisions. If the commenter is aware that any unapproved revisions are being enforced or implemented, the commenter should notify OSM's Casper Field Office of such (See ''For Further Information Contact'' provided at the beginning of this rule) so that OSM may take any necessary site-by-site inspection and enforcement actions and include an appropriate review in our annual oversight of the Montana program.

The commenter also expressed some concern with the proposed revision at ARM 17.24.733, where Montana proposed to delete a provision requiring that, in counting woody plants with multiple stems, only the tallest stem may be counted. As discussed above in Finding C.27., the critical factor is that any vegetation parameter (cover, production, stem density, or others) be measured using the same methodology in setting success standards and determining operator compliance with the standard.

Finally, the commenter noted that the definitions in Montana's statute (presumably, 82–4–203, MCA) need to be examined and discussed. We are unclear in what way this comment relates to the current amendment. We did not note in reviewing the proposed regulatory definitions any conflict with the statutory definitions. If the commenter has any specific concerns, they should be addressed to the Casper Field Office.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record No. MT–20–03).

We received a reply from the Bureau of Indian Affairs (Rocky Mountain Regional Office) indicating that the revisions were acceptable from their point of view (Administrative Record No. MT–20–04).

We also received a reply from the Mine Safety and Health Administration, indicating that they found no direct impact on employee or public health or safety, and hence had no comments or recommendations (Administrative Record No. MT–20–05).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Montana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On May 14, 2002, we requested comments on Montana's amendment from the SHPO and ACHP (Administrative Record No. MT–20–03), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve, with the following exceptions and additional requirements, Montana's May 7, 2002 amendment.

We defer decision on the following proposed revisions: Finding No. C.3., ARM 17.24.301(79), 17.24.303(14), and 17.24.404, concerning ownership and control; and Finding No. C.30., ARM 17.24.932(5)(b), concerning inspections of durable rock fills on underground mines.

With the requirement that Montana further revise its rules, we do not approve, as discussed in: Finding No. C.29, ARM 17.24.911(7)(d), concerning replacement of water supplies harmed by underground mining activities.

To implement this decision, we are amending the Federal regulations at 30 CFR part 926, which codify decisions concerning the Montana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires a State program to demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of Montana's program, we will recognize only those statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Montana to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on any Tribe, 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. The State of Montana, under a Memorandum of Understanding with the Secretary of the Interior (the validity of which was upheld by the U.S. District Court for the District of Columbia), does have the authority to apply the provisions of the Montana regulatory program to mining of some coal minerals held in trust for the Crow Tribe. This proposed program amendment does not alter or address the terms of the MOU. Therefore, this rule does not affect or address the distribution of power between the Federal Government and Indian Tribes or the relationship between the Federal Government and Indian Tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) Considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of $100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 16, 2003.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

■ 1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 926.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
May 7, 2002	August 6, 2003	ARM 17.24.301 (recodified); 17.24.301(13), (34), (39), (46), (47), (64), (71), (73), (76), (79), (95), (103), (110), (111), (133); 17.24.302(6); 17.24.303(15)(a)(ii); 17.24.304(5); 17.24.305(2)(b); 17.24.306(1), (3); 17.24.313(6); 17.24.315(1)(b); 17.24.321(1)(intro), (a), (2)–(4); 17.24.324(2), (3); 17.24.327(2); 17.24.401(1), (5)(b)(i); 17.24.403(2)(a); 17.24.405(1), (8); 17.24.413(4); 17.24.415(1); 17.24.416(1)(d), (2); 17.24.501(1), (3), (4)–(6); 17.24.501A deleted; 17.24.503(1); 17.24.505(2); 17.24.507(4); 17.24.510(1), (2); 17.24.514 deleted; 17.24.518(1); 17.24.519A deleted; 17.24.520(1), (2), (3 recodified); 17.24.522(1); 17.24.601(1)–(11); 17.24.603(1)–(5); 17.24.604 deleted; 17.24.605(1)–(3); 17.24.606 [moved to 17.24.601(7)]; 17.24.607(1)–(3); 17.24.623(2)(b)(iii); 17.24.625(1), (2); 17.24.632(1); 17.24.633(3)–(5); 17.24.634(1)(intro), (a), (2), (3); 17.24.639(1)(c)–(27); 17.24.640(1); 17.24.642(1)(f), (2), (3), (6); 17.24.645(5 intro), (6); 17.24.646(6); 17.24.647(1); 17.24.652(1); 17.24.702(1), (2), (6); 17.24.711(1), (6)(b); 17.24.716(1), (2), (5); 17.24.718(2); 17.24.724(3)(a); 17.24.725(1); 17.24.726(2); 17.24.728 (intro); 17.24.733(3), recodified (3)–(5); 17.24.762(1); 17.24.815(2)(c)–(e), (f)(i), (h); 17.24.821(1)(intro), (1)(g); 17.24.823(2); 17.24.825(1), (3); 17.24.826(1), (2) [replaces 17.24.1103]; 17.24.901(1)(c)(i)–(iii); 17.24.903(1)(a), (c), (d); 17.24.911(1)–(3), (4)–(6) recodified, (7)(intro), (8)–(10); 17.24.924(15)–(20); 17.24.925(2); 17.24.927(3); 17.24.1001(1)(a), (2)(b)–(o), (4); 17.24.1002(1), (2)(j)–(m), (3); 17.24.1003(1 recodified), (2)–(4); 17.24.1005(3)(c intro); 17.24.1006(1), (3)(intro); 17.24.1010 intro; 17.24.1014(1)(b), (2)(d), (4); 17.24.1017(2)(c), (3)(d); 17.24.1018(3)–(9); 17.24.1103 deleted; 17.24.1104(2), recodify (3)–(5); 17.24.1108(1); 17.24.1111(4), recodify (5)–(6); 17.24.1112(1)(h); 17.24.1116(8); 17.24.1116A deleted; 17.24.1132(1)(a)(iv); 17.24.1143(1); 17.24.1221(1); 17.24.1222(2); 17.24.1223(5) (intro), (6)(b); 17.24.1224(1)(b); 17.24.1225(1)–(3); 17.24.1226(1), (2); 17.24.1228(1); 17.24.1261(1), (2), (4)(b), (c), (5); 17.24.1262(1 as recodified). MCA 82–4–205 recodification, (1), (2); 82–4–206 title, (1), (2); 82–4–231(8)(c), (d), (f); 82–4–241(1)–(3); 82–4–254(3), (4).

■ 3. Section 926.16 is amended by removing and reserving paragraph (e)(9) and adding paragraph (m) to read as follows:

§ 926.16 Required program amendments.

* * * * *

(m) By October 6, 2003, Montana shall revise ARM 17.24.911, or otherwise modify its program, to require the prompt replacement of any drinking, domestic or residential water supply that is contaminated, diminished, or interrupted by underground mining activities, regardless of the occurrence of subsidence or whether subsidence has caused material damage or reduced the value or use of surface lands, to be no less effective than 30 CFR 817.41(j) in meeting the requirements of SMCRA 720(a)(2).

[FR Doc. 03–19944 Filed 8–5–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 4

RIN 1024–AC69

Operating Under the Influence of Alcohol or Drugs

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule revises the National Park Service (NPS) regulation governing motor vehicle operation under the influence of alcohol. The revision is in response to a Presidential directive issued to all Federal agencies to promulgate regulations adopting a 0.08 blood alcohol concentration (BAC) as the legal limit for a per se impaired driving offense. This rule will assist in preventing tragic and unnecessary alcohol-related deaths and injuries on our Nation's roads.

DATES: Effective date: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Bernard C. Fagan, National Park Service, 1849 C Street, NW., Mailstop 7252, Washington, DC 20240. Telephone: (202) 208–7456. Email: *Chick_Fagan@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NPS administers 388 areas throughout the country ''to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' The National Park Service Organic Act, 16 U.S.C. 1. Although the nearly 300 million annual visitors to the national park system use a variety of access methods, the vast majority rely on motor vehicles and roadways to reach park

areas and to circulate within them. Consequently, the NPS has major responsibilities and program involvement in the areas of road construction and maintenance, traffic safety and traffic law enforcement.

There are approximately 8,000 miles of NPS-administered roads open to the public within the national park system. These 8,000 miles compare in magnitude to the State of Arizona's road system, except that they are scattered throughout the United States and its territories. There is great variety in the nature and extent of park roads. They range from very short lengths of unpaved secondary roadways, to well-developed road systems complete with spur roads, parking areas and overlooks, to parkways running for hundreds of miles through several States, to parkways used primarily as commuter routes in the Washington, DC area. In addition, many park areas contain State and/or county highways and roads over which the NPS may exercise varying degrees of jurisdiction.

On April 2, 1987, the NPS promulgated a final rule (36 CFR 4.23) concerning operating a motor vehicle under the influence of alcohol (52 FR 10683). That rule prohibits the operation or control of a motor vehicle if the alcohol concentration in the operator's blood or breath is 0.10 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath. The regulation provides, however, that if State law governing operation of a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph. The regulation is implemented primarily through roadside signing, text in brochures, and incidental public contact.

On March 3, 1998, President Clinton directed the Secretary of Transportation to work with Congress, other Federal agencies, the States, and others to develop a plan to promote the adoption of 0.08 BAC as the legal limit for a per se impaired driving offense. Specifically, he further directed that the plan consider setting a 0.08 BAC standard on all Federal property, including Department of Defense installations and the national parks. The directive also called for strong enforcement of, and publicity regarding, the 0.08 BAC standard. The benefits of the 0.08 standard in lives saved and injuries prevented have been documented extensively.

On January 31, 2003, the NPS published a proposed rule in the **Federal Register** (68 FR 4975), stating that it proposed to revise its regulation to reduce the BAC standard from 0.10 grams of alcohol per 100 milliliters of blood or 210 liters of breath, to 0.08 grams.

Discussion of Comments

The NPS received two comments in response to the proposed rule, both of which support adoption of the lower 0.08 BAC standard.

The first commenter stated that he supported the 0.08 BAC standard, and also urged its adoption by the NPS with regard to boating and water use activities. That subject is dealt with in part 3 of 36 CFR, specifically 36 CFR 3.6(b). This rule deals only with part 4. The suggestion, however, will be taken into consideration in any future revision of part 3.

The second commenter also supported the lower BAC standard, but noted that the language of the proposed revision (as contained in the proposed rule) would also add a superfluous reference to breath. Specifically, the language of the proposed revision would have added ''breath is'' to the first sentence of 36 CFR 4.23(a)(2), just after ''100 milliliters of blood or'' and just before ''0.08 grams or more of alcohol per 210 liters of breath.'' The NPS agrees that the extra wording is unnecessary, and that the only change needed in the language of the existing 36 CFR 4.23(a)(2) is to substitute ''0.08'' for ''0.10''. The second commenter also stated that authorities in the State of California have had difficulty treating violations of the NPS regulation as prior offenses under California's driving under the influence (DUI) statutes. The reasons cited by the commenter, however, do not relate to the BAC standard, but to other factors such as, for example, the California courts' strict interpretation of the State's DUI laws.

After considering the comments, and in light of their unanimous support of the lower 0.08 BAC standard, the NPS is adopting the rule as proposed, with the editing change discussed in the paragraph above.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effect on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. The lower legal blood alcohol concentration level is prevalent throughout the United States and has been adopted by most other Federal agencies and States.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Although the regulation has significant implications for public safety, it does not have monetary implications. There are no businesses that depend on the public's ability to operate a motor vehicle while intoxicated. The rule will likely provide non-monetary benefits to the NPS and other law enforcement agencies through decreased accidents and injuries.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Does not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 13132. This rule only affects the use of roads on NPS administered lands. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. An OMB form 83–I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d) and the Department of the Interior Manual (516 DM 1.1–7.7). The regulation has been found to be covered by an applicable categorical exclusion (516 DM 6, Appendix 7.4 A.10), and no exceptions to categorical exclusions (516 DM 2, Appendix 2) apply to the regulation. The National Park Service has documented this finding in accord with the agency's procedures (Director's Order #12: Conservation Planning, Environmental Impact Analysis, and Decision-making, and the accompanying Handbook). As a result, the National Park Service is not legally required to prepare, and has not prepared, either an environmental assessment (EA) or an environmental impact statement (EIS).

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249), the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951), and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and determined that there are no potential effects.

List of Subjects in 36 CFR Part 4

National parks, Traffic regulations.

■ Accordingly, the NPS amends 36 CFR part 4 as follows:

PART 4—VEHICLES AND TRAFFIC SAFETY

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

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

■ 2. Section 4.23(a)(2) is revised to read as follows:

§ 4.23 Operating under the influence of alcohol or drugs.

(a) * * *

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath. Provided however, that if State law that applies to operating a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

* * * * *

Dated: July 11, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–19965 Filed 8–5–03; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–200317; FRL–7524–4]

Approval and Promulgation of Air Quality Implementation Plans; Forsyth County, North Carolina Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by North Carolina that are incorporated by reference (IBR) into the Forsyth County portion of the North Carolina state implementation plan (SIP). The regulations affected by this update have been previously submitted by the Local agency through the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective August 6, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Rosymar De La Torre Colon at the above Region 4 address or at (404) 562–8965. Email: *delatorre.rosymar@epa.gov*.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document. On October 22, 2002, EPA published a document in the **Federal Register** (67 FR 64999) beginning the table for Forsyth County, North Carolina IBR material. In this document EPA is doing the update to the material being IBRed.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause

where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 6, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 16, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II

■ 2. Section 52.1770 is amended by revising paragraph (b) and revising table 2 in paragraph (c) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed in paragraph (c) of this section with an EPA approval date prior to December 1, 2002, for North Carolina (Table 1 of the North Carolina State Implementation Plan), January 1, 2003 for Forsyth County, North Carolina (Table 2 of the North Carolina State Implementation Plan) and January 1, 2003, for Mecklenburg County, North Carolina (Table 3 of the North Carolina State Implementation Plan), was approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) of this section with EPA approval dates after January 1, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilations at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State and local implementation plans listed in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

(c) * * *

TABLE 2.—EPA APPROVED FORSYTH COUNTY, NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
Subchapter 3A Air Pollution Control Requirements				
Section .0100 In General				
Sect. .0101	Department Established	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0102	Enforcement of Chapter	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0103	General Powers and Duties of Director	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0104	Authority of Director to Establish Administrative Procedures	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0105	Fees for Inspections, Permits, and Certificates Required by Chapter.	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0106	Penalties for Violation of Chapter	01/17/97	02/17/00, 65 FR 8053.	
Sect. .0107	Civil Relief for Violations of Chapter	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0108	Chapter Does Not Prohibit Private Actions For Relief	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0109	Judicial Review of Administrative Decisions Rendered Under Chapter.	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0111	Copies of Referenced Federal Regulations	06/14/1990	05/02/91, 56 FR 20140.	
Section .0200 Advisory Board				
Sect. .0201	Established; Composition; Terms of Members	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0202	Secretary	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0203	Meetings	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0204	To Serve in Advisory Capacity; General Functions	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0205	Appeals to and Other Appearances Before Board	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0206	Opinions Not Binding	06/14/1990	05/02/91, 56 FR 20140.	
Section .0300 Remedies for Enforcement of Standards—Special Orders				
Sect. .0301	Applicability	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0302	Issuance	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0303	Definitions	06/14/1990	05/02/91, 56 FR 20140.	
Sect. 0304	Categories of Sources	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0305	Enforcement Procedures	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0306	Required Procedures for Issuance of Special Orders by Consent and Special Orders.	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0307	Documentation for Special Orders	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0308	Public Hearing	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0309	Compliance Bonds	06/14/1990	05/02/91, 56 FR 20140.	
Section .0400 Forsyth County Air Quality Technical Code				
Sect. .0401	Adopted	06/14/1990	05/02/91, 56 FR 20140.	
Subchapter 3B Relationship to State Code				
Sect. .0101	In General	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0102	Air Pollution Control Requirements (Subchapter 3D)	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0103	Air Quality Permits (Subchapter 3Q)	06/14/1990	05/02/91, 56 FR 20140.	
Subchapter 3D Air Pollution Control Requirements				
Section .0100 Definitions and References				
Sect. .0101	Definitions	11/6/98	02/17/00, 65 FR 8093.	
Sect. .0103	Copies Referenced Federal Regulations	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0104	Incorporation by Reference	05/24/99	10/22/02, 67 FR 64994.	
Section .0200 Air Pollution Sources				
Sect. .0201	Classification of Air Pollution Sources	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0202	Registration of Air Pollution Sources	06/14/1990	05/02/91, 56 FR 20140.	
Section .0300 Air Pollution Emergencies				
Sect. .0301	Purpose	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0302	Episode Criteria	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0303	Emission Reduction Plans	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0304	Preplanned Abatement Program	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0305	Emission Reduction Plan: Alert Level	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0306	Emission Reduction Plan: Warning Level	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0307	Emission Reduction Plan: Emergency Level	06/14/1990	05/02/91, 56 FR 20140.	

TABLE 2.—EPA APPROVED FORSYTH COUNTY, NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
Section .0400 Ambient Air Quality Standards				
Sect. .0401	Purpose	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0402	Sulfur Oxides	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0403	Total Suspended Particulates	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0404	Carbon Monoxide	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0405	Ozone	05/24/2999	10/22/02, 67 FR 64994.	
Sect. .0407	Nitrogen Dioxide	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0408	Lead	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0409	PM 10 Particulate Matter	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0410	PM 2.5 Particulate Matter	05/24/99	10/22/02, 67 FR 64994.	
Section .0500 Emission Control Standards				
Sect. .0501	Compliance With Emission Control Standards	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0502	Purpose	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0503	Particulates From Fuel Burning Indirect Heat Exchangers	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0504	Particulates From Wood Burning Indirect Heat Exchangers	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0506	Particulates from Hot Mix Asphalt Plants	11/6/98	02/17/00, 65 FR 8053.	
Sect. .0507	Particulates from Chemical Fertilizer Manufacturing Plants	11/6/98	02/17/00, 65 FR 20140.	
Sect. .0508	Particulates from Pulp and Paper Mills	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0509	Particulates from MICA or FELDSPAR Processing Plants	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0510	Particulates from Sand, Gravel, or Crushed Stone Operations.	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0511	Particulates from Lightweight Aggregate Processes	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0512	Particulates from Wood Products Finishing Plants	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0513	Particulates From Portland Cement Plants	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0514	Particulates From Ferrous Jobbing Foundries	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0515	Particulates from Miscellaneous Industrial Processes	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0516	Sulfur Dioxide Emissions from Combustion Sources	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0517	Emissions from Plants Producing Sulfuric Acid	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0519	Control of Nitrogen Dioxide and Nitrogen Oxides Emissions	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0521	Control of Visible Emissions	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0522	Control and Prohibition of Odorous Emissions	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0524	New Source Performance Standards	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0527	Emissions from Spodumene Ore Roasting	06/14/1990	05/02/91, 56 FR 20140.	
Sect .0528	Total Reduced Sulfur from Kraft Pulp Mills	06/14/1990	05/02/91, 56 FR 20140	
Sect .0529	Flouride Emissions from Primary Aluminum24 Reduction Plants.	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0530	Prevention of Significant Deterioration	10/10/97	12/31/98 63 FR 72190.	
Sect. .0531	Sources in Nonattainment Areas	11/6/98	2/17/00 65 FR 8053.	
Sect. .0532	Sources Contributing to an Ambient Violation	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0533	Stack Heights	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0534	Flouride Emissions From Phosphate Fertilizer Industry	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0535	Excess Emissions Reporting and Malfunctions	11/6/98	2/17/00 65 FR 8053.	
Sect. .0536	Particulate Emissions From Electric Utility Boilers	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0537	Control of Mercury Emissions	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0538	Control of Ethylene Oxide Emissions	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0539	Odor Control of Feed Ingredient Manufacturing Plants	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0540	Particulates from Fugitive Non-Process Dust Emission Sources.	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0541	Control of Emissions from Abrasive Blasting	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0542	Control of Particulate Emissions from Cotton Ginning Operations.	06/14/1990	05/02/91, 56 FR 20140.	
Section .0600 Monitoring: Recordkeeping: Reporting				
Sect. .0601	Purpose and Scope	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0602	Definitions	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0604	Exceptions to Monitoring and Reporting Requirements	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0605	General Recordkeeping and Reporting Requirements	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0606	Sources Covered By Appendix P of 40 CFR Part 51	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0607	Large Wood and Wood-fossil Fuel Combination Units	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0611	Monitoring Emissions From Other Sources	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0612	Alternative Monitoring and Reporting Procedures	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0613	Quality Assurance Program	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0614	Compliance Assurance Monitoring	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0615	Delegation	06/14/1990	05/02/91, 56 FR 20140.	
Section .0800 Transportation Facilities				
Sect. .0801	Purpose and Scope	06/14/1990	05/02/91 56 FR 20140	

TABLE 2.—EPA APPROVED FORSYTH COUNTY, NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
Sect. .0802	Definitions	06/14/1900	05/02/91, 56 FR 20140	
Sect. .0803	Highway Projects	06/14/1990	05/02/91, 56 FR 20140	
Sect. .0804	Airport Facilities	06/14/1990	05/02/91, 56 FR 20140	
Sect. .0805	Parking Facilities	06/14/1990	05/02/91, 56 FR 20140	
Sect. .0806	Ambient Monitoring and Modeling Analysis	06/14/1990	05/02/91, 56 FR 20140.	
Section .0900 Volatile Organic Compounds				
Sect. .0901	Definitions	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0902	Applicability	10/10/97	12/31/98, 63 FR 72190.	
Sect. .0903	Recordkeeping: Reporting: Monitoring	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0906	Circumvention	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0909	Compliance Schedules for Sources in New Nonattainment Areas.	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0912	General Provisions on Test Methods and Procedures	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0913	Determination of Volatile Content of Surface Coatings	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0914	Determination of VC Emission Control System Efficiency	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0915	Determination of Solvent Metal Cleaning VOC Emissions	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0916	Determination: VOC Emissions from Bulk Gasoline Terminals.	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0917	Automobile and Light-Duty Truck Manufacturing	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0918	Can Coating	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0919	Coil Coating	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0920	Paper Coating	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0921	Fabric and Vinyl Coating	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0922	Metal Furniture Coating	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0923	Surface Coating of Large Appliances	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0924	Magnet Wire Coating	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0925	Petroleum Liquid Storage in Fixed Roof Tanks	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0926	Bulk Gasoline Plants	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0927	Bulk Gasoline Terminals	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0928	Gasoline Service Stations Stage I	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0930	Solvent Metal Cleaning	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0931	Cutback Asphalt	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0932	Gasoline Truck Tanks and Vapor Collection Systems	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0933	Petroleum Liquid Storage in External Floating Roof Tanks	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0934	Coating of Miscellaneous Metal Parts and Products	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0935	Factory Surface Coating of Flat Wood Paneling	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0936	Graphic Arts	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0937	Manufacture of Pneumatic Rubber Tires	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0939	Determination of Volatile Organic Compound Emissions	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0940	Determination of Leak Tightness and Vapor Leaks	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0941	Alternative Method for Leak Tightness	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0942	Determination of Solvent in Filter Waste	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0943	Synthetic Organic Chemical and Polymer Manufacturing	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0944	Manufacture of Polyethelene, Polypropylene and Polystyrene.	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0945	Petroleum Dry Cleaning	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0947	Manufacture of Sythesized Pharmaceutical Products	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0948	VOC Emissions from Transfer Operations	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0949	Storage of Miscellaneous Volatile Organic Compounds	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0951	Miscellaneous Volatile Organic Compound Emissions	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0952	Petition for Alternative Controls	11/29/95	5/23/96, 61 FR 25789.	
Sect. .0953	Vapor Return Piping for Stage II Vapor Recovery	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0954	Stage II Vapor Recovery	10/10/97	12/31/98, 63 FR 72190.	
Sect. .0955	Thread Bonding Manufacturing	11/29/95	5/23/96, 61 FR 25789.	
Sect. .0956	Glass Christmas Ornament Manufacturing	11/29/95	5/23/96, 61 FR 25789.	
Sect. .0957	Commercial Bakeries	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0958	Work Practices for Sources of Volatile Organic Compounds	06/14/1990	05/02/91, 56 FR 20140.	
Section .1200 Control of Emissions from Incinerators 111(a)				
Sect. .1201	Purpose and Scope	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .1202	Definitions	06/14/1990	05/02/91, 56 FR 20140.	
Section .1900 Open Burning				
Sect. .1901	Purpose, Scope, and Impermissible Open Burning	07/01/96	08/01/97, 62 FR 41277.	
Sect. .1902	Definitions	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .1903	Permissible Open Burning	10/25/99	08/08/02, 67 FR 51763.	
Sect. .1904	Air Curtain Burners	06/14/1990	05/02/91, 56 FR 20140.	

TABLE 2.—EPA APPROVED FORSYTH COUNTY, NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
Sect. .1905	Office Location	06/14/1990	05/02/91, 56 FR 20140.	
Subchapter 3Q Air Quality Permits				
Section .0100 General Provisions				
Sect. .0101	Required Air Quality Permits	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0102	Activities Exempted From Permit Requirements	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0103	Definitions	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0104	Where to Obtain and File Permit Applications	10/10/97	12/31/98, 63 FR 72190.	
Sect. .0107	Confidential Information	05/24/99	10/22/02, 67 FR 64994.	
Section .0200 Permit Fees				
Sect. .0207	Annual Emissions Reporting	11/6/98	2/17/00, 65 FR 8053.	
Section .0300 Construction and Operation Permit				
Sect. .0301	Applicability	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0302	Facilities Not Likely to Contravene Demonstration	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0303	Definitions	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0304	Applications	07/01/99	10/22/02, 67 FR 64994.	
Sect. .0305	Application Submittal Content	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0306	Permits Requiring Public Participation	07/01/99	10/22/02, 67 FR 64994.	
Sect. .0307	Public Participation Procedures	10/10/97	12/31/98, 63 FR 72190.	
Sect. .0308	Final Action on Permit Applications	03/14/1995	02/01/96, 61 FR 3586.	
Sect. .0309	Termination, Modification and Revocation of Permits	07/01/99	10/22/02, 67 FR 64994.	
Sect. .0310	Permitting of Numerous Similar Facilities	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0311	Permitting of Facilities at Multiple Temporary Site	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0312	Application Processing Schedule	11/6/98	2/17/00, 65 FR 8053.	
Sect. .0314	General Permit Requirements	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0315	Synthetic Minor Facilities	07/01/99	10/22/02, 67 FR 64994.	
Section .0800 Exclusionary Rules				
Sect. .0801	Purpose and Scope	05/24/99	10/22/02, 67 FR 64994.	
Sect. .0802	Gasoline Service Stations and Dispensing Facilities	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0803	Coating, Solvent Cleaning, Graphic Arts Operations	05/24/99	12/31/98, 63 FR 72193.	
Sect. .0804	Dry Cleaning Facilities	06/14/1990	05/02/91, 56 FR 20140.	
Sect. .0805	Grain Elevators	11/6/98	02/17/00, 65 FR 8093.	
Sect. .0806	Cotton Gins	11/6/98	02/17/00, 65 FR 8093.	
Sect. .0807	Emergency Generators	11/6/98	02/17/00, 65 FR 8093.	
Sect. .0808	Peak Shaving Generators	07/01/99	10/22/02, 67 FR 64990.	

[FR Doc. 03–19638 Filed 8–5–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA203–4210a; FRL–7523–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Two Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for one major source of nitrogen oxides (NO_X) and one major source for volatile organic compounds (VOC) located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on October 6, 2003 without further notice, unless EPA receives adverse written comment by September 5, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution

Avenue, NW., Room B108, Washington, DC 20460; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Janice Lewis at (215) 814–2185 or by e-mail at *lewis.janice@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area, and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT, as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

II. Summary of the SIP Revision

On October 26, 1999, and February 4, 2003, PADEP submitted formal revisions to the Pennsylvania SIP which establish and impose case-by-case RACT for several major sources of VOC and/or NO_X. This rulemaking pertains to two of those sources. The remaining sources are or have been the subject of separate rulemakings. The RACT determinations and requirements are included in plan approvals (PA) or operating permits (OP) issued by the Commonwealth. The following table below identifies the sources and the individual operating permits (OP) which are the subject of this rulemaking.

VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	OP#	Source type	Major pollutant
Tarkett, Inc	Lehigh	OP 39–0002	Vinyl Flooring Mfg	VOC.
Harcros Pigments, Inc	Northampton	OP 48–018	Mfg. of Pigments	NO_X.

A. *Tarkett Inc.*—Tarkett, Inc. (Tarkett) is a vinyl flooring manufacturing facility located in Lehigh County. Tarkett is a major source of VOC and a minor source for NO_X. PADEP issued an operating permit (OP 39–0002) to establish and impose RACT for Tarkett. Under the OP 39–0002, the NO_X emission limit shall never exceed 100 tons per year. Under the OP 39–0002, Tarkett must not exceed 356.81 tons of VOC per year. Both limits must be met on a rolling monthly basis over a consecutive 12-month period. Under OP 39–0002 , Tarkett must maintain all records, testing data and calculations to clearly demonstrate compliance with Sections 129.95 and 129.91–94 of 25 Pennsylvania's Code of Regulations. Record keeping requirements shall include the following, but not be limited to: a record of all VOC containing compounds used at the facility as well as calculations on the individual source emissions and the VOC emissions for the entire facility; the felt mill must maintain monthly records of the hydropulper feed materials for all batches, the paper machine slurry must maintain monthly feed rates and hours of operation; the four meter line must maintain monthly records of the types of urethane, urethane usage, and hours of operation; all air pollution control systems must conduct performance evaluations, records of calibration checks, adjustments and maintenance performed on all equipment which are subject to OP 39–0002. Also, the type of VOC contained products stored, a record of quantities, identify usage and recovery of all VOC solvents used in clean-up operations for the entire facility. All record keeping requirements must be calculated on a monthly basis (12-month period). The storage and handling of materials collected in the air cleaning device(s) shall not at anytime result in the emissions of fugitive air contaminants. Temperature measuring and recording devices on the thermal incinerator shall be maintained to show gases exiting the combustion chamber or zone. All records shall be retained and maintained for at least two years. Under OP 39–0002, Tarkett must operate and maintain all processes according to good engineering and air pollution control practices in accordance with applicable PADEP regulations.

B. *Harcros Pigments, Inc.*—Harcros Pigments Inc. (Harcros) is a manufacturer of synthetic and natural iron oxides for use in chemical and pigmenting applications. Harcros is located in Northampton County. Harcros is a major source of NO_X and minor source for VOC. On July 31, 1996, PADEP issued an operating permit (OP 48–0018) to establish and impose RACT for Harcros. Under OP 48–0018, Harcros must comply with Section 129.93(2) of 25 Pennsylvania Code of Regulations for the Cleaver Brooks boiler with a rated heat input of 25.1 MMBtu/hr and the Babcock & Wilcox boiler with a rated heat input of 36.4 MMBtu/hrs. Presumptive RACT for these units shall be the performance of an annual adjustment or tune-up on the combustion process. The emergency generator shall be limited to 500 hours of operation in a consecutive 12-month period. The remaining units which have a rated heat input of less than 20 MMBtu/hr shall install, maintain, and operate all units in accordance with manufacturers' specifications. The total allowable NO_X emission limit for this facility shall not exceed 207.0 tons per year. Under OP 48–0018, Harcros must operate and maintain all equipment according to good engineering and air pollution control practices. All measurements, records and other data required to be maintained by the company shall be retained for at least two years following the date on which such measurements, records and/or data are recorded.

III. EPA's Evaluation of the SIP Revisions

EPA is approving these SIP revisions because the Commonwealth established and imposed RACT requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

IV. Final Action

EPA is approving revisions to the Commonwealth of Pennsylvania's SIP to establish and require VOC and/or NO_X RACT for two major sources listed in this document. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on October 6, 2003 without further notice unless we receive

adverse comment by September 5, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA203–42104a in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention PA203–4210a. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or

practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for two named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 6, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Pennsylvania's source-specific RACT requirements to control VOC and/or NO_X from two individual sources may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements,Volatile organic compounds.

Dated: June 26, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(208) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(208) Revisions pertaining to VOC and NO_X RACT for major sources submitted on October 25, 1999, and February 4, 2003, by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) Letters submitted on October 26, 1999, and February 4, 2003 by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of operating permits.

(B) Operating permits (OP) issued to the following sources:

(*1*) Tarkett Incorporated, Lehigh County, OP 39–0002, effective May 31, 1995.

(*2*) Harcros Pigments, Inc., Northampton County, OP 48–0018, effective July 31, 1996.

(ii) Additional Material.

(A) Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(208)(i) of this section.

[FR Doc. 03–19924 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD140–3094a; FRL–7523–7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to Visible Emissions and Sulfur Dioxide Testing Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revision consists of amendments to Maryland's general air quality emission standards, prohibitions and restrictions affecting visible emissions, particulate matter and sulfur compounds from sources other than fuel burning equipment. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on October 6, 2003 without further notice, unless EPA receives adverse written comment by September 5, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 6, 2002, the Maryland Department of the Environment (MDE) submitted a formal revision to its SIP (#02–05) consisting of amendments to Code of Maryland's Administrative Regulations (COMAR) 26.11.06 General Emission Standards, Prohibitions and Restrictions. This regulation contains general provisions that apply to an installation when no other pollutant or source specific requirement exists. The specific revisions to Regulations .02 .03, and .05 remove applicability of the visible emission standard for sources with particulate matter emission controls; expand applicability of unconfined emission requirements; remove prohibitions on visible emissions beyond a source's property line; expand certain visible emission exceptions; and require an adjustment to sulfur compound (SO_x) test results.

II. Summary of SIP Revision

A. Visible and Particulate Matter Emission Standards

Regulation .03 of COMAR 26.11.06 establishes general particulate matter emissions standards for sources in the State. Subsection .03C specifically addresses particulate matter emissions from unconfined sources that are not discharged into the outdoor atmosphere through a stack, duct, hood, flue, or other conduit. The regulation requires these sources to take reasonable precautions, approved by the Maryland Department of the Environment (MDE), to prevent particulate matter from becoming airborne. Reasonable precautions include the installation and

use of hoods, fans, and dust collectors to enclose, capture, and vent emissions.

Subsection .03D establishes requirements for controlling particulate matter from materials handling and construction and prohibits material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne.

Prior to this SIP revision, the provisions in Regulation .03C were applicable in only certain areas of the State. Furthermore, sources that did comply with the requirement to install measures to prevent airborne particulate matter emissions were still subject to the State's visible emissions standards. The revisions approved in today's action will expand applicability of the requirements for unconfined sources to the entire state. This SIP revision also amends the applicability of the general visible emissions standard in Regulation .02 to exclude those unconfined sources that comply with Subsection .03C and those materials handling and construction activities that comply with .03D. In other words, the latter sources that install and implement reasonable controls, approved by MDE, to control particulate matter are excluded from the general visible emission standard. Finally, to be consistent with the exclusions for materials handling and construction activities, the SIP revision also removes the prohibition on visible emissions at the property line for these activities.

B. Sulfur Oxides Testing

COMAR 26.11.06.05 establishes SO_x emission limits for process installations other than fuel burning equipment. COMAR 26.11.06.05A requires calculations of emissions to be adjusted to standard conditions as defined in COMAR 26.11.01.01B(46). This section is being amended to require that the calculations of emissions also be adjusted to 7 percent oxygen to assure that the test results are not diluted with excess air.

III. Final Action

EPA is approving the revisions to COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, submitted to EPA on November 6, 2002. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on October 6, 2003 without further notice unless EPA receives adverse comment by September 5, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number MD140–3094a in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. E-mail. Comments may be sent by electronic mail (e-mail) to morris.makeba@epa.gov, attention MD140–3094a. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or

significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 6, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve revisions to MDE's regulations at COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 26, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. Section 52.1070 is amended by adding paragraph (c)(181) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(181) Revisions to the Code of Maryland's Administrative Regulations (COMAR) for particulate matter, visible emissions and sulfur compounds submitted on November 6, 2002 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of November 6, 2002 from the Maryland Department of the Environment transmitting the revision consisting of housekeeping and clarification amendments to Regulations .02, .03, and .05 under COMAR 26.11.06 General Emission Standards, Prohibitions and Restrictions.

(B) The following amendments to COMAR 26.11.06—General Emission Standards, Prohibitions and Restrictions, effective November 11, 2002:

(*1*) Addition of COMAR 26.11.06.02A(1)(k).

(*2*) Revisions to COMAR 26.11.06.02A(1)(j), .02A(2), .02C(1), .03C (introductory paragraph), .03C(1), and .05A.

(*3*) Removal of COMAR 26.11.06.02C(3).

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(181)(i) of this section.

[FR Doc. 03–19922 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries

CFR Correction

■ In Title 40 of the Code of Federal Regulations, part 60 (60.1 to End), revised as of July 1, 2002, on page 496, § 60.593 is corrected by revising paragraph (e). The revised text reads as follows:

§ 60.593 Exceptions.

* * * * *

(e) Pumps in light liquid service and valves in gas/vapor and light liquid service within a process unit that is located in the Alaskan North Slope are exempt from the requirements of § 60.482–2 and § 60.482–7.

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[FR Doc. 03–55520 Filed 8–5–03; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[KS 189–1189a; FRL–7540–7]

Approval and Promulgation of Operating Permits Program; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Kansas Operating Permit Program. On June 25, 2001, the state of Kansas requested a revision to change the Class I Operating Permits annual emission inventory due date and to revise the annual emissions fee. Approval of these revisions will ensure consistency between the state and Federally-approved rules.

DATES: This direct final rule will be effective October 6, 2003, unless EPA receives adverse comments by September 5, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be submitted to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to Heather Hamilton at *hamilton.heather@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking'' in the **SUPPLEMENTARY INFORMATION** section.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039 or by e-mail at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions: What is the Part 70 operating permits program? What is being addressed in this document? What action is EPA taking?

What Is the Part 70 Operating Permits Program?

The Clean Air Act (CAA) Amendments of 1990 requires all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the Part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations.

Revisions to the state operating permits program are subject to public notice, comment, and EPA approval.

What Is Being Addressed in This Document?

The state of Kansas has requested that EPA approve as a revision to the 40 CFR Part 70 Operating Permits Program the following revisions:

1. This revision to K.A.R. 28–19–202 Annual Emissions Fee raised the annual rate from $18.00 per ton to $20.00 per ton for emissions occurring in 2001 and later. This revision changes the annual rate back to the original rate set when the Title V program was established, for which Kansas made a demonstration that it was collecting fees sufficient to cover its costs of implementing the Title V program. This monetary revision will adjust the balance in the air quality fee fund to adequately support the current actual developmental costs of the program.

2. This revision to rule K.A.R. 28–19–517 Class I Operating Permits, annual emission inventory changed the annual inventory due date for Class I operating permits from April 1 of each year to June 1. This revision is being made to allow additional time to submit fees and to regulate the fee cycle with the state's budget cycle.

What Action Is EPA Taking?

EPA is approving the revision to the Kansas Operating Permits Program to change the due date of the annual emission inventory from April 1 to June 1, and to raise the annual emissions fee from $18.00 to $20.00 per ton for emissions occurring in the year 2001 and later. On June 25, 2001, the state of Kansas submitted a request for EPA to revise the rules to reflect these changes.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives an adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, KS 189–1189a, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. Electronic mail. Comments may be sent by e-mail to Heather Hamilton at *hamilton.heather@epa.gov.* Please include identification number KS 189–1189a in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. Regulations.gov. Your use of regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, click on ''To Search for Regulations,'' then select Environmental Protection Agency and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online

instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. By Mail. Written comments should be sent to the name and address listed in the **ADDRESSES** section of this document.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state operating permits programs submitted pursuant to Title V of the CAA, EPA will approve state programs provided that they meet the requirements of the CAA and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state operating permits program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of a state program that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 6, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: July 28, 2003.

William Rice,

Acting Regional Administrator, Region 7.

■ 40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Appendix A to part 70 is amended by adding paragraph (b) under Kansas to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Kansas

* * * * *

(b) The Kansas Department of Health and the Environment approved revisions to the Kansas Administrative Record (K.A.R.), 28–19–202 and 28–19–517, which became effective on March 23, 2001, and February 28, 1998, respectively. These revisions were submitted on June 25, 2001. We are approving these program revisions effective October 6, 2003.

* * * * *

[FR Doc. 03–20019 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0207; FRL–7317–3]

Spinosad; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of spinosad in or on onion, dry bulb. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on onion, dry bulb. This regulation establishes a maximum permissible level for residues of spinosad in this food commodity. The tolerance will expire and is revoked on December 31, 2006.

DATES: This regulation is effective August 6, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0207, must be received on or before October 6, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; e-mail address: *Sec-18-Mailbox@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a Federal or State Government Agency involved in Administration of Environmental quality programs (i.e., Departments of Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification ID number OPP–2003–0207. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the insecticide spinosad, in or on onion, dry bulb at 0.10 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2006. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance the legal limit for a pesticide chemical residue in or on a food only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State Agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA) of 1996. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Spinosad on Onion, Dry Bulb and FFDCA Tolerances

The State of New Mexico requested the use of spinosad to control thrips on onion, dry bulb due to documented resistance of thrips to pyrethroid insecticides. EPA has authorized under FIFRA section 18 the use of spinosad on onion for control of thrips in New Mexico. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of spinosad in or on onions. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31,

2006, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on onions after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether spinosad meets EPA's registration requirements for use on onions or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of spinosad by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than New Mexico to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for spinosad, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, *see* the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of spinosad and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for residues of spinosad in or on onions at 0.10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no observed adverse effect level are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which observed adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for spinosad used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR SPINOSAD USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary females (13–50 years of age)	N/A	N/A	This risk assessment is not required. No endpoint of concern attributable to a single exposure was identified.
Acute dietary general population including infants and children	N/A	N/A	This risk assessment is not required. No endpoint attributable to a single exposure of concern was identified for the general population, including infants and children.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR SPINOSAD USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Chronic dietary all populations	NOAEL = 2.68 milligrams/kilogram/day (mg/kg/day) UF = 100 Chronic RfD = 0.02 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD ÷ FQPA SF = 0.027 mg/kg/day	Chronic toxicity - dog LOAEL = 8.22 mg/kg/day based on on vacuolation in glandular cells (parathyroid) and lymphatic tissues, arteritis and increases in serum enzymes such as alanine aminotransferase, and aspartate aminotransferase, and triglyceride levels.
Incidental oral Short-term (1–30 days) Residential only	NOAEL = 4.9 mg/kg/day MOE = 100	FQPA SF = 1x	Subchronic feeding study in dogs LOAEL = 9.73 mg/kg/day based on microscopic changes in multiple organs, clinical signs of toxicity, decreases in mean body weights and food consumption and biochemical evidence of anemia and possible liver damage.
Incidental oral Intermediate-term (1–6 months) Residential only	NOAEL = 2.7 mg/kg/day MOE = 100	FQPA SF = 1x	Chronic toxicity study in dogs LOAEL = 8.22 mg/kg/day based on vacuolation in glandular cells (parathyroid) and lymphatic tissues, arteritis, and increases in serum alanine aminotransferase, aspartate aminotransferase, and triglyceride levels.
Dermal (any time period) (Residential)	N/A	N/A	Dermal risk assessment is not required. Short-term, intermediate-term, and long-term dermal risk assessments are not required because: (1) Lack of concern for prenatal and/or postnatal toxicity; (2) the combination of molecular structure and size as well as the lack of dermal or systemic toxicity at 1,000 mg/kg/day in a 21–day dermal toxicity study in rats which indicates poor dermal absorption; and (3) the lack of long-term exposure based on the current use pattern.
Short-term inhalation (1–30 days) (Residential)	Oral NOAEL = 4.9 mg/kg/day UF = 100	FQPA SF = 1x MOE = 100	Subchronic feeding study in dogs LOAEL = 9.73 mg/kg/day based on microscopic changes in a multiple organs, clinical signs of toxicity, decreases in mean body weights and food consumption and biochemical evidence of anemia and possible liver damage.
Intermediate-term inhalation (1–6 months) (Residential)	Oral NOAEL = 2.7 mg/kg/day UF = 100	FQPA SF = 1x MOE = 100	Chronic toxicity study in dogs LOAEL = 8.22 mg/kg/day based on vacuolation in glandular cells (parathyroid) and lymphatic tissues, arteritis, and increases in serum alanine aminotransferase, aspartate aminotransferase, and triglycerides levels
Long-term inhalation (>6 months) (Residential)	Oral NOAEL = 2.7 mg/kg/day UF = 100	FQPA SF = 1x MOE = 100	Chronic toxicity study in dogs LOAEL = 8.22 mg/kg/day based on vacuolation in glandular cells (parathyroid) and lymphatic tissues, arteritis, and increases in serum alanine aminotransferase, aspartate aminotransferase, and triglycerides levels

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR SPINOSAD USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Cancer (oral, dermal, inhalation)	N/A	N/A	Classification: Not likely to be carcinogenic to humans Q1* = N/A Risk Assessment not required.

*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.495) for the residues of spinosad, in or on a variety of raw agricultural commodities. Tolerances range from 0.02 ppm (many commodities; limit of quantitation) to 20 ppm (aspirated grain fractions). Risk assessments were conducted by EPA to assess dietary exposures from spinosad in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute dietary exposure risk assessment is not required because the Agency did not identify an acute dietary endpoint that was applicable to females (13+ years) or to the general population, including infants and children.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the U. S. Department of Agriculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic dietary (food only) analysis represents a moderately refined estimate of dietary exposure to spinosad due to the use of default processing factors, percent crop treated (PCT) estimates for agricultural crops having previously registered uses, and anticipated residues for meat and milk. This Tier 3 DEEM™ analysis shows that dietary (food only) exposure estimates are below the Agency's LOC for all population subgroups. The highest chronic dietary exposure was for children 1–6 years old at 0.018540 mg/kg/day, representing 69% of the cPAD. Exposure for the U.S. population was 0.008127 mg/kg/day, representing 30% of the cPAD.

iii. *Cancer.* Spinosad has been classified by the Agency as a not likely human carcinogen. Therefore, a cancer dietary exposure analysis was not performed.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: Almond 5%; apple 28%; apricot 5%; avocado 5%, bean, snap 9%; broccoli 62%; cabbage 32%; cauliflower 54%; celery 78%; collards 24%; cherry 5%; eggplant 14%; grapefruit 1%; grape, wine 1%; kale 32%; lemon 11%; lettuce, head 59%; Lettuce, other 42%; mustard greens 17%; orange 6%; peach 4%; pepper 45%; pistachio 1%; prune/plum 5%; spinach 32%; pumpkin 1%; squash 1%; sweet corn 1%; tangerine 6%; turnip, greens 6%; tomato, fresh 30%; tomato, processed 2%; watermelon 1%; cotton 3%; dry bean/pea 1%; peanut 1%; potato 1%; wheat, and winter 1%.

The Agency believes that the 3 conditions listed above have been met. With respect to condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant

subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which spinosad may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for spinosad in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of spinosad.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in ground water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will generally use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to spinosad they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models the EECs of spinosad for acute exposures are estimated to be 25 parts per billion (ppb) for surface water and 0.037 ppb for ground water. The EECs for chronic exposures are estimated to be 2.3 ppb for surface water and 0.037 ppb for ground water.

3. *From Non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Spinosad is currently registered for use on residential turf and ornamentals to control a variety of insect pests. The registered residential products for spinosad are Conserve SC Turf and Ornamental (EPA Reg No. 62719–291) and Conserve Fire Ant Bait (EPA Reg No. 62719–304). Conserve Fire Ant Bait is a ready-to-use granular formulation that may be applied by homeowners. For adults, residential exposures may result from dermal and inhalation exposure while applying Conserve Fire Ant Bait and/or from dermal contact with treated turf. However, dermal, post-application exposure is not of concern since no toxicological endpoint was established for dermal exposure. Inhalation exposure is not expected due to the low vapor pressure of spinosad and because the homeowner product is formulated as a granular. Post-application exposure to toddlers was not assessed for the Conserve Fire Ant Bait product since children are not likely to ''habit'' lawn areas where fire ant mounds are present. Conserve SC is labeled for use on turfgrass and ornamentals by commercial applicators. Since this product will be applied by commercial applicators, homeowner applicator exposure was not assessed. For toddlers, dermal and non-dietary oral post-application exposures may result from dermal contact with treated turf as well as hand-to-mouth transfer of residues from turfgrass. Since dermal post-application exposure is not of concern, only hand-to-mouth, object-to-mouth and incidental ingestion of soil exposures for the turf and ornamental uses were performed. The average aerobic soil metabolism half-life of spinosad (containing factors A and D) is 13–14 days. For the intermediate-term duration, typical lawn maintenance practices, such as mowing and watering, are expected to expedite the dissipation of spinosad on turfgrass. Since residue on turf that is available for transfer after day 30 is expected to be negligible, intermediate-term post-application incidental oral exposures were not assessed. The Agency developed exposure formulas and estimated doses to theoretically assess residential post-application incidental oral exposure scenarios including: (1) Hand-to-mouth, (2) object-to-mouth (turfgrass), and (3) incidental ingestion of soil. The resulting incidental oral ingestion MOEs from residential use of spinosad on turf are as follow:

- MOE for oral hand-to-mouth activities on treated lawns is 800 for short-term (1–30 days).
- MOE for oral object-to-mouth (turfgrass) from treated lawns is 3,300 for short-term.
- MOE for incidental ingestion of soil from treated lawns is 240,000 for short-term.
- Combined incidental oral MOE (hand-to-mouth, object-to-mouth, and soil ingestion) is 640. All MOEs are below EPA's LOC.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether spinosad has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, spinosad does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that spinosad has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, *see* the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is no indication of increased susceptibility of rat and rabbit fetuses to *in utero* and/or postnatal exposure.

3. *Conclusion.* There is a complete toxicity data base for spinosad and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10x safety factor to protect infants and children should be removed. This recommendation is based on:

i. There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with spinosad, and there is no evidence of increased susceptibility of young rats in the reproduction study with spinosad.

ii. There are no residual uncertainties identified in the exposure data bases; the dietary food exposure assessment (chronic only; no acute endpoint was identified) is refined using Anticipated Residues calculated from field trial data and available PCT information (100% crop treated is assumed for proposed new uses).

iii. The dietary drinking water exposure is based on conservative modeling estimates.

iv. EPA's Health Effect Division Residential Standard Operating Procedures were used to assess post-application exposure to children as well as incidental oral exposure of toddlers, so these assessments do not underestimate the exposure and risks posed by spinosad.

v. A developmental toxicity study is not required.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to spinosad in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of spinosad on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Acute aggregate risk consists of the combined dietary exposures from food and drinking water sources. The total exposure is compared to the acute RfD. An acute RfD was not identified since no effects were observed in oral toxicity studies that could be attributable to a single dose. Therefore, the Agency concludes that there is a reasonable certainty of no harm from acute aggregate exposure to spinosad.

2. *Chronic risk.* Using the exposure assumptions described in unit C for chronic exposure, EPA has concluded that exposure to spinosad from food will utilize 30% of the cPAD for the U.S. population, 41% of the cPAD for infant <1 year old and 69% of the cPAD for children 1–6 years old (subpopulation at greatest exposure). Based on the use pattern, chronic residential exposure to residues of spinosad is not expected. In addition, there is potential for chronic dietary exposure to spinosad in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO SPINOSAD

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.027	30	2.3	0.037	660
All infants (<1 year old)	0.027	41	2.3	0.037	160
Children (1–6 years old)	0.027	69	2.3	0.037	85
Children (7–12 years old)	0.027	45	2.3	0.037	150
Females (13–50)	0.027	24	2.3	0.037	620

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Spinosad is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for spinosad.

Using the exposure assumptions described in Unit IV. B. for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 600 for the U.S. population, 260 for all infants less than 1–year old, 190 for children 1–6 years old (greatest risk subpopulation) and 250 for children 7–12 years old. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of spinosad in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's LOC, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO SPINOSAD

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate LOC	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	600	100	2.3	0.037	1,400
All infants (<1 year old)	260	100	2.3	0.037	300
Children (1–6 years old)	190	100	2.3	0.037	230
Children (7–12 years old)	250	100	2.3	0.037	290
Female (13–50)	760	100	2.3	0.037	1,300

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Though residential exposure could occur with the use of spinosad, the average aerobic soil metabolism half-life of spinosad (containing factors A and D) is 13–14 days. For the intermediate-term duration, typical lawn maintenance practices, such as mowing and watering, are expected to expedite the dissipation of spinosad on turfgrass. Since residue on turf that is available for transfer after day 30 is expected to be negligible, intermediate-term post-application incidental oral exposures were not assessed.

5. *Aggregate cancer risk for U.S. population*. Spinosad has been classified as ''not likely to be carcinogenic in humans'' based on the results of a carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in rats. Therefore, spinosad is not expected to pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to spinosad residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology using high pressure liquid chromatography with ultraviolet detector (HPLC/UV) is available to enforce the tolerances in plants. Adequate livestock methods are available for tolerance enforcement. Method RES 94094 (GRM 95.03) is an HPLC/UV method suitable for determination of spinosad residues in ruminant commodities. Method GRM 95.03 has undergone successful independent laboratory validation (ILV) and EPA laboratory validation, and has been forwarded to FDA for inclusion in PAM Volume II. Method GRM 95.15 is another HPLC/UV method suitable for determination of spinosad residues in poultry commodities. This method has been forwarded to FDA for inclusion in PAM Volume II. Method RES 95114, an immunoassay method for determination of spinosad residues in ruminant commodities, underwent a successful ILV and EPA laboratory validation. It has been submitted to FDA for inclusion in PAM Volume II. The methods may be requested from: Paul Golden, U.S. EPA/OPP/BEAD/ACB, Environmental Science Center, 701 Mapes Road, Fort Meade, MD 20755–5350; telephone number: (410) 305–2960; FAX (410) 305–3091; e-mail address: *RAM Mailbox*.

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established for spinosad in/on root and tuber vegetables. Therefore, no compatibility problems exist for the proposed tolerances.

VI. Conclusion

Therefore, the tolerance is established for residues of spinosad in or on onion, dry bulb at 0.10 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in

accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0207 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 6, 2003.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2003–0207, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: July 28, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.495 is amended by alphabetically adding the following commodity to the table in paragraph (b) to read as follows:

§ 180.495 Spinosad; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation date
* * * * *		
Onion, dry bulb	0.10	12/31/06
* * * * *		

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[FR Doc. 03–20017 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 01–174; FCC 03–151]

2000 Biennial Review—Requirement Governing the NECA Board of Directors

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission modifies the requirements governing how the National Exchange Carrier Association (NECA) conducts elections for its board of directors (Board). The Commission eliminates the requirement that NECA hold annual elections and that Board members serve one-year terms. The Commission also liberalizes its rules regarding contested elections for NECA's non-telecommunications industry directors (Outside Directors).

DATES: Effective September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Cara Voth, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket No. 01–174, FCC 03–151 released on July 3, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street SW., Washington, DC, 20554.

I. Introduction

1. In this Report and Order, as part of our biennial regulatory review under section 11 of the Communications Act of 1934, as amended (the Act), we modify the requirements governing how the National Exchange Carrier Association (NECA) conducts elections for its board of directors (Board). We eliminate the requirement that NECA hold annual elections and that Board members serve one-year terms. We also liberalize our rules regarding contested elections for NECA's non-telecommunications industry directors (Outside Directors). Under the liberalized rules, no Outside Director may serve for more than six consecutive calendar years without standing for an election in which that director is opposed by at least one other qualified candidate. By modifying our election requirements for the Board, we reduce the regulatory burdens that the current election requirements impose on NECA, while furthering our goal of ensuring that NECA fulfills certain Commission-specified functions.

II. Discussion

2. We find that the current election process imposes several unnecessary administrative burdens on NECA and therefore we eliminate certain election requirements for NECA's Board. We also find, however, that because NECA continues to perform certain functions pursuant to Commission rules, we have a continuing interest in ensuring that NECA fulfills its obligations. In retaining certain requirements, we seek

to ensure that NECA, as overseen by its Board, continues to comply with the Commission's rules. We find that the modifications to the Board requirements allow us to achieve our goals, yet impose minimal burdens on NECA.

3. We retain the current composition of NECA's Board positions, which consists of five Outside Directors, two directors representing Subset I, two directors representing Subset II, and six directors representing Subset III. NECA is a unique organization that performs several functions pursuant to the Commission's rules, including the administration of the common line and traffic sensitive access tariff pools. The access rates established by these pools have a direct impact on interstate telephone rates and pursuant to section 201 of the Act, interstate telephone rates must be just and reasonable. We believe that a Board that consists of directors representing all classes of carriers helps to ensure that NECA prepares accurate and reasonable tariffs, which in turn helps to further the Commission's implementation of the statutory requirement that rates be just and reasonable.

4. Although we retain our rules regarding the composition of the Board, we find that it is appropriate to eliminate our rule that requires that NECA elect its directors annually for one-year terms. As NECA notes, Delaware General Corporation Law (DGCL) does not require non-stock corporations like NECA to hold annual elections. We find it is no longer in the public interest to retain such requirements in our rules because we accept NECA's claim that the election requirements are overly burdensome without a concomitant benefit. Our primary policy goal is to ensure that NECA, as overseen by its Board, fulfills its Commission-specified functions. In this regard, we believe that the composition of the Board positions, and not how often elections are held or the terms of the directors, best achieves this goal. We find that the presence on the Board of five Outside Directors is particularly important to achieving our goals, including providing effective governance of NECA consistent with our rules. As described in more detail, we amend the contested election requirement for Outside Directors to provide NECA greater flexibility in how it elects these Outside Directors. With regard to the Board generally, we conclude that safeguards exist to ensure that NECA will adopt an appropriate election process, even absent specific Commission direction, because NECA must continue to comply with all applicable DGCL rules and regulations.

5. We believe that it is in the public interest, as NECA proposes, to modify the contested election rules so that instead of every three years as the current rules require, Outside Directors may not serve for more than six consecutive calendar years without standing for an election in which that director is opposed by at least one other qualified candidate. The Commission instituted contested elections for Outside Directors to ''assure NECA's members an opportunity to choose among a range of candidates for each outside director position.'' Also, the overarching goal of the *NECA Board Order,* 60 FR 19528, April 19, 1995, was to add Outside Directors to NECA's Board to bring independent perspectives to NECA's deliberations and ensure that NECA complies with the Commission rules. While our goals remain the same, we recognize the burdens associated with contested elections, and believe that this rule can be liberalized without impairing our achievement of those fundamental goals. We believe it appropriate to amend our rules so that contested elections for Outside Directors will occur at least every six years. We note that, although we are relaxing the contested election requirement for Outside Directors, this will not preclude contested elections from taking place more frequently than every six years. If it so chooses, NECA may allow independent parties to challenge an incumbent Outside Director's seat whenever that seat is subject to an election.

6. The rule amendments adopted herein will be effective thirty days after publication in the **Federal Register**. We also direct NECA to revise its by-laws and articles of incorporation as required by Delaware state law and in accordance with this order, and to submit its revised by-laws to the Commission as soon as practicable. Finally, we note that NECA lists its current Board of directors on its Internet website. We strongly encourage NECA to continue to post this listing and revise it each time there is a change to the Board.

III. Procedural Issues

7. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended, (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

8. In this Report and Order, we amend certain of our rules pertaining to the National Exchange Carrier Association (NECA), which operates pooling mechanisms to collect and distribute revenues among its participating carriers. In particular, we eliminate the requirement that NECA hold annual elections and the requirement that NECA's board of directors serve one-year terms. We also modify the rule requiring NECA to hold contested elections for its non-telecommunications industry directors (Outside Directors) at least every three years. Under the modified rule, Outside Directors may not serve more than six consecutive calendar years without standing for a contested election. In the Initial Regulatory Flexibility Certification in the *Notice,* we stated that the proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were received concerning that initial certification.

9. We conclude that this regulatory flexibility certification is appropriate for the amended rules adopted herein. NECA is a non-profit association created to administer the Commission's interstate access tariff and revenue distribution processes. Because the proposed rule amendments affect only NECA directly, we find that the amendments will not affect a substantial number of small entities. In addition, any economic effect that might result is positive (de-regulatory) and not significant. Therefore, we certify that the amended rules adopted in this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Report and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and it will be published in the **Federal Register**.

IV. Ordering Clauses

10. Pursuant to the authority contained in sections 1, 4(i), 11, 201–

205, 218–220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 201–205, 218–220, and 403, and 5 U.S.C. 553(d), that part 69 of the Commission's rules, is amended, and is effective September 5, 2003.

11. The National Exchange Carrier Association's Petition for Waiver, filed January 31, 2003, is dismissed without prejudice.

12. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 69 as follows:

PART 69—ACCESS CHARGES

■ 1. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

■ 2. Section 69.602 is amended by revising paragraphs (c), (e), and (f), and by removing paragraph (i) to read as follows:

§ 69.602 Board of directors.

* * * * *

(c) Two directors shall represent the first subset, two directors shall represent the second subset, six directors shall represent the third subset, and five directors shall represent all three subsets.

* * * * *

(e) Each subset of the association membership shall select the directors who will represent it through elections in which each member of the subset shall be entitled to one vote for each director position within that subset.

(f) The association membership shall select the directors who will represent all three subsets through an election in which each member of the association shall be entitled to one vote for each director position. No director representing all three subsets may serve for more than six consecutive calendar years without standing for an election in which that director is opposed by at least one other candidate meeting the qualifications in paragraph (d) of this section.

* * * * *

[FR Doc. 03–20052 Filed 8–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2479, MB Docket No. 02–363, RM–10604]

Analog and Digital Television Broadcast Service; Asheville, NC and Greenville, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Meredith Corporation, licensee of Station WHNS(TV), channel 21 and paired digital channel 57, Asheville, North Carolina, reallots channel 21 and paired digital channel 57, from Asheville to Greenville, South Carolina, and modifies station WHNS(TV)'s license accordingly.

With this action, this proceeding is terminated.

DATES: Effective September 12, 2003.

FOR FURTHER INFORMATION CONTACT: Brad Lerner, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No.02–363, adopted July 24, 2003, and released August 1, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

■ 2. Section 73.606, the Table of Television Allotments under North Carolina, is amended by removing channel 21 at Asheville and under South Carolina, is amended by adding channel 21 at Greenville.

§ 73.622 [Amended]

■ 3. Section 73.622(b), the Table of Digital Television Allotments under North Carolina, is amended by removing DTV Channel 21 at Asheville and under South Carolina, is amended by adding DTV channel 57 at Greenville.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–20050 Filed 8–5–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036-02; I.D. 073003E]

Fisheries of the Economic Exclusive Zone Off Alaska; Groundfish Fisheries by Vessels using Hook-and-Line Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for demersal shelf rockfish in the Southeast Outside District or sablefish. This action is necessary because the second seasonal bycatch mortality allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than demersal shelf rockfish in the Southeast Outside District or sablefish has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 1, 2003, until 1200 hrs, A.l.t., September 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 Pacific halibut bycatch mortality allowance for groundfish included in the other hook-and-line fishery, which is defined at § 679.21(d)(4)(iii)(C), was as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003) for the second season, the period June 10, 2003, through September 1, 2003, as 5 metric tons. The other hook-and-line fishery includes all groundfish except for demersal shelf rockfish in the Southeast Outside District or sablefish.

In accordance with § 679.21(d)(7)(ii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 2003 Pacific halibut bycatch mortality allowance specified for the hook-and-line groundfish fisheries other than demersal shelf rockfish in the Southeast Outside District or sablefish has been reached. Consequently, NMFS is prohibiting directed fishing for groundfish other than demersal shelf rockfish in the Southeast Outside District or sablefish by vessels using hook-and-line gear.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

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 contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the second seasonal bycatch mortality allowance of Pacific halibut apportioned to hook-and-line gear, and therefore reduce the public's ability to use and enjoy the fishery resource.

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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: July 31, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–20020 Filed 8–1–03; 1:50 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 151

Wednesday, August 6, 2003

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

Processed Fruits and Vegetables

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing inspection and certification for processed fruits, vegetables, and processed products. A projected fee increase ranging from 8 to 11 percent is proposed. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services under the Agricultural Marketing Act of 1946 and to ensure the program's financial stability. Also affected are the fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Act of 1937.

DATES: Comments must be postmarked, courier dated, or sent via the Internet on or before September 5, 2003.

ADDRESSES: Interested persons are invited to submit comments on the internet or written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, Washington, DC 20250–0247, telephone (202) 720–4693, or e-mail *Terry.Bane@usda.gov.* Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours and on the Internet at *http://www.ams.usda.gov/fv/ppbdocklist.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Terry B. Bane at the above address, call (202) 720–4693, or e-mail *Terry.Bane@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. Also, pursuant to the requirements of the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The Agency has and will continue to seek out cost savings opportunities and implement appropriate changes to reduce its costs. Such actions can provide alternatives to fee increases. The fee schedule was last revised on November 19, 2000 (63 FR 66485). However, even with cost control efforts, the existing fee schedule will not generate sufficient revenues to cover the lot, year round, and less than year round processed fruit and vegetable inspection program costs and sustain an adequate reserve balance (4 months of costs) as called for by Agency policy (AMS Directive 408.1).

AMS projects that program costs will increase to approximately $14.4 million in FY 2004 and $14.9 million in FY 2005, primarily from increases in employee salaries and benefits. An estimated 3.4 percent pay increase for employees effective January 2004 and January 2005 will increase program costs approximately $375,000 in FY 2004 and approximately $390,000 in FY 2005. Without a fee increase, the FY 2004 and FY 2005 end-of-year reserve balances will decline from $4.3 million to $3.6 million (3.0 months reserve), and $2.4 million (1.9 months reserve), respectively. The required 4 month level would be approximately $5.0 million. The proposed fee increase ranging from 8 to 11 percent will increase revenue by $1.3 million per year and will enable AMS to replenish program reserves to a 4 month level, approximately $5.0 million, for both FYs 2004 and 2005.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. This action would increase user fee revenue generated under the lot inspection program and the year round and less than year round inspection programs by approximately $1.3 million annually. This action is authorized under the AMA of 1946 [*see* 7 U.S.C. 1622(h)] which provides that the Secretary of Agriculture assess and collect ''such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *''.

There are more than 1,250 users of PPB's lot, year round, and less than year round inspection services (including applicants who must meet import requirements [1], inspections which amount to under 2 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). There will be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this rule. AMS has not identified any other federal rules which may duplicate, overlap, or conflict with this proposed rule.

The impact on all businesses, including small entities, is very similar. Further, even though fees will be increased, the amount of the increase is small (ranging from 8 to 11 percent), and should not significantly affect these entities. Finally, except for those applicants who are required to obtain inspections in connection with certain imports these businesses are under no obligation to use these inspection services.

Executive Order 12988

The rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–604), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect.

Currently, there are 4 processed commodities subject to 8e import regulations: canned ripe olives, dates, prunes, and processed raisins. A current listing of the regulated commodities can be found under 7 CFR Parts 944 and 999.

procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Proposed Action

The AMA authorizes official inspection, grading, and certification for processed fruits, vegetables, and processed products made from them. The AMA provides that the Secretary collect reasonable fees from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This rule would amend the schedule for fees for inspection services rendered to the processed fruit and vegetable industry to reflect the costs necessary to operate the program.

AMS regularly reviews its user fee programs to determine if the fees are adequate. While AMS continues to pursue opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover lot, year round, and less than year round inspection program costs while maintaining an adequate reserve balance.

Based on the Agency's analysis of increasing program costs, AMS is proposing to increase the fees relating to lot, year round, and less than year round inspection services.

AMS projects that program costs will increase to approximately $14.4 million in FY 2004 and $14.9 million in FY 2005, primarily from increases in employee salaries and benefits. An estimated 3.4 percent pay increase for employees effective January 2004 and January 2005 will increase program costs approximately $375,000 in FY 2004 and approximately $390,000 in FY 2005. Without a fee increase, the FY 2004 and FY 2005 end-of-year reserve balances will decline from $4.3 million to $3.6 million (3.0 months reserve), and $2.4 million (1.9 months reserve), respectively. The required 4 month level would be approximately $5.0 million. The proposed fee increase ranging from 8 to 11 percent will increase revenue by $1.3 million per year and will enable AMS to replenish program reserves to a 4 month level, approximately $5.0 million, for both FYs 2004 and 2005.

For inspection services charged under § 52.42, overtime and holiday work would continue to be charged as provided in that section.

For inspection services charged on a contract basis under § 52.51 overtime work would also continue to be charged as provided in that section. The following fee schedule compares current fees and charges with proposed fees and charges for processed fruit and vegetable inspection as found in 7 CFR §§ 52.42–52.51. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 52.42 are:

Current: $47.00/hr.
Proposed: $52.00/hr.

Charges for travel and other expenses as found in § 52.50 are:

Current: $47.00/hr.
Proposed: $52.00/hr.

Charges for year-round in-plant inspection services on a contract basis as found in § 52.51 (c) are:

(1) For inspector assigned on a year-round basis:

Current: $36.00/hr.
Proposed: $39.00/hr.

(2) For inspector assigned on less than a year-round basis: Each inspector:

Current: $48.00/hr.
Proposed: $52.00/hr.

Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis as found in § 52.51 (d) are:

(1) Each inspector:

Current: $48.00/hr.
Proposed: $52.00/hr.

A thirty day comment period is provided for interested persons to comment on this proposed action. Thirty days is deemed appropriate because it's preferable to have any fee increase, if adopted, to be in place as close as possible to the beginning of the fiscal year, October 1, 2003.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and record keeping requirements, and Vegetables.

For the reasons set forth in the preamble, 7 CFR part 52 is proposed to be amended as follows:

PART 52—[AMENDED]

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

Authority: 7 U.S.C. 1621–1627.

§ 52.42 [Amended]

2. In § 52.42, the figure ''$47.00'' is revised to read ''$52.00''.

§ 52.50 [Amended]

3. In § 52.50, the figure ''$47.00'' is revised to read ''$52.00''.

§ 52.51 [Amended]

4. In § 52.51, paragraph (c) (1), the figure ''$36.00'' is revised to read ''$39.00'', in paragraph (c) (2), the figure ''$48.00'' is revised to read ''$52.00'', and in paragraph (d) (1), the figure ''$48.00'' is revised to read ''$52.00''.

Dated: July 31, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–20008 Filed 8–5–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1124 and 1131

[Docket No. AO–368–A32, AO–271–A37; DA–03–04]

Milk in the Pacific Northwest and Arizona-Las Vegas Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1124	Pacific Northwest.	AO–368–A32
1131	Arizona-Las Vegas.	AO–271–A37

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider proposals to amend the producer-handler provisions of the Arizona-Las Vegas and Pacific Northwest orders. The proposals seek to, among other things, end the regulatory exemption of producer-handlers from the pooling and pricing provisions of these two milk marketing orders if their Class I route distribution exceeds three million pounds of milk per month. Additionally, the hearing will consider a proposal that would prohibit the ability to simultaneously pool the same milk on the Arizona-Las Vegas order and on a State-operated milk order that provides for marketwide pooling.

DATES: The hearing will convene at 8:30 a.m. on Tuesday, September 23, 2003.

ADDRESSES: The hearing will be held at the Sheraton Airport Hotel, 1600 South 52nd Street, Tempe, AZ 85281, telephone: (480) 967–6600.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231-Room 2971, 1400 Independence Avenue, Washington, DC 20250–0231, (202)–720–2357, e-mail address *jack.rower@usda.gov.*

Persons requiring a sign language interpreter or other special accommodations should contact

William Wise at (602)541–2909 or *wisew@fmma.net* before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Sheraton Airport Hotel, 1600 South 52nd Street, Tempe, AZ 85281, telephone: (480) 967–6600, beginning at 8:30 a.m., on Tuesday, September 23, 2003, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Arizona-Las Vegas and Pacific Northwest marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This public hearing is being conducted to collect evidence for the record concerning the definition, terms and conditions that are used to establish and regulate producer-handlers in the Arizona-Las Vegas and Pacific Northwest orders and how producer milk is defined in the Arizona-Las Vegas order. The hearing is intended to focus on matters related to these issues only. Witnesses are asked to limit their testimony to information pertaining directly to the definition of producer-handlers in the Arizona-Las Vegas and Pacific Northwest orders, the ability to simultaneously pool the same milk on the Arizona-Las Vegas order and on a State-operated order that provides for marketwide pooling, and closely related issues.

Interested parties who wish to introduce exhibits also should provide the Presiding Officer at the hearing with four (4) copies of such exhibits for the Official Record, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1124 and 1131

Milk marketing orders.

The authority citation for 7 CFR parts 1124 and 1131 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Department of Agriculture.

PART 1124—[AMENDED]

Proposed by Northwest Dairy Association: Proposal No. 1

Revise the *Producer-handler* provision of the Pacific Northwest milk marketing order in its entirety to read as follows:

§ 1124.10 Producer-handler.

Producer-handler means a person who operates a dairy farm and a distributing plant from which there is route distribution within the marketing area during the month not to exceed 3 million pounds and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

(a) *Requirements for designation.* Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting the conditions set forth in paragraphs (a)(1) through (5) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have their producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month.

(1) The care and management of the dairy animals and the other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control, ownership and management of the producer-handler and are operated as the producer-handler's own enterprise and its own risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes, its own milk production is under the complete and exclusive control, ownership and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the

limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(5) No milk produced by the herd(s) or on the farm(s) that supply milk to the producer-handler's plant operation is:

(i) Subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program under the authority of a State government maintaining marketwide pooling of returns, or

(ii) Marketed in any part as Class I milk to the non-pool distributing plant of any other handler.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation, under the sole and exclusive ownership of the producer-handler.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which are solely owned, operated, and which the producer-handler has designated as a source of milk supply for the producer-handler's plant operation. However, for purposes of this paragraph, any such milk production resources and facilities which do not constitute an actual or potential source of milk supply for the producer-handler's operation shall not be considered a part of the producer-handler's milk production resources and facilities.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely owned by, and directly operated or controlled by the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through (5) of this section are not continuing to be met, or under any of the conditions described in paragraphs (c)(1), (2) or (3) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month following the month in which the requirements were not met or the conditions for cancellation occurred.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own-farm production is less than 150,000 pounds during the month.

(3) Milk from the milk production resources and facilities of the producer-handler is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan operating under the authority of a State government.

(d) *Public announcement.* The market administrator shall publically announce:

(1) The name, plant location(s), and farm location(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been cancelled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of the designation do not exist.

Proposed by Dairy Farmers of America: Proposal No. 2

Proposal 2 is identical to Proposal 1 except that it would also limit a producer-handler from distributing fluid milk products to a wholesale customer who is served by a fully regulated or partially regulated distributing plant that already supplies the same product in the same-sized package with a similar label to a wholesale customer during the month.

PART 1131—[AMENDED]

Proposed by United Dairymen of Arizona, Northwest Dairy, and Dairy Farmers of America: Proposal No. 3

Amend the *Producer-handler* definition of the Arizona-Las Vegas milk marketing order by revising § 1131.10 to read as follows:

§ 1131.10 Producer-handler.

Producer-handler means a person who operates a dairy farm and a distributing plant from which there is route distribution within the marketing area during the month not to exceed 3 million pounds and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

(a) *Requirements for designation.* Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting the conditions set forth in paragraphs (a)(1) through (5) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have their producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month.

(1) The care and management of the dairy animals and the other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control, ownership and management of the producer-handler and are operated as the producer-handler's own enterprise and its own risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes, its own milk production is under the complete and exclusive control, ownership and management of the producer-handler and is operated as the

producer-handler's own enterprise and at its sole risk.

(3) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(5) No milk produced by the herd(s) or on the farm(s) that supply milk to the producer-handler's plant operation is:

(i) Subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program under the authority of a State government maintaining marketwide pooling of returns, or

(ii) Marketed in any part as Class I milk to the non-pool distributing plant of any other handler.

(6) The producer-handler does not distribute fluid milk products to a wholesale customer who is served by a plant described in § 1131.7(a), (b), or (e), or a handler described in § 1000.8(c) that supplied the same product in the same-sized package with a similar label to a wholesale customer during the month.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation, under the sole and exclusive ownership of the producer-handler.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which are solely owned, operated, and which the producer-handler has designated as a source of milk supply for the producer-handler's plant operation. However, for purposes of this paragraph, any such milk production resources and facilities which do not constitute an actual or potential source of milk supply for the producer-handler's operation shall not be considered a part of the producer-handler's milk production resources and facilities.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely owned by, and directly operated or controlled by the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through (5) of this section are not continuing to be met, or under any of the conditions described in paragraphs (c)(1), (2) or (3) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month following the month in which the requirements were not met or the conditions for cancellation occurred.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own-farm production is less than 150,000 pounds during the month.

(3) Milk from the milk production resources and facilities of the producer-handler is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan operating under the authority of a State government.

(d) *Public announcement.* The market administrator shall publically announce:

(1) The name, plant location(s), and farm location(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been cancelled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of the designation do not exist.

§ 1131.13 [Amended]

Proposed by United Dairymen of Arizona: Proposal No. 4

Revise the producer milk definition of the Arizona-Las Vegas milk marketing order so that the same milk cannot be simultaneously pooled on the Arizona-Las Vegas order and on a State-operated order that provides for marketwide pooling:

§ 1131.13 Producer milk.

1. Section 1131.13 is revised by adding a paragraph (e) to read as follows:

(d) * * *

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan under the authority of a State government.

Proposed by Dairy Programs, Agricultural Marketing Service: Proposal No. 5

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture,

Office of the Administrator, Agricultural Marketing Service,

Office of the General Counsel,

Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: July 31, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–19968 Filed 8–5–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4279

RIN 0570–AA47

Fiscal and Transfer Agent—Secondary Market Sales

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is proposing new regulations to standardize procedures for secondary market transactions, including initial and subsequent secondary market sales. The agency is proposing to solicit for an independent party to act as a Fiscal and Transfer Agent (FTA) to coordinate secondary market activities. RBS is taking this action to assure that lenders have a standard method in place to facilitate the paperwork and accounting associated with secondary market transactions for RBS Guaranteed Loans. While authority exists for guaranteed lenders to sell loans on the secondary market, many lenders are not active in the program because no such sales and accounting standards exist. RBS believes that implementing the FTA will result in increased secondary market sales. The intended effect of this action will be increased secondary market sales by lenders resulting in increased access to capital at competitive rates and terms by rural businesses. The FTA will serve as the record keeping facility for RBS, thus, eliminating the need for and cost of direct Government human and financial resources to administer the record keeping for sales on the secondary market.

DATES: Written comments on this proposed rule must be received on or before October 6, 2003 to be assured consideration. The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through October 6, 2003.

ADDRESSES: Submit written comments either (1) via the U.S. Postal Service to the Regulations and Paperwork Management Branch, Attention: Tracy Givelekian, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742; or (2) via Federal Express Mail to the Regulations and Paperwork Management Branch, Attention: Tracy Givelekian, USDA-Rural Development, 3rd Floor, 300 7th St., SW., Washington, DC 20024. Comments may also be submitted via the Internet by addressing them to *tracy.givelekian@usda.gov* and must contain the word ''transfer'' in the subject line. All comments will be available for public inspection during regular work hours at the 300 7th. Street, SW., address listed above.

FOR FURTHER INFORMATION CONTACT: Pandor H. Hadjy, Assistant Deputy Administrator, Business Programs, U.S. Department of Agriculture, Rural Business Cooperative Service, Room 5050, Stop 3220, 1400 Independence Ave., SW., Washington, DC 20250–3220, Telephone: 202–720–9693, FAX: (202) 690–0097, E-mail: *pandor.hadjy@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RBS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effect will be given to this rule, and administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RBS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Lenders participating in the Business and Industry Guaranteed Loan program are recipients of loan guarantees backed by the full faith and credit of the U.S. Government. This rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

The Administrator of RBS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program impacted by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.768, Business and Industry Loans.

Executive Order 12372

For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RBS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Executive Order 13132, Federalism

This proposal has been reviewed for compliance with Executive Order 13132 on Federalism, and it has been determined that the regulation has no federalism implications, does not impose substantial direct compliance costs on State and local governments, and does not preempt State law.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, RBS will seek Office of Management and Budget (OMB) approval of the reporting and record keeping requirements contained in this proposed rule.

Title: Fiscal and Transfer Agent—Secondary Market Sales.

Type of Request: New collection.

Abstract: The Business and Industry (B&I) program was legislated in 1972 under section 310B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the program is to improve, develop, or finance businesses, industries, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved through bolstering the existing private credit structure through the guaranteeing of quality loans made by lending institutions, thereby providing lasting community benefits. Secondary markets allow a lender to sell the loan and an investor to purchase the guaranteed portion of a loan, thereby increasing the lender's profit on the loan. This collection of information is necessary to standardize recordkeeping and facilitate the sale of guaranteed portions of loans on the secondary market. The agency is implementing statutory authority to establish a Fiscal and Transfer Agent (FTA) to provide central registration and act as the paying/transfer agent and administrative agent for secondary market transactions. The FTA will serve as a centralized, computerized recordkeeping facility for the Rural Business-Cooperative Service (RBS). The use of the FTA concept eliminates the need and cost for direct Government human and financial resources which will be required to administer recordkeeping transactions on the secondary market. The B&I program is administered by the Agency through Rural Development State Offices and sub-State offices serving each State.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 23.9 hours per response.

Respondents: Lending Institutions, Investors, Financial Services Firms.

Estimated Number of Respondents: 821.

Estimated Number of Responses per Respondent: 27.3.

Estimated Number of Responses: 22,385.

Estimated Total Annual Burden on Respondents: 533,920 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250.

Background

RBS is proposing to implement new regulations to standardize record keeping and facilitate the sale of guaranteed portions of loans sold on the secondary market. Section 338 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1988), as amended, provides legislative parameters for the sale of Guaranteed Loans on the secondary market. This section of the Act authorizes the Secretary to facilitate loan sales in accordance with regulations as established by the Secretary. RBS is implementing this existing statutory authority by promulgation of new regulations.

The Agency is proposing to implement by regulation the authority to solicit for an independent party to act as a Fiscal and Transfer Agent (FTA) to provide central registration and act as the paying/transfer agent and administrative agent for secondary market transactions. The FTA will not be eligible to buy and sell loans. The FTA will be responsible to handle the mechanical aspects of secondary market operations. When this regulation becomes final, the Agency will enter into a contract with an independent party to act as the FTA. When that contract is in place, a **Federal Register** Notice will be issued to the public announcing the selection of the FTA as well as the date that lenders are required to use the selected FTA for processing secondary market sales under this regulation.

Current Agency regulations permit the lender to sell all or part of the guaranteed loan on the secondary market or retain the entire loan. However, there are inadequate mechanisms in place to facilitate the paperwork and accounting associated with secondary market transactions of Agency loans. While authority exists for guaranteed lenders to sell loans on the secondary market, most lenders are not active in the program.

Over the course of years of experience with secondary market sales, it has been demonstrated to the Agency that notification of subsequent sales has not consistently taken place in spite of requirements in Agency sales documents that require that notifications of subsequent sales be transmitted to the servicing office. Thus, a notification system has been in existence but has not been effective.

There are several viable options available to increase access to the capital needed to increase rural economic growth. Secondary markets allow an investor to purchase the guaranteed portion of a loan. There are several reasons why a lender may desire to sell the guaranteed portion of the loan. Selling increases the yield to the lender on the unguaranteed portion. The increased liquidity gained by selling the guaranteed portion of the loan may be used by the lender to make additional loans. The broadened customer base offers increased opportunities to sell other services offered by the lender. In addition to helping with current liquidity problems, the secondary market offers lenders a hedge against potential liquidity troubles if a lender knows that it can sell guaranteed portions if it encounters liquidity problems in the future. In rural areas, where capital is often in short supply, the secondary market allows a lender to meet the credit needs of the local business community by importing capital from other parts of the country.

The secondary market helps lenders make long-term fixed rate loans at a competitive interest rate to small

businesses. Typically, a lender will arrange forward pricing commitments with investors, in which the investor agrees to purchase the loan at a specified price if the lender delivers within a specific time. In this way, the lender knows its yield and can price accordingly. The borrower receives the fixed rate financing at competitive rates, which enables it to budget its interest costs more accurately. This provides the borrower with a reasonably stable payment while protecting the lender from interest rate risk.

The Agency is proposing to implement by regulation the authority to solicit for an independent party to act as a Fiscal and Transfer Agent (FTA) to provide central registration and act as the paying/transfer agent and administrative agent for secondary market transactions. The FTA will not be eligible to buy and sell loans. The FTA will handle the mechanical aspects of secondary market operations. When this regulation becomes final, the Agency will enter into a contract with an independent party to act as the FTA. When that contract is in place, a **Federal Register** Notice will be issued to the public announcing the selection date of the FTA as well as an Implementation Date for processing secondary market sales under this regulation.

The FTA will be responsible to serve as a central registry of owners of guaranteed loans (Holders); receive, examine, and safe keep documents received in connection with the sale; deliver to each registered holder the Certificate which evidences ownership interest; receive remittances from lenders, with respect to Guaranteed Interests; make appropriate payments to the Registered Holder together with a Statement of Account; provide the Agency with a statement of the outstanding balances of Guaranteed Loans sold on the secondary market as they appear from the FTA's books and records; and furnish the Agency with timely and current reports on program activity as directed by the Agency and which may be changed from time to time as the Agency may require. In addition, the FTA will be responsible to check key information on the settlement documents against Agency and lender records, to insure that they are accurate, and resolve any discrepancies before settlement. It is the FTA's responsibility to check to ensure that the loan has not been previously sold by the lender and/or repurchased prior to settlement. If the loan was repurchased due to default, the FTA will be responsible to obtain appropriate documentation from the lender and notify the Agency if the loan has been previously sold. If a loan was repurchased and subsequently sold, the FTA is responsible to examine the payment history for the required 12 monthly payments since default and repurchase.

For initial sales, the FTA is responsible to monitor the first four payments of all loans sold to determine that the borrower makes payments pursuant to repayment agreements. For newly sold loans, the FTA is responsible for balance and interest paid-to-date accuracy. If the first payment is submitted incorrectly, the FTA will contact the lender and review the proper procedure for submission of payment information. The FTA will supply explanatory materials to lenders to assist with the preparation of payment information. The FTA will check all loan payments received to determine if the lender's principal balance and paid-to-date information agree with FTA records.

In order to insure that the Agency's financial interest is protected, the FTA will maintain computerized, on-line default and prepayment files. The FTA will generate a monthly Late Payment Report for each respective servicing office which lists loans 60 days or more in default. The FTA will generate additional loan status reports from time to time as directed by the Agency. The FTA will provide to each servicing office, in a format approved by the Agency, a report of initial sales approved during the previous month. The FTA is responsible for sending bills to lenders to collect fees as are authorized by regulation and sending written instructions to the lender on the correct application of loan payments if necessary. The FTA is responsible to provide technical assistance to the Agency and maintain an inventory of regulations, forms, and program guides.

The FTA is responsible to operate and maintain an in-house system consisting of all hardware, software, and procedures that will be used during the term of the agreement by the FTA to service the Secondary Market Program. As part of this program, the FTA will agree to provide the Agency with financial information as specified in contract on loan sales and is responsible for the accuracy of these records. The FTA will cooperate in the transfer of the FTA functions from it to a successor FTA upon termination or expiration of this contract, including all databases pertinent to Loan Sales. The FTA is responsible to provide timely answers to inquiries from investors, broker-dealers, and lenders concerning sales.

The FTA is responsible to prepare, authenticate, and deliver Certificates to Registered Holders or their representatives. The FTA will receive from purchasers notifications of pending sales of Guaranteed Interests and monitor the progress of such sales. The FTA will establish and maintain a trust account on behalf of the Agency. The purpose of this account is to provide funds for the timely payment of principal and interest for securities issued under the program.

The FTA will be required to carry a fidelity bond or similar insurance in an amount commensurate with the level of funds in possession of the FTA. The bond shall be in place or evidence of a legally-binding binder in place for this coverage shall be provided by the FTA prior to contract award, preferably the required information will be provided with the proposal.

The FTA will be responsible to provide sufficient staff to act as a liaison between program participants for the purpose of handling any requests relating to secondary market sales. The FTA will be responsible to insure that the customer service function operates properly by developing, operating, and staffing an on-line customer service inquiry system that will enable customer service representatives to log each incoming telephone call and letter and track its status. Specific information as required by the agency and actions taken as a result of the inquiry must be retained for the duration of the contract and is subject to review by the Agency.

Upon awarding of the contract, the FTA is responsible for development of a Secondary Market Program Guide. The guide should describe the market for loans sold on an individual basis and the role of the FTA. The remainder of the guide may be devoted to special topics and reference materials.

The contract with the FTA will be effective on the date signed and expire 1 year after that date. The Agency shall retain the right to extend the contract for up to 4 additional years.

Due to the declining level of resources available, the Agency has determined that the most efficient way to address the record keeping problems and implement secondary market policy decisions is to require the use of the FTA. The FTA will serve as a centralized, computerized record keeping facility for the Agency. The Agency will have electronic access to information regarding the owner of the guaranteed portion, terms of the sale, accounting of the payment flow, etc.

The Small Business Administration (SBA) has utilized the FTA program since the mid-1980s and found that use of the program has resulted in several advantages: (1) Greater stability in the secondary market, (2) increased

liquidity providing additional capital to small businesses, (3) increased participation by large institutional investors, and (4) decreased interest costs to borrowers.

Establishment of the FTA could encourage program lenders currently not utilizing the secondary market to sell loans to investors. SBA has operated successfully using the FTA concept. According to the SBA Annual Report for calendar year 2001, secondary market dollar volume of agency loans rose to an all-time high during that year. The increase in secondary market activity is attributed to implementation of the FTA concept. We believe that implementation of these regulatory changes will increase participation by lenders in the secondary market and make more funds available for rural business development. The benefits of participation in the secondary market will be passed on to the rural business and rural lending institutions.

In addition, the establishment of the FTA would eliminate the need for and cost of direct Government human and financial resources required to administer record keeping for sales transactions on the secondary market. This action would be in compliance with OMB Circular A–76 which states, in part: ''It is the policy of the United States Government to * * * rely on the commercially available sources to provide commercial products and services * * * the Government shall not start or carry on any activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source.''

List of Subjects in 7 CFR Part 4279

Loan programs—Business and Industry, Rural areas.

Accordingly, chapter XLII, title 7, Code of Federal Regulations, is proposed to be amended as follows:

PART 4279—GUARANTEED LOANMAKING

1. The authority citation for part 4279 is revised to read as follows:

Authority: 7 U.S.C. 1988; 7 U.S.C. 1989.

Subpart A—General

2. Section 4279.75 is amended by adding two sentences at the beginning of the introductory text to read as follows:

§ 4279.75 Sale or assignment of guaranteed loan.

This section applies to all loans where the Loan Note Guarantee is issued prior to the date in the **Federal Register** Notice announcing the selection of the Fiscal and Transfer Agent under subpart C of this part. After this date, all loans must be sold through the RBS Fiscal and Transfer Agent. * * *

* * * * *

3. Section 4279.78 is amended in paragraph (a) by adding one sentence after the heading to read as follows:

§ 4279.78 Repurchase from holder.

(a) * * * All loans sold through the FTA will be repurchased in accordance with subpart C of this part and the requirements of this paragraph. * * *

* * * * *

4. Subpart C is added to read as follows:

Subpart C—Fiscal and Transfer Agent—Secondary Market Sales

Sec.

4279.201 Purpose.
4279.202 Definitions and abbreviations.
4279.203 Fees.
4279.204 [Reserved]
4279.205 Sale of Guaranteed Loans.
4279.206–4279.222 [Reserved]
4279.223 Lender payments.
4279.224 FTA payment processing responsibilities.
4279.225–4279.231 [Reserved]
4279.232 FTA Certificate administration responsibilities.
4279.233 Disclosures to purchasers.
4279.234–4279.236 [Reserved]
4279.237 Termination of Certificates.
4279.238 [Reserved]
4279.239 Repurchase of Guaranteed Interest by Lender.
4279.240 [Reserved]
4279.241 Repurchase by the Agency.
4279.242 Default by Lender.
4279.243 Surrender of Certificate.
4279.244 Certificates lost, destroyed, stolen, mutilated, or defaced.
4279.245 Suspension or revocation of participant in secondary market.
4279.246 Eligibility and selection of FTA.
4279.247 4279.299 [Reserved]
4279.300 OMB control number.

Authority: 7 U.S.C. 1988; 7 U.S.C. 1989.

Subpart C—Fiscal and Transfer Agent—Secondary Market Sales

§ 4279.201 Purpose.

This subpart contains regulations governing the sales of Guaranteed Loans by RBS on the secondary market. This subpart applies to all loans where the Loan Note Guarantee is issued after the date in the **Federal Register** Notice announcing the selection of the Fiscal and Transfer Agent under this subpart. Guaranteed Loans sold on the secondary market prior to the date in such Notice will be regulated in accordance with subparts A and B of this part and subpart B of part 4287 of this chapter. After such date any resale of those loans will be encouraged, but not required, to comply with the provisions of this regulation.

§ 4279.202 Definitions and abbreviations.

The definitions and abbreviations in § 4279.2 of subpart A of this part are applicable to this subpart in addition to the following:

Certificate of Beneficial Interest or ''Certificate.'' The document that the Fiscal and Transfer Agent issues representing an undivided interest in the RBS guaranteed portion of a loan.

Detached Assignment for Guaranteed Interest Certificate. A document used by Registered Holders to transfer Certificates through the Fiscal Transfer Agent together with the original Certificate.

Fiscal and Transfer Agent (FTA). RBS Fiscal and Transfer Agent is an independent party responsible for coordinating the secondary market activities on behalf of the Agency.

FTA Due Date. The third calendar day of every month or the next business day thereafter if the third calendar day is not a business day.

Guaranteed Interest. The guaranteed portion of a Guaranteed Loan.

Guaranteed Loans. RBS Guaranteed Loans authorized under 7 U.S.C. 1932.

Implementation Date. The date in the Federal Register Notice announcing the selection of the Fiscal and Transfer Agent under this subpart after which lenders are required to sell loans in the secondary market through the FTA.

Note Rate. The interest rate on the Borrower's Promissory Note.

Registered Holder. The Certificate owner listed in the FTA's records. Registered Holders are entitled to the same rights as Holders under §§ 4279.16 and 4279.72 (a) and (b) of this part.

Request for Certification of Assignment Guarantee Agreement. The form utilized by the Holder of an Assignment Guarantee Agreement issued to the FTA in exchange for a Certificate.

Rural Business-Cooperative Service (RBS) or Agency. See the definition of ''Agency'' in § 4279.2(a) of this part.

Secondary Market Participation Agreement. The Agreement that delineates the rights and responsibilities of the Lender, Holder, FTA, and RBS in the secondary market.

Warranty date. The date the Secondary Market Participation Agreement is settled by the Lender and Registered Holder through FTA.

§ 4279.203 Fees.

(a) RBS will charge a program user fee which will be limited to the Agency's cost of administering the FTA program.

(b) RBS will periodically publish a list of fees in the **Federal Register**.

(c) The FTA may charge reasonable and customary servicing fees, transfer fees, and other fees as approved by RBS.

(d) FTA and the Agency reserve the right to withhold any unpaid fees owed by the Lender or Registered Holder or overpayments from any future payment they would otherwise be due.

§ 4279.204 [Reserved]

§ 4279.205 Sale of Guaranteed Loans.

(a) *Applicability.* (1) Guaranteed Loans made prior to the Implementation Date may be sold under this subpart or subparts A and B of this part and subpart B of part 4287 of this chapter.

(2) All Guaranteed Loans made after the Implementation Date of this regulation must be sold through the FTA in accordance with this part. The FTA will issue each Registered Holder a Certificate.

(b) *Sale by Lender.* (1) The Lender and Holder must execute a Secondary Market Participation Agreement and forward it to the FTA with a conformed copy of the Promissory Note. The FTA will handle the transfer of funds and issue and register a Certificate of Beneficial Interest to the Registered Holder.

(2) Lender may sell the Guaranteed Loan it has repurchased pursuant to § 4279.239 of this subpart.

(3) Lender shall be liable through the Warranty Date to the Agency for any erroneous financial information furnished to the FTA.

(4) Each Registered Holder shall receive a Certificate of Beneficial Interest.

(c) *Sale by Registered Holder.* (1) Guaranteed Loans may be sold by the Registered Holder under this subpart by providing the FTA with the Request for Certification of Assignment Guarantee Agreement.

(2) Guaranteed Loans will be sold by the Registered Holder by providing to the FTA:

(i) The Certificate of Beneficial Interest,

(ii) A Detached Assignment for Guaranteed Interest Certificate;

(iii) Applicable transfer fees, and

(iv) Any other information needed to effectuate the transfer.

(3) Transfers shall be effective when registered on the books of FTA. FTA will settle Registered Holder's account as of the last business day of the prior month.

§§ 4279.206–4279.222 [Reserved]

§ 4279.223 Lender payments.

(a) *Transmission of payments.* Lender shall send the FTA Borrower payments, less Agency approved fees, together with account status information by the FTA Due Date. All other payments received must be remitted by Lender to FTA within 2 business days of receipt.

(b) *Late fees.* Lender shall pay the following late fees for payments not received within 2 business days of their due date. Failure by the Lender to pay these fees within 10 business days of FTA's request will constitute a default under § 4279.245 of this subpart.

(1) A late payment fee to the FTA equal to:

(i) The interest on the delinquent payment at the rate provided in the Promissory Note (less the rate of Lender's servicing fee), and

(ii) Any other fees approved under § 4279.203 of this subpart; and

(2) A late payment fee to the Agency pursuant to § 4279.203 of this subpart (collected by FTA).

(c) *Payment discrepancies.* Lender shall work with the Agency and FTA to reconcile any payment discrepancies and provide a transcript of the account. If the Lender and FTA cannot agree on the balance and interest paid-to-date within 10 business days, FTA will immediately send the Lender's and FTA's transcript to the Agency for reconciliation. The reconciliation by the Agency will be final. If the Lender fails to furnish a current transcript statement within 10 business days after the Agency's request, then the Agency may rely on the certified statement of account with supporting documentation from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment in settlement will be made as expeditiously as possible. Upon request by FTA, the Lender shall issue at no charge a certified statement of the outstanding principal amount of the Guaranteed Interest and the effective interest rate on the Promissory Note. Failure of the Lender to provide a transcript shall result in a fee approved under § 4279.203 of this subpart and will constitute a default under § 4279.245 of this subpart.

(d) *Modifications to the Borrower's payment schedule.* Any payment modification must receive prior approval by the Registered Holder and the Agency.

§ 4279.224 FTA payment processing responsibilities.

(a) FTA shall remit to the Registered Holder payments received less applicable fees in a manner determined by the Agency.

(b) All other payments from the Lender or the Agency shall be remitted by FTA to the Registered Holder within 2 business days of receipt of immediately available funds by the FTA.

(c) Failure of the FTA to pay the Registered Holder will be treated the same as failure of the Lender to pay the FTA. If FTA fails to make timely payment to the Registered Holder, it will pay the Registered Holder:

(1) Interest on the delinquent payment at the rate provided in the Promissory Note less applicable fees; plus

(2) A late payment fee approved under § 4279.203 of this subpart.

(d) On loan servicing actions, no response by the Registered Holder within 30 days is deemed as denial of the request.

§§ 4279.225–4279.231 [Reserved]

§ 4279.232 FTA Certificate administration responsibilities.

(a) *Administration of Certificates—FTA responsibility.* The FTA will provide for the central registration and administration of all Certificates sold including registration, transfer, and redemption.

(b) *RBS right to subrogation.* RBS is subrogated to the extent it pays a claim on a Guaranteed Loan under this subpart.

§ 4279.233 Disclosures to purchasers.

As required by law, prior to any sale or transfer, the Lender or Registered Holder must disclose to the purchaser, on a form acceptable to the Agency, information on the terms, conditions and yield.

§§ 4279.234–4279.236 [Reserved]

§ 4279.237 Termination of Certificates.

The FTA and RBS may redeem a Certificate because of default. The Certificate will cease to accrue interest as of the date of such termination, regardless of whether the Certificate is surrendered. Payment will be made only after presentation of the Certificate to FTA by the Registered Holder. The Registered Holder shall pay a final transfer fee approved under § 4279.203 of this subpart upon redemption.

§ 4279.238 [Reserved]

§ 4279.239 Repurchase of Guaranteed Interest by Lender.

Where the decision is for the Lender to purchase the Guaranteed Interest in accordance with § 4279.78 of this part, FTA, at its option, may request a transcript of account from the Lender in accordance with § 4279.223(c) of this subpart. Subject to any necessary reconciliation, the Lender will give FTA 10 business days' written notice of the purchase. Within 2 business days of receiving notice, FTA will notify the

Registered Holder of the repurchase and request the Certificate. On the date of repurchase, the Lender will forward a payment to FTA that includes the outstanding principal balance of the Guaranteed Interest plus interest through the closing date. FTA shall remit this payment, less FTA approved fees, to the Registered Holder within 2 business days.

§ 4279.240 [Reserved]

§ 4279.241 Repurchase by the Agency.

The Agency may repurchase the Guaranteed Interest and request a transcription in accordance with § 4279.223(c) of this subpart. Written notices will be given to the Lender and FTA when the Agency is to purchase the Guaranteed Interest. The Agency shall not be liable for any amount attributable to any late payment fees due FTA or the Registered Holder.

§ 4279.242 Default by Lender.

The Agency can purchase the Guaranteed Loan when the Lender fails to timely pay the Registered Holder or FTA.

§ 4279.243 Surrender of Certificate.

Failure of the Registered Holder to submit the Certificate to FTA for redemption on the date of payment specified by the Agency or FTA will not entitle the Registered Holder to accrued interest beyond such date and will subject them to a fee approved under § 4279.203 of this subpart.

§ 4279.244 Certificates lost, destroyed, stolen, mutilated or defaced.

Procedures for claims resulting from loss, theft, destruction, mutilation, or defacement of a Certificate shall be the same as those for replacement of a Loan Note Guarantee found in § 4279.84 of this part.

§ 4279.245 Suspension or revocation of participant in secondary market.

The Agency may suspend, debar or otherwise revoke the privilege of a Lender, broker, dealer, FTA, or Registered Holder to sell, purchase, broker, or deal in Guaranteed Loans or Certificates for committing a material violation of:

(a) These regulations;

(b) Agreements made pursuant to these regulations; or

(c) Knowingly submitting false or fraudulent information to RBS or FTA; in accordance with 7 CFR part 3017.

§ 4279.246 Eligibility and selection of FTA.

(a) The selected FTA must be financially responsible and have demonstrated experience in secondary market loan sales. The FTA must comply with all laws and regulations applicable to transactions under this subpart.

(b) The Agency will award a contract with an independent party to act as the FTA.

(c) The contract with the FTA will expire in 1 year. The Agency shall retain the right to extend the contract for up to 4 additional years.

(d) The selected FTA must agree to allow the Agency access to any of the records or facilities of the FTA, as they pertain to activities authorized under this subpart, and as provided by the contract.

§§ 4279.247–4279.299 [Reserved]

§ 4279.300 OMB control number. [Reserved]

Dated: July 31, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 03–19987 Filed 8–5–03; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–332–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 650 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Cessna Model 650 airplanes. This proposal would require repetitive replacement of the horizontal stabilizer primary trim actuator assembly (HSTA) with a repaired assembly. This action is necessary to prevent uncommanded movement of the horizontal stabilizer, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 22, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–332–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–332–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Cessna Aircraft Co., PO Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Robert P. Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–332–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–332–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the ability of the no-back feature of the horizontal stabilizer primary trim actuator (HSTA) assembly, a design feature to prevent uncommanded movement of the horizontal stabilizer, could be degraded on Cessna Model 650 airplanes. The degradation is thought to be the result of a combination of assembly tolerances and a change in friction due to wear. Should the no-back feature of the HSTA assembly be degraded, an additional HSTA failure could cause the horizontal stabilizer to move when air loads are applied to it during flight. This condition, if not corrected, could result in the uncommanded movement of the horizontal stabilizer, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Cessna Service Bulletin SB650–27–50, dated June 12, 2002, which describes procedures for replacement of the HSTA assembly part number 9914056–3 or 9914056–4 with a repaired assembly.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin recommends accomplishing a one-time replacement of the HSTA assembly, the FAA has determined that a one-time replacement would not ensure that the identified unsafe condition would not reoccur after replacement. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the likelihood that degradation in the no-back design feature of the HSTA assembly would reoccur, the average utilization of the affected fleet, and the time necessary to replace the HSTA assembly (approximately 35 hours). In light of all of these factors, the FAA finds that periodic replacement of the HSTA assembly at intervals not to exceed 18 months, to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 357 airplanes of the affected design in the worldwide fleet. The FAA estimates that 285 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 35 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $65 per work hour. The manufacturer has indicated that it would provide the required parts at no cost. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $648,375 or $2,275 per airplane per replacement cycle. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Cessna Aircraft Company: Docket 2002–NM–332–AD.

Applicability: Model 650 airplanes, serial numbers 0001 through 0171 inclusive, 0173 through 0241 inclusive, 7001 through 7094 inclusive, and 7096 through 7119 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded movement of the horizontal stabilizer, which could result in reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, replace the horizontal stabilizer primary trim actuator (HSTA) assembly part number 9914056–3 or 9914056–4, with a repaired assembly, part number 9914056–3 or 9914056–4; in accordance with Cessna Service Bulletin SB650–27–50, dated June 12, 2002. Repeat the replacement thereafter at intervals not to exceed 18 months.

Note 1: Having the letter ''B'' following the part serial number (for example, SER. NO. 13B) identifies a repaired HSTA assembly, part number 9914056–3 or 9914056–4.

Parts Installation

(b) As of the effective date of this AD, no person shall install an HSTA, part number 9914056–3 or 9914056–4, on any airplane, unless that HSTA has been repaired and reidentified with the letter ''B'' following the part serial number.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Wichita Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 31, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19984 Filed 8–5–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Investment of Customer Funds

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening comment period.

SUMMARY: The Commodity Futures Trading Commission (Commission) is reopening the comment period for the proposed amendments to Regulation 1.25. These amendments would, among other things, allow futures commission merchants and derivatives clearing organizations (DCO) to engage in repurchase agreements with securities deposited by customers subject to certain conditions and modify the portfolio time-to-maturity requirements for securities deposited in connection with certain collateral management programs of DCOs pursuant to certain conditions. The new deadline for submitting public comments is September 5, 2003.

DATES: Written comments must be received on or before September 5, 2003.

ADDRESSES: Comments on proposed amendments to Regulation 1.25 should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528 or by e-mail to *secretary@cftc.gov.* Reference should be made to ''Proposed Amendments to Regulation 1.25.''

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director and Chief Counsel, or Lois Gregory, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington DC 20581. Telephone: (202) 418–5450.

SUPPLEMENTARY INFORMATION: On June 30, 2003, the Commission published a notice of proposed rulemaking which sought comment on proposed amendments to Regulation 1.25.[1] The amendments would allow futures commission merchants and derivatives clearing organizations (DCO) to engage in repurchase agreement with securities deposited by customers subject to certain conditions and modify the portfolio time-to-maturity requirements for securities deposited in connection with certain collateral management programs of DCOs pursuant to certain conditions. The Commission also requested comments concerning whether the portfolio time-to-maturity requirement should be modified for portfolios consisting exclusively of Treasury securities; whether the restriction on embedded derivatives should be modified, whether the list of permitted benchmarks for variable rate securities should be expanded, and whether the concentration limits on reverse repurchase agreements should be changed. The Commission established a 30-day period for submitting public comment, ending July 30, 2003.

By letter dated July 24, 2003, an association of futures industry participants requested an extension of the original comment period until September 5, 2003, so that additional parties who could not meet the original July 30 deadline could submit comments letters.

In response to this request and in order to ensure that an adequate opportunity is provided for submission of meaningful comments, the Commission has determined to reopen the comment period for the notice of proposed rulemaking to September 5, 2003.

Issued in Washington, DC, on July 30, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–19949 Filed 8–5–03; 8:45 am]

BILLING CODE 6351–01–M

[1] 68 FR 38654.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128203–02]

RIN 1545–BA81

Partnership Transactions Involving Long-Term Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to partnership transactions involving contracts accounted for under a long-term contract method of accounting. The regulations are necessary to resolve issues that were reserved in final regulations under section 460 that were published in the **Federal Register** on May 15, 2002, addressing other mid-contract changes in taxpayer engaged in completing such contracts. The effect of the regulations is to explain the tax consequences of these partnership transactions.

DATES: Written and electronic comments and requests for a public hearing must be received by November 4, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–128203–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m.

to: CC:PA:RU (REG–128203–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet directly to the IRS Internet site at *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Richard Probst, (202) 622–3060; concerning submissions, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION

Background

Section 460 of the Internal Revenue Code generally requires that taxpayers determine taxable income from a long-term contract using the percentage-of-completion method (PCM). Under regulations finalized in 2001 (TD 8929, 2001–1 C.B. 756), a taxpayer using the PCM generally includes a portion of the total contract price in income for each taxable year that the taxpayer incurs contract costs allocable to the long-term contract. More specifically, to determine the income from a long-term contract, the taxpayer first computes the completion factor for the contract, which is the percentage of the estimated total allocable contract costs that the taxpayer has incurred (based on the all events test of section 461, including economic performance, regardless of the taxpayer's method of accounting) through the end of the taxable year. Second, the taxpayer computes the amount of cumulative gross receipts from the contract by multiplying the completion factor by the total contract price, which is the amount that the taxpayer reasonably expects to receive under the contract. Third, the taxpayer computes the amount of current-year gross receipts, which is the difference between the cumulative gross receipts for the current taxable year and the cumulative gross receipts for the immediately preceding taxable year. This difference may be a loss (a negative number) based on revisions to estimates of total allocable contract costs or total contract price. Fourth, the taxpayer takes into account both the current-year gross receipts and the amount of allocable contract costs actually incurred during the taxable year. To the extent any portion of the total contract price has not been included in taxable income by the completion year, section 460(b)(1) and the regulations require the taxpayer to include that portion in income for the taxable year following the completion year.

A long-term contract or a portion of a long-term contract that is exempt from the PCM may be accounted for under any permissible method, including the completed contract method (CCM). Under the CCM, a taxpayer does not take into account the gross contract price and allocable contract costs until the contract is complete, even though progress payments are received in years prior to completion.

A taxpayer generally must allocate costs to a contract subject to section 460(a) in the same manner as direct and indirect costs are capitalized to property produced by a taxpayer under section 263A. The regulations provide exceptions, however, that reflect the differences in the cost allocation rules of sections 263A and 460.

Section 460(h) directs the Secretary to prescribe regulations to the extent necessary or appropriate to carry out the purpose of section 460, including regulations to prevent a taxpayer from avoiding section 460 by using related parties, pass-through entities, intermediaries, options, and other similar arrangements.

On May 15, 2002, final regulations under section 460 were issued to address a mid-contract change in taxpayer engaged in completing a contract accounted for under a long-term contract method of accounting (TD 8995; 2002–23 I.R.B. 1070). The regulations divide the rules regarding a mid-contract change in taxpayer into two categories-constructive completion transactions and step-in-the-shoes transactions.

In a constructive completion transaction, the taxpayer that originally accounted for the long-term contract (old taxpayer) must recognize income from the contract as of the time of the transaction. The contract price used to determine the amount of income recognized by the taxpayer is the amount realized from the transaction, reduced by any amounts paid by the old taxpayer to the taxpayer subsequently accounting for the long-term contract (new taxpayer) that are allocable to the contract. Similarly, the new taxpayer in a constructive completion transaction is treated as though it entered into a new contract as of the date of the transaction. The new taxpayer's contract price is the amount that the new taxpayer reasonably expects to receive under the contract, reduced by the price paid by the new taxpayer for the contract, and increased by any amounts paid by the old taxpayer to the new taxpayer that are allocable to the contract. In contrast, in a step-in-the-shoes transaction, the old taxpayer's obligation to account for the contract terminates on the date of the transaction and is assumed by the new taxpayer. The new taxpayer must assume the old taxpayer's methods of accounting for the contract, with both the contract price and allocable contract costs based on amounts taken into account by both parties.

The final section 460 regulations provide that a contribution to a partnership in a transaction described in section 721(a), a transfer of a partnership interest, and a distribution by a partnership to which section 731 applies (other than a distribution of a contract accounted for under a long-term contract method of accounting) are step-in-the-shoes transactions. In a notice issued concurrently with the final regulations, Notice 2002–37 (2002–23 I.R.B. 1095), Treasury and the IRS announced their intention to publish regulations setting forth the special rules that apply to these partnership transactions and described many of these rules. The notice further provided that these regulations would apply to contributions, transfers, and distributions occurring on or after May 15, 2002. The IRS requested comments as to the appropriate scope and substance of the regulations. No comments were received.

Explanation and Summary of Contents

1. Contribution of a Contract to a Partnership

The final section 460 regulations provide that a contribution of a contract accounted for under a long-term contract method of accounting in a transaction described in section 721(a) is a step-in-the-shoes transaction. Under section 722, the partner's basis in the partnership interest is increased by the adjusted basis of the contributed contract (including the uncompleted property, if applicable). Under section 723, the partnership's basis in the contributed contract (including the uncompleted property, if applicable) equals the partner's basis in the contributed contract (including the uncompleted property, if applicable).

Under the final section 460 regulations, the basis of a long-term contract (including the uncompleted property, if applicable) is determined by reference to the allocable contract costs incurred by the taxpayer but not taken into account in computing taxable income. Thus, if the contract is accounted for under the PCM, then the taxpayer's basis in the contract is $0, even though the taxpayer has incurred costs and recognized income under the contract. If, on the other hand, the contract is accounted for under the CCM, then the taxpayer's basis in the contract is equal to the costs incurred by the taxpayer, unreduced by any progress

payments that the taxpayer has received but not taken into income with respect to the contract. Under these rules, a partner accounting for a long-term contract under the CCM that incurs $400 of allocable contract costs, receives $500 of progress payments with respect to the contract, and the contributes the contract, but not the progress payments, to a partnership would be able to claim a $400 basis in the partnership interest received. Without any adjustments, such an analysis would give rise to erroneous results.

For this reason, these proposed regulations, like the rules in the final section 460 regulations applicable to corporate step-in-the-shoes transactions, such as transactions described in section 351(a), require a partner that contributes a contract accounted for under a long-term contract method of accounting to a partnership to adjust the basis of the partnership interest received. Specifically, the proposed regulations require the partner to increase the basis of the partnership interest by the amount of gross receipts that the partner has recognized under the contract, and reduce the basis of the partnership interest by the amount of gross receipts the partner has received or reasonably expects to receive under the contract. If the decrease exceeds the partner's basis in the partnership interest, then the partner must recognize income equal to the excess. To ensure that the partnership is not taxed again on any income taken into account by the partner under this rule, the proposed regulations require the partnership to reduce its total contract price (or gross contract price) by the amount of income recognized by the contributing partner.

2. Built-In Income and Loss

Section 704(c) generally provides that income, gain, loss, or deduction attributable to property that is contributed to a partnership must be allocated to the contributing partner. The purpose of section 704(c) is to prevent the shifting of tax consequences among partners with respect to precontribution gain or loss. These proposed regulations provide that the principles of section 704(c) and § 1.704–3 apply to allocations of income or loss with respect to a contract accounted for under a long-term contract method of accounting that is contributed to a partnership (or that is revalued by a partnership under § 1.704–1(b)(2)(iv)(f)). The proposed regulations provide that the partnership must apply section 704(c) to such income or loss in a manner that reasonably accounts for the section 704(c) income or loss over the remaining term of the contract.

Under the proposed regulations, the amount of built-in income or built-in loss attributable to a contributed contract that is subject to section 704(c) is determined as follows. First, the contributing partner must take into account any income or loss required under the step-in-the-shoes rules for the period ending on the date of the contribution. Second, the partnership determines the amount of income or loss that the contributing partner would take into account if the contract were disposed of for its fair market value in a constructive completion transaction. This calculation is treated as occurring immediately after the partner has applied the step-in-the-shoes rules, but before the contribution to the partnership. Finally, this amount is reduced by the amount of income, if any, that the contributing partner is required to recognize as a result of the contribution.

3. Transfer of a Partnership Interest

The transfer of an interest in a partnership engaged in a contract accounted for under a long-term contract method of accounting is a step-in-the-shoes transaction. Section 741 provides that gain or loss recognized on the sale or exchange of an interest in a partnership is considered as gain or loss from a capital asset, except as provided in section 751. Section 751(a) provides that the amount of any money, or the fair market value of any property, received by a transferor partner in exchange for all or any part of the partner's interest in the partnership attributable to unrealized receivables (as defined in section 751(c)) or inventory items (as defined in section 751(d)) of the partnership shall be considered as an amount realized from the sale or exchange of property other than a capital asset. In Rev. Rul. 79–51 (1979–1 C.B. 225), the IRS addressed a transaction in which a partner sold the partner's entire interest in a partnership holding partially completed contracts, the income from which was being accounted for under the CCM. The IRS ruled that the value of the contracts at the time of sale are unrealized receivables for purposes of section 751(c).

Consistent with Rev. Rul. 79–51, the proposed regulations provide that contracts accounted for under a long-term contract method of accounting are unrealized receivables within the meaning of section 751(c). The amount of ordinary income or loss attributable to a contract is the amount of income or loss that the partnership would take into account under the constructive completion rules if, at the time of a transfer of a partnership interest, the partnership disposed of the contract for its fair market value in a constructive completion transaction.

4. Adjustments to the Basis of Partnership Property

Section 743(b) allows a partnership to adjust the basis of partnership property in the case of a transfer of an interest in the partnership by sale or exchange or on the death of a partner. If all or part of a basis adjustment under section 743(b) is allocated to a contract accounted for under a long-term contract method of accounting, the proposed regulations provide that the adjustment shall reduce or increase, as the case may be, the transferee partner's distributive share of income or loss from the contract. In the case of a contract accounted for under the CCM, the basis adjustment is taken into account in the year in which the contract is completed. In the case of a contract accounted for under a long-term contract method of accounting other than the CCM, the portion of the basis adjustment that is recovered in each taxable year of the partnership must be determined by the partnership in a manner that reasonably accounts for the adjustment over the remaining term of the contract. Similar rules apply if all or part of an adjustment to the basis of partnership property under section 734(b) is allocated to a contract accounted for under a long-term contract method of accounting.

5. Closing of the Books

Generally, under the step-in-the-shoes rules, an old taxpayer's obligation to account for the contract terminates on the date of the transaction and is assumed by the new taxpayer. As a result, an old taxpayer using the PCM is required to recognize income from the contract based on the cumulative allocable contract costs incurred as of the date of the transaction. This rule differs from § 1.706–1(c)(2)(ii), which provides that, if a partner's interest in the partnership terminates during the taxable year, the partnership may determine the partner's distributive share of partnership items either by closing the partnership's books as of the termination date or by prorating the partnership's income for the entire year between the pre- and post-termination periods.

Consistent with § 1.706–1(c)(2)(ii), these regulations generally provide that upon the transfer or liquidation of an interest in a partnership holding a contract accounted for under a long-term contract method of accounting, the step-in-the-shoes rules apply to a

contract accounted for under a long-term contract method of accounting only if the partnership's books are properly closed with respect to that contract under section 706. If the partnership's books are not closed with respect to the contract, the partnership shall compute its income or loss from each contract accounted for under a long-term contract method of accounting for the period that includes the date of the transfer or liquidation as though no change in taxpayer had occurred with respect to that contract, and may pro rate income from the contract under a reasonable method complying with section 706. Similar rules are provided for distributions of property (other than a contract accounted for under a long-term contract method of accounting) from a partnership holding a long-term contract, and for contributions of property (other than a contract accounted for under a long-term contract method of accounting) to a partnership holding a contract accounted for under a long-term contract method of accounting.

Comments are requested regarding whether similar rules should be provided with respect to transfers of stock in an S corporation holding a contract accounted for under a long-term contract method of accounting. See section 1377(a)(1) and § 1.1377–1(a) (providing that each shareholder's pro rata share of any S corporation item for any taxable year is generally the sum of the amounts determined with respect to the shareholder by assigning an equal portion of the item to each day of the S corporation's taxable year, and then dividing that portion pro rata among the shares outstanding on that day); and section 1377(a)(2) and § 1.1377–1(b) (providing that an S corporation may elect to close its books if a shareholder's entire interest in an S corporation is terminated during the S corporation's taxable year, and the corporation and all affected shareholders agree).

6. Look-Back Method

The final section 460 regulations generally require any old taxpayer that accounted for income from a long-term contract under the PCM, and that transfers the contract to a new taxpayer in a step-in-the-shoes transaction, to provide the information described in § 1.460–6(g)(3)(ii)(D) to the new taxpayer. The proposed regulations provide that, if the step-in-the-shoes transaction is a contribution of property (other than a contract accounted for under a long-term contract method of accounting) to a partnership, the distribution of property (other than a contract accounted for under a long-term contract method of accounting) by a partnership, or a transfer of a partnership interest, the old taxpayer is not required to provide this information, because information necessary for the new taxpayer to apply the look-back method is provided by the partnership. A similar exception is provided if the step-in-the-shoes transaction is a transfer of stock in an S corporation, or a conversion to or from an S corporation.

7. Distribution of a Contract by a Partnership

The distribution of a contract accounted for under a long-term contract method of accounting by a partnership to a partner is a constructive completion transaction. The proposed regulations provide that, in determining the partnership's income on the constructive completion transaction, the fair market value of the contract is treated as the amount realized from the transaction. The proposed regulations also clarify that, for purposes of determining each partner's distributive share of partnership items, any income or loss resulting from the constructive completion must be allocated among the partners of the partnership as though the partnership closed its books on the date of the distribution.

Section 732 determines the basis of property (other than money) distributed by a partnership to a partner. Section 734(b) provides for an adjustment to the basis of partnership property as a result of certain distributions from partnerships that have a section 754 election in effect. The proposed regulations provide that, if a contract accounted for under a long-term contract method of accounting is distributed to a partner, then, for purposes of determining the partner's basis in the contract (including the uncompleted property, if applicable) under section 732 and the amount of any basis adjustment under section 734(b), the partnership's basis in the contract (including the uncompleted property, if applicable) immediately prior to the distribution is the partnership's allocable contract costs (including transaction costs), increased (or decreased) by the amount of cumulative taxable income (or loss) recognized by the partnership on the contract through the date of the distribution (including amounts recognized as a result of the constructive completion), and decreased by the amounts that the partnership has received or reasonably expects to receive under the contract.

The proposed regulations provide that, if a contract accounted for under a long-term contract method of accounting is distributed to a partner, then, in computing the total contract price (or gross contract price) for the new contract, the partner's basis in the contract (including the uncompleted property, if applicable) after the distribution (as determined under section 732) is treated as consideration paid by the partner that is allocable to the contract. Thus, the total contract price (or gross contract price) of the new contract is reduced by the partner's basis in the contract (including the uncompleted property, if applicable) immediately after the distribution.

Section 751(b)(1) provides that, to the extent a partner receives in a distribution partnership property which is unrealized receivables or inventory items which have appreciated substantially in value, in exchange for all or a part of the partner's interest in other partnership property (including money), the transaction is considered a sale or exchange of the property between the distributee partner and the partnership. The same treatment applies if a partner receives in a distribution partnership property (including money) other than unrealized receivables and substantially appreciated inventory in exchange for the partner's interest in the partnership's unrealized receivables or substantially appreciated inventory. Because the distribution of a contract accounted for under a long-term contract method of accounting is the distribution of an unrealized receivable, section 751(b) may apply to the distribution. Therefore, the proposed regulations provide an ordering rule under which a partnership that distributes a contract accounted for under a long-term contract method of accounting to apply the constructive completion rules before applying the rules of section 751(b) to the distribution.

8. Treatment of Progress Payments Under Section 752

In Rev. Rul. 73–301 (1973–2 C.B. 215), the IRS addressed whether unrestricted progress payments received by a partnership reporting its income under the CCM constitute a partnership liability under section 752. In that revenue ruling, the partnership performed all of the services required to be entitled to receive the progress payments, and there was no obligation to return the payments or perform any additional services in order to retain the payments. The IRS ruled that the progress payments described in the ruling did not constitute a liability

within the meaning of section 752. See also Rev. Rul. 81–241 (1981–2 C.B. 146) (citing and following Rev. Rul. 73–301). Treasury and the IRS request comments regarding whether there are circumstances under which the receipt of progress payments under a contract accounted for under a long-term contract method of accounting could give rise to a liability under section 752, and, if so, how the regulations would need to be revised to account for such liabilities.

Proposed Effective Date

As indicated in Notice 2002–37, the regulations are proposed to apply to contributions, transfers, and distributions that occur on or after May 15, 2002.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs*. Treasury and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Matthew Lay and Richard Probst of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.460–0 is amended as follows:

1. Revising the entry for paragraph 1.460–4(k)(2)(iv).
2. Adding entries for § 1.460–4(k)(2)(iv)(A) through (E).
3. Revising the entry for § 1.460–4(k)(3)(iv).
4. Revising the entry for § 1.460–4(k)(3)(iv)(A)(*2*) and adding an entry for §1.460–4(k)(3)(iv)(c).
5. Revising the entry for § 1.460–4(k)(3)(v).
6. Adding entries for § 1.460–4(k)(3)(v)(A) through (D).
7. Adding entries for § 1.460–6(g)(3)(ii)(D)(*1*) and (*2*).

The revisions and additions read as follows:

§ 1.460–0 Outline of regulations under section 460.

* * * * *

§ 1.460–4 Methods of accounting for long-term contracts.

* * * * *

(k) * * *

(2) * * *

(iv) Special rules relating to distributions of certain contracts by a partnership.

(A) In general.

(B) Old taxpayer.

(C) New taxpayer.

(D) Basis rules.

(E) Section 751.

(*1*) In general.

(*2*) Ordering rules.

(3) * * *

(iv) Special rules related to certain corporate and partnership transactions.

(A) * * *

(*2*) Basis adjustment in excess of stock or partnership interest basis.

* * * * *

(C) Definition of old taxpayer and new taxpayer for certain partnership transactions.

(v) Special rules relating to certain partnership transactions.

(A) Section 704(c).

(*1*) Contributions of contracts.

(*2*) Revaluations of partnership property.

(*3*) Allocation methods.

(B) Basis adjustments under sections 743(b) and 734(b).

(C) Cross reference.

(D) Exceptions to step-in-the-shoes rules.

* * * * *

§ 1.460–6 Look-back method.

* * * * *

(g) * * *

(3) * * *

(ii) * * *

(D) * * *

(*1*) In general.

(*2*) Special rules for certain pass-through entity transactions.

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Par. 3. Section 1.460–4 is amended as follows:

1. Revising the sixth sentence in paragraph (k)(1).
2. Revising paragraph (k)(2)(iv).
3. Removing the first word ''The'' in paragraph (k)(3)(i) and adding in its place: ''Except as otherwise provided in paragraph (k)(3)(v)(D) of this section, the''
4. Revising paragraph (k)(3)(i)(I).
5. Redesignating paragraphs (k)(3)(i)(J), (K) and (L) as paragraphs (k)(3)(i)(K), (L) and (M), respectively.
6. Adding a new paragraph (k)(3)(i)(J).
7. Revising paragraph (k)(3)(iv).
8. Adding text to paragraph (k)(3)(v).
9. Adding to paragraph (k)(5) *Example 9* through *Example 13*.

The additions and revisions read as follows.

§ 1.460–4 Methods of accounting for long-term contracts.

* * * * *

(k) * * *

(1) * * * Special rules relating to the treatment of certain partnership transactions are provided in paragraphs (k)(2)(iv) and (k)(3)(v) of this section.

* * *

(2) * * *

(iv) *Special rules relating to distributions of certain contracts by a partnership*—(A) *In general.* The constructive completion rules of paragraph (k)(2) of this section apply to the distribution of a contract accounted for under a long-term contract method of accounting by a partnership to a partner. The constructive completion rules of paragraph (k)(2) of this section do not apply to a transfer by a partnership (transferor partnership) of all of its assets and liabilities to a

second partnership (transferee partnership) in an exchange described in section 721, followed by a distribution of the interest in the transferee partnership in liquidation of the transferor partnership, under § 1.708–1(b)(4) (relating to terminations under section 708(b)(1)(B)) or § 1.708–1(c)(3)(i) (relating to certain partnership mergers).

(B) *Old taxpayer.* The partnership that distributes the contract is treated as the old taxpayer for purposes of paragraph (k)(2)(ii) of this section. For purposes of determining the total contract price (or gross contract price) under paragraph (k)(2)(ii) of this section, the fair market value of the contract is treated as the amount realized from the transaction. For purposes of determining each partner's distributive share of partnership items, any income or loss resulting from the constructive completion must be allocated among the partners of the old taxpayer as though the partnership closed its books on the date of the distribution.

(C) *New taxpayer.* The partner receiving the distributed contract is treated as the new taxpayer for purposes of paragraph (k)(2)(iii) of this section. For purposes of determining the total contract price (or gross contract price) under paragraph (k)(2)(iii) of this section, the new taxpayer's basis in the contract (including the uncompleted property, if applicable) after the distribution (as determined under section 732) is treated as consideration paid by the new taxpayer that is allocable to the contract. Thus, the total contract price (or gross contract price) of the new contract is reduced by the partner's basis in the contract (including the uncompleted property, if applicable) immediately after the distribution.

(D) *Basis rules.* For purposes of determining the new taxpayer's basis in the contract (including the uncompleted property, if applicable) under section 732, and the amount of any basis adjustment under section 734(b), the partnership's basis in the contract (including the uncompleted property, if applicable) immediately prior to the distribution is equal to—

(*1*) The partnership's allocable contract costs (including transaction costs);

(*2*) Increased (or decreased) by the amount of cumulative taxable income (or loss) recognized by the partnership on the contract through the date of the distribution (including amounts recognized as a result of the constructive completion); and

(*3*) Decreased by the amounts that the partnership has received or reasonably expects to receive under the contract.

(E) *Section 751*—(*1*) *In general.* Contracts accounted for under a long-term contract method of accounting are unrealized receivables within the meaning of section 751(c). For purposes of section 751, the amount of ordinary income or loss attributable to a contract accounted for under a long-term contract method of accounting is the amount of income or loss that the partnership would take into account under the constructive completion rules of paragraph (k)(2) of this section if the contract were disposed of for its fair market value in a constructive completion transaction, adjusted to account for any income or loss from the contract that is allocated under section 706 to that portion of the taxable year of the partnership ending on the date of the distribution, sale, or exchange.

(*2*) *Ordering rules.* Because the distribution of a contract accounted for under a long-term contract method of accounting is the distribution of an unrealized receivable, section 751(b) may apply to the distribution. A partnership that distributes a contract accounted for under a long-term contract method of accounting must apply paragraph (k)(2)(ii) of this section before applying the rules of section 751(b) to the distribution.

* * * * *

(3) * * *

(i) * * *

(I) Contributions of contracts accounted for under a long-term contract method of accounting to which section 721(a) applies;

(J) Contributions of property (other than contracts accounted for under a long-term contract method of accounting) to a partnership that holds a contract accounted for under a long-term contract method of accounting;

* * * * *

(iv) *Special rules related to certain corporate and partnership transactions*—(A) *Old taxpayer—basis adjustment*—(*1*) *In general.* Except as provided in paragraph (k)(3)(iv)(A)(*2*) of this section, in the case of a transaction described in paragraph (k)(3)(i)(D), (E), or (I) of this section, the old taxpayer must adjust its basis in the stock or partnership interest of the new taxpayer by—

(*i*) Increasing such basis by the amount of gross receipts the old taxpayer has recognized under the contract; and

(*ii*) Reducing such basis by the amount of gross receipts the old taxpayer has received or reasonably expects to receive under the contract.

(*2*) *Basis adjustment in excess of stock or partnership interest basis.* If the old and new taxpayer do not join in the filing of a consolidated Federal income tax return, the old taxpayer may not adjust its basis in the stock or partnership interest of the new taxpayer under paragraph (k)(3)(iv)(A)(*1*) of this section below zero and the old taxpayer must recognize ordinary income to the extent the basis in the stock or partnership interest of the new taxpayer otherwise would be adjusted below zero. If the old and new taxpayer join in the filing of a consolidated Federal income tax return, the old taxpayer must create an (or increase an existing) excess loss account to the extent the basis in the stock of the new taxpayer otherwise would be adjusted below zero under paragraph (k)(3)(iv)(A)(*1*) of this section. See §§ 1.1502–19 and 1.1502–32(a)(3)(ii).

(*3*) *Subsequent dispositions of certain contracts.* If the old taxpayer disposes of a contract in a transaction described in paragraph (k)(3)(i)(D), (E), or (I) of this section that the old taxpayer acquired in a transaction described in paragraph (k)(3)(i)(D), (E), or (I) of this section, the basis adjustment rule of this paragraph (k)(3)(iv)(A) is applied by treating the old taxpayer as having recognized the amount of gross receipts recognized by the previous old taxpayer under the contract and any amount recognized by the previous old taxpayer with respect to the contract in connection with the transaction in which the old taxpayer acquired the contract. In addition, the old taxpayer is treated as having received or as reasonably expecting to receive under the contract any amount the previous old taxpayer received or reasonably expects to receive under the contract. Similar principles will apply in the case of multiple successive transfers described in paragraph (k)(3)(i)(D), (E), or (I) of this section involving the contract.

(B) *New Taxpayer*—(*1*) *Contract price adjustment.* Generally, payments between the old taxpayer and the new taxpayer with respect to the contract in connection with the transaction do not affect the contract price. Notwithstanding the preceding sentence and paragraph (k)(3)(iii)(B) of this section, however, in the case of transactions described in paragraph (k)(3)(i)(B), (D), (E), or (I) of this section, the total contract price (or gross contract price) must be reduced to the extent of any amount recognized by the old taxpayer with respect to the contract in connection with the transaction (*e.g.*, any amount recognized under section 351(b) or section 357 that is attributable to the contract and any income recognized by the old taxpayer pursuant

to the basis adjustment rule of paragraph (k)(3)(iv)(A) of this section).

(2) *Basis in contract.* The new taxpayer's basis in a contract (including the uncompleted property, if applicable) acquired in a transaction described in paragraphs (k)(3)(i)(A) through (E) or paragraph (k)(3)(i)(I) of this section will be computed under section 362, section 334, or section 723, as applicable. Upon a new taxpayer's completion (actual or constructive) of a CCM or a PCM contract acquired in a transaction described in paragraphs (k)(3)(i)(A) through (E) or paragraph (k)(3)(i)(I) of this section, the new taxpayer's basis in the contract (including the uncompleted property, if applicable) is reduced to zero. The new taxpayer is not entitled to a deduction or loss in connection with any basis reduction pursuant to this paragraph (k)(3)(iv)(B)(*2*).

(C) *Definition of old taxpayer and new taxpayer for certain partnership transactions.* For purposes of paragraphs (k)(3)(ii), (iii) and (iv) of this section, in the case of a transaction described in paragraph (k)(3)(i)(I) of this section, the partner contributing the contract to the partnership is treated as the old taxpayer, and the partnership receiving the contract from the partner is treated as the new taxpayer.

(v) *Special rules relating to certain partnership transactions*—(A) *Section 704(c)*—(*1*) *Contributions of contracts.* The principles of sections 704(c) and § 1.704–3 apply to income or loss with respect to a contract accounted for under a long-term contract method of accounting that is contributed to a partnership. The amount of built-in income or built-in loss attributable to a contributed contract that is subject to section 704(c) is determined as follows. First, the contributing partner must take into account any income or loss required under paragraph (k)(3)(ii)(A) of this section for the period ending on the date of the contribution. Second, the partnership must determine the amount of income or loss that the contributing partner would take into account if the contract were disposed of for its fair market value in a constructive completion transaction. This calculation is treated as occurring immediately after the partner has applied paragraph (k)(3)(ii)(A) of this section, but before the contribution to the partnership. Finally, this amount is reduced by the amount of income, if any, that the contributing partner is required to recognize as a result of the contribution.

(*2*) *Revaluations of partnership property.* The principles of section 704(c) and § 1.704–3 apply to allocations of income or loss with respect to a long-term contract that is revalued by a partnership under § 1.704–1(b)(2)(iv)(f). The amount of built-in income or built-in loss attributable to such a contract is equal to the amount of income or loss that would be taken into account if, immediately before the revaluation, the contract were disposed of for its fair market value in a constructive completion transaction.

(*3*) *Allocation methods.* In the case of a contract accounted for under the CCM, any built-in income or loss under section 704(c) is taken into account in the year the contract is completed. In the case of a contract accounted for under a long-term contract method of accounting other than the CCM, any built-in income or loss under section 704(c) must be taken into account in a manner that reasonably accounts for the section 704(c) income or loss over the remaining term of the contract.

(B) *Basis adjustments under sections 743(b) and 734(b).* For purposes of §§ 1.743–1(d), 1.755–1(b), and 1.755–1(c), the amount of ordinary income or loss attributable to a contract accounted for under a long-term contract method of accounting is the amount of income or loss that the partnership would take into account under the constructive completion rules of paragraph (k)(2) of this section if, at the time of the sale of a partnership interest or the distribution to a partner, the partnership disposed of the contract for its fair market value in a constructive completion transaction. If all or part of the transferee's basis adjustment under section 743(b) or the partnership's basis adjustment under section 734(b) is allocated to a contract accounted for under a long-term contract method of accounting, the basis adjustment shall reduce or increase, as the case may be, the affected party's income or loss from the contract. In the case of a contract accounted for under the CCM, the basis adjustment is taken into account in the year in which the contract is completed. In the case of a contract accounted for under a long-term contract method of accounting other than the CCM, the portion of that basis adjustment that is recovered in each taxable year of the partnership must be determined by the partnership in a manner that reasonably accounts for the adjustment over the remaining term of the contract.

(C) *Cross reference.* See paragraph (k)(2)(iv)(E) of this section for rules relating to the application of section 751 to the transfer of an interest in a partnership holding a contract accounted for under a long-term contract method of accounting.

(D) *Exceptions to step-in-the-shoes rules.* Upon a contribution described in paragraph (k)(3)(i)(J) of this section, a transfer described in paragraph (k)(3)(i)(K) of this section, or a distribution described in paragraph (k)(3)(i)(L) of this section, paragraphs (k)(3)(ii) and (iii) of this section apply to a contract accounted for under a long-term contract method of accounting only if the partnership's books are properly closed with respect to that contract under section 706. In these cases, the partnership is treated as both the old taxpayer and the new taxpayer for purposes of paragraphs (k)(3)(ii) and (iii) of this section. In all other cases involving these transactions, the partnership shall compute its income or loss from each contract accounted for under a long-term contract method of accounting for the period that includes the date of the transaction as though no change in taxpayer had occurred with respect to the contract, and must allocate the income or loss from the contract for that period under a reasonable method complying with section 706.

* * * * *

(5) * * *

Example 9. Constructive completion—PCM—distribution of contract by partnership—(i) Facts. In Year 1, W, X, Y, and Z each contribute $100,000 to form equal partnership PRS. In Year 1, PRS enters into a contract. The total contract price is $1,000,000 and the estimated total allocable contract costs are $800,000. In Year 1, PRS incurs costs of $600,000 and receives $650,000 in progress payments under the contract. Under the contract, PRS performed all of the services required in order to be entitled to receive the progress payments, and there was no obligation to return the payments or perform any additional services in order to retain the payments. PRS properly accounts for the contract under the PCM. In Year 2, PRS distributes the contract to X in liquidation of X's interest. PRS incurs no costs and receives no progress payments in Year 2 prior to the distribution. At the time of the distribution, PRS's only asset other than the long-term contract and the partially constructed property is $450,000 cash ($400,000 initially contributed and $50,000 in excess progress payments). The fair market value of the contract is $150,000. Pursuant to the distribution, X assumes PRS's contract obligations and rights. In Year 2, X incurs additional allocable contract costs of $50,000. X correctly estimates at the end of Year 2 that X will have to incur an additional $75,000 of allocable contract costs in Year 3 to complete the contract (rather than $150,000 as originally estimated by PRS). Assume that X properly accounts for the contract under the PCM, that PRS has no income or loss other than income or loss from the contract, and that PRS has an election under section 754 in effect in Year 2.

(ii) *Tax consequences to PRS.* For Year 1, PRS reports receipts of $750,000 (the completion factor multiplied by total contract

price ($600,000/$800,000 x $1,000,000)) and costs of $600,000, for a profit of $150,000, which is allocated equally among W, X, Y, and Z ($37,500 each). Immediately prior to the distribution of the contract to X in Year 2, the contract is deemed completed. Under paragraph (k)(2)(iv)(B) of this section, the fair market value of the contract ($150,000) is treated as the amount realized from the transaction. For purposes of applying the PCM in Year 2, the total contract price is $800,000 (the sum of the amounts received under the contract and the amount treated as realized from the transaction ($650,000 + $150,000)) and the total allocable contract costs are $600,000. Thus, in Year 2 PRS reports receipts of $50,000 (total contract price minus receipts already reported ($800,000—$750,000)), and costs incurred in year 2 of $0, for a profit of $50,000. Under paragraph (k)(2)(iv)(B) of this section, this profit must be allocated among W, X, Y, and Z as though the partnership closed its books on the date of the distribution. Accordingly, each partner's distributive share of this income is $12,500.

(iii) *Tax consequences to X.* X's basis in its interest in PRS immediately prior to the distribution is $150,000 (X's $100,000 initial contribution, increased by $37,500, X's distributive share of Year 1 income, and $12,500, X's distributive share of Year 2 income). Under paragraph (k)(2)(iv)(D) of this section, PRS's basis in the contract (including the uncompleted property, if applicable) immediately prior to the distribution is equal to $150,000 (the partnership's allocable contract costs, $600,000, increased by the amount of income recognized by PRS on the contract through the date of the distribution (including amounts recognized as a result of the constructive completion), $200,000, decreased by the amounts that the partnership has received or reasonably expects to receive under the contract, $650,000). Under section 732, X's basis in the contract (including the uncompleted property) after the distribution is $150,000. Under paragraph (k)(2)(iv)(C) of this section, X's basis in the contract (including the uncompleted property) is treated as consideration paid by X that is allocable to the contract. X's total contract price is $200,000 (the amount remaining to be paid under the terms of the contract less the consideration allocable to the contract ($350,000—$150,000)). For Year 2, X reports receipts of $80,000 (the completion factor multiplied by the total contract price [($50,000/$125,000) x $200,000]) and costs of $50,000 (the costs incurred after the distribution of the contract), for a profit of $30,000. For Year 3, X reports receipts of $120,000 (the total contract price minus receipts already reported ($200,000—$80,000)) and costs of $75,000, for a profit of $45,000.

(iv) *Section 734(b).* Because X's basis in the contract (including the uncompleted property) immediately after the distribution, $150,000, is equal to PRS's basis in the contract (including the uncompleted property) immediately prior to the distribution, a basis adjustment under section 734(b) is not required.

Example 10. Constructive completion—CCM—distribution of contract by partnership—(i) Facts. The facts are the same as in *Example 9,* except that PRS and X properly account for the contract under the CCM.

(ii) *Tax consequences to PRS.* PRS reports no income or costs from the contract in Year 1. Immediately prior to the distribution of the contract to X in Year 2, the contract is deemed completed. Under paragraph (k)(2)(iv)(B) of this section, the fair market value of the contract ($150,000) is treated as the amount realized from the transaction. For purposes of applying the CCM in Year 2, the gross contract price is $800,000 (the sum of the amounts received under the contract and the amount treated as realized from the transaction ($650,000 + $150,000)) and the total allocable contract costs are $600,000. Thus, in Year 2 PRS reports profits of $200,000 ($800,000 − $600,000). This profit must be allocated among W, X, Y, and Z as though the partnership closed its books on the date of the distribution. Accordingly, each partner's distributive share of this income is $50,000.

(iii) *Tax consequences to X.* X's basis in its interest in PRS immediately prior to the distribution is $150,000 ($100,000 initial contribution, increased by $50,000, X's distributive share of Year 2 income). Under paragraph (k)(2)(iv)(D) of this section, PRS's basis in the contract (including the uncompleted property, if applicable) immediately prior to the distribution is equal to $150,000 (the partnership's allocable contract costs, $600,000, increased by the amount of cumulative taxable income recognized by PRS on the contract through the date of the distribution (including amounts recognized as a result of the constructive completion), $200,000, decreased by the amounts that the partnership has received or reasonably expects to receive under the contract, $650,000). Under section 732, X's basis in the contract (including the uncompleted property) after the distribution is $150,000. Under paragraph (k)(2)(iv)(C) of this section, X's basis in the contract is treated as consideration paid by X that is allocable to the contract. Under the CCM, X reports no gross receipts or costs in Year 2. For Year 3, the completion year, X reports its gross contract price of $200,000 (the amount remaining to be paid under the terms of the contract less the consideration allocable to the contract ($350,000 − $150,000)) and its total allocable contract costs of $125,000 (the allocable contract costs that X incurred to complete the contract ($50,000 + $75,000)), for a profit of $75,000.

(iv) *Section 734(b).* The results under section 734(b) are the same as in Example 9.

Example 11.Step-in-the-shoes—PCM—contribution of contract to partnership—(i) Facts. In Year 1, X enters into a contract that X properly accounts for under the PCM. The total contract price is $1,000,000 and the estimated total allocable contract costs are $800,000. In Year 1, X incurs costs of $600,000 and receives $650,000 in progress payments under the contract. Under the contract, X performed all of the services required in order to be entitled to receive the progress payments, and there was no obligation to return the payments or perform any additional services in order to retain the payments. In Year 2, X contributes the contract (including the uncompleted property) with a basis of $0 and $125,000 of cash to partnership PRS in exchange for a one-fourth partnership interest. X incurs costs of $10,000, and receives no progress payments in Year 2 prior to the contribution of the contract. X and the other three partners of PRS share equally in its capital, profits, and losses. The parties determine that, at the time of the contribution, the fair market value of the contract is $160,000. Following the contribution in Year 2, PRS incurs additional allocable contract costs of $40,000. PRS correctly estimates at the end of Year 2 that it will have to incur an additional $75,000 of allocable contract costs in Year 3 to complete the contract (rather than $150,000 as originally estimated by PRS). (ii) *Tax consequences to X.* For Year 1, X reports receipts of $750,000 (the completion factor multiplied by the total contract price ($600,000/$800,000 x $1,000,000)) and costs of $600,000, for a profit of $150,000. Because the mid-contract change in taxpayer results from a transaction described in paragraph (k)(3)(i)(I) of this section, X is not treated as completing the contract in Year 2. Under paragraph (k)(3)(ii)(A) of this section, for Year 2, X reports receipts of $12,500 (the completion factor multiplied by the total contract price ($610,000/$800,000 ×x $1,000,000), $762,500, decreased by receipts already reported, $750,000) and costs of $10,000, for a profit of $2,500. Under section 722, X's initial basis in its interest in PRS is $125,000. Pursuant to paragraph (k)(3)(iv)(A)(*1*) of this section, X must increase its basis in its interest in PRS by the amount of gross receipts X recognized under the contract, $762,500, and reduce its basis by the amount of gross receipts X received under the contract, the $650,000 in progress payments. Accordingly, X's basis in its interest in PRS is $237,500.

(iii) *Tax consequences to PRS.* Because the mid-contract change in taxpayer results from a step-in-the-shoes transaction, PRS must account for the contract using the same methods of accounting used by X prior to the transaction. The total contract price is the sum of any amounts that X and PRS have received or reasonably expect to receive under the contract, and total allocable contract costs are the allocable contract costs of X and PRS. For Year 2, PRS reports receipts of $134,052 (the completion factor multiplied by the total contract price

[($650,000/$725,000) × $1,000,000], $896,552, decreased by receipts reported by X, $762,500) and costs of $40,000, for a profit of $94,052. For Year 3, PRS reports receipts of $103,448 (the total contract price minus prior year receipts ($1,000,000 − $896,552)) and costs of $75,000, for a profit of $28,448.

(iv) *Section 704(c).* The principles of section 704(c) and § 1.704–3 apply to allocations of income or loss with respect to the contract contributed by X. In this case, the amount of built-in income that is subject to section 704(c) is the amount of income or loss that the contributing partner would take into account if the contract were disposed of for its fair market value in a constructive completion transaction. This calculation is treated as occurring immediately after the partner has applied paragraph (k)(3)(ii)(A) of this section, but before the contribution to the partnership. In a constructive completion transaction, the total contract price would be $810,000 (the sum of the amounts received under the contract and the amount realized in the deemed sale ($650,000 + $160,000)). X would report receipts of $47,500 (total contract price minus receipts already reported ($810,000 − $762,500)) and costs of $0, for a profit of $47,500. Thus, the amount of built-in income that is subject to section 704(c) is $47,500. The partnership must apply section 704(c) to this income in a manner that reasonably accounts for the income over the remaining term of the contract. For example, in Year 2, PRS could allocate $26,810 to X under section 704(c) (the amount of built-in income, $47,500, multiplied by a fraction, the numerator of which is the completion factor for the year, $650,000/725,000, less the completion factor for the prior year, $610,000/$800,000, and the denominator of which is 100 percent reduced by the completion factor for the taxable year preceding the event creating the section 704(c) income or loss, $610,000/$800,000). The remaining $67,242 would be allocated equally among all of the partners. In Year 3, the completion year, PRS could allocate $20,690 to X under section 704(c) ($47,500 × [($725,000/$725,000 − $650,000/$725,000)/(100 percent − $610,000/$800,000)]). The remaining $7,758 would be allocated equally among all the partners.

Example 12. Step-in-the-shoes—CCM—contribution of contract to partnership—(i) Facts. The facts are the same as in *Example 11,* except that X and PRS properly account for the contract under the CCM, and X has a basis of $610,000 in the contract (including the uncompleted property).

(ii) *Tax consequences to X.* X reports no income or costs from the contract in Years 1 or 2. X is not treated as completing the contract in Year 2. Under section 722, X's initial basis in its interest in PRS is $735,000 (the sum of $125,000 cash and X's basis of $610,000 in the contract (including the uncompleted property)). Pursuant to paragraph (k)(3)(iv)(A)(*1*)(*ii*) of this section, X must reduce its basis in its interest in PRS by the amount of gross receipts X received under the contract, or $650,000. Accordingly, X's basis in its interest in PRS is $85,000.

(iii) *Tax consequences to PRS.* PRS must account for the contract using the same methods of accounting used by X prior to the transaction. Under the CCM, PRS reports no gross receipts or costs in Year 2. For Year 3, the completion year, PRS reports its gross contract price of $1,000,000 (the sum of any amounts that X and PRS have received or reasonably expect to receive under the contract), and total allocable contract costs of $725,000 (the allocable contract costs of X and PRS), for a profit of $275,000.

(iv) *Section 704(c).* In this case, the amount of built-in income that is subject to section 704(c) is the amount of income or loss that the contributing partner would take into account if the contract were disposed of for its fair market value in a constructive completion transaction. This calculation is treated as occurring immediately after the partner has applied paragraph (k)(3)(ii)(A) of this section, but before the contribution to the partnership. In a constructive completion transaction, X would report its gross contract price of $810,000 (the sum of the amounts received under the contract and the amount realized in the deemed sale ($650,000 + $160,000)) and its total allocable contract costs of $610,000, for a profit of $200,000. Thus, the amount of built-in income that is subject to section 704(c) is $200,000. Out of PRS's income of $275,000, in Year 3, $200,000 must be allocated to X under section 704(c), and the remaining $75,000 is allocated equally among all of the partners.

Example 13. Step-in-the-shoes—PCM—transfer of a partnership interest—(i) Facts. In Year 1, W, X, Y, and Z each contribute $100,000 to form equal partnership PRS. In Year 1, PRS enters into a contract. The total contract price is $1,000,000 and the estimated total allocable contract costs are $800,000. In Year 1, PRS incurs costs of $600,000 and receives $650,000 in progress payments under the contract. Under the contract, PRS performed all of the services required in order to be entitled to receive the progress payments, and there was no obligation to return the payment or perform any additional services in order to retain the payments. PRS properly accounts for the contract under the PCM. In Year 2, W transfers W's interest in PRS to T for $150,000. Assume that $10,000 of PRS's Year 2 costs are incurred prior to the transfer, $40,000 are incurred after the transfer; and that PRS receives no progress payments in Year 2. Also assume that the fair market value of the contract on the date of the transfer is $160,000, that PRS closes its books with respect to the contract under section 706 on the date of the transfer, and that PRS correctly estimates at the end of Year 2 that it will have to incur an additional $75,000 of allocable contract costs in Year 3 to complete the contract (rather than $150,000 as originally estimated by PRS).

(ii) *Income reporting for period ending on date of transfer.* For Year 1, PRS reports receipts of $750,000 (the completion factor multiplied by total contract price ($600,000/$800,000 × $1,000,000)) and costs of $600,000, for a profit of $150,000. This profit is allocated equally among W, X, Y, and Z ($37,500 each). Under paragraph (k)(3)(ii)(A) of this section, for the part of Year 2 ending on the date of the transfer of W's interest, PRS reports receipts of $12,500 (the completion factor multiplied by the total contract price ($610,000/$800,000 × $1,000,000) minus receipts already reported ($750,000)) and costs of $10,000 for a profit of $2,500. This profit is allocated equally among W, X, Y, and Z ($625 each).

(iii) *Income reporting for period after transfer.* PRS must continue to use the PCM. For the part of Year 2 beginning on the day after the transfer, PRS reports receipts of $134,052 (the completion factor multiplied by the total contract price decreased by receipts reported by PRS for the period ending on the date of the transfer [($650,000/$725,000 x $1,000,000) − $762,500]) and costs of $40,000, for a profit of $94,052. This profit is shared equally among T, X, Y, and Z ($23,513 each). For Year 3, PRS reports receipts of $103,448 (the total contract price minus prior year receipts ($1,000,000 − $896,552)) and costs of $75,000, for a profit of $28,448. The profit for Year 3 is shared equally among T, X, Y, and Z ($7,112 each).

(iv) *Tax Consequences to W.* W's amount realized is $150,000. W's adjusted basis in its interest in PRS is $138,125 ($100,000 originally contributed, plus $37,500, W's distributive share of PRS's Year 1 income, and $625, W's distributive share of PRS's Year 2 income prior to the transfer). Accordingly, W's income from the sale of W's interest in PRS is $11,875. Under paragraph (k)(2)(iv)(E) of this section, for purposes of section 751(a), the amount of ordinary income attributable to the contract is determined as follows. First, the partnership must determine the amount of income or loss from the contract that is allocated under section 706 to the period ending on the date of the sale ($625). Second, the partnership must determine the amount of income or loss that the partnership would take into account under the constructive completion rules of paragraph (k)(2) of this section if the contract were disposed of for its fair market value in a constructive completion transaction. Because PRS closed its books under section 706 with respect to the contract on the date of the sale, this calculation is treated as occurring immediately after the partnership has applied paragraph (k)(3)(ii)(A) of this section on the date of the sale. In a constructive completion transaction, the total contract price would be $810,000 (the sum of the amounts received under the contract and the amount realized in the deemed sale ($650,000 + $160,000)). PRS would report receipts of $47,500 (total contract price minus receipts already reported ($810,000 − $762,500)) and costs of $0, for a profit of $47,500. Thus, the amount of ordinary income attributable to the contract is $47,500, and W's share of that income is $11,875. Thus, under § 1.751–1(a), all of W's $11,875 of income from the sale of W's interest in PRS is ordinary income.

(v) *Tax Consequences to T.* T's adjusted basis for its interest in PRS is $150,000. Under § 1.743–1(d)(2), the amount of income that would be allocated to T if the contract were disposed of for its fair market value (adjusted to account for income from the contract for the portion of PRS's taxable year that ends on the date of the transfer) is $11,875. Under § 1.743–1(b), the amount of T's basis adjustment under section 743(b) is

$11,875. Under paragraph (k)(3)(v)(B) of this section, the portion of T's basis adjustment that is recovered in Year 2 and Year 3 must be determined by PRS in a manner that reasonably accounts for the adjustment over the remaining term of the contract. For example, PRS could recover $6,703 of the adjustment in Year 2 (the amount of the basis adjustment, $11,875, multiplied by a fraction, the numerator of which is the excess of the completion factor for the year, $650,000/$725,000, less the completion factor for the prior year, $610,000/$800,000, and the denominator of which is 100 percent reduced by the completion factor for the taxable year preceding the transfer, $610,000/$800,000). T's distributive share of income in Year 2 from the contract would be adjusted from $23,513 to $16,810 as a result of the basis adjustment. In Year 3, the completion year, PRS could recover $5,172 of the adjustment ($11,875 × [($725,000/$725,000 − $650,000/$725,000) / (100 percent − $610,000/$800,000)]). T's distributive share of income in Year 3, the completion year, from the contract would be adjusted from $7,112 to $1,940 as a result of the basis adjustment.

* * * * *

Par. 4. Section 1.460–6 is amended as follows:

1. Paragraph (g)(3)(ii)(D) is revised.
2. Paragraph (g)(4) is revised.

The revisions read as follows:

§ 1.460–6 Look-back method.

* * * * *

(g) * * *

(3) * * *

(ii) * * *

(D) *Information old taxpayer must provide*—(1) *In general.* Except as provided in paragraph (g)(3)(ii)(D)(2) of this section, in order to help the new taxpayer to apply the look-back method with respect to pre-transaction taxable years, any old taxpayer that accounted for income from a long-term contract under the PCM or PCCM for either regular or alternative minimum tax purposes is required to provide the information described in this paragraph to the new taxpayer by the due date (not including extensions) of the old taxpayer's income tax return for the first taxable year ending on or after a step-in-the-shoes transaction described in § 1.460–4(k)(3)(i). The required information is as follows—

(*i*) The portion of the contract reported by the old taxpayer under PCM for regular and alternative minimum tax purposes (*i.e.*, whether the old taxpayer used PCM, the 40/60 PCCM method, or the 70/30 PCCM method);

(*ii*) Any submethods used in the application of PCM (*e.g.*, the simplified cost-to-cost method or the 10-percent method);

(*iii*) The amount of total contract price reported by year;

(*iv*) The numerator and the denominator of the completion factor by year;

(*v*) The due date (not including extensions) of the old taxpayer's income tax returns for each taxable year in which income was required to be reported;

(*vi*) Whether the old taxpayer was a corporate or a noncorporate taxpayer by year; and

(*vii*) Any other information required by the Commissioner by administrative pronouncement.

(*2*) *Special rules for certain pass-through entity transactions.* For purposes of paragraph (g)(3)(ii)(D)(*1*) of this section, in the case of a transaction described in § 1.460–4(k)(3)(i)(I), the contributing partner is treated as the old taxpayer, and the partnership is treated as the new taxpayer. In the case of transactions described in §§ 1.460–4(k)(3)(i)(F), (G), (J), (K), or (L), the old taxpayer is not required to provide the information described in paragraph (g)(3)(ii)(D)(*1*) of this section, because information necessary for the new taxpayer to apply the look-back method is provided by the pass-through entity. This paragraph (g)(3)(ii)(D) is applicable for transactions on or after August 6, 2003.

* * * * *

(4) *Effective date.* Except as provided in paragraph (g)(3)(ii)(D) of this section, this paragraph (g) is applicable for transactions on or after May 15, 2002.

* * * * *

Par. 5. In § 1.704–3, a sentence is added at the end of paragraph (a)(3)(ii) to read as follows:

§ 1.704–3 Contributed property.

(a) * * *

(3) * * *

(ii) * * * See § 1.460–4(k)(3)(v)(A) for a rule relating to the amount of built-in income or built-in loss attributable to a contract accounted for under a long-term contract method of accounting.

* * * * *

Par. 6. Section 1.722–1 is amended by adding a new sentence between the sixth and seventh sentences to read as follows:

§ 1.722–1 Basis of contributing partner's interest.

* * * See § 1.460–4(k)(3)(iv)(A) for rules relating to basis adjustments required where a contract accounted for under a long-term contract method of accounting is transferred in a contribution to which section 721(a) applies.

* * * * *

Par. 7. A sentence is added at the end of § 1.723–1 to read as follows:

§ 1.723–1 Basis of property contributed to partnership.

* * * See § 1.460–4(k)(3)(iv)(B)(*2*) for rules relating to adjustments to the basis of contracts accounted for using a long-term contract method of accounting that are acquired in certain contributions to which section 721(a) applies.

Par. 8. In § 1.732–1, a sentence is added at the end of paragraph (c)(1)(i) to read as follows:

§ 1.732–1 Basis of distributed property other than money.

* * * * *

(c) * * *

(1) * * *

(i) * * * See § 1.460–4(k)(2)(iv)(D) for a rule determining the partnership's basis in a long-term contract accounted for under a long-term contract method of accounting.

* * * * *

Par. 9. In § 1.734–1, the undesignated paragraph immediately following paragraph (b)(1)(ii) is revised to read as follows:

§ 1.734–1 Optional adjustment to basis of undistributed partnership property.

* * * * *

(b) * * *

(i) * * *

(ii) * * *

See § 1.460–4(k)(2)(iv)(D) for a rule determining the partnership's basis in a long-term contract accounted for under a long-term contract method of accounting. The provisions of this paragraph (b)(1) are illustrated by the following examples:

* * * * *

Par. 10. Section 1.743–1 is amended as follows:

1. A sentence is added at the end of paragraph (d)(2).
2. A sentence is added at the end of paragraph (j)(2).

The additions read as follows:

§ 1.743–1 Optional adjustment to basis of partnership property.

* * * * *

(d) * * *

(2) * * * See § 1.460–4(k)(3)(v)(B) for a rule relating to the computation of income or loss that would be allocated to the transferee from a contract accounted for under a long-term contract method of accounting as a result of the hypothetical transaction.

* * * * *

(j) * * *

(2) * * * See § 1.460–4(k)(3)(v)(B) for rules relating to the effect of a basis adjustment under section 743(b) that is allocated to a contract accounted for under a long-term contract method of accounting in determining the

transferee's distributive share of income or loss from the contract.

* * * * *

Par. 11. In § 1.751–1, a sentence is added at the end of paragraph (a)(2) to read as follows:

§ 1.751–1 Unrealized receivables and inventory items.

(a) * * *

(2) * * * See § 1.460–4(k)(2)(iv)(E) for rules relating to the amount of ordinary income or loss attributable to a contract accounted for under a long-term contract method of accounting.

* * * * *

Par. 12. Section 1.755–1 is amended as follows.

1. Adding a sentence at the end of paragraph (b)(1)(ii).

2. Paragraph (c)(5) is redesignated as paragraph (c)(6).

3. New paragraph (c)(5) is added.

The additions read as follows:

§ 1.755–1 Rules for allocation of basis.

* * * * *

(b) * * *

(1) * * *

(ii) * * * See § 1.460–4(k)(3)(v)(B) for a rule relating to the computation of income or loss that would be allocated to the transferee from a contract accounted for under a long-term contract method of accounting as a result of the hypothetical transaction.

* * * * *

(c) * * *

(5) *Cross reference.* See § 1.460–4(k)(3)(v)(B) for a rule relating to the computation of unrealized appreciation or depreciation in a contract accounted for under a long-term contract method of accounting.

* * * * *

Dale F. Hart,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–18484 Filed 8–5–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA78

TRICARE; Individual Case Management Program; Program for Persons with Disabilities; Extended Benefits for Disabled Family Members of Active Duty Service Members; Custodial Care

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Department is publishing this proposed rule to implement requirements enacted by Congress in section 701(g) of the National Defense Authorization Act for Fiscal Year 2002 (NDAA–02), Pub. L. 107–107, which terminates the Individual Case Management Program. The Department withdraws its proposed rule published at 66 FR 39699–39705, August 1, 2001 regarding the Individual Case Management Program. This rule also implements section 701(b) of the NDAA–02 which provides additional benefits for certain eligible active duty dependents by amending the TRICARE regulations at 32 CFR 199.5 governing the Program for Persons with Disabilities. The Program for Persons with Disabilities will now be called the Extended Care Health Option. Other administrative amendments are included to clarify specific policies that relate to the Extended Care Health Option, custodial care, and to update related definitions.

Public comments are invited and will be considered for possible revisions to the Final Rule.

DATES: Written comments received at the address indicated below by October 6, 2003 will be accepted.

ADDRESSES: Because of staff and resource limitation, we cannot accept comments by facsimile (FAX) transmission or electronic mail (e-mail). Mail written comments to the following address ONLY: TRICARE Management Activity, Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011. Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

FOR FURTHER INFORMATION CONTACT: Michael Kottyan, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3520. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Background

The Individual Case Management Program (ICMP). Under the provisions of section 704(3) of the NDAA–93 [Pub. L. 102–484], 10 U.S.C. 1079(a)(17) was enacted which allowed the DoD to establish the ICMP, also known as the Individual Case Management Program for Persons with Extraordinary Conditions (ICMP–PEC). This allowed a reasonable deviation from the restrictive statutory coverage of health services for patients who had exceptionally serious, long-range, costly and incapacitating conditions. The ICMP was officially implemented in March 1999 as a waiver program that provided coverage for care and services that were normally restricted from coverage under the Basic Program. Specifically, when a beneficiary was determined to meet the TRICARE definition of custodial care, coverage under the Basic Program was limited to one hour of skilled nursing care per day, twelve physician visits per year related to the custodial condition, durable medical equipment and prescription medications. The Department recognized that the exclusion of coverage when a family member is deemed to be a custodial care patient is both a financial and emotional burden. Consequently, the Department used the ICMP/ICMP–PEC authority to cover medically necessary care and to enable TRICARE case managers to maximize available resources for these beneficiaries.

Repeal of the ICMP. Section 701(g) of the NDAA–02 repealed 10 U.S.C. 1079(a)(17), the statutory authority for the ICMP. However, section 701(d) allows the Department to continue to provide payment for home health care or custodial care services not otherwise authorized under the Basic Program as if the ICMP were still in effect. Payment may occur when a determination is made that discontinuation of payment would result in the provision of services inadequate to meet the needs of the eligible beneficiary and would be unjust to the beneficiary. Eligible beneficiaries are defined in section 701(d)(3) as covered beneficiaries who were regarded as custodial care patients under the ICMP/ICMP–PEC and received medically necessary skilled services for which the Secretary provided payment before December 28, 2001.

Custodial Care. Section 701(c) of the NDAA–02 provides a statutory definition of custodial care that is more consistent with other federal programs. The change also results in the narrowing of the statutory exclusions of custodial care that has the effect of eliminating current program restrictions on paying for certain medically necessary care. **Note:** The statutory definition of custodial care under section 701(c) became effective on December 28, 2001, the effective date of the NDAA–02. Public notice of the substitution of the new statutory definition for the former custodial care definition in 32 CFR 199.2 was provided on June 13, 2002 (67 FR 40597–40606).

The Program for Persons with Disabilities (PFPWD). This program is now renamed the Extended Health Care Option (ECHO). The PFPWD was established by Congress in 1966 and

was originally called the Program for the Handicapped (PFTH). The name was changed to PFPWD in 1997 to reflect the national shift away from the label of handicapped and in an effort to be more sensitive to our beneficiaries with special needs. The program was established to provide financial assistance for active duty family members who are moderately or severely mentally retarded or have a serious physical disability. The purpose of the program was to help defray the cost of services not available either through the Basic Program or through other public agencies as a result of state residency requirements. Section 701(b) of the NDAA–02 strikes 10 U.S.C. 1079(d), (e), and (f), which was the statutory authority for the PFPWD, and re-authorizes the program with new sub-sections (d), (e), and (f). These new sub-sections add an extraordinary physical or psychological condition as a qualifying condition and remove the requirement to use public facilities to the extent that they are available and adequate in all circumstances. They also include discretion to increase the allowable monthly Government cost-share for allowable services from a maximum of $1,000 per month and expand the benefit to allow for coverage of ECHO home health care and services beyond the Basic program. It also includes the discretion to allow coverage for custodial care and respite care.

II. The Extended Care Health Option (ECHO)

The primary purpose of the ECHO is to provide extended benefits to eligible beneficiaries that are not available through the Basic Program that assist in the reduction of the disabling effects of an ECHO qualifying condition. Under 10 U.S.C. 1079(e), ECHO benefits may be provided only to the extent such service, supply or equipment is not a covered benefit under the Basic Program. This may include comprehensive health care services, including services necessary to maintain, or minimize or prevent deterioration of, function of an eligible beneficiary.

Eligibility. Participation in the ECHO is voluntary and is available only for TRICARE-eligible family members of active duty service members who have a qualifying condition. Qualifying conditions are limited under 10 U.S.C. 1079(d)(3)(B) to beneficiaries who have:

(a) moderate or severe mental retardation; or

(b) a serious physical disability; or

(c) an extraordinary physical or psychological condition, as defined in 32 CFR 199.2.

ECHO Benefits. Benefits available under ECHO detailed herein include diagnostic procedures to establish a qualifying condition, treatment through the use of medical, habilitative or rehabilitative means, training to allow use of assistive technology, special education instruction, institutional care within a State when a residential environment is required, transportation under certain circumstances, and certain adjunct services such as assistive services of a qualified interpreter or translator for deaf or blind beneficiaries in conjunction with receipt of other allowed ECHO benefits, equipment adaptation and maintenance, and ECHO home health care.

ECHO Respite Care. Under 10 U.S.C. 1079(e)(6), the Department may provide respite care under the ECHO program. Respite care is defined in 32 CFR 199.2 as short term care for a patient in order to provide rest and change for those who have been caring for the patient at home, usually the patient's family. DoD recognizes that caring for a special needs beneficiary poses special challenges, especially for active duty families. DoD proposes an ECHO benefit to provide a maximum of 16 hours per month of respite care. The benefit would be available to the primary caregiver(s), as defined in 32 CFR 199.2, in any month in which the beneficiary is otherwise receiving ECHO benefits. Respite care services would be provided by a TRICARE-authorized home health agency and would be designed to provide health care services for the covered beneficiary, and not baby-sitting or child-care services for other members of the family. The benefit would not be cumulative, that is, any respite care hours not used in one-month would not be carried over or banked for a subsequent month(s). The government's cost-share incurred for these services accrue to the proposed maximum monthly benefit of $2,500.

ECHO Home Health Care (EHHC). Under 10 U.S.C. 1079(e), extended benefits may be provided to eligible beneficiaries to the extent such benefits are not provided under provisions of chapter 55, title 10, United States Code, other than under this section. Under 10 U.S.C. 1079(e)(2), the ECHO may include ''comprehensive home health care supplies and services which may include cost effective and medically appropriate services other than part-time or intermittent services (within the meaning of such terms as used in the second sentence of section 1861(m) of the Social Security Act).'' Section 701(a) of the NDAA–02 requires home health care services under the Basic Program be provided in the manner and under the conditions described in section 1861(m) of the Social Security Act. Therefore, the Department proposes an ECHO Home Health Care (EHHC) benefit for qualifying beneficiaries.

EHHC Eligibility. To qualify for EHHC, the beneficiary must meet all general ECHO program eligibility requirements and must:

(a) physically reside within the 50 United States or the District of Columbia; and

(b) be homebound, as defined in section 199.2 and as modified in this proposed rule;

(c) require medically necessary skilled services that exceed the maximum level of coverage provided under the Basic Program's home health care benefit, or

(d) require frequent interventions, other than skilled medical services, by the primary caregiver(s) such that EHHC services are necessary to allow primary caregiver(s) the opportunity to rest;

(e) be case managed, including a periodic assessment of needs, and receive services as outlined in a written plan of care, and

(f) receive home health care services from a TRICARE-authorized home health agency as described in section 199.6(b)(4)(xv).

EHHC Benefit. Covered TRICARE-authorized home health agency services are the same as, and provided under the same conditions as, those services provided under the TRICARE Basic Program under section 199.4(e)(21), with the exception that the EHHC benefit is not limited to part-time or intermittent home health care. Therefore, DoD proposes that beneficiaries who are eligible for the ECHO and require home health care services beyond the coverage limits under the Basic Program will receive all home health care services under EHHC and no portion will be provided under the Basic Program.

EHHC Plan of Care: The level of ECHO home health care services authorized will be based on a written plan of care that supports the medical necessity of those services in excess of what can be authorized by the Basic Program, or, in the case of a beneficiary who requires frequent interventions, the need for EHHC in order to allow the primary caregiver(s) the opportunity to rest. The plan of care must include identification of the professional qualifications or skill level of the person required to provide the care. Reasonable justification for the medical necessity of the level of provider must be included

in the plan of care, otherwise, reimbursement will not be authorized.

EFFC Respite Care. The DoD proposes to provide respite care within the EHHC benefit specifically tailored for families with a beneficiary who has a medical conditions(s) that requires frequent interventions by the primary caregiver. For the purpose of this respite care, the term ''frequent'' means ''more than two interventions during the eight-hour per day period that the primary caregiver would normally be sleeping. The service performed during the interventions may have been taught to the primary caregiver by a medical professional, but the services performed by the primary caregiver are such that they can be performed safely and effectively by the average non-medical person without direct supervision of a licensed nurse or other health care provider. DoD proposes that when an eligible beneficiary's care plan reflects a need for frequent interventions by the primary caregiver, the beneficiary's primary caregiver is eligible for EHHC respite services in lieu of the ECHO respite care benefit. Primary caregivers in this situation would be eligible for eight hours per weekday of respite care by a TRICARE-authorized home health agency. The services provided would be designed to provide health care services for the covered beneficiary so that the primary caregiver is relieved of his/her responsibility for providing such care for the duration of that period of respite care in order that the primary caregiver may rest. The TRICARE-authorized home health agency will not provide baby-sitting or child care services for other members of the family. The benefit would not be cumulative, that is, any respite care hours not used in a given day would not be carried over or banked for use on another occasion. The government's cost-share incurred for these services accrue to the proposed fiscal year maximum ECHO Home Health Care benefit.

EHHC Government Cost Share. TRICARE-authorized home health agencies who provide services under the Basic Program are reimbursed under section 199.14(h) using the same methods and rates as used under the Medicare TRICARE-authorized home health agency prospective payment system under section 1895 of the Social Security Act (42 U.S.C. 1385fff) and 42 CFR part 484, subpart E, except for children under age ten and except as otherwise necessary to recognize distinct characteristics of TRICARE beneficiaries and as described in instructions issued by the Director, TRICARE Management Activity. However, the Medicare home health agency prospective payment system is designed to reimburse providers who provide part-time or intermittent services; it is not designed to reimburse providers for services that exceed those limits. As a result, the Department proposes to pay billed charges or negotiated rates for EHHC services up to an annual fiscal year cap in an amount no greater than what the highest locally wage-adjusted maximum Medicare Resource Utilization Grouping (RUG–III) category cost to the Government would be if services were provided in a TRICARE-authorized skilled nursing facility. (See 67 FR 40597–40606, June 13, 2001, concerning the TRICARE Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers). Because the highest RUG–III category is used to determine the fiscal year cap, the Department will not attempt to determine what RUG–III category would apply to the beneficiary if such beneficiary were in fact admitted for care into a TRICARE-authorized skilled nursing facility.

The Maximum monthly Government cost-share to be paid to the home health agency for ECHO home health care will be the billed charge or negotiated rate, but in no case will it exceed one-twelfth of the fiscal year cap calculated as above.

When EHHC beneficiaries move within the 50 United States or the District of Columbia, the annual fiscal year cap will be recalculated as above to reflect the correct wage-adjusted maximum RUG–III category cost for the beneficiary's new location and apply for the remaining portion of that fiscal year and subsequent fiscal years.

EHHC Reimbursement. A TRICARE-authorized home health agency must bill for all authorized ECHO home health care services through established TRICARE claims mechanisms. No special billing arrangements will be authorized in coordination with coverage that may be provided by Medicaid (subject to any State Agency Billing Agreements), or other federal, state, community or private programs.

Reimbursement for all EHHC services will be based on the professional level of the TRICARE-authorized home health agency individual(s) providing the authorized care. Specifically, TRICARE will reimburse up to 100% of the CHAMPUS Maximum Allowable Charge (CMAC) rate for a physician or registered nurse; up to 80% of the CMAC for a licensed practical or vocational nurse; and up to 60% of the CMAC for a home health aide.

Beneficiary Cost-share Liability for ECHO. Under 10 U.S.C. 1079(f), members are required to share in the cost of any benefits provided to their dependents under ECHO. ECHO benefits are not subject to a deductible amount. Regardless of the number of ECHO eligible family members, the sponsor's monthly cost-share for allowed ECHO benefits is based upon the rank of the uniformed service member. Under 10 US.C. 1079(f)(1)(A), members with a rank of E–1 are required to pay the first $25 incurred per month, and members with a rank of O–10 are required to pay the first $250 incurred per month. It is proposed that the cost-share for members with ranks in-between would be structured so that the vast majority would pay less than $100 per month, with the most senior enlisted member paying less than $50 per month.

Sponsor rank-based cost-sharing (refer to Table 1, 32 CFR 199.5) applies to benefits covered by the ECHO and these cost-shares do not apply toward the Basic Program's catastrophic cap under 10 U.S.C. 1079(b)(5). The waiver of cost-shares for active duty family members enrolled in TRICARE Prime does not apply to ECHO, as there is a separate statutory basis for the ECHO program and its cost-shares compared to the Basic Program or Prime.

Government Cost-share Liability for ECHO. The Government's monthly cost-share of all benefits provided to a beneficiary in a particular month under the PFPWD was statutorily limited to $1,000 by 10 U.S.C. 1079(e)(2) for all benefits. The Government's monthly cost-share of any benefits provided under ECHO is now statutorily limited by section 701(b) of the NDAA–02 (10 U.S.C. 1079(f)(2)(A)) to $2,500 for benefits related to training, rehabilitation, special education, assistive technology devices, and institutional care in private, non-profit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities. Because the NDAA–02 provided no statutory limitation concerning the amount of the Government's monthly cost-share for all other benefits under ECHO, the Department has discretion to determine the maximum monthly Government cost-share. Therefore, the Department proposes to increase the monthly Government cost-share from $1,000 to $2,500 for all benefits under ECHO, with the exception of the new ECHO home health care benefit as is detailed herein. The primary reason for this proposed increase is that the maximum government cost-share has not been

adjusted since 1980. We will continue to review this issue to ensure that the government's cost-share reasonably meets the needs of beneficiaries.

Other Requirements. Other ECHO requirements are as follows:

Registration: Sec 701(b) of the NDAA–02 (10 U.S.C. 1079(d)(1)) requires registration to receive ECHO benefits. Sponsors of potentially qualifying beneficiaries will seek to register their family member(s) for ECHO benefits through the applicable Managed Care Support Contractor who will certify eligibility and update the Defense Eligibility Enrollment Reporting System (DEERS) to reflect ECHO eligibility. No ECHO benefits may be authorized unless the beneficiary is registered in DEERS as ECHO-eligible.

EMFP enrollment: Each of the Services has their own Exceptional Family Member Program (EFMP). The programs are a military personnel program. The purpose of the program is to have military personnel offices evaluate the ability of a military and civilian community to provide appropriate medical and/or educational services to service members' dependents who have special medical or educational needs before the Service re-assigns the member to a new location. Although each Service requires its members with special needs to enroll in the EFMP, some members do not comply with this requirement. The result is that some members arrive at assignment locations that are unable to accommodate the special medical and/or educational needs of their dependent. Dependents of members required to be enrolled in EFMP are similar if not identical to those who qualify for the ECHO program. The Services do not routinely provide EFMP enrollments to TRICARE. In accordance with 10 U.S.C. 1079(d)(1), a beneficiary must register with TRICARE in order to qualify for receipt of benefits through the ECHO. We propose that the registration process will be provided by the applicable Managed Care Support Contractor. We also propose that members will be required to provide evidence they are enrolled in their Services' Exceptional Family Member program when registering for ECHO benefits. This requirement will enhance the probability that personnel are assigned to locations where there are sufficient qualified individual or institutional providers to provide the ECHO benefit to their dependents.

Use of Public Facilities: For ECHO benefits related to training, rehabilitation, special education, assistive technology devices, and institutional care in private, non-profit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilitates, the statute expressly requires use of public facilities to be the extent such facilities are available and adequate as determined under this regulation.

III. Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA. This rule, although not economically significant under Executive Order 12866, is a significant rule under Executive order 12866 and has been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). Existing DoD information systems to include the Defense Eligibility Enrollment Reporting System (DEERS) will be upgraded to reflect ECHO registration.

List of Subjects in 32 CFR Part 199:

Case management, Claims, Custodial care, Health insurance, Individuals with disabilities, Military Personnel.

For the reasons set out in the preamble, 32 CFR part 199 is proposed to be amended as follows.

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2 is proposed to be amended by removing the definition for the ''*Program for Persons with Disabilities (PFPWD)*'' and ''*Extraordinary condition*'', by revising the definitions of ''*Durable equipment*'', *Durable medical equipment*'', and ''Homebound'', and adding definitions ''*Duplicate Equipment* ''*Extended Care Health Option (ECHO)*'', ''*Extraordinary Physical or Psychological Condition*'' and placing them in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Duplicate Equipment. An item of durable equipment or durable medical equipment, as defined in this section, that serves the *same* purpose that is served by an item of durable equipment or durable medical equipment previously cost-shared by TRICARE. For example, various models of stationary oxygen concentrators with no primary functional differences are considered duplicate equipment, whereas stationary and portable oxygen concentrators are not considered duplicates of each other because the latter is intended to provide the user with mobility not afforded by the former. Also, a manual wheelchair and an electric wheelchair, both of which otherwise meet the definition of durable equipment or durable medical equipment, would not be considered duplicates of each other if each is found to provide an appropriate level of mobility. For the purpose of TRICARE cost-sharing, durable equipment and durable medical equipment that is essential to provide a fail-safe-in-home life support system is not considered duplicate equipment.

Durable equipment.

(1) A device or apparatus which does not qualify as durable medical equipment and which is essential to the efficient arrest or reduction of functional loss resulting from a qualifying condition as provided in section 199.5; and

(2) is other than duplicate equipment as defined in this section.

Durable medical equipment.

* * * * *

(9) Is other than duplicate equipment as defined in this section.

* * * * *

Extended Care Health Option (ECHO). The TRICARE special program of supplemental benefits for qualifying active duty family members as described in Section 199.5

* * * * *

Extraordinary Physical or Psychological Condition. A complex physical or psychological clinical condition of such severity which results in the beneficiary being homebound as defined in this section.

* * * * *

Homebound. A beneficiary's condition is such that there exists a

normal inability to leave home and, consequently, leaving home would require considerable and taxing effort. Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment or in an adult day-care program certified by a state, or accredited to furnish adult day-care services in the state shall not disqualify an individual from being considered to be confined to his home. Any other absence of an individual from the home shall not disqualify an individual if the absence is infrequent or of relatively short duration. For the purposes of the preceding sentence, any absence for purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration. Also, absences from the home for non-medical purposes, such as an occasional trip to the barber, a walk around the block or a drive, would not necessarily negate the beneficiary's homebound status if the absences are undertaken on an infrequent basis and are of relatively short duration. In addition to the above, absences, whether regular or infrequent, from the beneficiary's primary residence for the purpose of attending an educational program in a public or private school that is licensed and/or certified by a state, shall not negate the beneficiary's homebound status.

* * * * *

Program for Persons with Disabilities [Removed]

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3. Section 199.3 is proposed to be amended by removing the term Program for Persons with Disabilities or the acronym PFPWD, and replacing the term Extended Care Health Option or the acronym ECHO in paragraphs (c)(2)(i)(C), (c)(2)(ii)(B), (c)(2)(iii)(B), (c)(3)(i)(C), (c)(4)(i)(B), (c)(4)(ii)(B), (c)(4)(iii)(B), (c)(5)(9i)(C), (c)(5)(ii)(B), (c)(5)(iii)(B), (c)(5)(iv)(C)(2),(c)(6)(ii), (c)(7)(i)(C), (c)(7)(ii)(B), (c)(8)(ii), (c)(9)(i)(B), and (c)(10)(ii) by, wherever they appear.

4. Section 199.4 is proposed to be amended to revise paragraph (e)(12) regarding custodial care; remove and reserve paragraph (e)(2) Case management services; revise paragraph (g)(7) of exclusions; and remove paragraph (i) Case management program in its entirety; to read as follows:

§ 199.4 Basic Program Benefits.

* * * * *

(e) * * *

(12) *Custodial care.* Custodial care is statutorily excluded under the TRICARE Basic Program. The term custodial care means treatment or services, regardless of who recommends such treatment or services or where such treatment or services are provided, that

(i) can be rendered safely and reasonably by a person who is not medically skilled; or

(ii) is or are designed mainly to help the patient with the activities of daily living.

* * * * *

(20) [*Removed and Reserved*]

* * * * *

(g) * * *

(7) *Custodial care.* Services and supplies related to custodial care as defined in section 199.2.

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(i) [*Removed*]

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5. Section 199.5 is proposed to be revised to read as follows:

§ 199.5 TRICARE Extended Care Health Option (ECHO).

(a) *General.* The ECHO provides financial assistance for certain TRICARE/CHAMPUS beneficiaries to cover an integrated set of services and supplies designed to care for those who have a qualifying condition. The ECHO is not intended to be a stand-alone benefit for those who need only financial assistance but is used to provide benefits not available through the TRICARE Basic Program. The primary purpose is to provide coverage for services that assist in the reduction of the disabling effects of an ECHO qualifying condition, which may include services necessary to maintain, or minimize or prevent deterioration of, function of an ECHO-eligible beneficiary.

(b) *Eligibility.*

(1) The following categories of TRICARE/CHAMPUS beneficiaries with a qualifying condition are eligible for ECHO benefits:

(i) A child or spouse (as described in 10 U.S.C. 1072(a)(A), (D), of (I)) of an active duty member of one of the Uniformed Services on active duty for a period of more than 30 days; or

(ii) An abused dependent, as described in section 199.3((b)(2)(iii); or

(iii) A child or spouse (as described in 10 U.S.C. 1072(2)(A), (D), or (I)) of an active duty member of one of the Uniformed Services on active duty for a period of more than 30 days who dies while on active duty, remains eligible for benefits under the ECHO for a period of three years from the date the active duty sponsor dies; or

(iv) A child or spouse (as described in 10 U.S.C. 1072(2)(A), (D), or (I)) of a deceased active duty member of one of the Uniformed Services who at the time of the member's death was receiving benefits under ECHO, and the member at the time was eligible for receipt of hostile-fire pay, or died as a result of a disease or injury incurred while eligible for such pay. In such circumstances, the dependent shall be eligible through midnight of the beneficiary's twenty-first birthday.

(2) *Qualifying condition.* The eligible dependent must have one of the following qualifying conditions:

(i) *Mental retardation.* A diagnosis of moderate or severe mental retardation made in accordance with the criteria of the current edition of the ''Diagnostic and Statistical Manual of Mental Disorders'' published by the American Psychiatric Association.

(ii) *Serious physical disability.* A serious physicial disability as defined in section 199.2.

(iii) *Extraordinary physical or psychological condition.* An extraordinary physical or psychological condition as defined in section 199.2.

(iv) *Infant/toddler.* TRICARE/CHAMPUS beneficiaries under the age of three years who are diagnosed with a neuromuscular developmental condition or other condition that can be reasonably expected to precede a diagnosis of moderate or severe mental retardation or be considered as a serious physical disability shall be demed to have a qualifying condition for the ECHO. The Director, TRICARE Management Activity or designee shall establish criteria for ECHO eligibility in lieu of the requirements of paragraphs (b)(2)(i), (ii) or (iii) of this section.

(v) *Multiple disabilities.* The cumulative effect of multiple disabilities as determined by the Director, TRICARE Management Activity or designee shall be used in the determination of a qualifying condition when the beneficiary has two or more disabilities involving separate body systems.

(3) *Loss of ECHO eligibility.* Eligibility for ECHO benefits ceases as of 12:01 a.m. of the day following the day that:

(i) the sponsor ceases to be an active duty member for any reason other than death; or

(ii) eligibility based upon the abused dependent provisions of paragraph (b)(1) of this section expires; or

(iii) eligibility based upon the deceased sponsor provisions of paragraph (b)(1) of this section expires; or

(iv) eligibility based upon a beneficiary's participation in the Transitional Assistance Management Program ends; or

(v) the Director, TRICARE Management Activity or designee determines that the beneficiary no longer has a qualifying condition.

(4) *Continuity of eligibility.* A TRICARE beneficiary who has an outstanding Program for Persons with Disabilities (PFPWD) benefit authorization prior to the effective date of the ECHO program shall be deemed to have an ECHO qualifying condition for the duration of the authorization period during which the beneficiary is otherwise eligible for ECHO and the beneficiary continues to meet the applicable qualifying condition criteria. Upon termination of such an existing authorization for services the beneficiary shall re-establish eligibility for the ECHO in accordance with this section.

(c) *ECHO Benefit.* Items or services which the Director, TRICARE Management Activity or designee has determined to be intrinsic to the following benefit categories and which are determined to be capable of confirming, arresting, or reducing the severity of the effects of a qualifying condition, and that are not otherwise available through the TRICARE Basic Program or excluded by the ECHO, may be allowed.

(1) Diagnostic procedures to establish a qualifying condition diagnosis or to measure the extent of functional loss.

(2) Treatment through the use of such medical, habilitative, or rehabilitative methods, techniques, therapies, and durable equipment and durable medical equipment which otherwise meet the requirements of the ECHO. Allowable treatment may be rendered in-home, or as inpatient or outpatient care, or other environment as appropriate.

(3) Training which allows the use of an assistive technology device or to acquire skills which are expected to reduce the effects of a qualifying condition and for parents or guardians and siblings of an ECHO beneficiary when required as an integral part of the management of the qualifying condition. Vocational training, in the beneficiary's home or a facility providing such, is also allowed.

(4) Special education as provided by the Individuals with Disabilities Education Act and defined at 34 CFR 300.26 and which is specifically designed to accommodate the disabling effects of qualifying condition.

(5) Institutional care within a state, as defined in section 199.2, when the severity of the qualifying condition requires protective custody or training in a residential environment.

(6) Transportation when required to convey an ECHO beneficiary to or from a facility or institution to receive allowable ECHO services or items. Transportation for a medical attendant may be approved when medically necessary for the safe transport of the ECHO beneficiary to receive an authorized ECHO benefit.

(7) Adjunct services.

(i) Assistive services. Services of a qualified interpreter or translator for ECHO beneficiaries who are deaf and readers for ECHO beneficiaries who are blind, and personal assistants for ECHO beneficiaries with other types of qualifying conditions, when such services are necessary in order for the ECHO beneficiary to receive authorized ECHO benefits.

(ii) Equipment adaptation. The allowable equipment purchase shall include such services and modifications to the equipment as necessary to make the equipment useable for a particular ECHO beneficiary.

(iii) Equipment maintenance. Reasonable repairs and maintenance of beneficiary owned or rented durable equipment or durable medical equipment otherwise allowable by this section shall be allowable while a beneficiary is registered in the ECHO.

(8) Respite Care. The primary caregiver is eligible for respite care, as defined in section 199.2, of 16 hours per month in any month in which the qualified beneficiary otherwise receives an ECHO benefits. Respite care services will be provided by a TRICARE-authorized home health agency and will be designed to provide health care services for the covered beneficiary, and not baby-sitting or child-care services for other members of the family. The benefit will not be cumulative, that is, any respite care hours not used in one month will not be carried over or banked for use on another occasion. The government's cost-share incurred for these services accrue to the maximum monthly benefit of $2,500.

(d) *ECHO Benefit Exclusions.*

(1) Benefits allowed under the TRICARE Basic Program will not be provided through the ECHO.

(2) *Inpatient care.* Inpatient acute care for medical or surgical treatment of an acute illness, or of an acute exacerbation of the qualifying condition, is excluded.

(3) *Structural alterations.* Alterations to living space and permanent fixtures attached thereto, including alterations necessary to accommodate installation of equipment or to facilitate entrance or exit, are excluded.

(4) *Homemaker services.* Services that predominantly provide assistance with household chores are excluded.

(5) *Dental care or orthodontic treatment.* Both are excluded.

(6) *Non-domestic travel.* Travel that originates or terminates outside of a state is excluded.

(7) *Deluxe travel accommodation.* The difference between the price for a type of accommodation which provides services or features which exceed the requirements of the beneficiary's condition for safe transport and the price for a type of accommodation without those services or features, is excluded.

(8) *Equipment.* Exclusions for durable medical equipment at section 199.4(d)(3)(ii)(D) apply to all ECHO allowable equipment. Except as otherwise provided in this part, duplicate items of durable equipment and durable medical equipment shall not be authorized. Reasonable repairs and maintenance shall be allowable for equipment otherwise allowable by this section, however, maintenance agreements are excluded.

(9) *No obligation to pay.* Services or items for which the beneficiary or sponsor has no legal obligation to pay, or for which no charge would be made if the beneficiary was not eligible for TRICARE, are excluded.

(10) *Public facility or Federal government.* Services or items paid for, or eligible for payment, directly or indirectly by a public facility, as defined in section 199.2, or by the Federal government, other than the Department of Defense, are excluded for training, rehabilitation, special education, assistive technology, and institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities except when such services or items are eligible for payment under a state plan for medical assistance under Title XIX of the Social Security Act (Medicaid). Rehabilitation and assistive technology services or supplies may be available under the TRICARE Basic Program.

(11) *Study, grant, or research programs.* Services and items provided as a part of a scientific clinical study, grant, or research program are excluded.

(12) *Unproven drugs, devices, and medical treatments or therapeutic or diagnostic procedures.* Services and items whose safety and efficacy have not been established in accordance with section 199.4 are excluded.

(13) *Immediate family or household.* Services or items provided or prescribed by a member of the beneficiary's immediate family, or a person living in the beneficiary's or sponsor's household, are excluded.

(14) *Court or agency ordered care.* Services or items ordered by a court or other government agency, which are not

otherwise an allowable ECHO benefit, are excluded.

(15) *Excursions.* Additional or special charges for excursions, other than otherwise allowable transportation, are excluded even though part of a program offered by a TRICARE-authorized provider.

(16) *Drugs and medicines.* Drugs and medicines that do not meet the benefit requirements of section 199.4 or 199.21 are excluded.

(17) *Therapeutic absences.* Therapeutic absences from an inpatient facility or from home for a homebound beneficiary are excluded.

(e) *ECHO Home Health Care (EHHC).* Home health care services and supplies are authorized for those beneficiaries who meet all applicable ECHO eligibility requirements and who also:

(1) physically reside within the 50 United States or the District of Columbia; and

(2) are homebound, as defined in section 199.2; and

(3) require medically necessary skilled services that exceed the level of coverage provided under the Basic Program's home health care benefit, or

(4) require frequent interventions (other than skilled medical services), usually provided by the primary caregiver(s), as defined in section 199.2, such that EHHC services are necessary to allow the primary caregiver(s) the opportunity to rest.

(5) are case managed to include a reassessment at least every ninety (90) days, and receive services as outlined in a written plan of care; and

(6) receive all home health care services from a TRICARE-authorized home health agency as described in section 199.6(b)(4)(xv) in the beneficiary's primary residence.

(f) *EHHC Benefit.* Covered home health services are the same as, and provided under the same conditions as, those services described in section 199.4(e)(21)(i), except that they are not limited to part-time or intermittent services. Custodial care services, as defined in section 199.2, may be provided to the extent such services are provided in conjunction with authorized ECHO home health care services. Beneficiaries who are authorized EHHC will receive all home health care services under EHHC and no portion will be provided under the Basic Program. TRICARE-authorized home health agencies are not required to use the Outcome and Assessment Information Set (OASIS) to assess beneficiaries who are authorized EHHC.

(1) *Plan of Care.* A written plan of care is required prior to authorizing ECHO home health care. The plan must include the type, frequency, scope and duration of the care to be provided and support the professional level of provider. Reimbursement will not be authorized for a level of provider not identified in the plan of care.

(2) *Respite Care for Beneficiaries Receiving ECHO Home Health Care (EHHC).* Beneficiaries who are receiving EHHC services and whose plan of care includes frequent interventions by the primary caregiver are eligible for respite care services for the primary caregiver in lieu of the ECHO general respite care benefit. For the purpose of this section, the term ''frequent'' means ''more than two interventions during the eight-hour period per day that the primary caregiver would normally be sleeping.'' The services performed by the primary caregiver are those that can be performed safely and effectively by the average non-medical person without direct supervision of a health care provider after the primary caregiver has been trained by appropriate medical personnel. Primary caregivers in this situation are eligible for a maximum of eight hours per day of respite care by a TRICARE-authorized home health agency. The home health agency will provide the health care interventions or services for the covered beneficiary so that the primary caregiver is relieved of the responsibility to provide such interventions or services for the duration of that period of respite care. The health care agency will not provide baby-sitting or child care services for other members of the family. The benefit is not cumulative in that any hours not used in a given day may not be carried over or banked for use on another occasion. The Government's cost-share incurred for these services accrue to the maximum yearly ECHO Home Health Care benefit.

(3) *EHHC Government Cost-Share.* The maximum annual Government cost-share, using a billed charges or negotiated rate payment methodology, for ECHO home health care services may not exceed the local wage-adjusted highest Medicare Resource Utilization Group (RUG–III) category.

(i) The maximum monthly Government cost-share for EHHC will be based on the actual number of hours of ECHO home health care services rendered in the month, but in no case will it exceed one-twelfth of the annual maximum Government cost-share as determined in this section.

(ii) When a beneficiary moves to a different locality within the 50 United States or the District of Columbia, the annual fiscal year cap will be recalculated to reflect the wage-adjusted highest Medicare RUG–III category cost for the beneficiary's new location and will apply to the EHHC benefit for the remaining portion of that and subsequent fiscal years.

(4) *EHHC Reimbursement.* TRICARE-authorized home health agencies must provide and bill for all authorized home health care services through established TRICARE claims mechanisms. No special billing arrangements will be authorized in conjunction with coverage that may be provided by Medicaid or other federal, state, community or private programs. Reimbursement will be based on the professional level of the person providing the authorized care as indicated in the beneficiary's plan of care. Specifically, TRICARE will reimburse up to 100% of the CHAMPUS Maximum Allowable Charge (CMAC) or negotiated rate for a physician or registered nurse; up to 80% of the CMAC for a licensed practical or vocational nurse; and up to 60% of the CMAC for a home health aide.

(5) *EHHC Exclusions.*

(i) *Respite care.* Respite care for the purpose of covering primary caregiver absences due to deployment, employment, seeking of employment or for pursuit of education is excluded. Authorized respite care covers only the ECHO beneficiary, not siblings or others who may reside in or be visiting in the beneficiary's residence.

(ii) *ECHO home health care for former Individual Case Management Program for Persons with Extraordinary Conditions (ICMP–PEC) or Case Management Demonstration Participants.* ECHO home health care services and supplies are excluded for those beneficiaries being provided continuing coverage for home health care as participants of the previous case management demonstrations or the ICMP–PEC.

(g) *Cost-share liability—*

(1) *No deductible.* ECHO benefits are not subject to a deductible amount.

(2) *Sponsor cost-share liability.*

(i) Regardless of the number of ECHO eligible family members, the sponsor's cost-share for ECHO benefits, including ECHO Home Health Care, in a given month is according to the following table:

TABLE 1.—MONTHLY COST-SHARE BY MEMBER'S PAY GRADE

E–1 through E–5	$25
E–6	30
E–7 and O–1	35
E–8 and O–2	40
E–9, W–1, W–2 and O–3	45
W–3, W–4 and O–4	50
W–5 and O–5	65
O–6	75

TABLE 1.—MONTHLY COST-SHARE BY MEMBER'S PAY GRADE—Continued

O–7	100
O–8	150
O–9	200
O–10	250

(ii) The sponsor's cost-share shown in Table 1 in paragraph (g)(2)(i) will be applied to the first allowed ECHO charges in any given month. The Government's share will be paid, up to the maximum amount specified in paragraph (g)(3) of this section, for allowed charges after the sponsor's cost-share has been applied.

(iii) The provisions of 32 CFR 199.18(d)(1) and (e)(1) regarding elimination of copayments for active duty family members enrolled in TRICARE Prime do not eliminate, reduce, or otherwise affect the sponsor's cost-share shown in Table 1 in paragraph (g)(2)(i).

(iv) The sponsor's cost-share shown in Table 1 in paragraph (g)(2)(i) does not accrue to the Basic Program's Catastrophic Loss Protection under 10 U.S.C. 1079(b)(5) as shown at 32 CFR 199.4(f)(10) and 199.18(f).

(3) *Government cost-share liability.*

(i) The total government share of the cost of all ECHO benefits, except for ECHO home health care, provided in a given month to a beneficiary may not exceed $2,500 after application of the allowable payment methodology.

(ii) The total government share of the cost of authorized ECHO home health care provided in a month to a beneficiary may not exceed one-twelfth of the annual maximum Government cost-share as determined in this section.

(h) *Benefit payment.*

(1) *Transportation.* The allowable amount for transportation of an ECHO beneficiary is limited to the actual cost of the standard published fare plus any standard surcharge made to accommodate any person with a similar disability or to the actual cost of specialized medical transportation when non-specialized transport cannot accommodate the beneficiary's qualifying condition related needs, or when specialized transport is more economical than non-specialized transport. When transport is by private vehicle, the allowable amount is limited to the Federal government employee mileage reimbursement rate in effect on the date the transportation is provided.

(2) *Equipment.*

(i) The TRICARE allowable amount for durable equipment and durable medical equipment shall be calculated in the same manner as durable medical equipment allowable through section 199.4.

(ii) *Allocating equipment expense.* The ECHO beneficiary (or sponsor or guardian acting on the beneficiary's behalf) may, only at the time of the request for authorization of equipment, specify how the allowable cost of the equipment is to be allocated as an ECHO benefit. The entire allowable cost of the authorized equipment may be allocated in the month of purchase provided the allowable cost does not exceed the ECHO maximum monthly benefit of $2,500, or it may be prorated regardless of the allowable cost. Prorating permits the allowable cost of ECHO-authorized equipment to be allocated such that the amount allocated each month does not exceed the maximum monthly benefit.

(A) *Maximum period.* The maximum number of consecutive months during which the allowable cost may be prorated is the lesser of:

(*1*) The number of months calculated by dividing the allowable cost for the item by 2,500 and then doubling the resulting quotient, rounded off to the nearest whole number; or

(*2*) The number of months of expected useful life of the equipment for the requesting beneficiary, as determined by the Director, TRICARE Management Activity or designee.

(B) *Alternative allocation period.* The allowable equipment cost may be allocated monthly in any amount such that the maximum allowable monthly ECHO benefit of $2,500, or the maximum period under (i), is not exceeded.

(C) *Authorization.*

(*1*) The amount allocated each month under (i) or (ii) will be separately authorized as an ECHO benefit.

(*2*) An item of durable equipment or durable medical equipment shall not be authorized when such authorization would allow concurrent ECHO cost-sharing of duplicate equipment, as defined in section 199.2, for the same beneficiary.

(D) *Cost-share.* A cost-share, as provided by (g) of this section, is required for each month in which a prorated amount is authorized.

(E) *Termination.* Prorated payments shall be terminated as of the first day of the month following the death of a beneficiary or as of the effective date of a beneficiary's loss of ECHO eligibility for any other reason.

(3) *For-profit institutional care provider.* Institutional care provided by a for-profit entity may be allowed only when the care for a specific ECHO beneficiary.

(i) is contracted for by a public facility as a part of a publicly funded long-term inpatient care program; and

(ii) is provided based upon the ECHO beneficiary's being eligible for the publicly funded program which has contracted for the care; and

(iii) is authorized by the public facility as a part of a publicly funded program;

(iv) would cause a cost-share liability in the absence of TRICARE eligibility; and

(v) produces an ECHO beneficiary cost-share liability that does not exceed the maximum charge by the provider to the public facility for the contracted level of care.

(i) *Other ECHO Requirements.*

(1) All provisions of this part, except the provisions of section 199.4 unless otherwise provided by this section, apply to the ECHO.

(2) *Registration.* Active duty sponsors must register potential ECHO eligible beneficiaries through the Director, TRICARE Management Activity or designee prior to receiving ECHO benefits. The Director, TRICARE Management Activity or designee will determine ECHO eligibility and update the Defense Eligibility Enrollment Reporting System (DEERS) accordingly. Sponsors must provide evidence of enrollment in their respective branch of services Exceptional Family Member Program at the time they register their family member(s) for the ECHO.

(3) *Benefit authorization.* All ECHO benefits require authorization by the Director, TRICARE Management Activity or designee prior to receipt of such benefits.

(i) *Documentation.* The sponsor shall provide such documentation as the Director, TRICARE Management Activity or designee requires as a prerequisite to authorizing ECHO benefits. Such documentation shall describe how the requested benefit will contribute to confirming, arresting, or reducing the disabling effects of the qualifying condition, including maintenance of function or prevention of further deterioration of function, of the beneficiary.

(ii) *Format.* An authorization issued by the Director, TRICARE Management Activity or designee shall specify such description, dates, amounts, requirements, limitations or information as necessary for exact identification of approved benefits and efficient adjudication of resulting claims.

(iii) *Valid period.* An authorization for ECHO benefits shall be valid until such time as the Director, TRICARE Management Activity or designee determines that the authorized services are no longer appropriate or required.

(iv) *Authorization waiver.* The Director, TRICARE Management

Activity or designee may waive the requirement for a written authorization for rendered ECHO benefits that, except for the absence of the written authorization, would be allowable as an ECHO benefit.

(v) *Public facility use.*

(A) An ECHO beneficiary residing within a state must demonstrate that a public facility is not available and adequate to meet the needs of their qualifying condition. Such requirement shall apply for beneficiaries who request authorization for training, rehabilitation, special education, assistive technology, and institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities. The maximum Government cost-share for services that require demonstration of pubic facility non-availability or inadequacy is limited to $2,500 per month per beneficiary. State-administered plans for medical assistance under Title XIX of the Social Security Act (Medicaid) are not considered available and adequate facilities for the purpose of this section.

(B) The domicile of the beneficiary shall be the basis for the determination of public facility availability when the sponsor and beneficiary are separately domiciled due to the sponsor's move to a new permanent duty station or due to legal custody requirements.

(C) Written certification, in accordance with information requirements, formats, and procedures established by the Director, TRICARE Management Activity or designee that requested ECHO services or items cannot be obtained from public facilities because the services or items are not available and adequate, is a prerequisite for ECHO benefit payment for training, rehabilitation, special education, assistive technology, and institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities.

(*1*) An administrator or designee of a public facility may make such certification for a beneficiary residing within the service are of that public facility.

(*2*) The Director, TRICARE Management Activity or designee may determine, on a case-by-case basis, that apparent public facility availability for a requested type of service or item cannot be substantiated for a specific beneficiary's request for ECHO benefits and therefore is not available.

(*i*) A case-specific determination shall be based upon a written statement by the beneficiary (or sponsor or guardian acting on behalf of the beneficiary) which details the circumstances wherein a specific individual representing a specific public facility refused to provide a public facility use certification, and such other information as the Director, TRICARE Management Activity or designee determines to be material to the determination.

(*ii*) A case-specific determination of public facility availability by the Director, TRICARE Management Activity or designee is conclusive and is not appealable under section 199.10

(4) Repair or maintenance of beneficiary owned durable equipment and durable medical equipment is exempt from the public facility use requirements.

(5) The requirements of this paragraph (i)(4)(v) notwithstanding, no public facility use certification is required for medical services and items that are provided under Part C of the Individuals with Disabilities Education Act in accordance with the Individual Family Services Plan and that are otherwise allowable under the ECHO.

(j) *Implementing instructions.* The Director, TRICARE Management Activity or designee shall issue TRICARE policies, instructions, procedures, guidelines, standards, and criteria as may be necessary to implement the intent of this section.

* * * * *

5. Section 199.6 is proposed to be amended by revising paragraphs (e)(1)(ii), (e)(2) and (e)(3) to read as follows:

§ 199.6 TRICARE—authorized providers.

* * * * *

(e) *Extended Care Health Option Providers—*

(1) *General.* * * *

(ii) A Program for Persons with Disabilities (PFPWD) provider with TRICARE-authorized status on the effective date for the Extended Care Health Option (ECHO) Program shall be deemed to be a TRICARE-authorized provider until the expiration of all outstanding PFPWD benefit authorizations for services or items being rendered by the provider.

(2) *ECHO provider categories—*

(i) *ECHO inpatient care provider.* A provider of residential institutional care, which is otherwise an ECHO benefit shall be:

(A) A not-for-profit entity or a public facility and

(B) Located within a state; and

(C) Be certified as eligible for Medicaid payment in accordance with a state plan for medical assistance under Title XIX of the Social Security Act (Medicaid) as a Medicaid Nursing Facility, or Intermediate Care Facility for the Mentally Retarded, or be a TRICARE-authorized institutional provider as defined in paragraph (b) of this section, or be approved by a state educational agency as a training institution.

(ii) *ECHO outpatient care provider.* A provider of ECHO outpatient, ambulatory, or in-home services shall be:

(A) A TRICARE-authorized provider of services as defined in this section; or

(B) An individual, corporation, foundation, or public entity that predominantly renders services of a type uniquely allowable as an ECHO benefit and not otherwise allowable as a benefit of section 199.4, that meets all applicable licensing or other regulatory requirements of the state, county, municipality, or other political jurisdiction in which the ECHO service is rendered.

(iii) *ECHO vendor.* A provider of an allowable ECHO item, such as supplies or equipment, shall be deemed to be a TRICARE-authorized vendor for the provision of the specific item, supply or equipment when the vendor supplies such information as the Director, TRICARE Management Activity or designee determines necessary to adjudicate a specific claim.

(3) *ECHO provider exclusion or suspension.* A provider of ECHO services or items may be excluded or suspended for a pattern of discrimination on the basis of disability. Such exclusion or suspension shall be accomplished according to the provisions of section 199.9.

* * * * *

6. Section 199.7 is proposed to be amended by revising paragraph (a)(2), to read as follows:

§ 199.7 Claims submission, review, and payment.

(a) *General* * * *

(2) *Claim required.* No benefit may be extended under the Basic Program or Extended Care Health Option (ECHO) Program without submission of an appropriate, complete and properly executed claim form.

* * * * *

7. Section 199.8 is proposed to be amended by revising paragraph (d)(4), to read as follows:

§ 199.8 Double coverage.

* * * * *

(d) *Special considerations*—(4) *Extended Care Health Option (ECHO).* For those services or supplies that require use of public facilities, an ECHO eligible beneficiary (or sponsor or guardian acting on behalf of the

beneficiary) does not have the option of waiving the full use of public facilities which are determined by the Director, TRICARE Management Activity or designee to be available and adequate to meet a disability related need for which an ECHO benefit was requested. Benefits eligible for payment under a state plan for medical assistance under Title XIX of the Social Security Act (Medicaid) are never considered to be available in the adjudication of ECHO benefits.

* * * * *

Dated: July 29, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–19822 Filed 8–5–03; 8:45 am]

BILLING CODE 5001–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[OPP–2003–0132; FRL–7322–3]

RIN: 2070–AD57

Human Testing; Advance Notice of Proposed Rulemaking; Reopening of a Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: On May 7, 2003, EPA announced the availability for comment of an advance notice of proposed rulemaking (ANPR) discussing EPA's plan to conduct rulemaking about criteria and standards EPA would apply in deciding the extent to which it will consider or rely on various types of research with human subjects to support its actions. The Agency received a request to extend the comment period. EPA is hereby reopening the comment period, which ended on August 5, 2003. The new comment period will end August 20, 2003.

DATES: Comments, identified by the docket ID number OPP–2003–0132, must be received on or before August 20, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the May 7, 2003 **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: William L. Jordan, Mail code 7501C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1049; fax number: (703) 308–4776; e-mail address: jordan.william@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of particular interest to those who conduct testing of substances regulated by EPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0132. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the May 7, 2003 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA taking?

This document reopens the public comment period established in the **Federal Register** of May 7, 2003 (68 FR 24410) (FRL–7302–8). In that document, EPA sought comment on its plan to conduct rulemaking about criteria and standards the Agency would apply in deciding the extent to which it will consider or rely on various types of research with human subjects to support its actions. The Agency received a request to extend the comment period. EPA is hereby reopening the comment period, which ended on August 5, 2003. The new comment period will end August 20, 2003. The public is strongly encouraged to submit comments as early as possible so that EPA may make them available for consideration by a committee of the National Academy of Sciences, which is preparing a report for EPA on these issues.

III. What is the Agency's Authority for Taking this Action?

Section 25(a) of FIFRA gives the Administrator authority to "prescribe regulations to carry out the purposes of [FIFRA]." Such a rule would implement EPA's authority to require data in support of registration of pesticides (see, for example, FIFRA sections 3(c)(1)(F) and 3(c)(2)(B)) and to interpret the provision making it unlawful for any person "to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature and purposes of the test and of any physical and mental health consequences which are reasonably foreseeable therefrom, and (ii) freely volunteer to participate in the test." (FIFRA section 12(a)(2)(P)). In addition, section 408(e)(1)(C) of the FFDCA authorizes the Administrator to issue a regulation establishing "general procedures and requirements to implement this section."

IV. Do Any Statutory and Executive Order Reviews Apply to this Action?

No. This action is not a rulemaking, it merely extends the date by which public comments must be submitted to EPA on an ANPR that previously published in the **Federal Register** of May 7, 2003 (68 FR 24410). For information about the applicability of the regulatory assessment requirements to the ANPR, please refer to the discussion in Unit III.A. of that document (68 FR 24410).

List of Subjects

Environmental protection, Human studies.

Dated: August 1, 2003.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 03–20154 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7540–3]

RIN 2060–AJ99

Draft Regulatory Text for Proposed Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has developed draft regulatory text to accompany the proposed rule to implement the 8-hour ozone national ambient air quality standard (NAAQS) which was published on June 2, 2003 (68 FR 32802). If, after notice and comment, we adopt approaches other than those reflected by the draft regulatory text, the regulatory text we promulgate at the time of our final action will incorporate the approaches we adopt.

DATES: Comments must be received on or before September 5, 2003.

ADDRESSES: Comments on the draft regulatory text should be submitted to Docket #OAR 2003–0079. When mailing documents, commnents or requests to the EPA Docket Center through the U.S. Postal Service, please use the following address: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Comments can be submitted to the address above, by fax (202) 566–1741, or by e-mail to *A-and-R-Docket@epa.gov.* The voice telephone number is (202) 566–1742. In addition, we have placed a variety of materials regarding the 8-hour ozone implementation proposed rule on the Web site: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr.* While the Web site is not an exact duplicate of the Air Docket, we have placed materials that we have generated and materials that have been submitted in electronic format on the Web site.

The draft regulatory text is available for public inspection at EPA's Web site at: *www.epa.gov/ttn/naaqs/ozone/o3imp8hr* and at the Office of Air and Radiation (OAR) Docket Center, Docket Number OAR 2003–0079, respectively. Copies of the draft regulatory text can also be obtained from the Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards (C539–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 54l-5666 or by e-mail at: *silvasi.john@epa.gov* or Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 54l-5550 or by e-mail at: *gerth.denise@epa.gov*.

SUPPLEMENTARY INFORMATION: The draft regulatory text for the 8-hour ozone implementation proposed rule is intended to accompany the June 2, 2003, proposed rule to implement the 8-hour ozone NAAQS. The draft regulatory text contains most of the major elements of the implementation approach, *e.g.*, the transition from the 1-hour to the 8-hour ozone NAAQS and how to implement the Clean Air Act's provisions related to anti-backsliding. In the draft regulatory text, we are not yet addressing the options concerning new source review, *i.e.*, the transitional program and the Clean Air Development Communities program.

The June 2, 2003 proposed rule contains the background discussion for the draft regulatory text. The June 2, 2003 proposal sets forth for comment several options for certain features or plan elements; the draft regulatory text provides the regulatory text for only one of the options being proposed for each feature or element to demonstrate how the regulatory text would appear for that set of options. Selection of a particular option was generally based on the preferences stated in the June 2, 2003 proposal; however, this selection should not be interpreted as a decision by EPA to proceed with that option in the final rule, since comments are still being received on the June 2, 2003, proposal.

The draft regulatory text would also amend 40 CFR part 81 by adding and reserving a new subpart E, which would be used to identify the area designations and classifications for the 1-hour standard in place at the time the 1-hour standard no longer applies to each area; this is being done to implement the proposed rule on anti-backsliding.

A. How Can I Get Copies of This Document?

1. *Docket.* The EPA has established an official docket for this action under Docket ID Number 2003–0079. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosures is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OAR Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OAR Docket is (202) 566–1742.

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Authority: 42 U.S.C. 7408, 42 U.S.C. 7410, 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: July 28, 2003.

Tom Curran,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–20030 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA203–4210b; FRL–7523–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Requirements for Two Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) related requirements to limit volatile organic compounds (VOCs) and nitrogen oxides (NO_X) from two sources. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 5, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, follow the detailed instructions described in the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, or by e-mail at *lewis.janice@epa.gov.*

SUPPLEMENTARY INFORMATION: You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number MD140–3094b in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention PA203–4210b. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 26, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–19923 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD140–3094b; FRL7523–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to Visible Emissions and Sulfur Oxides Testing Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment (MDE) on November 6, 2002. The revision amends Regulations .02, .03, and .05. under COMAR 26.11.06—General Emission Standards, Prohibitions and Restrictions. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a

direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 5, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, follow the detailed instructions described in the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov*.

SUPPLEMENTARY INFORMATION: You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number MD140–3094b in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention MD140–3094b. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through *Regulations.gov*, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 26, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–19921 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[KS 189–1189; FRL–7540–8]

Approval and Promulgation of Operating Permits Program; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of revisions to the Kansas Operating Permit Program. On June 25, 2001, the state of Kansas requested a revision to change the Class I Operating Permits annual emission inventory due date and to revise the annual emissions fee. Approval of these revisions will ensure consistency between the state and Federally-approved rules.

DATES: Comments on this proposed action must be received in writing by September 5, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to Heather Hamilton at *hamilton.heather@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking'' in the **SUPPLEMENTARY INFORMATION** section of the direct final rule which is located in the rules section of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's operating permits program revisions as a direct final rule without prior proposal because the Agency views this as a

noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. *See* the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: July 28, 2003.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 03–20037 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–03–15732]

RIN 2127–AI98

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In this document, NHTSA proposes to amend Federal Motor Vehicle Safety Standard No. 208, *Occupant crash protection* (FMVSS No. 208), to establish the same maximum test speed and phase-in schedule for the belted barrier test using the 5th percentile adult female test dummy as is required for belted tests using the 50th percentile adult male test dummy commencing September 1, 2007. The effect of this proposal would be to increase the maximum belted frontal barrier crash test speed for the smaller dummy from 48 km/h (30 mph) to 56 km/h (35 mph). Preliminary testing has shown that at the higher test speed, a belted 5th percentile adult female dummy seated in accordance with FMVSS No. 208 seating procedures may record higher injury measurements than a 50th percentile adult male dummy tested in the same vehicle. Improving performance beyond the 48 km/h (30 mph) test speed for the 5th percentile adult female would require that air bag and seat belt designs be optimized to protect occupants in high speed crashes without increasing the aggressiveness of those systems to a level where they are likely to induce injuries for out-of-position occupants.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than October 6, 2003.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number 03–15732) by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery : Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Requests for Comments heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Lori Summers, Office of Crashworthiness Standards, Light Duty Vehicle Division by phone at (202) 366–1740, and by fax at (202) 493–2739.

For legal issues, you may contact Christopher Calamita of the NHTSA Office of Chief Counsel by phone at (202) 366–2992 and by fax at (202) 366–3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

FMVSS No. 208 requires passenger vehicles to be equipped with safety belts and frontal air bags to prevent or mitigate the effects of occupant interaction with the vehicle interior in a crash. While air bags have been very effective in increasing the number of people saved in moderate and high speed frontal crashes, they have occasionally been implicated in fatalities in instances where vehicle occupants were very close to the air bag when it deployed. On May 12, 2000, NHTSA published a final rule to require that future air bags be designed to create less risk of serious air bag-induced injuries than current air bags and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology (''Advanced Air Bag Rule'', 65 FR 30680).

The Advanced Air Bag Rule established two phase-in schedules. In the first phase-in, NHTSA will require vehicle manufacturers to install air bag systems that reduce the risk of air bag-induced injury (particularly to young children and small adult drivers), while improving the frontal crash protection provided by current air bag systems to occupants of different sizes. In the second phase-in, the agency will require manufacturers to further improve upon the existing air bag systems by implementing a belted rigid barrier crash test at impact speeds up to and including 56 km/h (35 mph), rather than 48 km/h (30 mph) as has been required for many years. The Advanced Air Bag

Rule established, on an interim basis, a maximum unbelted test speed for tests using the 5th percentile adult female and 50th percentile adult male dummies of 40 km/h (25 mph). While the rule retained the existing 48 km/h (30 mph) belted test requirement for the 50th percentile adult male test dummy throughout the first phase-in, it added a new belted test for the 5th percentile adult female test dummy at impact speeds up to and including 48 km/h (30 mph). It also established a 56 km/h (35 mph) maximum test speed for the 50th percentile adult male in phase two of the requirements (65 FR 30685).

While the agency has been performing a 56 km/h (35 mph) frontal barrier impact test with 50th percentile adult male dummies in the New Car Assessment Program (NCAP), now for the first time, FMVSS No. 208 has rigid barrier test requirements for belted occupants at a higher test speed than for unbelted occupants.[1] Until the Advanced Air Bag Rule, FMVSS No. 208 specified the same maximum test speed for both belted and unbelted rigid barrier testing. From the early 1970s, when FMVSS No. 208 was first issued, up through the early 1990s, when air bags first began to be widely introduced, seat belt use was quite low, reaching only 51 percent in 1991. Since that time, seat belt use has risen to 75 percent nationally, and is as high as 92 percent in states with primary seat belt laws and strong enforcement programs. By increasing the maximum speed for belted testing requirements, the Advanced Air Bag Rule amended FMVSS No. 208 to better serve the safety needs of the growing number of Americans using seat belts on a regular basis.

In the preamble to the Advanced Air Bag Rule the agency stated that ''we did not propose including the 5th percentile adult female dummy in [the 56 km/h (35 mph) phase-in] requirement because we had sparse information on the practicability of such a requirement. NHTSA will initiate testing to examine this issue and anticipates proposing increasing the test speed for belted tests using the 5th percentile adult female dummy to 56 km/h (35 mph), beginning at the same time that the 50th percentile adult male is required to be used in belted testing at that speed.'' [60 FR 30680, 30690.] This position was reiterated when the agency declined a petition to immediately begin rulemaking to establish a requirement for vehicles to meet a 0–56 km/h (0–35 mph) belted barrier test with the 5th percentile adult female dummy (66 FR 65376; December 18, 2001). However, the agency continued research on the feasibility and practicability of increasing the testing speed for belted testing using the 5th percentile adult female dummy.

Based on the results of our research, we are proposing to increase the maximum belted rigid barrier test speed for the 5th percentile adult female in accordance with the same phase-in schedule already adopted for the 50th percentile adult male test dummy. The proposed amendment would apply to all vehicles required to meet the requirements of the Advanced Air Bag Rule.

II. Tests Conducted To Assess the Feasibility of a 56 km/h (35 mph) Belted Barrier Test Requirement Using the 5th Percentile Adult Female Test Dummy

Preliminary testing conducted by NHTSA and Transport Canada indicates that a belted 5th percentile adult female dummy may be subject to higher injury measures than a belted 50th percentile adult male dummy in comparable frontal barrier crash tests, when both are seated in accordance with the applicable FMVSS No. 208 seating procedures. In 2001, NHTSA conducted a series of ten crashes to demonstrate the feasibility of meeting the performance requirements adopted in the Advanced Air Bag Rule using belted 5th percentile adult female driver and passenger dummies in a 56 km/h (35 mph) rigid barrier test. NHTSA then conducted an additional eight tests through a joint research program with Transport Canada. Mini, light, and medium passenger cars were tested, along with sport utility vehicles, minivans, and a pickup truck.[2] None of the tested vehicles were designed to meet the new test requirements of the Advanced Air Bag Rule (See, NHTSA–2001–10687).

Of the eighteen vehicles tested, twelve were able to meet the driver and right front passenger dummy Injury Assessment Reference Values (IARVs) required under FMVSS No. 208. The six vehicles that exceeded the IARVs for the 5th percentile adult female dummy were found to exceed injury measures in the head, chest, and/or neck regions. When comparable NCAP crash tests were conducted with 50th percentile adult male dummies, none of the adult male dummies exceeded the IARVs.

In a test of a 2001 Dodge Durango, the driver-side test dummy measured injury levels that exceeded the IARVs for HIC, Nij, and neck tension; the passenger dummy exceeded the Nij criteria. Both driver and passenger dummies exceeded the chest acceleration criteria in a test of a 2002 Chevy Trailblazer, with acceleration levels approximately 17 percent higher than the levels measured in the next highest vehicle for both driver and passenger. The driver dummy measured a Nij reading equivalent to the IARV in a test of a 2001 Ford Taurus and two times the IARV in a test of a 1998 Geo Metro. The high injury measurement in the 1998 Geo Metro test was more indicative of cars manufactured in the mid-1990s than of newer models, many of which have been redesigned to have a less aggressive air bag deployment. In all four of these vehicles, NHTSA believes the high injury readings were the result of the deploying air bag interacting with the dummy.

The driver dummy in a 2001 Dodge Grand Caravan test exceeded both Nij and chest acceleration limits. Film analysis of the test indicated that the steering wheel rotated upward during the crash test and the air bag deployment pattern was such that it inflated under the dummy's chin, causing high neck loads. At the same time, the air bag may have failed to prevent dummy contact with the steering wheel through the air bag, resulting in the high chest acceleration measurement. The sixth test involved a 2001 Toyota Echo. In that test, the driver dummy exceeded the HIC criteria. It appears that in this instance the force limiting seat belt system did not yield effectively and allowed the dummy's head to snap forward and exceed the HIC criteria. These tests suggest that the deployment characteristics of some air bag systems and the force limiting capabilities of some seat belt systems will need to be optimized for the smaller occupants represented by the 5th percentile female dummy to provide better protection.

While the remaining twelve vehicles all tested within the IARV limits, the overall average injury values for the 5th percentile adult female driver dummies in these vehicles were somewhat higher than the values for 50th percentile adult male driver dummies tested in the same vehicles. The greatest discrepancy was with the neck injury criteria (Nij). Fourteen of the tested vehicles met the neck IARVs for the 5th percentile adult female driver dummy, but on average the Nij values for the 5th percentile

[1] Vehicles manufactured after March 18, 1997 not certified to the Advanced Air Bag Rule may comply with the standard by means of an unbelted sled test, as opposed to the unbelted rigid barrier test. 49 CFR 571.208, S13. The sled test does not involve an impact with a rigid barrier but uses the same crash pulse for each vehicle and fires air bags artificially without the use of the vehicle sensor system.

[2] The vehicle classifications were based on those adopted by NHTSA in NCAP.

adult female driver dummy were nearly double the Nij values registered for the 50th percentile adult male driver dummies tested in the same vehicle. The higher injury measures may result from the proximity of the female dummy to the steering wheel or instrument panel. The seating procedure for testing with the 5th percentile female dummy places the dummy closer to the steering wheel than the 50th percentile adult male dummy, reducing the distance between the dummy and the deploying air bag. A major factor in air bag-induced fatalities has been the proximity of the occupant to the air bag module at deployment. Therefore, this amendment is intended to ensure that belted small-stature drivers and any belted passengers seated close to the air bag are adequately protected in a high speed crash.

These eighteen tests indicate both a need for and the feasibility of extending the 56 km/h (35 mph) maximum belted test speed to include the 5th percentile adult female dummy. If adopted, the new requirement would improve the equality of belted crash protection for occupants of different sizes by requiring the 5th percentile female and the 50th percentile male belted rigid barrier crash tests to use the same maximum speed. As described above, compliance with this amendment will likely lead to further improvement of air bag and/or seat belt systems.

III. Benefits and Costs Associated With the Proposed Rule

NHTSA estimates that today's proposal, if adopted, could prevent between five and six small occupant fatalities per year and could also reduce two to three moderate to severe injuries (MAIS 2+).[3] Compliance with the proposal would reduce fatalities for drivers by reducing fatal HIC values by 1.4–2.3 percent, fatal Nij values by 3.8 percent, and fatal chest g values by 2.8 percent. When applying these reduction rates to the corresponding target population, this translates to a reduction in driver fatalities from head, neck and chest injuries of 1–2, 1, and 2, respectively. For passengers, compliance would reduce fatalities by reducing fatal HIC values by 0.9–1.5 percent. This translates to a reduction in passenger fatalities by 1. The total reduction in fatalities would be between five and six drivers and passengers combined. Compliance with this proposal would also reduce MAIS 2–5 injuries to drivers by reducing the associated HIC values by 0.2–0.4 percent and the associated chest g values by 0.2 percent. When applying these reduction rates to the corresponding target population, this would result in a reduction in head MAIS 2–5 head and chest injuries of 1–2 and 1 respectively, or a total reduction of MAIS 2–5 injuries of 2–3. A complete discussion of how NHTSA arrived at its estimates may be found in the Preliminary Regulatory Evaluation located in the docket for this rulemaking.

Beyond reducing the rates of injury and fatality to small-stature occupants, increasing the maximum belted test speed for testing with the 5th percentile adult female dummy would expand belted crash protection to occupants of different sizes. The amendment would address the potential hazard to all belted occupants who are very close to both the air bag module and the steering wheel or instrument panel. By phasing in a maximum test speed of 56 km/h (35 mph) for belted testing with the 50th percentile adult male dummy, the Advanced Air Bag Rule should improve occupant protection for belted occupants whose seats are positioned in the mid-track position or further back. Increasing the test speed to 56 km/h (35 mph) for 5th percentile female dummies would oblige occupant protection designers to concurrently focus on improving the safety of small stature belted drivers as well as other individuals who for some reason have the seat positioned closer to the instrument panel or steering wheel.

Compliance with the proposal would result in a nominal additional cost to vehicle manufacturers. The test procedure itself is already required at a lower impact speed in FMVSS No. 208; only the maximum impact speed would be raised. Likewise, agency compliance tests would use the same procedures that will be used for the 48 km/h (30 mph) belted barrier test. Additionally, as indicated by twelve vehicles that met all IARVs in NHTSA's test program, many vehicles already meet the proposed requirement. Measures implemented to meet the 48 km/h (30 mph) crash test requirements for the 5th percentile adult female test dummies may also result in compliance with the proposed 56 km/h (35 mph) requirement with no additional changes.

To the extent additional measures may prove necessary, improving performance beyond the 48 km/h (30 mph) requirement could involve relatively simple changes. Air bag inflation characteristics could be redesigned through changes to the fold pattern, vents, or the air bag algorithm that would effectively modify the timing between primary and secondary stages of deployment. Changes could be made to the electronic control module, which controls the dual stage air bag. Possible changes could include seat track sensors and/or modified seat track lengths to position the full forward seating position further away from the steering assembly. Safety belt pretensioners could be used to remove the slack from the safety belt and provide restraining forces on the occupant earlier in the crash, reducing forward excursion into the steering wheel or deploying air bag. Manufacturers may decide to use a combination of technologies to maximize the performance of the entire occupant protection system.

Based on vehicle production numbers, about 20 percent of new light vehicles would have to change either driver side or passenger side performance to comply with the proposal. Assuming a new light vehicle fleet in 2005 of 15.9 million, 3.32 million vehicles would need to improve driver side performance, with 0.92 million of these vehicles also having to improve passenger side performance.

Manufacturers may be able to comply with this proposal by changing the air bag characteristics as described above. There would be minimal costs associated with this alternative. If manufacturers were to comply with the proposal by modifying the electronic control module, 3.32 million driver side and 0.92 million passenger side air bags would need to be improved. At a unit cost of $3.12 per vehicle, the total cost for this implementation strategy would be $10.36 million.

Of the vehicles that would need improved performance, about 40 percent were equipped with a driver seat track sensor and 60 percent were not. Under a compliance strategy incorporating seat track sensors, 1.32 million vehicles that would not comply with the proposed requirements would already be equipped with seat track sensors. These 1.32 million vehicles would need to modify the driver side air bag inflation characteristics and electronic control module, at a cost of $3.12 per vehicle, or a total of $4.12 million. Two million of the vehicles that would not comply with the proposal would not be equipped with a seat track sensor. These two million vehicles would need to install a driver side seat track sensor and change the air bag characteristics. The cost of a sensor and modification of the air bag

[3] MAIS (Maximum Abbreviated Injury Scale) represents the maximum injury severity at an Abbreviated Injury Scale (AIS) level, regardless of the nature or location of the injury. The AIS ranks individual injuries by body region on a scale of 1 to 6 as follows: 1=minor, 2=moderate, 3=serious, 4=severe, 5=critical, and 6=maximum/currently untreatable.

characteristics would be $8.12 ($5.00 + $3.12) per seat. The cost for the driver side improvement would be $16.24 million. Of these two million vehicles, 0.92 million vehicles would also have to make modifications to the front passenger side. These modifications may be able to be made through altering the characteristics of the air bag. The total cost for the compliance alternative relying on seat track sensors would be $20.36 million.

Manufacturers may also be able to comply with the proposal using pretensioners, with or without adopting other refinements. For vehicles that would not comply with the proposed requirements but already have pretensioners, manufacturers would have to change the air bag electronic control module or other restraint characteristics. For vehicles that do not comply with the proposed requirements and do not have pretensioners, manufacturers may have to install pretensioners for both driver and passenger sides and change the air bag electronic module.

Eighty seven percent of the vehicles that did not comply with the proposed requirements had pretensioners, indicating that pretensioners alone may not be sufficient to meet the proposed requirements. The 2.89 million vehicles equipped with pretensioners that would not comply with the proposal would have to incorporate improved air bag characteristics or adopt some other, additional strategy to improve performance of the overall system. At an incremental cost of $3.12 per vehicle, the cost for these vehicles would be $9.02 million. Roughly 13 percent of the vehicles that would need improved performance had no pretensioners. The addition of pretensioners to these 0.43 million vehicles, at a cost per seat of $16.50 and installation in at both the driver and front passenger position, would equal $14.20 million. In addition, these vehicles would also likely need to improve their air bag characteristics at a cost of $3.12 per vehicle, or $1.34 million for the portion of the fleet that needed new pretensioners. The cost for vehicles that required installation of pretensioners would be $15.54 million. The total estimated cost for compliance based on the pretensioner option would equal $24.56 million ($9.02 million + 15.54 million).

In summary, the overall cost of the proposal would range from minimal costs to $24.56 million, depending on the implementation of technologies. A complete discussion of how NHTSA arrived at these costs may be found in the Preliminary Regulatory Evaluation located in the docket for this rulemaking.

IV. Effective Date of the Proposed Rule

If adopted, this proposal would be implemented according to the same phase-in schedule as for the increase in test speed for the 50th percentile adult male dummy belted rigid barrier test. Implementation of the proposed requirement, if adopted, would be as follows:

—35 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2007 with an allowance of advance credits for vehicles built after September 1, 2006;

—65 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2008 with an allowance of carryover credits from vehicles built after September 1, 2006.

—100 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2009 with an allowance of carryover credits from vehicles built after September 1, 2006.

—All light vehicles manufactured on or after September 1, 2010.

If this proposal is adopted as a final rule, the agency will permit manufacturers that sell two or fewer carlines in the United States at the beginning of the first year of the phase-in (September 1, 2007) the option of omitting the first year of the phase-in. Likewise, manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market per year and multi-stage manufacturers and alterers may defer compliance with the new requirement until September 1, 2010. This approach is fully consistent with the existing phase-in for the 0–56 km/h (0–35 mph) belted test using the 50th percentile adult male test dummy.

V. Request for Comments

To aid the agency in obtaining useful comments, we are setting forth in this section a specific list of questions for commenters. For easy reference, the questions are numbered consecutively. NHTSA encourages commenters to provide specific responses to each question for which they may have information or views. In addition, in order to facilitate tabulating the comments by issue, the agency encourages commenters to respond to the questions in sequence, and to identify the number of each question to which they are responding.

1. *Overall safety.* Does the overall proposal achieve an appropriate level of safety with respect to risks from air bags for small stature drivers and passengers?

2. *Possible unintended consequences.* To what extent could the proposed increase in the test speed for the belted frontal barrier crash test using the 5th percentile adult female test dummy result in unintended adverse consequences?

3. *Potential cost.* What are the potential costs for the technology and design changes required to meet the proposed amendment?

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically. If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[4]

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://dmses.dot.gov/submit/DataQualityGuidelines.pdf.*

[4] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''Simple Search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''Search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one 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 budget 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 the Executive Order.

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This document proposes to amend 49 CFR 571.208 by increasing the maximum belted frontal barrier crash test speed from 48 km/h (30 mph) to 56 km/h (35 mph) for the 5th percentile adult female dummy. This proposal would establish the same requirement and phase-in schedule for testing with a 5th percentile adult female dummy as is currently required for the 50th percentile adult male dummy. Preliminary testing has shown that at a maximum frontal barrier crash test speed, a belted 5th percentile adult female dummy may produce higher injury measurements than a 50th percentile adult male dummy tested in the same vehicle. Increasing the maximum belted crash test speed for the 5th percentile female would require manufacturers to optimize safety belt and air bag performance for both the 5th percentile female and 50th percentile male dummies at the same crash test speed. The proposed amendment would not necessarily require any additional vehicle crash testing to be conducted by the manufacturer and the test procedures are already specified in the FMVSSs. Measures to provide protection to occupants the size of the 5th percentile adult female dummy are currently being implemented to meet the Advanced Air Bag Rule crash test requirements up to 48 km/h (30 mph).

As noted above in the section entitled Benefits and Costs Associated with the Proposed Rule, the overall cost of the proposal would range from minimal costs to $24.56 million, depending on the implementation of technologies. A complete discussion of how NHTSA arrived at these costs may be found in the Preliminary Regulatory Evaluation located in the docket for this rulemaking.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NHTSA has evaluated the effects of this proposed action on small entities. I hereby certify that this notice of proposed rulemaking would not have a significant impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). If adopted, the proposal would directly affect motor vehicle manufacturers, second stage or final manufacturers, and alterers. SIC code number 3711, *Motor Vehicles and Passenger Car Bodies,* prescribes a small business size standard of 1,000 or fewer employees. SIC code No. 3714, *Motor Vehicle Part and Accessories,* prescribes a small business size standard of 750 or fewer employees.

The majority of motor vehicle manufacturers would not qualify as a small business. These manufacturers,

along with manufacturers that do qualify as a small business, are already required to comply with the 48 km/h (30 mph) maximum crash test speed requirements using 5th percentile adult female dummies under the Advanced Air Bag Rule of FMVSS No. 208. Measures to provide protection up to 48 km/h (30 mph) are already being implemented, and 12 of 18 vehicles tested currently comply with the proposed amendment (more than five model years prior to the first proposed phase-in). Improving performance to further meet the proposed 56 km/h (35 mph) requirement could be achieved through simple changes in safety belt design or changes in air bag inflation characteristics with low-cost algorithm changes. Furthermore, small volume manufacturers would be given the option of waiting until the end of the phase-in to meet the new requirements.

Most of the intermediate and final stage manufacturers of vehicles built in two or more stages and alterers have 1,000 or fewer employees. But again, these companies already are required to comply with the 48 km/h (30 mph) belted 5th percentile adult female dummy requirement. These companies could either rely on the original equipment manufacturer's certification, or employ similar low cost measures as the large manufacturers. Accordingly, there would be no significant impact on small businesses, small organizations, or small governmental units by these amendments. For these reasons the agency has not prepared a preliminary regulatory flexibility analysis.

C. Executive Order No. 13132

NHTSA has analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132, Federalism and has determined that this proposal does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

D. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

E. Paperwork Reduction Act

Under the new procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. For the phase-in reporting requirements, NHTSA is submitting to OMB a request for approval of the following collection of information. Public comment is sought on the proposed collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Part 585—Advanced Air Bag Phase-In Reporting Requirements.

Type of Request: Updated collection.

OMB Clearance Number: 2127–0599.

Form Number: This collection of information will not use any standard forms.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information

So that NHTSA could ensure that vehicle manufacturers are certifying their applicable vehicles as meeting the rigid barrier test using the belted 5th percentile adult female test dummy, NHTSA would require vehicle manufacturers to report on compliance of their vehicles with the upgraded frontal barrier crash test for the 5th percentile adult female test dummy. The report would be included with the required reports for the phase-in of the higher test speed for the 50th percentile adult male dummy.

This proposal would be implemented according to the same phase-in schedule as for the increase in test speed for the 50th percentile adult male dummy belted rigid barrier test. Implementation of the proposed requirement, if adopted, would be as follows:

—35 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2007 with an allowance of advance credits for vehicles built after September 1, 2006;

—65 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2008 with an allowance of carryover credits from vehicles built after September 1, 2006.

—100 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2009 with an allowance of carryover credits from vehicles built after September 1, 2006.

—All light vehicles manufactured on or after September 1, 2010.

If this proposal is adopted as a final rule, the agency would permit manufacturers that sell two or fewer carlines in the United States at the beginning of the first year of the phase-in (September 1, 2007) the option of omitting the first year of the phase-in. Likewise, manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market per year and multi-stage manufacturers and alterers could defer compliance with the new requirement until September 1, 2010. This approach is fully consistent with the existing phase-in for the 0–56 km/h (0–35 mph) belted test using the 50th percentile adult male test dummy.

For each year of the phase-in period, manufacturers would be required to provide to NHTSA, within 60 days after August 31 of each ''production year,'' information identifying the vehicles (by make, model, and vehicle identification number (VIN)) that have been certified as complying with the belted barrier test upgrade.

Description of the Need for the Information and Proposed Use of the Information

NHTSA would need this information to ensure that vehicle manufacturers are certifying their applicable vehicles as meeting the new belted barrier test using the 5th percentile female. NHTSA will use this information to determine whether a manufacturer has complied with the amended requirements of FMVSS No. 208 during the phase-in period.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

NHTSA estimates that 21 vehicle manufacturers would submit the required information. For each report, the manufacturer will provide, in addition to its identity, several numerical items of information. This information would include:

(a) Total number of vehicles manufactured for sale during the preceding production year,

(b) Total number of vehicles manufactured during the production year that meet the new regulatory requirements, and

(c) Information identifying the vehicles (by make, model, and vehicle identification number (VIN)) that have been certified as complying with the belted barrier test upgrade.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information

NHTSA estimates that each manufacturer will incur 61 burden hours per year. This is an increase in one additional annual burden hour to the estimated annual burden for the existing OMB clearance, 2127–0599. This estimate is based on the fact that data collection would involve only computer tabulation and that manufacturers would provide the information to NHTSA in an electronic (as opposed to paper) format. We anticipate the data collection to involve the same vehicles as for the upgrade of the belted barrier test using the 50th percentile adult male test dummies.

NHTSA estimates that the recordkeeping burden resulting from the collection of information would be 0 hours because the information will be retained on each manufacturer's existing computer systems for each manufacturer's internal administrative purposes.

NHTSA estimates that the total annual cost burden would be increased by $735 dollars (1 additional hour × 21 manufacturers × $35 cost per hour). There would be no capital or start-up costs as a result of this collection. Manufacturers could collect and tabulate the information by using existing equipment. Thus, there would be no additional costs to respondents or recordkeepers.

NHTSA requests comment on its estimates of the total annual hour and cost burdens resulting from this collection of information. Please submit any comments to the NHTSA Docket Number referenced in the heading of this notice or to: Lori Summers, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Ms. Summers' telephone number is: (202) 366–1740. Comments are due within 60 days of the date of publication of this Notice of Proposed Rulemaking in the **Federal Register**.

F. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' If adopted, the amendments would use the technical standards currently in FMVSS No. 208 and would only increase the maximum speed for the frontal barrier crash test using the 5th percentile adult female dummy from 48 km/h (30 mph) to 56 km/h (35 mph). No voluntary consensus standard uses a maximum speed of 56 km/h (35 mph) for a frontal barrier crash test using a 5th percentile adult female dummy.

G. Civil Justice Reform

This proposal would not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This rulemaking would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

I. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health, or safety risks that disproportionately affect children. The proposed rule, if made final, would increase the maximum belted frontal crash barrier test speed from 48 km/h (30 mph) to 56 km/h (35 mph) for the 5th percentile adult female dummy.

J. Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If made final, this rulemaking would increase the maximum belted frontal crash barrier test speed from 48 km/h (30 mph) to 56 km/h (35 mph) for the 5th percentile adult female dummy. Therefore this proposal was not analyzed under E.O. 13211.

K. Data Quality Act

Section 515 of the Fiscal Year (FY) 2001 Treasury and General Government Appropriations Act (Pub. L. 106–554, sec. 515, *codified at* 44 U.S.C. 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the ''quality,'' ''objectivity,'' ''utility,'' and ''integrity'' of information that federal agencies disseminate to the public. The Act also required agencies to develop their own conforming data quality guidelines, based upon the OMB model. OMB issued final guidelines implementing the Data Quality Act (67 FR 8452, Feb. 22, 2002). On October 1, 2002, the Department of Transportation promulgated its own final information quality guidelines that take into account the unique programs and information products of DOT agencies (67 FR 61719). The DOT guidelines were reviewed and approved by OMB prior to promulgation.

NHTSA made information quality a primary focus well before passage of the Data Quality Act, and has made implementation of the new law a priority. NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines, and plans to review and update these procedures on an ongoing basis.

NHTSA believes that the information and data used to support this rulemaking adhere to the intent of the Data Quality Act and comply with both the OMB and DOT guidelines. NHTSA has reviewed all relevant procedures for research and analysis in order to ensure that information disseminated by the agency is accurate, reliable, and unbiased in substance, and is presented in a clear, complete, and unbiased manner. Having followed those procedures, NHTSA believes that the information related to this rulemaking meet the requirements of the Data Quality Act guidelines of both OMB and DOT. This expectation regarding information quality has been confirmed by the agency in the course of its pre-dissemination review, per the guidelines.

Individuals may review all of the data related to this rulemaking by accessing NHTSA Docket No. NHTSA–03–15732 through the DOT docket management Web site at *http://dms.dot.gov. See* Section N. of this notice for further instructions.

L. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

M. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

N. 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) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 would be amended by revising S16.1(a) to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S16.1 *General provisions.* * * *

(a) *Belted test.* (1) *Vehicles certified to S14.1 or S14.2.* Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard. Impact the vehicle traveling longitudinally forward at any speed, up to and including 48km/h (30 mph), into a fixed rigid barrier that is perpendicular within a tolerance of ±5 degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard.

(2) *Vehicles certified to S14.3 or S14.4.* Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard. Impact the vehicle traveling longitudinally forward at any speed, up to and including 56km/h (35 mph), into a fixed rigid barrier that is perpendicular within a tolerance of ±5 degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard.

* * * * *

Issued on: August 1, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–20054 Filed 8–5–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571, 585, 586, 589, 590, and 596

[Docket No. NHTSA–03–15817; Notice 1]

RIN 2127–AI91

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to require all designated seating positions in rear seats, other than side-facing seats, be equipped with integral lap/shoulder safety belts. This proposal responds, in part, to a Congressional mandate that the agency begin to phase-in requirements for lap/shoulder belts for all rear seating positions, wherever practicable, not later than September 1, 2005.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than October 6, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number 03–15817] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For

detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Sanjay Patel, Office of Crashworthiness Standards, at 202–366–4583.

For legal issues, you may call Rebecca MacPherson, Office of the Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

On December 4, 2002, the President signed into law ''Anton's Law'', Pub. L. 107-318 (December 4, 2002; 116 Stat. 2772), which provides for the improvement of child safety devices when installed in motor vehicles. One of the provisions of Anton's Law concerns the installation of lap/shoulder belts in rear seating positions. Specifically, section 5(a) of the law directs the Secretary of Transportation, through NHTSA, to issue a final rule by December 2004 that would:

> require a lap and shoulder belt assembly for each rear designated seating position in a passenger motor vehicle with a gross vehicle weight rating of 10,000 pounds or less, except that if the Secretary determines that installation of a lap and shoulder belt assembly is not practicable for a particular designated seating position in a particular type of passenger motor vehicle, the Secretary may exclude the designated seating position from the requirement.

Section 5(b) of the statute further specifies that the final rule be implemented in phases on a production year basis, beginning with the closest production year after the year the final rule is published.[1] The rule is to be effective for all vehicles by the third production year of the phase-in. Thus, according to the schedule mandated by Anton's Law, the phase-in would commence on September 1, 2005, and all vehicles not covered by the phase-in would have to meet the requirements of the final rule by September 1, 2007.

The Anton's Law requirement is fully consistent with the agency's pre-existing plan to initiate rulemaking that would expand upon the current requirement in Federal Motor Vehicle Safety Standard No. 208, *Occupant crash protection* (FMVSS No. 208) that, subject to certain exceptions, all rear seating positions be equipped with integral lap/shoulder belts.[2] An entry for this rulemaking appeared in the DOT Semiannual Regulatory Agenda published December 9, 2002 (67 FR 74943).

The agency first addressed mandatory lap/shoulder belts for rear seats in 1984 (49 FR 15241, April 18, 1984), when it denied a petition to initiate rulemaking that would require such belts for rear outboard seating positions of passenger cars. The petition largely focused on the need for such systems to restrain children adequately in booster seats. At the time of the denial, NHTSA was considering a requirement that vehicles be equipped with a tether anchorage to secure a then-popular child restraint. The agency believed this approach would offer greater protection than requiring a lap/shoulder belt. While NHTSA acknowledged that a lap/shoulder belt would offer additional protection, it concluded that rear lap belts already provided effective protection to occupants in the rear seat. It also concluded that the cost associated with a rear lap/shoulder belt would be too great, given the low rate of belt use in the rear seat.

The agency was again petitioned to require rear lap/shoulder belts in 1986. Once again the petition focused on the increased protection that would be afforded to children riding in motor vehicles. NHTSA granted the petition because of two new factors: many states had adopted mandatory safety belt use laws, and the child restraint industry had moved away from child seat designs that could be tethered to the vehicle. While still concerned about the high cost of rear lap/shoulder belts relative to the expected reduction in deaths and injuries, the agency published first an advance notice of proposed rulemaking (ANPRM) and then a notice of proposed rulemaking (NPRM) to require manufacturers to install lap/shoulder belts in all forward-facing rear outboard seating positions in vehicles with a gross vehicle weight rating (GVWR) under 4,536 kg (10,000 pounds). See 52 FR 22818, June 16, 1987 and 53 FR 47982, November 29, 1988, respectively.

On June 14, 1989 (54 FR 25275), the agency published the first of two final rules addressing the issues raised in the 1988 NPRM (53 FR 47982). The rule established a new requirement mandating lap/shoulder belts for forward-facing rear outboard seating positions in all passenger cars other than convertibles. At that time, the agency estimated that approximately 90 percent of the projected benefits for lap/shoulder belts in all rear designated seating positions of passenger cars would accrue to occupants in the outboard seats because those are the rear seats that are most frequently occupied. Given the relatively small projected benefits related to center seating positions and the potential costs and technical difficulties associated with anchoring the shoulder portion of the belt at the center seating position, NHTSA decided against mandating lap/shoulder belts for any rear seat other than forward-facing outboard seats.

On November 2, 1989, NHTSA published its second final rule on rear lap/shoulder belts (54 FR 46257). This rule extended the requirements of the June 14 final rule to convertibles, light trucks, multi-purpose vehicles like passenger vans and sport utility vehicles (SUVs), and small buses other than school buses. As in the earlier final rule, center seating positions and non-forward-facing seating positions were excluded from the requirements. Outboard seating positions that abutted an aisle located along the side of a vehicle, *i.e.*, a passenger van, were

[1] ''The requirement prescribed under subsection (a)(1) shall be implemented in phases on a production year basis beginning with the production year that begins not later than 12 months after the end of the year in which the regulations are prescribed under subsection (a). The final rule shall apply to all passenger motor vehicles with a gross vehicle weight rating of 10,000 pounds or less that are manufactured in the third production year of the implementation phase-in under the schedule.''

[2] An integral lap/shoulder belt, also referred to as a Type 2 belt, is one where the lap and shoulder portion are either both attached at the buckle assembly or are a continuous piece of webbing, along which the buckle assembly moves. In either instance, there is a single buckle for both the lap and shoulder portion of the belt. An integral lap/shoulder belt is different from a lap/shoulder belt that is integrated into the seat back. This second type of belt is an integral lap/shoulder belt for which the upper shoulder anchorage is physically attached to the seat back rather than to the vehicle structure.

likewise excluded. The agency noted that while rear lap belts reduce the risk of death by 24–40 percent, rear lap/shoulder belts would reduce that risk by 32–50 percent. The agency postulated that there would be even more benefits if occupants were more willing to use the lap/shoulder belt than the lap belt.

Much has changed since NHTSA issued the two final rules in 1989. At present, all 50 states and the District of Columbia, Puerto Rico, and the U.S. Territories have child passenger safety laws that require children to be properly restrained in an approved child restraint or by the vehicle's belt system. In 1987, belt use in the rear seat was only 16 percent. Today, the agency estimates that the rate of belt use in the center rear seat is 50 percent in passenger cars and 57 percent in light trucks and vans (LTVs). Belt use among all rear seat passengers is 58.5 percent for passenger cars and 66.3 percent for LTVs. Over time, belt use has been increasing for these positions. It is believed that a lap/shoulder belt in the rear center position will lead to a further increase in belt use. In addition, children are increasingly riding in the back seat in response to educational campaigns designed to educate parents and other caregivers about the risk to children from riding in the front seat. NHTSA recently examined rear seat occupancy patterns for children up to nine years of age. It found that while the number of fatalities among children in this age group was evenly divided between the front and rear seat in 1991, by 2000, the front seat accounted for 56 percent fewer fatalities than the rear seat. The major change in distribution occurred between 1996 and 2000, the time frame during which consumers were urged to place their children in the back seat due to the risk of air bag-related injury or death.[3]

Additionally, consumer information campaigns, which advocate child restraints for children up to eight years of age, unless they are taller than 4′9″ have been increasingly successful in convincing parents to keep their children in appropriate child restraints well past the age mandated by state law. Finally, states have recently begun to increase the minimum age requirements for child restraints. Nine states and the District of Columbia have enacted legislation that requires children be restrained in a child restraint at least to age six. Seven other states require child restraint use up to age five. The increase in child restraint usage by older children has led to greater use of belt-positioning booster seats. These seats, in which the vehicle safety belt serves to hold both the child and the restraint in place, are most often designed for use with a lap/shoulder belt.

Today's proposal seeks to increase the use of belt-positioning boosters and to improve the safety of all occupants in the center rear seating position, regardless of whether the occupant is seated in a booster seat. While this seating position may not be used as often as the rear outboard seats, we believe that an individual is more likely to survive a side impact collision if seated in the center seat than if seated in the impacted outboard seat, as the empty space between the side of the vehicle and the occupant provides a significant amount of crush space. We believe that this proposal will provide these occupants with the same level of safety belt protection as the occupants of other seating positions.

II. The Safety Problem

As indicated above, one of the primary reasons for today's proposal is the increased protection that children between the ages of four and eight gain by having a lap/shoulder belt made available in rear center seating positions. When these lap/shoulder belts are installed in the rear center seating position, there will be an additional, and potentially safer, seating position available for a child in a belt-positioning booster seat. Lap/shoulder belts are 12 percent more effective in preventing AIS 2–5 injuries and fatalities than lap belts in rear seats of passenger cars and ten percent more effective in preventing AIS 2–5 injuries and fatalities in rear seats of light trucks. These effectiveness rates assume that the belts are properly positioned. The increased effectiveness for children who are not properly positioned would likely be less. Belt positioning booster seats should enable children to attain the same effectiveness rates from lap/shoulder belts as the rest of the population, since they allow proper positioning for children in the four- to eight-year-old age group. Additionally, the presence of a center lap/shoulder belt may shift seat usage from the outboard positions to the center seat position. This would lead to some reduction of injury or death in side impact crashes.

The potential benefits associated with requiring lap/shoulder belts for rear center seating positions is not limited to the potential for increased use of booster seats. It would also benefit older occupants. In order to estimate the number of individuals who travel in the center seats of vehicles, NHTSA examined the National Automotive Sampling System (NASS) Crashworthiness Data System (CDS) data from 1988 to 1999. Overall, the NASS CDS data indicated that, in this eleven-year period, approximately eight percent of the roughly 19.6 million individuals involved in tow away crashes were seated in a center seat. Eighty percent of the center seat occupants were in the rear. The agency then looked at the distribution of the annualized maximum abbreviated injury scale (MAIS) injury levels for occupants seated in center seating positions in passenger cars and LTVs from 1996 to 1999. The vast majority of these injuries were sustained by individuals seated in the rear center seat, with approximately 20 percent of the occupants in passenger cars seated in a front center seat and 53 percent of the occupants in LTVs seated in a front center seat.

In a 1999 study, NHTSA found that belt use was approximately seven to ten percent higher at back outboard designated seating positions with a lap/shoulder belt than at ones with only a lap belt.[4] While the agency cannot explain why belt use is higher, the combination of higher belt use and increased benefits related to the additional protection afforded by the shoulder belt result in greater benefits than lap belts alone. This is true for every forward-facing seating position.

Current belt use among rear center-seated passengers in passenger cars is approximately fourteen percentage points less than among occupants in the front passenger seat, 49.6 percent as opposed to 63.3 percent. The belt use among rear-seated passengers in LTVs is generally equivalent to belt use by occupants in the front passenger seat, 57.4 percent and 57.6 percent, respectively.

If the switch from lap belts to lap/shoulder belts in rear center seating positions did not lead to any increase in belt use, NHTSA estimates that the addition of a shoulder belt to the rear center seating positions of passenger cars would prevent five fatalities and 111 injuries (AIS 2–5) annually. Similar numbers, five fatalities and 134 injuries (AIS 2–5) would be achieved in

[3] The development and implementation of advanced air bag technologies does not obviate the need for additional rear seat protections. To the contrary, it remains imperative that children ride in the back seat regardless of the type of air bag system integrated into the vehicle. This is because the back seat provides a safer environment for all occupants, even if the vehicle has no air bag, and because even the most advanced technology cannot completely eliminate risk.

[4] ''Effectiveness of Lap/Shoulder Belts in the Back Outboard Seating Positions,'' Evaluation Division, Plans and Policy, National Highway Traffic Safety Administration, Washington, DC June 1999. DOT HS 808 945.

requiring lap/shoulder belts in the rear center seats of LTVs. These reductions in injuries and fatalities are purely the result of the added protection offered by the shoulder belt.

As noted above, the agency has observed a seven to ten percent increase in belt usage for seating positions equipped with a lap/shoulder belt rather than just a lap belt. Assuming that the switch to lap/shoulder belts lead to a ten percent increase in belt use, the agency would expect to see the benefits increase to 16 fewer fatalities, 77 fewer AIS 1 injuries, and 202 fewer AIS 2–5 injuries in passenger cars equipped with rear center lap/shoulder belts. Likewise, it would expect to see the benefits increase to 17 fewer fatalities, 60 fewer AIS 1 injuries, and 317 fewer AIS 2–5 injuries in LTVs equipped with rear lap/shoulder belts. Most of the reduction in injuries would be in the AIS 2 range. These are injuries that, while not life-threatening, can result in significant financial costs and long-term pain and suffering.

III. Proposed Requirements

Today we are proposing to require lap/shoulder belts for all forward-facing designated seating positions other than the center front seat for all passenger cars and for most other vehicles with a GVWR under 4,536 kg (10,000 lb), unless there is an exception for a particular type of vehicle.[5] The vehicle exceptions are discussed below. We are also proposing to require lap/shoulder belts for rear-facing seats.

Since the rulemakings of the late 1980s, manufacturers have begun voluntarily installing lap/shoulder belts in the rear center seating position. Data collected in the course of preparing NHTSA's ''Buying a Safer Car'' brochure indicate a significant increase in the voluntary installation of lap/shoulder belts in that position. Those data indicate a nearly twofold increase in the number of vehicle models with center rear lap/shoulder belts between MY 2000 (66 models) and MY 2002 (120 models). While those data cannot be used to make projections for the overall fleet, they are indicative of a strong upward trend. An analysis of passenger cars and LTVs sold during 1999 to 2000 reveals that approximately 8.2 percent of the passenger cars were equipped with either two or four seats and did not have any center seating position. Approximately 69 percent came equipped with a lap/shoulder belt in the rear center seating positions. The rest of the fleet, approximately 23 percent, would have to be, for the first time, equipped with a rear center lap/shoulder belt should we decide to issue a final rule adopting today's proposal. The percentages for LTVs are roughly reversed. Approximately 67 percent of LTVs sold during 1999 to 2000 had only a lap belt in the rear center seating positions.

We have also tentatively decided to require lap/shoulder belts for rear-facing seats and for forward-facing outboard seats adjacent to an aisle. While we have little data to determine whether a shoulder belt will reduce the risk of death or injury in a rear-facing seat during a frontal collision, it is likely that a shoulder belt integrated into the seat would reduce occupant trajectory in frontal and rear crashes. However, a shoulder belt mounted to a side pillar may not be as beneficial in a frontal crash. FMVSS No. 208 currently allows a rear forward-facing outboard seat that is adjacent to an aisle that runs between the seat and the side of the vehicle to be equipped with only lap belts if that aisle is used to gain access to seats rearward of the seat in question. This exclusion was added to the standard to address potential ingress/egress problems for those more rearward seats and because anchorages attached to the side of the vehicle could be a poor fit with the vehicle seat. With the advent of lap/shoulder belts that are integrated into the seat back, we believe such an exception may no longer be needed. Likewise, a manufacturer could choose to anchor the shoulder portion of the belt to the vehicle roof rather than the side of the vehicle.

At the present time, we are not planning on changing the lap/shoulder belt requirements for swivel seats or for readily removable seats. Both of these types of seats may have modified lap/shoulder belt assemblies. Currently, FMVSS No. 208 specifies that seats that can be adjusted to be forward-facing and to face in some other direction (*e.g.*, swivel seats) must have at least a lap belt at all positions in which the seat may be placed while the vehicle is in motion. Additionally, the seat must have at least a non-integral lap/shoulder belt that is usable while the seat is in its forward-facing position. While integral lap/shoulder belts are also permissible, a non-integral belt allows a passenger to only buckle the lap portion of the belt while the seat is forward-facing, although the occupant does have the option to use both the lap and shoulder portion of the belt. This exception may no longer be needed with the advent of lap/shoulder belts that are integrated into the seat back. The standard also permits readily removable seats to have a shoulder belt that may be detached at either the upper or lower shoulder belt anchorage, but not both. Again, the advent of lap/shoulder belts integrated into the seat back may obviate the need for this exception.

We have tentatively decided against requiring lap/shoulder belts for the center front seat, because the projected benefits, when compared to the cost involved in requiring lap/shoulder belts for this seating position, are so low. The primary reason that benefits are so low is because belt use among front center seat occupants is low, particularly in LTVs. While the belt use rate in the front center seating position of passenger cars is 25.6 percent, in LTVs it is only 16 percent. However, we also recognize that requiring lap/shoulder belts for the center front seating position would allow individuals who do use their seat belt to receive the additional benefit of a shoulder belt. We estimate that, assuming a ten percent increase in belt use rates due to the addition of a shoulder belt, there would be approximately four fewer fatalities and ten fewer injuries (AIS 2–5) per year if a lap/shoulder belt were required for front center seat positions in passenger cars. For LTVs, the numbers are quite a bit higher, with an estimated 12 fewer fatalities and 59 fewer injuries (AIS 2–5) per year. Additionally, being able to use a booster seat in the front center position could have a further incremental safety benefit in those vehicles where there are no rear seating positions by enabling the use of a belt-positioning booster seat at that seating position. Accordingly, the benefit associated with a front center lap/shoulder belt may be particularly high for LTVs; this may be especially true for pick-up trucks with a single row of seating, where the additional cost of the shoulder belt would be minimal, there are no other locations other than the right outboard passenger seat to place a booster seat, and the presence of a lap/shoulder belt may increase the currently low levels of belt use. A more thorough discussion of the costs associated with this rulemaking is provided below.

Likewise, we have tentatively decided against proposing to require lap/shoulder belts for side-facing seats, although we are seeking comment on this. Lap belts would be required for side-facing seats that are designated seating positions. While we are unaware of any studies demonstrating benefits related to the addition of a shoulder belt for side-facing seats, there could be

[5] The rule, if adopted, would include school buses under 4,536 kg (10,000 lb). However, the agency is currently working on a separate rulemaking regarding seat belts in school buses. Accordingly, this document will not further discuss potential requirements for lap/shoulder belts on school buses with a GVWR under 10,000 lb.

some benefit to having a lap/shoulder belt in rollovers or if the opposite side of the vehicle is struck. Additionally, we have some concern that the shoulder belt, depending on its placement, could actually harm an occupant sitting in a side-facing seat. This is because the shoulder portion of the belt could load the neck during a frontal collision.

Finally, we have tentatively decided to retain some vehicle exceptions to the current rear lap/shoulder provisions contained in FMVSS No. 208. Specifically, rear designated seats in motor homes, walk-in van-type trucks, and vehicles designed to be sold exclusively to the U.S. postal service would be excluded from the rear lap/shoulder belt requirements. The rear seats in LTVs carrying chassis-mount campers with a GVWR greater than 3,855 kg (8,500 lb) and no greater than 4,536 kg (10,000 lb) need only be equipped with a lap belt.

While not proposing any changes to the current FMVSS No. 208 comfort and convenience requirements and the various barrier tests contained in FMVSS No. 208, we are seeking comment on whether rear seat requirements should be considered. Since the benefits associated with lap/shoulder belts can only be realized if they are used correctly, it may be appropriate to consider requiring adjustable upper anchorages. For example, some vans have shoulder belts mounted as far back as the next rearward seating position. These designs may not provide a particularly good fit. Other designs may be equally uncomfortable, particularly for children. Accordingly, we are presently evaluating the need for rear seat adjustability requirements to ensure that a minimum level of comfort is provided. As is presently the case, today's proposal contemplates imposing rear seat lap/shoulder belt requirements without a corresponding test requirement that the belts provide a requisite level of protection in a crash. Such a test procedure, while desirable, could be difficult to implement given the relatively small space in the rear seat. However, the agency will monitor the performance of rear seat belt systems in various agency programs to ensure that they are effective at mitigating injury.

IV. Anticipated Benefits and Costs of Proposed Requirements

As indicated above, NHTSA anticipates that the addition of a shoulder belt to the rear center seating positions in passenger cars would prevent between five and 16 fatalities and 111–279 injuries (AIS 1–5) per year. If lap/shoulder belts were required at all forward-facing rear seating positions in LTVs, an additional five to 17 fatalities and 134 to 377 injuries (AIS 1–5) would be prevented annually. If all center seating positions were equipped with lap/shoulder belts, seven to 20 fatalities and 118 to 324 injuries (AIS 1–5) could be prevented per year in passenger cars and eight to 29 fatalities and 142 to 505 injuries (AIS 1–5) could be prevented in LTVs annually.

Approximately 23 percent of the passenger car fleet, or 2,032,842 passenger cars, would need to be equipped with an additional shoulder belt should the agency decide to issue a final rule adopting today's proposal. Approximately 57.5 percent of the LTV fleet, or 4,326,850 LTVs would need to be equipped with an additional shoulder belt. Approximately 41 percent of this total (1,779,078) consists of SUVs, approximately 36 percent (1,563,389) consists of light trucks, and approximately 23 percent (984,383) consists of vans. Additionally, if NHTSA were to require a center lap/shoulder belt for light trucks with only one row of seats, approximately 11 percent (966,128) of the LTV fleet would need to be equipped with an additional lap/shoulder belt.

NHTSA estimates the average cost of installing a lap/shoulder belt in the front outboard seat of a passenger car is $28.25. The average cost of a lap belt currently installed in the center rear seat of a passenger car is $12.84. Accordingly, NHTSA estimates that the net cost of installing a lap/shoulder belt in the center rear seat of a passenger car would average $15.41. The average cost of installing front outboard lap/shoulder belts in LTVs is somewhat higher than for passenger cars: $35.79 as opposed to $28.25. However, this difference is largely related to differences in the seat geometry of the two different types of vehicles. We would not expect to see these differences in a rear center seating position. Assuming the shoulder portion of the center rear seat costs the same as the shoulder portion of an outboard rear seat, we anticipate that the net cost, per belt, for LTVs would be the same as for passenger cars. The total net cost associated with replacing lap belts with lap/shoulder belts at rear center seating positions is anticipated to be approximately $109 million.

The rear seat of pick-up trucks and passenger cars (other than station wagons) would not need to be reinforced to anchor the center lap/shoulder belts. Likewise, the seat of a front seat-only pick-up truck would not need to be reinforced. This is because the upper anchorages for these vehicles can be attached to the back package shelf or to the floor frame of the vehicle without impinging on the available occupant floor space or cargo space. The same is not true for passenger vans and SUVs. In these vehicles, there might be no back package shelf and the floor space behind the seat might be needed to accommodate vehicle occupants or cargo. While other anchorage locations might exist, for cost purposes NHTSA is assuming that most manufacturers would choose to install lap/shoulder belts that are integrated into the seat back. This might require the seat back to be reinforced at an estimated cost of $31.08 per seating position. The estimated total cost of such reinforcements is approximately $109 million. The total cost of the rule would be $218 million.[6]

V. Phase-in of New Requirements

Anton's Law requires that NHTSA issue a final rule not later than December 2004. It further specifies that the final rule be implemented, in stages, starting not later than September 1, 2005 and be fully implemented no later than September 1, 2007. Thus, the rule would be phased-in between September 1, 2005 and September 1, 2007. We are proposing the following phase-in schedule to provide interested parties with the contemplated compliance percentages for each year of the phase-in:

- *MY 2006* (September 1, 2005 through August 31, 2006): 50 percent of all vehicles that are produced by manufacturers and are subject to the phase-in must comply. Advance credits for early compliance may be used on a one-to-one basis.
- *MY 2007* (September 1, 2006 through August 31, 2007): 80 percent of all vehicles that are produced by manufacturers and are subject to the phase-in must comply. Advance credits may be used on a one-to-one basis.
- *September 1, 2007:* all vehicles, regardless of whether they are subject to the phase-in, must comply. No advance credits may be used.

We are proposing to exclude vehicles manufactured in two or more stages and altered vehicles from the phase-in requirements. Final-stage manufacturers have no control over the vehicles that the previous-stage manufacturer decides to modify to meet the phase-in requirements. Accordingly, the final-stage manufacturer may have little or no choice in purchasing an incomplete

[6] Since the number of buses under 4,536 kg (10,000) is negligible, the addition of lap/shoulder belts to these vehicles would not impact the total cost of the rule.

vehicle that meets the requirements of the proposed rule. While alterers have more control, since they are only purchasing completed vehicles, they may have limited control over purchasing completed, certified vehicles in a manner that would allow them to meet the phase-in requirements. This is because, as with the final-stage manufacturers, the end customer often makes the final decision as to which type of vehicle to purchase. All multi-stage and altered vehicles manufactured on or after September 1, 2007 must be certified as complying with the new requirements.

We have tentatively decided to also exclude small volume manufacturers (*i.e.*, manufacturers of less than 5,000 vehicles per year produced for the U.S. market) from the phase-in because of their small size. However, NHTSA notes that, unlike the advanced air bag or tire pressure monitor system rulemakings, in which the technologies used to comply with the standard are relatively new, the technologies for lap/shoulder belts are well established. Accordingly, these manufacturers are unlikely to face the supply-and-demand problems anticipated in the afore-referenced rulemakings.

We have also tentatively decided to allow manufacturers of two or fewer carlines to opt out of the first year of the phase-in as long as 100% of their vehicles are certified as complying with the new requirements during the second year of the phase-in. NHTSA is considering allowing manufacturers to claim advanced credits for that second year, although we believe it is unlikely they would be needed.

The proposed regulatory text addressing the phase-in reporting requirements gathers together the phase-in requirements for all safety standards being phased-in and places them in a single part of the Code of Federal Regulations, 49 CFR Part 585. This would allow people henceforth to look to a single source for all reporting requirements associated with phase-ins. While no substantive changes are proposed for existing reporting requirements, some changes have been made for consistency of text. We encourage interested parties to review these changes to ensure that no substantive changes have been made.

VI. Request for Comments

NHTSA seeks answers to the following questions, as well as comments on this notice in general.

1. What are the projected costs associated with increasing seat back strength to allow for lap/shoulder belts that are integrated into the seat back?

2. What are the potential benefits and disbenefits associated with requiring integral lap/shoulder belts for rear-facing designated seating positions, and what are the projected costs associated with such a requirement?

3. What are the potential technological impediments associated with requiring integral lap/shoulder belts for rear-facing designated seating positions?

4. What are the potential benefits and disbenefits associated with requiring integral lap/shoulder belts for forward-facing outboard designated seating positions adjacent to an aisle located next to the side of the vehicle and used for ingress and egress to more rearward seating positions, and what are the projected costs associated with such a requirement?

5. How many seats referenced in question 4, if any, currently use a lap/shoulder belt integrated into the vehicle seat or other technology that provides a lap/shoulder belt without impeding access to more rearward seats, and what are the estimated costs associated with such technologies?

6. How many swivel seats, if any, currently use a lap/shoulder belt integrated into the vehicle seat or other technology that provides a lap/shoulder belt, and what are the estimated costs associated with such technologies?

7. How many readily removable seats, if any, currently use a lap/shoulder belt integrated into the vehicle seat or other technology that provides a lap/shoulder belt, and what are the costs associated with such technologies?

8. What are the benefits and disbenefits associated with allowing detachable shoulder belts for seats other than those that are readily removable?

9. What are the potential benefits and disbenefits associated with requiring integral lap/shoulder belts for side-facing designated seating positions, and what are the projected costs associated with such a requirement?

10. NHTSA seeks information on side-facing seat studies in multiple crash modes. Should the agency prohibit the installation of Type 2 belts for side-facing seats?

11. What are the benefits and disbenefits associated with a requirement for integral lap/shoulder belts for the front center seats in passenger cars and LTVs, particularly vehicles that have a single row of seats?

12. What are the benefits and disbenefits associated with a requirement for integral lap/shoulder belts in all designated rear seating positions on buses, other than school buses, with a GVWR of 4,536 kg (10,000 lb) or less?

13. What are the potential technological impediments associated with requiring integral lap/shoulder belts for rear designated seating positions on buses, other than school buses, with a GVWR of 4,536 kg (10,000 lb) or less?

14. NHTSA requests comment on the proposed phase-in schedule. Should special provision be made for small volume manufacturers and manufacturers of two or fewer carlines? If so, please provide data and information that would justify such a provision.

15. Is it still appropriate to exclude particular vehicle types, *e.g.*, motor homes, walk-in vans, and driver positions in heavy trucks and buses, from requirements for lap/shoulder belts at designated seating positions?

16. Is there a need to develop comfort and convenience test procedures for rear designated seating positions?

17. NHTSA seeks information on seat belt fit studies conducted on rear seat occupants of varying size and stature. The agency also requests the results of any dynamic testing of any adjustable seat belt anchorages at different anchorage adjustments that would allow NHTSA to determine the appropriateness of requiring adjustable anchorages for rear lap/shoulder belts.

18. Is there a need to extend the frontal impact crash test requirements of FMVSS No. 208 to the rear seating positions?

19. What percentage of cars have lap/shoulder safety belts in the rear center seating positions in MY 2003 and what percentage are planned to have them in MY 2004? What percentage of LTVs have lap/shoulder safety belts in the rear center seating positions in MY 2003 and what percentage are planned to have them in MY 2004?

20. What is the cost of installing a manual lap/shoulder belt system in place of the current lap belt system in front and rear center seats of passenger cars and LTVs? How would these center seat systems differ in design and cost from current outboard systems?

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is economically significant. Accordingly, the Office of Management and Budget has reviewed this rulemaking document under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action

has also been determined to be significant under the Department's regulatory policies and procedures. The benefits and costs associated with today's rule have been briefly discussed earlier in this document. For a more detailed analysis, please refer to the preliminary economic analysis supporting today's proposal.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This action would not have a significant economic impact on a substantial number of small businesses because the vast majority of motor vehicle manufacturers are not small businesses. Small organizations and small governmental units would not be significantly affected by the proposed rule since the potential cost impacts associated with this proposal should only slightly increase the price of new motor vehicles. A more complete analysis of the impact of today's rule on small businesses, organizations, and governmental units may be found in the preliminary economic analysis.

C. National Environmental Policy Act

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule, if issued, would have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. The final rule, if issued, is not intended to preempt state tort civil actions.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). The final rule, if issued, would require the expenditure of resources above and beyond $100 million annually. NHTSA will explore various options based on the response to the public comments. For example, the agency could decide to exclude rear-facing seats from the final rule. Likewise, it could decide to require a lap/shoulder belt for the front seat of some, but not all vehicles with a center designated seating position.

F. Executive Order 12778 (Civil Justice Reform)

The proposed rule would not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposal contains a collection of information because of the proposed phase-in reporting requirements. There is no burden to the general public.

We are submitting a request for OMB clearance of the collection of information required under today's proposal. These requirements and our estimates of the burden to vehicle manufacturers are as follows:

- NHTSA estimates there are 21 manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses having a GVWR of 4,536 kg (10,000 lb) or less.
- NHTSA estimates that the total annual reporting and recordkeeping burden resulting from the collection of information is 1,260 hours.
- NHTSA estimates that the total annual cost burden, in U.S. dollars, will be $0.00. No additional resources will be expended by vehicle manufacturers to gather annual production information because they already compile this data for their own use.

Organizations and individuals that wish to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention Desk Officer for NHTSA.

The purpose of the reporting requirements will be to aid NHTSA in determining whether a manufacturer has complied with the requirements of FMVSS No. 208 during the phase-in of those requirements. NHTSA requests comments on this proposed collection of information in evaluating:

- The accuracy of the agency's estimate of the burden of the proposed collection of information;
- The quality, utility, and clarity of the information collected; and
- The opportunities to minimize the information collection burden.

H. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

As noted earlier, this rulemaking is economically significant. Additionally, it is expected to have a disproportionate effect on children, since children are most likely to sit in the rear seat. However, the impact of this rulemaking on children would be beneficial instead of detrimental.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [7] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult

[7] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards. NHTSA has searched the voluntary consensus standards generally applicable to the manufacture of motor vehicles and is unaware of any standards relevant to this rule. If relevant standards exist, please provide NHTSA with the proper citations.

J. Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given under **ADDRESSES.**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov* to review the statement.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on ''simple search.''
3. On the next page, type in the docket number shown at the beginning of this document. There is no need to type in the name of the agency or the year that the docket was opened. For example, if the docket number is ''NHTSA–03–123545,'' you would type in ''12345''. After typing the docket number, click on ''search.''
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

K. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Today's proposal has been written with that directive in mind, although FMVSS No. 208, in general, is a complicated regulation. We note that some of the requirements proposed today are technical in nature. As such, they may require some understanding of technical terminology. We expect those parties directly affected by today's rule, *i.e.*, vehicle manufacturers, to be familiar with such terminology.

L. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Chapter V as follows:

List of Subjects in 49 CFR Parts 571, 585, 586, 589, 590, and 596

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166 delegation of authority at 49 CFR 1.50.

2. Section 571.138 would be amended by revising S7.5.2 to read as follows:

§ 571.138 Standard No. 138; Tire pressure monitoring systems.

* * * * *

S7.5.2 A vehicle produced by more than one manufacturer must be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety

Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S7.5.1.

* * * * *

3. Section 571.201 would be amended by revising S6.1.6.2 to read as follows:

§ 571.201 Standard No. 201; Occupant protection in interior impact.

* * * * *

S6.1.6.2 A vehicle produced by more than one manufacturer must be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S6.1.6.1.

* * * * *

4. Section 571.208 would be amended by adding S4.1.5.5, S4.2.7, S4.4.5, and S4.5.5 as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S4.1.5.5 *Passenger cars manufactured on or after September 1, 2007.* Each passenger car shall have a Type 2 seat belt assembly that conforms to Standard No. 209 and to S7.1 and S7.2 of this standard at each rear designated seating position, except that side-facing designated seating positions shall have a Type 1 seat belt assembly that conforms to Standard No. 209 and to S7.1 and S7.2 of this standard.

* * * * *

S4.2.7 *Rear seating positions in trucks, and multipurpose passenger vehicles manufactured on or after September 1, 2007 with a GVWR of 10,000 lbs. (4,536 kg) or less.*

S4.2.7.1 Except as provided in S4.2.7.2, S4.2.7.3, and S4.2.7.4, each truck and each multipurpose passenger vehicle, other than a motor home, a walk-in van-type truck, or a vehicle designed to be sold exclusively to the U.S. Postal Service with a GVWR of 10,000 lbs. (4,536 kg) or less, or a vehicle carrying chassis-mount camper with a gross vehicle weight rating of 8,500–10,000 lbs. (3,855–4,536 kg), shall be equipped with a Type 2 seat belt assembly at every rear designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall conform to Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in conformity to this requirement incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension relieving device, and the vehicle shall conform to S7.4.2(c) of this standard.

S4.2.7.2 Any rear designated seating position with a seat that can be adjusted to be forward-facing and to face some other direction shall either:

(a) Meet the requirements of S4.2.7.1 with the seat in any position in which it can be occupied while the vehicle is in motion; or

(b) When the seat is in its forward-facing position, have a Type 2 seat belt assembly with an upper torso restraint that conforms to S7.1 and S7.2 of this standard and that adjusts by means of an emergency locking retractor that conforms to Standard No. 209 (49 CFR 571.209), which upper torso restraint may be detachable at the buckle, and, when the seat is in any position in which it can be occupied while the vehicle is in motion, have a Type 1 seat belt or the pelvic portion of a Type 2 seat belt assembly that conforms to S7.1 and S7.2 of this standard.

S4.2.7.3 Any rear designated seating position on a readily removable seat (*i.e.*, a seat designed to be easily removed and replaced by means installed by the manufacturer for that purpose) shall meet the requirements of S4.2.7.1 and may use an upper torso belt that detaches at either its upper or lower anchorage point, but not both anchorage points, to meet those requirements. The means for detaching the upper torso belt may be operable by push button action.

S4.2.7.4 Any rear side-facing designated seating position shall have a Type 1 seat belt assembly that conforms to S7.1 and S7.2 of this standard.

* * * * *

S4.4.5 *Buses with a GVWR of 10,000 lbs. (4,536 kg) or less manufactured on or after September 1, 2007.*

S4.4.5.1 Except as provided in S4.4.5.2, S4.4.5.3, and S4.4.5.4, each bus with a gross vehicle weight rating of 10,000 lbs. (4,536 kg) or less shall be equipped with a Type 2 seat belt assembly at the driver's designated seating position and at the front and every rear designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall conform to Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates a webbing tension relieving device, the vehicle owner's manual shall include the information specified in S7.3.1(b) of this standard for the tension relieving device, and the vehicle shall conform to S7.4.2(c) of this standard.

S4.4.5.2 Any rear designated seating position with a seat that can be adjusted to be forward-facing and to face some other direction shall either:

(a) Meet the requirements of S4.4.5.1 with the seat in any position in which it can be occupied while the vehicle is in motion; or

(b) (1) When the seat is in its forward-facing position, have a Type 2 seat belt assembly with an upper torso restraint that

(i) conforms to S7.1 and S7.2 of this standard,

(ii) adjusts by means of an emergency locking retractor conforming to Standard No. 209 (49 CFR 571.209), and

(iii) may be detachable at the buckle, and

(2) When the seat is in any position in which it can be occupied while the vehicle is in motion, have a Type 1 seat belt or the pelvic portion of a Type 2 seat belt assembly that conforms to S7.1 and S7.2 of this standard.

S4.4.5.3 Any rear designated seating position on a readily removable seat (that is, a seat designed to be easily removed and replaced by means installed by the manufacturer for that purpose) shall meet the requirements of S4.4.5.1 and may use an upper torso belt that detaches at either its upper or lower anchorage point, but not both anchorage points, to meet those requirements. The means for detaching the upper torso belt may be operable by push button action.

S4.4.5.4 Any rear side-facing designated seating position shall have a Type 1 seat belt assembly that conforms to S7.1 and S7.2 of this standard.

* * * * *

S4.5.5 *Rear seat belt requirements for passenger cars and for trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,536 kg (10,000 lbs.) or less.*

S4.5.5.1 *Vehicles manufactured on or after September 1, 2005 and before September 1, 2007.*

(a) For vehicles manufactured for sale in the United States on or after September 1, 2005, and before September 1, 2007, a percentage of the manufacturer's production as specified in S4.5.5.2, shall meet the requirements specified in either S4.1.5.5 for complying passenger cars, S4.2.7 for complying trucks and multipurpose passenger vehicles, or S4.4.5 for complying buses.

(b) A manufacturer that sells two or fewer carlines, as that term is defined at 49 CFR 583.4, in the United States may, at the option of the manufacturer, meet the requirements of this paragraph,

instead of paragraph (a). Each vehicle manufactured on or after September 1, 2006, and before September 1, 2007, shall meet the requirements specified in S4.1.5.5 for complying passenger cars, S4.2.7 for complying trucks & multipurpose passenger vehicles, and S4.4.5 for complying buses.

(c) Vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having previously been certified in accordance with Part 567 of this chapter are not subject to the requirements of S4.5.5.1.

(d) Vehicles that are manufactured by a manufacturer that produces fewer than 5,000 vehicles annually for sale in the United States are not subject to the requirements of S4.5.5.1.

S4.5.5.2 *Phase-in schedule.*

(a) *Vehicles manufactured on or after September 1, 2005, and before September 1, 2006.* Subject to S4.5.5.3(a), for vehicles manufactured on or after September 1, 2005, and before September 1, 2006, the amount of vehicles complying with S4.1.5.5 for complying passenger cars, S4.2.7.1 for complying trucks and multipurpose passenger vehicles, or S4.4.5.1 for complying buses shall be not less than 50 percent of:

(1) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years immediately prior to September 1, 2005, the manufacturer's average annual production of vehicles manufactured on or after September 1, 2003, and before September 1, 2006, or

(2) The manufacturer's production on or after September 1, 2005, and before September 1, 2006.

(b) *Vehicles manufactured on or after September 1, 2006, and before September 1, 2007.* Subject to S4.5.5.3(b), for vehicles manufactured on or after September 1, 2006, and before September 1, 2007, the amount of vehicles complying with S4.1.5.5 for complying passenger cars, S4.2.7.1 for complying trucks and multipurpose passenger vehicles, or S4.4.5.1 for complying buses shall be not less than 80 percent of:

(1) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years immediately prior to September 1, 2006, the manufacturer's average annual production of vehicles manufactured on or after September 1, 2004, and before September 1, 2007, or

(2) The manufacturer's production on or after September 1, 2006, and before September 1, 2007.

S4.5.5.3 *Calculation of complying vehicles.*

(a) For the purposes of complying with S4.5.5.2(a), a manufacturer may count a vehicle if it is manufactured on or after (date 60 days after publication of Final Rule in the **Federal Register**), but before September 1, 2006.

(b) For the purposes of complying with S4.5.5.2(b), a manufacturer may count a vehicle if it:

(1) Is manufactured on or after (date 60 days after publication of Final Rule in the **Federal Register**), but before September 1, 2007, and

(2) Is not counted toward compliance with S4.5.5.2(a).

S4.5.5.4 Vehicles produced by more than one manufacturer.

(a) For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S4.5.5.2, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to paragraph (b) of this section.

(1) A vehicle that is imported shall be attributed to the importer.

(2) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

(b) A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under paragraph (a) of this section.

5. Section 571.225 would be amended by revising S14.2.2 to read as follows:

§ 571.225 Standard No. 225; Child restraint anchorage systems.

* * * * *

S14.2.2 A vehicle produced by more than one manufacturer must be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S14.2.1.

* * * * *

6. The authority citation for part 585 of title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

7. Part 585 would be revised to read as follows:

PART 585—PHASE-IN REPORTING REQUIREMENTS

Subpart A—General

Sec.

585.1 Definitions.
585.2 Phase-in reports.
585.3 Vehicles produced by more than one manufacturer.
585.4 Petitions to extend period to file report.

§ 585.1 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in accordance with their statutory meaning.

(b) The terms *bus, gross vehicle weight rating* or *GVWR, multipurpose passenger vehicle, passenger car,* and *truck* are used as defined in section 571.3 of this chapter.

(c) *Production year* means the 12-month period between September 1 of one year and August 31 of the following year, inclusive, unless otherwise specified.

§ 585.2 Phase-in reports.

Each report submitted to NHTSA under this part shall:

(a) Identify the manufacturer;

(b) State the full name, title, and address of the official responsible for preparing the report;

(c) Identify the production year being reported on;

(d) Contain a statement regarding whether or not the manufacturer complied with the requirements of the Federal motor vehicle safety standard addressed by the report, for the period covered by the report, and the basis for that statement;

(e) Be written in the English language; and

(f) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

§ 585.3 Vehicles produced by more than one manufacturer.

Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by a Federal Motor Vehicle Safety Standard subject to the reporting requirements of this part shall:

(a) Report the existence of each contract, including the names of all parties to the contract and explain how the contract affects the report being submitted.

(b) Report the number of vehicles covered by each contract in each production year.

§ 585.4 Petitions to extend period to file report.

A petition for extension of the time to submit a report required under this part shall be received not later than 15 days before the report is due. The petition shall be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. The filing of a petition does not automatically extend the time for filing a report. A petition will be granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest.

Subpart B—Advanced Air Bag Phase-in Reporting Requirements

Sec.
585.11 Scope.
585.12 Purpose.
585.13 Applicability.
585.14 Definitions.
585.15 Reporting requirements.
585.16 Records.

§ 585.11 *Scope.*

This subpart establishes requirements for manufacturers of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg or less and an unloaded vehicle weight of 2,495 kg or less to submit reports, and maintain records related to the reports, concerning the number and identification of such vehicles that are certified as complying with the advanced air bag requirements of Standard No. 208, *Occupant crash protection* (49 CFR 571.208).

§ 585.12 Purpose.

The purpose of these reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with the advanced air bag requirements of Standard No. 208 during the phase-ins of those requirements.

§ 585.13 Applicability.

This subpart applies to manufacturers of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg or less and an unloaded vehicle weight of 2,495 kg or less. However, this subpart does not apply to any manufacturers whose production consists exclusively of walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter. In addition, this subpart does not apply to manufacturers whose production of motor vehicles for the United States market is less than 5,000 vehicles in a production year.

§ 585.14 Definitions.

For the purposes of this subpart,

(a) *Phase one of the advanced air bag requirements of Standard No. 208* refers to the requirements set forth in S14.1, S14.2, S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 of Federal Motor Vehicle Safety Standard No. 208, 49 CFR 571.208.

(b) *Phase two of the advanced air bag reporting requirements of Standard No. 208* refers to the requirements set forth in S14.3, S14.4, S14.5.1(b), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 of Federal Motor Vehicle Safety Standard No. 208, 49 CFR 571.208.

(c) *Vehicles* means passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg or less and an unloaded vehicle weight of 2,495 kg or less manufactured for sale in the United States whose production of motor vehicles for sale in the United States is equal to or greater than 5,000 vehicles in a production year, and does not mean walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

§ 585.15 Reporting requirements.

(a) *Advanced credit phase-in reporting requirements.*

(1) Within 60 days after the end of production years ending August 31, 2000, August 31, 2001, August 31, 2002, and August 31, 2003, each manufacturer choosing to certify vehicles manufactured during any of those production years as complying with phase one of the advanced air bag requirements of Standard No. 208 shall submit a report to the National Highway Traffic Safety Administration providing the information specified in paragraph (c) of this section and in § 585.2 of this part.

(2) Within 60 days after the end of the production year ending August 31, 2007, each manufacturer choosing to certify vehicles manufactured during that production year as complying with phase two of the advanced air bag requirements of Standard No. 208 shall submit a report to the National Highway Traffic Safety Administration providing the information specified in paragraph (c) of this section and in § 585.2 of this part.

(b) *Phase-in reporting requirements.*

(1) Within 60 days after the end of the production years ending August 31, 2004, August 31, 2005, and August 31, 2006, each manufacturer shall submit a report to the National Highway Traffic Safety Administration regarding its compliance with phase one of the advanced air bag requirements of Standard No. 208 for its vehicles produced in that production year. The report shall provide the information specified in paragraph (d) of this section and in § 585.2 of this part. Each report shall also specify the number of advance credit vehicles, if any, which are being applied to the production year being reported on.

(2) Within 60 days after the end of production years ending August 31, 2008, August 31, 2009, and August 31, 2010, each manufacturer shall submit a report to the National Highway Traffic Safety Administration regarding its compliance with phase two of the advanced air bag requirements of Standard No. 208 for its vehicles produced in that production year. The report shall provide the information specified in paragraph (d) of this section and in § 585.2 of this part. Each report shall also specify the number of advance credit vehicles, if any, which are being applied to the production year being reported on.

(c) *Advanced credit phase-in report content.*

(1) With respect to the reports identified in section 585.15(a)(1), each manufacturer shall report for the production year for which the report is filed the number of vehicles, by make and model year, that meet the applicable advanced air bag requirements of Standard No. 208, and to which advanced air bag requirements the vehicles are certified.

(2) With respect to the report identified in section 585.15(a)(2), each manufacturer shall report the number of vehicles, by make and model year, that meet the applicable advanced air bag requirements of Standard No. 208, and to which the advanced air bag requirements the vehicles are certified.

(d) *Phase-in report content.*

(1) Basis for phase-in production requirements. For production years ending August 31, 2003, August 31, 2004, August 31, 2005, August 31, 2007, August 31, 2008, and August 31, 2009, each manufacturer shall provide the number of vehicles manufactured in the current production year, or, at the manufacturer's option, for the current production year and each of the prior two production years if the manufacturer has manufactured vehicles during both of the two production years prior to the year for which the report is being submitted.

(2) Production of complying vehicles. Each manufacturer shall report for the production year for which the report is filed the number of vehicles, by make and model year, that meet the applicable advanced air bag requirements of Standard No. 208, and to which advanced air bag requirements the vehicles are certified.

§ 585.16 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number of each vehicle for which information is reported under § 585.15(c)(1) and (d)(2) until December 31, 2011.

Subpart C—Rear Center Lap/Shoulder Belt Phase-in Reporting Requirements

Sec.
585.21 Scope.
585.22 Purpose.
585.23 Applicability.
585.24 Reporting requirements.
585.25 Records.

§ 585.21 Scope.

This subpart establishes requirements for manufacturers of passenger cars and for trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,536 kg (10,000 lb) or less to submit reports, and maintain records related to the reports, concerning the number and identification of such vehicles that are certified as complying with the Type 2 seat belt requirements for rear seating positions of Standard No. 208, *Occupant crash protection* (49 CFR 571.208).

§ 585.22 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with the Type 2 seat belt requirements for rear seating positions of Standard No. 208.

§ 585.23 Applicability.

This subpart applies to manufacturers of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,536 kg or less. However, this subpart does not apply to any manufacturers whose production consists exclusively of walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter. In addition, this subpart does not apply to manufacturers whose worldwide production of motor vehicles is less than 5,000 vehicles in a production year.

§ 585.24 Reporting requirements.

(a) *Advanced credit phase-in reporting requirements.*

Within 60 days after the end of the production year ending August 31, 2004, each manufacturer choosing to certify vehicles manufactured during that production year as complying with the Type 2 seat belt for each rear designated seating position requirements of Standard No. 208 shall submit a report to the National Highway Traffic Safety Administration providing the information specified in paragraph (c) of this section and in § 585.2 of this part.

(b) *Phase-in reporting requirements.*

Within 60 days after the end of the production years ending August 31, 2005, and August 31, 2006, each manufacturer shall submit a report to the National Highway Traffic Safety Administration regarding its compliance with the Type 2 seat belt for each rear designated seating position requirements of Standard No. 208 for its vehicles produced in that production year. The report shall provide the information specified in paragraph (d) of this section and in § 585.2 of this part. Each report shall also specify the number of advance credit vehicles, if any, which are being applied to the production year being reported on.

(c) *Advanced credit phase-in report content.*

With respect to the reports identified in section 585.24(a), each manufacturer shall report for the production year for which the report is filed the number of vehicles, by make and model year, that meet the applicable Type 2 seat belt for each rear designated seating position requirements of Standard No. 208.

(d) *Phase-in report content.*

(1) Basis for phase-in production requirements. For production years ending August 31, 2005, and August 31, 2006 each manufacturer shall provide the number of vehicles manufactured in the current production year, or, at the manufacturer's option, for the current production year and each of the prior two production years if the manufacturer has manufactured vehicles during each production year prior to the year for which the report is being submitted.

(2) Production of complying vehicles. Each manufacturer shall report for the production year for which the report is filed the number of vehicles, by make and model year, that meet the applicable Type 2 seat belt for each rear designated seating position requirements of Standard No. 208.

§ 585.25 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number of each vehicle for which information is reported under § 585.24(c) and (d)(2) until December 31, 2008.

Subpart D—Tire Pressure Monitoring System Phase-in Reporting Requirements

Sec.
585.31 Scope.
585.32 Purpose.
585.33 Applicability.
585.34 Definitions.
585.35 Response to inquiries.
585.36 Reporting requirements.
585.37 Records.

§ 585.31 Scope.

This subpart establishes requirements for manufacturers of passenger cars, multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 kg or less, except those vehicles with dual wheels on an axle, to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the requirements of Standard No. 138, *Tire pressure monitoring systems* (49 CFR 571.138).

§ 585.32 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with Standard No. 138.

§ 585.33 Applicability.

This subpart applies to manufacturers of passenger cars, multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating of 4,536 kg or less, except those vehicles with dual wheels on an axle. However, this subpart does not apply to any manufacturers whose production consists exclusively of vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter. In addition, this subpart does not apply to manufacturers whose production of motor vehicles for the United States market is less than 500 vehicles in a production year.

§ 585.34 Definitions.

For the purposes of this subpart, *production year* means the 12-month period between November 1 of one year and October 31 of the following year, inclusive.

§ 585.35 Response to inquiries.

At any time during the production years ending October 31, 2004, October

31, 2005, October 1, 2006, each manufacturer must, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model, and vehicle identification number) that have been certified as complying with Standard No. 138. The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

§ 585.36 Reporting requirements.

(a) *General reporting requirements.* Within 60 days after the end of the production years ending October 31, 2004, October 31, 2005, and October 31, 2006, each manufacturer must submit a report to the National Highway Traffic Safety Administration concerning its compliance with Standard No. 138 (49 CFR 571.138) for passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kg or less produced in that year. The report shall provide the information specified in paragraph (b) of this section and in § 585.2 of this part.

(b) *Report content.*

(1) Basis for statement of compliance. Each manufacturer must provide the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg or less, except those vehicles with dual wheels on an axle, manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that has not previously manufactured these vehicles for sale in the United States shall report the number of such vehicles manufactured during the current production year.

(2) Production. Each manufacturer must report for the production year for which the report is filed: the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg or less, that meet Standard No. 138; the number of passenger cars, multi-purpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg or less that comply.

§ 585.37 Records.

Each manufacturer must maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.36(b)(2) until December 31, 2008.

Subpart E—Child Restraint Anchorage System Phase-in Reporting Requirements

Sec.

585.41 Scope.
585.42 Purpose.
585.43 Applicability.
585.44 Response to inquiries.
585.45 Reporting requirements.
585.46 Records.

§ 585.41 Scope.

This subpart established requirements for manufacturers of passenger cars and of trucks and multipurpose passenger vehicles with a GVWR of 3,855 kg or less, and of buses with a GVWR of 4,536 kg or less, to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the requirements of Standard No. 225, *Child restraint anchorage systems* (49 CFR 571.225).

§ 585.42 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with Standard No. 225.

§ 585.43 Applicability.

This subpart applies to manufacturers of passenger cars, and of trucks and multipurpose passenger vehicles with a GVWR of 3,855 kg or less, and of buses with a GVWR of 4,536 kg or less. However, this subpart does not apply to vehicles excluded by S5 of Standard No. 225 from the requirements of the standard.

§ 585.44 Response to inquiries.

At any time during the production years ending August 31, 2000, August 31, 2001, and August 31, 2002, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with Standard No. 225. The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

§ 585.45 Reporting requirements.

(a) *General reporting requirements.* Within 60 days after the end of the production years ending August 31, 2000, August 31, 2001, and August 31, 2002, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the child restraint anchorage system requirements of Standard No. 225 for its passenger cars, trucks, buses, and multipurpose passenger vehicles produced in that year. The report shall provide the information specified in paragraph (b) of this section and in § 585.2 of this part.

(b) *Report content.*

(1) Basis for phase-in production goals. Each manufacturer shall provide the number of passenger cars and trucks and multipurpose passenger vehicles with a GVWR of 3,855 kg or less, and buses with a GVWR of 4,536 kg or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that has not previously manufactured these vehicles for sale in the United States shall report the number of such vehicles manufactured during the current production year.

(2) Production. Each manufacturer shall report for the production year for which the report is filed: the number of passenger cars and trucks and multipurpose passenger vehicles with a GVWR of 3,855 kg or less, and buses with a GVWR of 4,536 kg or less, that meet Standard No. 225.

§ 585.46 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.45(b)(2) until December 31, 2004.

Subpart F—Upper Interior Component Head Impact Protection Phase-in Reporting Requirements

Sec.

585.51 Scope.
585.52 Purpose.
585.53 Applicability.
585.54 Response to inquiries.
585.55 Reporting requirements.
585.56 Records.

§ 585.51 Scope.

This subpart establishes requirements for manufacturers of passenger cars and trucks and multipurpose passenger vehicles with a GVWR of 4,536 kg and buses with a GVWR of 3,860 kg or less to respond to NHTSA inquiries, to submit a report, and to maintain records related to the report, concerning the number of such vehicles that meet the upper interior component head impact protection requirements of Standard No. 201, *Occupant protection in interior impact* (49 CFR 571.201).

§ 585.52 Purpose.

The purpose of these reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a manufacturer of passenger cars, trucks, and multipurpose vehicles with a GVWR of 4,536 kg or less and buses with a GVWR of 3,860 kg or less has complied with the upper interior component head impact protection requirements of Standard No. 201.

§ 585.53 Applicability.

This subpart applies to manufacturers of passenger cars, trucks, and multipurpose vehicles with a GVWR of 4,536 kg or less and buses with a GVWR of 3,860 kg or less. However, this subpart does not apply to any manufacturers whose production consists exclusively of walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

§ 585.54 Response to inquiries.

During the production years ending August 31, 1999, August 31, 2000, August 31, 2001, and August 31, 2002, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information regarding which vehicle make/models are certified as complying with the requirements of S6 of Standard No. 201.

§ 585.55 Reporting requirements.

(a) *Phase-in selection reporting requirements.* Within 60 days after the end of the production year ending August 31, 1999, each manufacturer choosing to comply with one of the phase-in schedules permitted by S6.1 of 49 CFR 571.201 shall submit a report to the National Highway Traffic Safety Administration stating which phase-in schedule it will comply with until September 1, 2002. Each report shall—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the section number for the phase-in schedule selected;

(4) Be written in the English language; and

(5) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *General reporting requirements.* Within 60 days after the end of the production years ending August 31, 1999, August 31, 2000, August 31, 2001, and August 31, 2002, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the upper interior component head impact protection requirements of Standard No. 201 for its passenger cars, trucks, buses and multipurpose passenger vehicles produced in that year. The report shall provide the information specified in paragraph (c) of this section and in § 585.2 of this part.

(c) *Report content.*

(1) Basis for phase-in production goals. Each manufacturer shall provide the number of passenger cars and trucks and multipurpose passenger vehicles with a GVWR of 4,536 kg or less and buses with a GVWR of 3,860 kg or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that has not previously manufactured passenger cars and trucks and multipurpose passenger vehicles with a GVWR of 4,536 kg or less and buses with a GVWR of 3,860 kg or less for sale in the United States must report the number of such vehicles manufactured during the current production year. However, manufacturers are not required to report any information with respect to those vehicles that are walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

(2) Production. Each manufacturer shall report for the production year for which the report is filed the number of passenger cars and multipurpose passenger vehicles and trucks with a GVWR of 4,536 kg or less and buses with a GVWR of 4,536 kg or less that meet the upper interior component head impact protection requirements (S6) of Standard No. 201.

§ 585.56 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number for each passenger car, multipurpose passenger vehicle, truck and bus for which information is reported under § 585.55(c)(2) until December 31, 2003.

PART 586—[REMOVED AND RESERVED]

8. Part 586 would be removed and the part would be reserved.

PART 589—[REMOVED AND RESERVED]

9. Part 589 would be removed and the part would be reserved.

PART 590—[REMOVED AND RESERVED]

10. Part 590 would be removed and the part would be reserved.

PART 596—[REMOVED AND RESERVED]

11. Part 596 would be removed and the part would be reserved.

Issued: July 31, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–20024 Filed 8–5–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 15

RIN 1018–AH89

Importation of Exotic Wild Birds Into the United States; Adding Blue-Fronted Amazon Parrots From Argentina's Approved Sustainable-Use Management Plan to the Approved List of Non-Captive-Bred Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: In this rule, the U.S. Fish and Wildlife Service (Service) proposes to approve a sustainable-use management plan developed by the CITES Management Authority of Argentina for blue-fronted amazon parrots (*Amazona aestiva*), under the Wild Bird Conservation Act of 1992 (WBCA). Approval of Argentina's petition would allow the import into the United States of blue-fronted amazon parrots removed from the wild in Argentina under an approved sustainable-use management plan. Criteria for approval of sustainable-use management plans are contained in 50 CFR 15.32. This rule proposes to add blue-fronted amazon parrots to the approved list of non-captive-bred (wild-caught) species contained in 50 CFR 15.33(b).

DATES: Comments must be submitted on or before October 6, 2003.

ADDRESSES: Materials related to this proposed rule are available for public inspection by appointment from 8 a.m. to 4 p.m., Monday through Friday, at the Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203.

Please send comments and materials relating to this proposed rule to Dr. Peter O. Thomas, Chief, Division of Management Authority, at the above address, or via E-mail at: *cites@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Peter O. Thomas, Chief, Division of Management Authority, U.S. Fish and

Wildlife Service; telephone (703) 358–2093; fax (703) 358–2280.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule would amend the regulations implementing aspects of the Wild Bird Conservation Act (WBCA), which was signed into law on October 23, 1992. The WBCA limits or prohibits imports of exotic bird species to ensure that their wild populations are not harmed by trade. It also encourages wild bird conservation programs in countries of origin by ensuring that all imports of such species into the United States are biologically sustainable and not detrimental to the survival of the species. A final rule published in the **Federal Register** on November 16, 1993 (58 FR 60536), implemented the prohibitions stipulated in the WBCA and provided permit requirements and procedures for some allowed exemptions.

Import quotas were established for CITES-listed bird species for the year immediately following enactment of the WBCA, from October 23, 1992, to October 22, 1993. Those quotas were announced in the **Federal Register** on December 4, 1992 (57 FR 57510). In that same notice, we informed the public that, after that year, the importation of all exotic bird species listed in the CITES Appendices would be prohibited unless the species was listed in an approved list, or unless the species was a member of one of the ten families of birds specifically exempted from the WBCA. A notice published on March 30, 1993 (58 FR 16644), solicited public comments and announced a public meeting, held April 15–16, 1993, to receive input for developing regulations to implement some of the provisions of the WBCA. We received input, both at the meeting and in writing, from a broad cross-section of the interested public. During the year in which import quotas for CITES-listed bird species were in place, we published two notices in the **Federal Register**, one on April 16, 1993 (58 FR 19840), and one on August 10, 1993 (58 FR 42573), announcing species for which the quotas had been met and no further individual birds could be imported.

Since the publication of the final rule of November 16, 1993, imports of all CITES-listed birds (as defined in the final rule) are prohibited, except for (a) species included in an approved list; (b) specimens for which an import permit has been issued; (c) species from countries that have approved sustainable-use management plans for those species; or (d) specimens from approved foreign captive-breeding facilities. We published a proposed rule in the **Federal Register** on March 17, 1994 (59 FR 12784), that would implement procedures for the establishment of an approved list of captive-bred species listed in the CITES Appendices that could be imported without a WBCA permit, provide criteria for including non-captive-bred (wild-caught) species in the approved list, and provide criteria for approval of foreign captive-breeding facilities.

As the result of a lawsuit filed on February 15, 1994, and a resultant District Court Order that found a portion of the regulation in the November 16, 1993, **Federal Register** invalid, we announced in the **Federal Register** on May 24, 1994 (59 FR 26810), that all exotic birds listed in Appendix III of CITES would also be covered by the automatic import moratorium of the WBCA, regardless of their country of origin. A proposed rule was published on June 3, 1994 (59 FR 28826), to promulgate that regulatory change, and the final rule was published on December 2, 1994 (59 FR 62254).

On December 2, 1994 (59 FR 62255), we published a final rule implementing procedures for the establishment of an approved list of captive-bred species listed in the CITES Appendices that could be imported without a WBCA permit; the approved captive-bred species were those for which it had been determined that trade involved only captive-bred specimens.

A final rule published on January 24, 1996 (61 FR 2084), implemented procedures for the establishment of an approved list of non-captive-bred (wild-caught) species listed in the CITES Appendices that could be imported. The list of approved non-captive-bred species is contained in 50 CFR 15.33(b). For wild-caught CITES-listed birds to be on the approved list, we must determine that CITES is being effectively implemented for the species for each country of origin from which imports will be allowed, CITES-recommended measures are implemented, and there is a scientifically based management plan for the species that is adequately implemented and enforced. The scientifically based management plan must: (a) Provide for the conservation of the species and its habitat; (b) include incentives for conservation; (c) ensure that the use of the species is biologically sustainable and is well above the level at which the species might become threatened; (d) ensure that the species is maintained throughout its range at a level consistent with its role in the ecosystem; (e) address factors that include illegal trade, domestic trade, subsistence use, disease, and habitat loss; and (f) ensure that the methods of capture, transport, and maintenance of the species minimize the risk of injury or damage to health. For a species with a multinational distribution, we must also consider (a) whether populations of the species in other countries will be detrimentally affected by exports from the country requesting approval; (b) whether factors affecting conservation of the species are regulated throughout its range so that recruitment and/or breeding stocks will not be detrimentally affected by the proposed export; (c) whether the projected take and export will detrimentally affect breeding populations; and (d) whether the projected take and export will detrimentally affect existing enhancement activities, conservation programs, or enforcement efforts throughout the species' range. A species and country of export listed in 50 CFR 15.33(b) may be approved for three years, after which time the Service will have an opportunity to consider renewal of the approval.

On August 10, 2000, we published a notice of receipt of application for approval in the **Federal Register** (65 FR 49007), which announced the receipt of a petition from the Management Authority of Argentina, Dirección de Fauna and Flora Silvestre, for approval of a sustainable-use management plan for the blue-fronted amazon parrot (*Amazona aestiva*) in Argentina. We accepted comments on that application until October 11, 2000. Although we have used information received to date in formulating this proposed rule, we will address previously received comments as well as any new comments in our final rule.

Criteria for Approval of Species for Importation (50 CFR 15.32)

Section 15.32(b)(1) Whether the Country of Export Is Effectively Implementing the Convention

Argentina has been a Party to CITES since 1981 and has established two Management Authorities and two Scientific Authorities. Designation of competent CITES authorities is crucial for effective implementation of the Convention and ensures that the country has the necessary regulatory and technical infrastructure for the issuance of CITES documents and for making the required findings for the issuance of those documents. Argentina received a Category 1 rating in the CITES National Legislation Project. As directed in this project, the CITES Secretariat made this determination following a thorough review of Argentina's CITES implementing

legislation. Category 1 is the highest rating possible and indicates that a Party has enacted ''legislation that is believed generally to meet the requirements for implementation of CITES.'' Furthermore, the CITES Standing Committee has never recommended that other CITES Parties enact sanctions against Argentina for failure to submit annual reports or properly implement the Convention. Argentina has also taken additional steps to demonstrate its commitment to the conservation of blue-fronted amazon parrots. In 1992, in response to concerns regarding the large number of blue-fronted amazons in trade, Argentina instituted a zero export quota. Prior to re-opening the export of blue-fronted amazons, Argentina worked to develop and implement a sustainable-use management plan for the species. Based on this information, we conclude that Argentina is effectively implementing CITES.

Section 15.32(b)(2) Whether the Country of Export Has Developed a Scientifically Based Management Plan for the Species

Although the population biology information provided in the application is not exhaustive, we conclude that there is sufficient baseline data provided in the petition to determine that Argentina has developed a scientifically based management plan and has established levels of harvest that will not be detrimental to the survival of the species in the wild.

Conservation of species and habitat and incentives for conservation: The management plan provides for the conservation of the species and its habitat. The purpose of the sustainable-use management program, Project Elé, is to increase wild populations of blue-fronted amazons by working with private landowners to protect critical habitat (Chaco and transitional forests) and allow a strictly controlled limited harvest for export. The project currently covers 150,000 km^2 in the Provinces of Chaco, Formosa, Jujuy, and Salta. These Provinces contain the majority of the remaining Chaco and transitional forest habitat and are where the greatest concentration of blue-fronted amazons in Argentina occurs (Moschione and Banchs, 1993). The habitat occurs primarily on privately or communally owned land. The main threat to the species in Argentina is habitat loss. According to Flombaum, et. al. (1997), the most limiting factor for survival of the birds is the lack of nest sites caused by accelerated deforestation. The birds nest only in primary-growth forests, with most nests in white quebracho trees (*Aspidosperma quebracho-blanco*)—a species that is in demand for tannins used for curing leather. Other species, such as quebracho colorado (*Schinopsis quebraco-colorado*), ceiba (*Ceiba insignis*), algarrobo blanco (*Prosopsis alba*), and palo santo (*Bulnesia sarmientoi*), which are used by the birds as nesting sites and for food, are commercially valuable for use as fenceposts, telephone poles, and furniture. In addition, large tracts of forest are cleared for cultivation of sugar cane, soybean, cotton, tobacco, and other crops. Because much of the remaining habitat used by the blue-fronted amazon is on private property, participation of property owners in the management program provides a deterrent to destroying parrot habitat for agricultural or development purposes.

We believe that the proposed level of harvest will maintain the species throughout its range at a level consistent with its role in the ecosystem (See *Sustainability, effect on wild population number*). The collection quotas are conservative and based on science (Bucher *et al.*, 1995; Flombaum *et al.*, 1997).

Included with Argentina's application is Decision 425/97, the *Letter of Agreement To Conserve the Blue-fronted Parrot (Amazona aestiva) in Argentina*, issued by the Department of Natural Resources and Sustainable Development. The Decision requires the establishment, using income generated from the program, of government-owned reserves where harvesting of blue-fronted amazons is prohibited. It also authorizes designating wooded areas within large private properties where parrot harvesting is permitted. The program coordinators work closely with provincial officials to determine where the reserves should be established in order to maximize critical habitat protection. Since the program's inception, three reserves have been established: Salta Province (dry transitional forest, established November, 2001, 15,000 ha), Chaco Province (dry chaco forest, established May, 2002 with 17,500 ha), and Jujuy Province (transitional forest, established December, 2002 with 10,000 ha). The reserve in Salta Province now also serves as the nucleus of a larger biosphere reserve. In Reserva Natural Loro Hablador, Chaco Province, funds from the project paid for the construction of a small building which is used as a guardhouse and a dormitory, and to store supplies for researchers and staff. The reserves are managed with funds and staff from the project.

The sustainable-use management plan prohibits the felling of nest trees to collect nestlings, thereby protecting nest sites. Exportation is only authorized for birds from nests that are marked and numbered and meet the project criteria. The financial benefits to the landowners from the controlled harvest provide the landowners an incentive to protect the nesting habitat on their property. In citrus groves where juvenile birds are collected, the killing of birds as agricultural pests, normally permitted by provincial law, is prohibited. The applicant notes that participating landowners become sensitized and educated regarding conservation of the species and its habitat through the authorization process, inspections, and advice on how to minimize environmental impact in the harvest process. Based on this information, we conclude that Argentina's scientifically based management plan for blue-fronted amazons provides for the conservation of the species and its habitat.

Implementation and enforcement: The applicant has provided substantial implementation and enforcement information. Decision 425/97 gives oversight of the project to the Wildlife Office. It provides mechanisms for the administration and enforcement of the program, establishment of reserves, control of illegal trade, and handling and disposition of confiscated birds at the national and provincial levels. Annual decrees also address collection zones, quotas, and export requirements.

Most of the oversight for the project is done by project staff members. Project staff live in the communities or on the properties of collectors during the harvest seasons. They place leg bands on each captured nestling and record biological data, inspect nests, mark each tree from which nestlings are removed, and inspect animal care conditions. All inspection and biological information is maintained in a large database. Staff members also accompany all collectors of juvenile birds to ensure compliance with project policies. The project coordinators identify collection properties and establish collection quotas for each broker so that brokers do not purchase more birds than allotted. In addition, project staff members accompany brokers when birds are purchased from the collectors. Staff members also inspect the parrot housing facilities of collectors and brokers. Frequent inspections by staff members and the perceived importance of the project in communities where the income generated by the collection is shared among community members reduce the incentive to cheat. During a site visit in January 2003, two U.S. Fish and Wildlife Service, International Affairs, biologists observed the project

coordinators take every available opportunity to provide outreach materials and information to national law enforcement personnel at highway checkpoints in the region. Officers were reminded to contact the provincial wildlife authority if they observed any individual with numerous parrots who did not have authorized certificates of origin and leg bands on the birds (contact information was provided). Unlike in the 1980s, birds can no longer be exported directly from the provinces; all legal exports of blue-fronted amazons from this project are through Buenos Aires.

The provinces participating in the program are responsible for meeting the criteria set forth in the national decrees, and only birds from authorized and inspected properties will be permitted to be exported. We received international trade data from the United Nations Environment Programme-World Conservation Monitoring Centre (UNEP–WCMC) showing that the number of blue-fronted amazons exported from Argentina during 1998 and 1999 closely matched the number of birds that were harvested for the program and certified for export, as reported in the application. Based on the above information, we conclude that the program appears to be adequately implemented and enforced.

Sustainability, effect on wild population number: The blue-fronted amazon is one of the most common amazon species in South America. Although the species is listed in CITES Appendix II, it is not listed in *Birds To Watch 2: The World List of Threatened Birds* (Collar *et al.*, 1994), *Parrots: Status Survey and Conservation Action Plan 2000–2004* (Snyder *et al.*, 2000), or the *2002 IUCN Red List of Threatened Animals* (*http://www.redlist.org*). In their comments to the Division of Management Authority (October 2000), TRAFFIC—North America and TRAFFIC—South America argued that the wild blue-fronted amazon parrot population could sustain the proposed harvest.

The applicant proposes collection of nestlings during the breeding season (December and January) and juvenile birds, which are designated as pests by landowners, on citrus farms in May, June, and July. While the species' range extends over 430,000 km^2 in Argentina, not all of the range is available habitat. The greatest population densities are within an area of 200,000 km^2, and the area subject to management that contains optimal roosting, foraging, and nesting areas is 170,000 km^2 in the Provinces of Chaco, Formosa, Jujuy, and Salta (Moschione and Banchs, 1993). Sampling in three localities between 1996 and 2002 resulted in an estimation of 7.70 nests per km^2 (1,309,000 active nests per breeding season within the management area). The mean number of hatchlings per nest at the sites sampled ranged from 3.87 to 4.27 hatchlings (Banchs *et al.*, 2000).

The nestling collection quotas are based on the total number of participating properties, the amount of forest in each, and the degree of past compliance by each collector. For new properties, satellite photographs are used to determine the area of forest and estimate nest density. If the property is fully forested, there is a high probability that there will be at least one nest per 7 hectares. However, to be conservative, the project assumes one nest per 20 hectares. Therefore, on a 100-hectare property, nestlings may be collected from only 5 nests, regardless of the actual number of nests on the property. In each nest from which birds are collected, a minimum of one nestling must be left in the nest. Because the typical nest contains 4 eggs, of which 3 hatch, and 2 nestlings survive to fledge, on the 100-hectare property, two nestlings could be taken from each of the five nests. Thus, the quota for the property would be 10 nestlings. Using fledgling rate only, the harvest per nest is less than that recommended by Bucher *et al.* (1995) as sustainable. Using fledging rate only, Bucher *et al.* (1995) recommended a harvest of 1.5 nestlings per nest based on a study of the population biology of the blue-fronted amazon at the Los Colorados Field Station, Salta Province. According to the model by Bucher *et al.*, on a 100-hectare property, 21.4 nestlings could be harvested sustainably given one nest per seven hectares.

The greater the number of properties that participate in the program, the higher the quota. Large properties are given much smaller quotas (based on an estimate of 1 nest/50 ha) because it is unlikely that the collector will explore the entire property. The total national quota is equal to the sum of the quotas from the different properties. The quota per property in succeeding years may be adjusted in response to the results of sampling (actual nest counts and number of hatchlings per nest). If a collector does not abide by the rules of the project, his quota may be lowered or, in rare instances, he may be expelled from the program. Only birds removed from individually numbered nest cavities in standing trees may be collected. Capture involves cutting a hole into the cavity to reach the nestling and resealing the hole following take. The project staff and landowners have observed pairs re-using nests that have been opened in previous years, indicating that opening nests has minimal effect on the quality of a nest cavity.

The blue-fronted amazon in Argentina is viewed as a pest species by citrus growers (Bucher 1992). The species is legally classified as a pest species in provinces where the project permits the harvest of juveniles, and large numbers of blue-fronted amazon parrots were regularly shot by citrus-grove managers prior to the establishment of the sustainable-use program. During their visit, the Service biologists were informed that there has not been an observed decline in the number of juvenile birds at nearby roosting areas in spite of shooting that may occur on properties not participating in the program. The maximum take of juveniles is set at one-third of the number of nestlings collected in the immediately preceding breeding season. Although the number of participating properties may increase each year, the take of juveniles per unit area does not change. Juveniles can only be taken when the owners declare in writing to the local administrative authority that the birds are damaging their crops, and project staff must verify that the damage is due to blue-fronted amazons. Banchs and Moschione believe that there are over 700,000 juveniles in the transitional forest area (Pers. comm. with DSA and DMA biologists, Jan. 2003). Because few nestlings are found in the Salta and Jujuy Provinces, the creation of reserves there to protect the transitional forests, as required by Decision 425/97, was made possible only through the harvest of juveniles. Thus, the limited harvest of juveniles may actually increase the population by protecting important roosting areas. As with nestlings, a project staff member bands each bird captured and collects biological data. The staff member also explores the property to determine if the participant is also shooting parrots. If so, the quota is reduced in the current or following year, or the collector is suspended from the program.

It is doubtful that the individuals that are left in the nests following the nestling collection become the source of juveniles collected in the citrus groves are the same. According to Banchs and Moschione, this is because the distance between the nesting areas and the citrus groves is over 150 km. It is unlikely that the flocks observed in the citrus groves are those that nest on the properties participating in the program (E-mail to M. Kreger, February 7, 2003).

The total quota for nestlings and juveniles has not been met in any given

year. This is because the properties are extensive and may not be completely explored. The applicant notes that it is difficult to locate nests, the vegetation is often dense and impenetrable, and most indigenous communities prefer to take only the birds they need to pay for short-term (subsistence) economic needs. No birds may be collected before or after the collection period. From a total authorized quota of 16,348 birds (nestlings + juveniles) for the period 1998–2002, only 8,940 were actually collected and exported.

Although complete information on the population biology of this species is not available, funds generated by the sustainable-use program are being used to address information gaps. All of the data collected each season by program staff members are entered into a database maintained by I. Berkunsky, a Ph.D. student and author of the management plan for the reserve in Chaco Province. These data are providing information on the number of nestlings per nest, nestling health and mortality, nest locations, whether or not nests are being re-used, harvest trends at each property or habitat, who is harvesting, and levels of compliance.

Now that reserves are in place, basic biological studies can be accomplished. Because there is no extraction of parrots in the reserves, these areas serve as a control for comparison with properties involved in the harvest. Berkunsky is also studying the reproductive biology of the birds, including clutch size, fledging rate, frequency of repeated nest use, predation of fledglings, natural recruitment, etc. Another study, which will involve radio-tracking of individuals, will examine population dynamics, flock movements, and habitat use. Such a study will determine whether birds in the harvest areas flock to the transitional forests or citrus groves. The project should also allow estimation of the percentage of the total population involved in foraging in citrus groves. Additional studies are proposed to focus on taxonomy, landscape ecology, the impact of foraging on citrus groves, and the impact of the project on local economies.

The information generated by these studies will also assist us to determine whether to renew the program after the initial approval period. If approved, we will require that the applicant provide an annual report at the end of each collection season during the period covered by the approval. The applicant will be asked to include in the report the number and size of the properties participating in the program, population censuses in the collection areas, and an assessment of the short- and long-term impacts of collection on the population, including recruitment, natural nestling mortality within the nest, and the effects of artificially opening and resealing nest cavities.

Illegal Trade, Domestic Trade, Subsistence Use, Disease, Habitat Loss

The management plan for the species addresses illegal trade, domestic trade, subsistence use, disease, and habitat loss. The program is operated at a national level with collaboration at the provincial level. In a supplemental letter dated September 2000, the applicant stated that domestic demand for blue-fronted amazons has declined due to economic factors and stricter controls over the harvest and transport of the species. In addition, more field personnel have been assigned to monitor legal harvest and control illegal trade. Argentina's application states that domestic trade is under the same guidelines as the proposed program and involves fewer than 150 birds per year.

The project is the only legal means to export blue-fronted amazons or commercialize parrots domestically. Some of the project birds are sold as pets in large cities such as Buenos Aires at prices competitive with export prices. There is a ''folkloric'' market in small pueblos and aldeas within the range of the species, where birds captured by individuals not participating in the program are sold as pets to local people. Such trade of single birds is permitted within a province. Larger numbers of birds in transport that are not certified as originating from the program are confiscated. Because the birds are imprinted on humans and their exact origin is unknown, they are non-releasable. The project pays for their rehabilitation and distributes them to local people as pets along with information about their care and about conservation of the species. Although about 500 non-program parrots were confiscated in 2002, Banchs and Moschione believe that illegal exports have declined by 600 birds each year since the inception of the program based on the numbers of birds confiscated by provincial authorities (Pers. comm. with DSA and DMA biologists, Jan. 2003).

The program staff strictly controls the harvest and bands all specimens in the field immediately after capture. Staff members ensure that nesting trees are labeled with plastic tags, check that no tree has been cut down to retrieve nestlings, and inspect some, to all, of the nests from which the nestlings have been removed, to verify that at least one nestling remains in the nest. The nestlings left in the nest are marked by project staff members under each wing with methylene blue to ensure they will not be harvested later and put into trade. Because the bands, capture locations, and other identifying information for each bird must be registered at a national level, and only birds harvested in accordance with the sustainable-use management plan are exported as part of this program, we believe that reasonable measures are being implemented to prevent illegal trafficking in blue-fronted amazon parrots from Argentina. More inspections are made on the properties of first-time participants and on those identified as needing closer oversight to ensure compliance with the program.

The possibility of disease is a concern within holding areas and in the countries into which the birds are imported. Decision 425/97 requires that a veterinarian be present at the assembly areas, separation within the assembly facility of birds captured from different locations, and appropriate quarantine prior to export. The birds are not assembled in the same housing area as other species, the housing areas must be well-ventilated, the floors of the cages must be cleaned daily, and sick birds must be isolated for diagnosis and treatment. Quarantine in Argentina must comply with rules established by SENASA (National Animal Health Service). Exotic birds imported into the United States are subject to quarantine in U.S. Department of Agriculture approved facilities before they can be released to U.S. importers. If the program were approved, blue-fronted amazons from Argentina would be subject to those quarantine requirements. Spain currently imports a large number of blue-fronted amazons from Argentina's sustainable-use program, and the Management Authority of that country reports that they have not linked any avian disease outbreaks to blue-fronted amazons from Argentina (E-mail to A. St. John, May 12, 2003). We are confident that approving this program would not increase the risk of introduction of avian diseases to the United States.

Loss of parrot habitat results mainly from logging of nesting habitat or habitat conversion for farming and agriculture. This program is intended to reduce habitat loss by providing incentives for protecting nesting areas on private property and requiring the establishment of national reserves.

Methods of Capture, Maintenance, and Transport

Nestlings are harvested in December and January. At least one nestling must be left in every nest harvested. The blue-

fronted amazon is a cavity nester. In order to locate nests, collectors look for holes in tree trunks that have insects swarming around the opening, adult birds entering and leaving the cavity, or audible vocalizations from within the cavity. In the 1980s, collectors cut down nesting trees to collect the nestlings. However, Argentina's sustainable-use management program prohibits this practice, and project staff train collectors to use lassos and harness systems to safely climb nest trees to collect the birds. Once at the opening of the cavity, collectors use a weighted string to determine the depth of the nest. When the depth is determined, the collector uses an axe or machete to cut a hole in the side of the tree in order to remove the nestlings. The nestlings are placed in a bag and the collector reseals the new opening with mud and sticks. A plastic identification label, indicating the unique number of the nest, is nailed to each harvested nesting tree. There is no evidence, since full implementation of the project in December 1997, that opening and resealing a hole near the nest has caused mortality of the remaining nestlings or failure of adult pairs to use the site in subsequent years. Project staff are continuing to collect these data.

After harvest, the nestlings are placed in a holding area until they are purchased by a broker. The holding areas must be dry to avoid fungus-induced respiratory and skin infections. We observed several different holding areas. The most common was a shallow hole dug into the ground with wooden planks over the top to keep predators out and maintain darkness typical of the nest.

The birds are hand-fed at least three times per day. The feed used is a commercial corn-based mash produced specifically for parrots by a pet food company in Buenos Aires. Project personnel provide the feed and feeding instructions to the collectors. The mash is mixed with water and fed by hand or spoon. On the site visit, we saw no evidence of force-feeding. Collectors and their families often supplement the commercial feed with local fruit and seeds that the birds would have been likely to receive from their parents.

Brokers prefer to purchase nestlings when the birds can feed independently. In addition, frequent handling of the birds is thought to tame them. We did not see nestlings in the holding area resist handling. We saw no evidence of illness or injuries in the nestlings in the holding areas, and collectors report very few mortalities. The nestlings remain with the collector 2–4 weeks, depending on the age of the birds at the time of collection.

Project staff members (biologists or field technicians) visit each collector before the arrival of the broker. They affix leg bands (open metal bands that once closed can only be removed by breaking) with the code AR or ARG and a unique identification number. Only staff members may affix leg bands, reducing the likelihood of injury during banding and ensuring that only legally acquired birds are banded. The birds are weighed, wing length is measured, and the general health of each bird is recorded. Injured birds are treated, and most injuries have been superficial around legs or toes. If the project staff were to observe evidence of a high mortality, injuries, or more birds collected than the quota allows, the collector might have his quota reduced the following year or be suspended from the program.

Juveniles are harvested from May through July in the citrus groves. Project staff members live on the properties and accompany collectors in every stage of the trapping process. Snares made of reeds are set at dawn before the birds arrive to forage in the citrus groves. The snares are set in the branches of the citrus trees to ensure that only birds that are actually foraging are caught. If a parrot is captured, its loud vocalizations alert the collector to the capture. In rare instances, other species are captured (*e.g.*, passerines); however, mortality is reported to be minimal. Every trap is inspected and disarmed within four hours of being set. The parrots usually retreat to the transitional forest by midday to escape the heat. No blue-fronted amazon has required euthanasia as a result of injuries sustained from the trapping process for juvenile birds since the project's inception.

We visited the holding facilities of three brokers. Each facility was indoors and contained stainless steel cages either suspended from the ceiling, on legs above the floor, or mounted on the wall above the floor. The cages are constructed of wire and contain water and feed pans. Each facility had windows providing sunlight, ventilation, drainage, and a source of clean running water. Depending on the size of the bird, up to 25 birds can be housed in each cage. The same commercial diet provided to collectors is provided to brokers. Brokers typically maintain the birds for less than 2 weeks. According to the application, cages at the assembly area may house up to 30 birds per cubic meter. We believe that, particularly for nestlings, such space is more than adequate. Other housing conditions, such as ventilation, lighting, running water, and sanitation, also appear to be adequate. Each assembly center is required to have a veterinarian available, who is responsible for animal health and official reporting.

Transport from the point of capture to the quarantine facility in Buenos Aires, road transport in excess of 500 kilometers, and air transport, require the use of crates built to IATA (International Air Transport Association) standards. Air circulation, crate handling, and other conditions for transport within the province of origin are addressed in the application, but do not have to meet IATA standards. It is important to note that *Standards for Humane and Healthful Transport of Wild Mammals and Birds to the United States* (50 CFR 14.105) prohibits the import of unweaned birds. Subsequently, we would not allow the import of birds into the United States that still require hand-feeding. However, during our visit to collection sites and broker facilities, brokers noted that they only purchase birds from collectors when the birds no longer require hand-feeding.

In a letter dated September 2000, the applicant reported that mortality during capture and transport is less than one percent. The nestling mortality, primarily during housing, in 1998 was 3.2 percent, 22.5 percent in 1999, and 4.2 percent in 2000. The high mortality in 1999 was due to Pacheco's disease at a quarantine facility that killed 95 percent of the birds at that facility. After that incident, Resolution 1955/99 was passed, that suspends from the program any exporters who experience mortalities greater than 25 percent in one season. Other causes of mortality that have been experienced in the program were not reported to us, although the application indicates that such information is reported to the Wildlife Office. No numbers were provided on animals that were sick or injured during the capture, housing, and transport process. As a condition of program approval, we would require that the annual reports include figures on disease, injury, and mortality during capture, housing, and transport. We would also require that the applicant provide training to program participants to ensure that appropriate parrot husbandry (including diet and basic animal health care) is provided to all individuals who will be responsible for the birds.

Section 15.32(b)(3) Whether the Country of Export Has Developed a Scientifically Based Management Plan for the Species That Considers Factors Relating to the Multi-National Distribution of the Species

The Division of Scientific Authority sent letters to the Scientific Authorities of the range countries for this species (Argentina, Bolivia, Brazil, and Paraguay) and asked them to address this criterion. Argentina, Bolivia, and Paraguay responded in support of Argentina's sustainable-use management plan. We did not receive a response from Brazil. However, the predominant subspecies in Brazil, *Amazona aestiva aestiva,* is not found in Argentina (Collar 1997). The Bolivian Scientific Authority said that Bolivia's blue-fronted amazon populations are non-migratory and would not be affected by the sustainable-use program in Argentina (Marianela Subieta Frías, Executive Director of the National Museum of Natural History in La Paz, Bolivia, email to DSA, September 2000). Bolivia expressed its support for Argentina's program, but noted concern over the possibility of illegally harvested Bolivian birds entering Argentina and being exported through this program. Studies of this species in Paraguay indicate that breeding populations are non-migratory and are distinct from populations in Argentina. Thus, the program in Argentina would not affect the populations in Paraguay (Braulio Román Solís, Director, CITES Office, Paraguay, letter to DSA, August 2000). According to Mr. Solís, Paraguay developed a similar program in 1999 based on the Argentine program and has regulations to ensure sustainable management of the species. Although Paraguay reported that its population of blue-fronted amazons is robust and that the species is locally common, the European Commission has asked Member States not to allow imports of blue-fronted amazons from Paraguay until further notice. This decision was made in response to information received that called into question the scientific basis of Paraguay's export quotas for this species. (E-mail to A. St. John, May 8, 2003). Argentina, Bolivia, and Paraguay have held roundtable discussions to develop a regional study plan in order to determine optimal population management for this species. They have also discussed the need for local educational outreach.

The application and additional information received from Argentina outline the safeguards in place to prevent illegally harvested birds from entering this program. As discussed above, most of the oversight for the project is done by project staff members. Only program staff affix legbands (open metal bands that once closed can only be removed by breaking) with the code AR or ARG and a unique identification number, and only birds with official bands are permitted for export. See earlier sections for discussion of additional safeguards. This program is the only legal source of birds for export from Argentina, and all exports are through Buenos Aires.

Complete population biology information is lacking for the specific effects of this program on breeding and recruitment of this species in other range countries, but we are unaware of any possible detrimental effects of this program on conservation programs or enforcement efforts throughout the range of this species. The program coordinators have been in contact with biologists from the other range countries who have expressed interest in developing similar programs (Pers. comm. with DSA and DMA biologists, Jan. 2003). The export of blue-fronted amazon parrots from each range country is regulated by CITES, and imports into the United States would also be subject to the provisions of the WBCA.

We believe that the proposed level of harvest will maintain the species throughout its range at a level consistent with its role in the ecosystem and that it is unlikely that the proposed harvest will significantly reduce the wild population during the 3 years for which the program would be approved. Critical research on the species' population biology as a result of this program in comparison to non-harvested areas will provide insight into the long- and short-term effects of the program on the species' survival. Any problems that arise during the 3 years could be addressed prior to renewing the program. Furthermore, because the program protects nests, creates nesting habitat, and reduces habitat loss, a population increase is expected.

Conclusion

We reviewed the proposal by the Management Authority of Argentina for the approval of a sustainable-use management plan for blue-fronted amazon parrots (*Amazona aestiva*), based on the criteria in 50 CFR 15.32. We propose to add blue-fronted amazon parrots from Argentina to the list of non-captive-bred species under the Wild Bird Conservation Act of 1992, with the following condition:

1. The Management Authority of Argentina must provide an annual report at the end of each collection season during the period covered by this approval. The report must include the following information: the number and size of the properties participating in the program, results of population censuses in the collection areas, and short- and long-term impacts of collection on the population, including recruitment, nestling mortality, and the effects of artificially opening and resealing nest cavities. The report must also include the number of birds that became sick or injured during capture, housing, and transport. Causes of mortality, illness, and injury should be reported, if known. Such data will be considered at the time of a request for program renewal.

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Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action, because:

a. The annual economic effect of the proposed rule would be less than $100 million and it would not adversely affect any economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

b. This proposed rule would not create inconsistencies with other agencies' actions.

c. This proposed rule would not materially alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients thereof.

d. This proposed rule would not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that the proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Most of the potential applicants who might take advantage of the procedures implemented through this rule are individuals or small entities. However, we do not expect that the amount of trade generated as a result of this rule to be large enough to have a significant economic effect on any industries, large or small.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it:

a. Would not have an annual effect on the economy of $100 million or more.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant negative effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies.

Unfunded Mandates Reform Act

The proposed rule would not significantly or uniquely affect small governments under the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*). The proposed rule would not produce a Federal requirement of $100 million or greater in any year, so it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

Under Executive Order 12630, this proposed rule would not have significant takings implications. The proposed rule would set forth regulations under an existing law (the WBCA) and a takings implication evaluation is not required.

Federalism

Since the proposed rule applies to the importation of live wild birds into the United States, it does not contain any Federalism impacts as described in Executive Order 13132. This proposed rule would not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, and a Federalism evaluation is not required.

Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not overly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Energy Supply, Distribution or Use

Because this proposed rule would allow the import into the United States of blue-fronted amazon parrots removed from the wild in Argentina under an approved sustainable-use management plan, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, or use.

Paperwork Reduction Act of 1995

This proposed rule does not contain any new information collection requirements that require approval from the Office of Management and Budget (OMB). Existing requirements in 50 CFR 15 are currently approved by OMB under OMB control number 1018–0093, which expires on March 31, 2004.

National Environmental Policy Act

We have prepared a draft environmental assessment under regulations implementing the National Environmental Policy Act of 1969 (NEPA). Council on Environmental Quality regulations in 40 CFR 1501.3(b) state that an agency ''may prepare an environmental assessment on any action at any time in order to assist agency planning and decision making.'' Future regulations implementing the WBCA may be subject to NEPA documentation requirements on a case-by-case basis. The draft environmental assessment for this proposed action is on file at the Division of Management Authority in Arlington, Virginia, and a copy may be obtained for review and comment by contacting Dr. Peter O. Thomas, Chief, Division of Management Authority, U.S. Fish and Wildlife Service; telephone (703) 358–2093; fax (703) 358–2280.

Government-to-Government Relationship With Tribes

Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Author

This document was prepared by Ms. Anne St. John, Division of Managment Authority, and Dr. Michael Kreger, Division of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240.

List of Subjects in 50 CFR Part 15

Imports, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

Accordingly, for the reasons given in the preamble, we propose to amend part 15, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 15—WILD BIRD CONSERVATION ACT

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

Authority: Pub. L. 102–440, 16 U.S.C. 4901–4916.

2. Amend § 15.33 by revising paragraph (b) to read as follows:

§ 15.33 Species included in the approved list.

* * * * *

(b) Non-captive-bred species. The list in this paragraph includes species of non-captive-bred exotic birds and countries for which importation into the United States is not prohibited by § 15.11. The species are grouped taxonomically by order, and may only be imported from the approved country, except as provided under a permit issued pursuant to subpart C of this part. The list of non-captive-bred species follows:

Species	Common name	Country	Date approved
Order Psittaciformes: ..... *Amazona aestiva*.	Blue-fronted Amazon Parrot	Argentina	[date of publication of final rule].

Dated: July 22, 2003.

Paul Hoffman,

Assistant Secretary—Fish and Wildlife and Parks.

[FR Doc. 03–19945 Filed 8–5–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 68, No. 151

Wednesday, August 6, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV03–377]

Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service.

ACTION: Notice of reestablishment of the U.S. Department of Agriculture (USDA) Fruit and Vegetable Industry Advisory Committee and a request for nominations.

SUMMARY: The USDA intends to reestablish the Fruit and Vegetable Industry Advisory Committee (Committee). The purpose of the Committee is to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas to the Secretary of Agriculture on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. USDA also seeks nominations of individuals to be considered for selection as Committee members.

DATES: Written nominations must be received on or before September 5, 2003.

ADDRESSES: Nominations should be sent to Mr. Robert C. Keeney, Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, Room 2077 South Building, Ag. Stop Code 0235, Washington, DC 20250–0235, e-mail—*robert.keeney@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Sandra Gardei, Designated Federal Official, (202) 720–0988; *Sandra.Gardei@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture has reestablished the Fruit and Vegetable Industry Advisory Committee for two years. The purpose of the Committee is to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the fruit and vegetable industry's needs.

The members of the reestablished Committee will elect the Chairperson and Vice-Chairperson of the Committee who will serve for a 2-year term. In absence of the Chairperson, the Vice-Chairperson will act in the Chairperson's stead. The Deputy Administrator of the Agricultural Marketing Service's Fruit and Vegetable Programs will serve as the Committee's Executive Secretary. Representatives from USDA mission areas and agencies affecting the fruit and vegetable industry will be called upon to participate in the Committee's meetings as determined by the Committee Chairperson.

Industry members will be appointed by the Secretary of Agriculture and serve 2-year terms. Membership will consist of up to twenty-five (25) members who represent the fruit and vegetable industry and will include at least; seven (7) representatives of fresh fruit and vegetable growers/shippers; four (4) representatives of fresh fruit and vegetable wholesalers; two (2) representatives of brokers; two (2) representatives of retailers; four (4) representatives of fruit and vegetable processors and fresh cut processors; two (2) representatives of foodservice suppliers; one (1) state department of agriculture official; and one (1) trade association representative.

The Secretary of Agriculture invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the reestablished Committee. Nominations should describe and document the proposed member's qualifications for membership to the Committee, and list their name, title, address, telephone, and fax number. The Secretary of Agriculture seeks a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs.

Individuals receiving nominations should contact Sandra Gardei, the designated Federal official, at (202) 720–0988 or by e-mail at: *Sandra.gardei@usda.gov* to receive necessary forms for membership. The biographical information and clearance forms must be completed and returned to USDA within 10 working days of notification, to expedite the clearance process that is required before selection by the Secretary of Agriculture.

Equal opportunity practices will be followed in all appointments to the Committee in accordance with USDA policies. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Dated: August 1, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–20074 Filed 8–1–03; 3:42 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–029–1]

National Wildlife Services Advisory Committee; Notice of Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of solicitation for membership.

SUMMARY: The Secretary of Agriculture intends to renew the National Wildlife Services Advisory Committee for a 2-year period. Through this notice, the Secretary is soliciting nominations for membership on this Committee.

DATES: Consideration will be given to nominations received on or before September 22, 2003.

ADDRESSES: Nominations should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Garrett, Director, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234; (301) 734–5149.

SUPPLEMENTARY INFORMATION: The National Wildlife Services Advisory Committee (the Committee) advises the Secretary of Agriculture on policies, program issues, and research needed to conduct the Wildlife Services program. The Committee also serves as a public forum enabling those affected by the Wildlife Services program to have a voice in the program's policies.

The Committee Chairperson and Vice Chairperson shall be elected by the Committee from among its members.

Terms will expire for the current members of the Committee in August 2003. We are soliciting nominations from interested organizations and individuals to replace members on the Committee. An organization may nominate individuals from within or outside its membership. The Secretary will select members to obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) and U.S. Department of Agriculture (USDA) Regulation 1041–1. Equal opportunity practices, in line with the USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done in Washington, DC, this 31st day of July, 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–20006 Filed 8–5–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety Inspection Service

[Docket No. 03–028N]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold public meetings of the full committee on August 20 & 22, 2003. The committee will discuss: (1) Protocols for FSIS ongoing microbiological baseline studies of raw meat and poultry products, (2) performance standards for broilers (young chickens)/ground chicken, (3) the scientific basis for establishing safety-based ''use by'' date labeling for refrigerated, ready-to-eat foods, and (4) scientific criteria for redefining pasteurization. Subcommittees will also meet as follows:

August 19th—Concurrent sessions of:

- Microbiological Performance Standards for Broilers (young chicken)/ Ground Chicken; an additional new topic will be discussed: reviewing new FSIS protocols for conducting ongoing microbiological baseline studies of raw meat and poultry products.
- Scientific Criteria for Redefining Pasteurization.

August 20th—Microbiological Performance Standards for Broilers (young chicken)/Ground Chicken; an additional new topic will be discussed: Reviewing new FSIS protocols for conducting ongoing microbiological baseline studies of raw meat and poultry products.

August 21st—Criteria for Shelf-Life Based on Safety.

DATES: The full Committee will hold open meetings on Wednesday, August 20, 2003, from 8:30 a.m.–10:30 a.m., and on Friday, August 22, 2003, from 8:30 a.m.–12 noon. Subcommittee meetings will be held on Tuesday, Wednesday, and Thursday, August 19, 20, and 21, 2003. Subcommittee meetings are open to the public.

ADDRESSES: The August 19–22 sub- and full-committee meetings will be held at the Hotel Monaco, Athens Room, 700 F Street NW., Washington, DC 20004, telephone number (202) 628–7177 or (877) 205–5411. Public comments and all documents related to full committee meetings will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments and NACMCF documents will also be available on the Internet at *http://www.fsis.usda.gov/OPPDE/rdad/Publications.htm*.

FSIS will complete a meeting agenda on or before the meeting date and post it on its Internet Web page. Send an original and two copies of comments to the Food Safety and Inspection Service Docket Room: Docket #03–028N, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250. Comments may also be sent by facsimile to (202) 205–0381. The comments and official transcripts of the meeting, when they become available, will be kept in the FSIS Docket Room at the above address. FSIS intends to post all comments associated with this docket on its Web page in the near future. FSIS reserves the right to redact any offensive language that may have been included in these public comments. The uncensored text will be made available in the FSIS Docket Room. See the disclaimer section below regarding modifications that may be necessary due to the presentation of the comments.

FOR FURTHER INFORMATION CONTACT: Persons interested in making a presentation, submitting technical papers, or providing comments should contact Karen Thomas (202) 690–6620, Fax (202) 690–6334, e-mail address: *karen.thomas@fsis.usda.gov*, or mailing address: Food Safety and Inspection Service, Department of Agriculture, Office of Public Health and Science, Aerospace Center, Room 333, 1400 Independence Avenue, SW., Washington, DC 20250–3700.

Persons requiring a sign language interpreter or other special accommodations should notify Ms. Thomas, by August 12, 2003.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established on March 18, 1988, in order to provide an interagency approach to microbiological criteria for food. The NACMCF was established in response to recommendations from the National Academy of Sciences, and from the U.S. House of Representatives Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal year 1988. The Charter for the NACMCF is available for viewing on the FSIS Internet Web page at *http://www.fsis.usda.gov/OA/programs/nacmcf_chart.htm*.

The NACMCF provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues involving the safety and wholesomeness of the U.S. food supply. NACMCF advice and recommendations include development of microbiological criteria and review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides advice to the Centers for Disease Control and Prevention and the Departments of Commerce and Defense.

Dr. Merle Pierson, Deputy Under Secretary for Food Safety, USDA, is the Committee Chair, Dr. Robert E. Brackett, Director of Food Safety and Security, Center for Food Safety and Applied Nutrition, Food and Drug Administration, is the Vice-Chair, and

Gerri Ransom, FSIS, is the Executive Secretary.

At the meetings of August 20 and 22, 2003, the full Committee will discuss:

- The added topic of reviewing protocols for FSIS ongoing microbiological baseline studies of raw meat and poultry products;
- The next phase of work regarding performance standards for broilers (young chickens)/ground chicken;
- Continuing work on the scientific basis for establishing safety-based ''use by'' date labeling for refrigerated, ready-to-eat foods; and
- New work on the scientific criteria for redefining pasteurization.

Documents Reviewed by NACMCF

FSIS intends to make available to the public all materials that are reviewed and considered by NACMCF regarding its deliberations. Generally, these materials will be made available as soon as possible after the full committee meeting. Further, FSIS intends to make these materials available in both electronic format on the FSIS web page, as well as hard copy format in the docket room. Whenever possible given time constraints, FSIS tries to make materials available at the start of the full committee meeting.

Disclaimer: Electronic copies of NACMCF documents and comments are conversions from a variety of source formats into HTML, a process that may result in character translation or format errors. Readers are cautioned not to rely on this HTML document. Minor changes to materials in electronic format may be necessary in order to meet the Web Accessibility Act requirement in which graphs, charts, and tables must be accompanied by a text descriptor in order for the hearing impaired to be made aware of the content. FSIS will add these text descriptors along with a qualifier that the text is a simplified interpretation of the graph, chart, or table. Portable Document Format (PDF) and/or paper documents of the official text, figures, and tables can be obtained from the FSIS Docket Room.

Copyrighted documents will not be posted on the FSIS Web site but are available for inspection in the FSIS docket room.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via listserv, a free e-mail subscription service. In addition, the update is available online through the FSIS Web page located at: *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, industry recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (listserv) go to the ''Constituent Update'' page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm.* Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done at Washington, DC, on: August 1, 2003.

Linda Swacina,

Acting Administrator.

[FR Doc. 03–20010 Filed 8–5–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Modoc County RAC Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of Modoc County RAC meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday, August 11, and Monday, August 18, 2003, from 6 to 8 p.m. in Alturas, California. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: August 11 Agenda topics include approval of July 21 minutes, reports from subcommittees, vote on two projects; and review proposed projects for fiscal year 2004 that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, provide economic benefits and restore and improve health and water quality that meet the intent of Pub. L. 106–393. Agenda topics for the August 18 meeting will include reports from subcommittees, and continued review of 2004 promised projects. Both meetings will be held at Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas, California from 6 to 8 p.m. Time will be set aside for public comments at the beginning of both meetings.

FOR FURTHER INFORMATION CONTACT: Contact Forest Supervisor Stan Sylva, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Stanley G. Sylva,

Forest Supervisor.

[FR Doc. 03–19977 Filed 8–5–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request an extension of a currently approved information collection, the Supplemental Qualifications Statement.

DATES: Comments on this notice must be received by October 10, 2003 to be assured of consideration.

ADDRESSES: Comments may be sent to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250 or to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Qualifications Statement.

OMB Control Number: 0535–0209.

Expiration Date of Approval: February 29, 2004.

Type of Request: To extend a currently approved information collection.

Abstract: Under Interagency Agreement Number DOA–1, between the Department of Agriculture and Office of Personnel Management, the USDA Administrative and Financial Management Staff examines, rates, and certifies applicants for Agricultural Statistician positions GS–1530 and Mathematical Statistician (Agricultural) GS–1529 positions within the National Agricultural Statistics Service. The Interagency Agreement was made under provisions of 5 U.S.C. 1104, as amended by Public Law No. 104–52(1995).

Resumes, curriculum vitae, and the ''Optional Application for Federal Employment'' (OF–612) are general purpose forms used to evaluate applicants for positions in the Federal service. While these forms request specific information about an applicant, they do not always obtain detailed references to those knowledge, skills, and abilities (KSA's) that are critical to the job. The Supplemental Qualifications Statement for agricultural statistician and mathematical statistician (agricultural) positions allows applicants the opportunity to describe their achievements or accomplishments as they relate to the required KSA's.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Individual job Applicants.

Estimated Number of Respondents: 200.

Estimated Total Annual Burden on Respondents: 600 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 5336 South Building, Washington, DC 20250–2009. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, July 14, 2003.

Carol House,

Associate Administrator.

[FR Doc. 03–20007 Filed 8–5–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Staff Briefing

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

Time and Date: 2 p.m., Monday, August 18, 2003.

Place: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

Status: Open.

Matters to be discussed:

1. Annual retirement of class A stock.
2. Annual class C stock dividend rate.
3. Loan loss reserve for FY 2003.
4. Privatization discussion.
5. Administrative and other issues.

ACTION: Board of Directors Meeting.

Time and Date: 9 a.m., Tuesday, August 19, 2003.

Place: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

Status: Open.

Matters to be considered: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on Minutes of the May 9, 2003, board meeting.
3. Secretary's Report on loans approved.
4. Treasurer's Report.
5. Report on the allowance for loan loss reserve for FY 2003.
6. Privatization presentation by the Office of Management and Budget and the Department of Treasury.
7. Consideration of resolution to retire class A stock in FY 2003.
8. Consideration of resolution to set annual class C stock dividend rate.
9. Governor's Remarks.
10. Adjournment.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: August 1, 2003.

Roberta D. Purcell,

Acting Governor, Rural Telephone Bank.

[FR Doc. 03–20079 Filed 8–1–03; 4:47 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, C–475–819]

Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders.

SUMMARY: On April 27, 2000, the Department of Commerce (the Department) self-initiated an anti-circumvention inquiry to determine whether an Italian producer of pasta is circumventing the antidumping and countervailing duty orders on certain pasta from Italy, issued July 24, 1996. We preliminarily determine that certain pasta produced in Italy by Pastificio Fratelli Pagani S.p.A. (Pagani) and exported to the United States in packages of greater than five pounds, which are subsequently repackaged in the United States into packages of five pounds or less, constitutes circumvention of the antidumping and countervailing duty orders on certain pasta from Italy, within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(g). Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Ronald Trentham, AD/CVD Enforcement, Office IV, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4114 or (202) 482–6320.

SUPPLEMENTARY INFORMATION:

Scope of Antidumping and Countervailing Duty Orders

Imports covered by these orders are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia or by Consorzio per il Controllo dei Prodotti Biologici.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to these orders is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. See Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, on file in the Central Records Unit (CRU) of the main Commerce Building, Room B–099.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. See Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, on file in the CRU.

(3) On October 23, 1997, the petitioners filed a request that the Department initiate an anti-circumvention investigation against Barilla S.r.L. (Barilla). On October 5, 1998, the Department issued a final determination that, pursuant to section 781(a) of the Act, Barilla was circumventing the antidumping duty order by exporting bulk pasta from Italy which it subsequently repackaged in the United States into packages of five pounds or less for sale in the United States. See *Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 63 FR 54672 (October 13, 1998) (*Barilla Circumvention Inquiry*).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing up to (and including) five pounds four ounces, and so labeled, is within the scope of the antidumping and countervailing duty orders. See Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, on file in the CRU.

Scope of the Anti-Circumvention Inquiry

The product subject to this anti-circumvention inquiry is certain pasta produced in Italy by Pagani and exported to the United States in packages of greater than five pounds (2.27 kilograms) that meets all the requirements for the merchandise subject to the antidumping and countervailing duty orders, with the exception of packaging size, and which is repackaged into packages of five pounds (2.27 kilograms) or less after entry into the United States.

By way of background, during the investigations, the issue of whether to expand the scope of the investigations to include pasta in packages of greater than five pounds was addressed in an October 10, 1995, decision memorandum (see Memorandum to Susan Esserman from Pasta Team, through Barbara Stafford).[1] In considering this issue, the Department acknowledged that the weight-restricted scope language could allow pasta producers to export their pasta in bulk and repackage it into packages of five pounds or less in the United States; however, it was the Department's understanding, based on assertions by Borden, Inc., New World Pasta, Inc., and Gooch Foods, Inc. (collectively, the petitioners), that repackaging operations of this sort would be too costly and inefficient and thus would not pose a circumvention threat. As a consequence, we did not alter the scope of the merchandise covered by the investigations.

Background

On August 30, 1999, we issued an antidumping questionnaire to Pagani for the third administrative review of the antidumping duty order, covering the period July 1, 1998 through June 30, 1999. In its October 1, 1999, questionnaire response, Pagani stated that it ''exported sacks of non-subject bulk pasta for repackaging after importation.'' Based upon our verification of Pagani's questionnaire responses in the third administrative review, we initiated this inquiry. *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry on the Antidumping and Countervailing Duty Orders (Notice of Initiation),* 65 FR 26179 (May 5, 2000). Since the initiation of this inquiry on April 27, 2000 the following events have occurred.

On May 10, 2000, the Department issued a circumvention questionnaire to Pagani. We requested information with respect to Pagani's corporate structure, sales and shipment information, process of repackaging in the United States, value of merchandise repackaged in the United States, and pattern of trade and levels of imports.

On June 14, 2000, Pagani responded to the Department's questionnaire. Pagani's response revealed that it did not have its own manufacturing or repackaging facility in the United States. Rather, all of the repackaging activity in the United States was conducted by an unaffiliated party. Section 781(a) of the Act sets forth the criteria the Department must examine when determining whether to include merchandise completed or assembled in the United States within the scope of an existing order. We determined it was necessary to collect information from the unaffiliated U.S. parties participating in the repackaging operations to examine these criteria. Accordingly, on December 7, 2000, the Department issued a supplemental circumvention questionnaire to an unaffiliated U.S. repacker and a U.S. customer that participated in

[1] This memorandum was written as a result of a request made by the petitioners and the Association of Food Industries past a group to expand the scope to include pasta imported in packages over five pounds.

repackaging. In addition, on December 7, 2000, we issued a supplemental questionnaire to Pagani.

On January 29, 2001, Pagani responded to the Department's supplemental questionnaire. We did not receive a response from the unaffiliated U.S. repacker or U.S. customer.

Pagani's Proposed Certification Scheme

Pagani described its reasoning for its repackaging operation in the United States in its responses. Pagani asserts that its business is primarily in the food service sector, including restaurants, not in the retail sector which was the target of the petitioners' original complaint. Pagani maintains that many restaurants prefer to buy pasta in one pound packages for reasons of portion control and inventory maintenance and, thus, Pagani, wishing to continue to supply pasta to the United States, explored the possibility of repackaging pasta in the United States. In 1997, Pagani located the unaffiliated repacker, a U.S. company in the business of packing dried food products such as crackers. The unaffiliated U.S. repacker already possessed the equipment to pack short-cut pasta, and it acquired from Pagani a packaging line for long cuts. Pagani began its U.S. repackaging operations in the third quarter of 1997.

Pagani does not believe the repackaging operations subject to this inquiry constitute circumvention. Nevertheless, Pagani proposed that, in the event of an affirmative finding of circumvention, the Department adopt a certification scheme which it states would enable the Department to exclude bulk pasta that is not to be repackaged after importation, *e.g.*, bulk pasta shipped directly to institutional or food service users. Specifically, Pagani states that each of its unaffiliated customers who purchase pasta in packages greater than five pounds (hereafter referred to as ''bulk pasta'') would certify that it would not repack any bulk pasta into packages of five pounds or less. Pagani states that this certification follows the certification program that Barilla, an Italian producer and exporter of pasta, proposed and which the Department accepted in its final determination of anti-circumvention. *See Barilla Circumvention Inquiry*, 63 FR at 54672.

Nature of the Anti-Circumvention Inquiry

Section 781(a)(1) of the Act provides that the Department, after taking into account any advice provided by the United States International Trade Commission (ITC) under section 781(e) of the Act, may include the imported merchandise under review within the scope of an order if the following criteria have been met: (A) The merchandise sold in the United States is of the same class or kind as the merchandise that is the subject to the antidumping duty and countervailing duty orders; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such orders apply; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components produced in the foreign country to which the antidumping duty and countervailing duty orders apply is a significant portion of the total value of the merchandise sold in the United States.

Section 781(a)(3) of the Act further provides that, in determining whether to include parts or components in the order, the Department shall consider: (1) The pattern of trade, including sourcing patterns; (2) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the orders or above findings apply; and (3) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such orders or findings.

The Department's questionnaire, transmitted to Pagani on May 10, 2000, and supplemental questionnaire, transmitted on December 7, 2000, were designed to elicit information for purposes of conducting both qualitative and quantitative analyses in accordance with the criteria enumerated at section 781(a) of the Act. In addition, a questionnaire was transmitted to an unaffiliated U.S. repacker and U.S. customer. This approach is consistent with our analysis in previous anti-circumvention inquiries. *See, e.g., Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders (Carbon Steel Products)*, 64 FR 40336 (July 26, 1999) and *Barilla Circumvention Inquiry*. For the Department to ascertain the value of the completed merchandise sold in the United States, we requested that Pagani provide cost data relevant to the production of pasta produced in Italy that is repackaged and sold in the United States, as well as the costs associated with the processing and repackaging operations performed in the United States.

Statutory Analysis

(1) Whether Merchandise Sold in the United States is of the Same Class or Kind as Other Merchandise That Is Subject to the Orders

The merchandise under review is imported as bulk pasta, then repackaged by an unaffiliated U.S. food packager, and sold in the United States as non-egg dry pasta in packages of five pounds (2.27 kilograms) or less. As the antidumping and countervailing duty orders encompass ''certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less,'' the merchandise subject to this inquiry is the same class or kind of merchandise as that subject to the antidumping and countervailing duty orders on certain pasta from Italy.

(2) Whether Merchandise Sold in the United States Is Completed or Assembled in the United States From Parts or Components Produced in the Foreign Country With Respect to Which the Orders Apply

Although the terms ''parts'' or ''components'' are not defined specifically, the bulk pasta produced by Pagani that is subsequently repackaged in the United States is imported from Italy, which is the country to which the orders apply. Specifically, the legislative history identifies the types of circumvention that are addressed by section 781(a) of the Act: (1) The importation of parts or components to be assembled in the United States into the class or kind of merchandise covered by the order, such as when picture tubes and printed circuit boards are shipped by the manufacturer to a related subsidiary in the United States to be assembled and sold as television receivers; and (2) the importation of an incomplete or unfinished article to be completed in the United States, by means other then assembly, into the class or kind of merchandise covered by the order, such as when steel pipe is imported by a related party that threads it and sells it as threaded pipe. H. Rep. No. 100–40, at 134 (1987).

In this particular case, the bulk pasta is imported into the United States from Italy and assembled into smaller packages of five pounds or less. The major parts and components that make up repackaged pasta consist of: pasta, packaging film, and cartons. In all instances, the pasta is imported from Italy, the country subject to the antidumping and countervailing duty orders. For certain scenarios the

packaging film and cartons used in the repackaging were produced in the United States and the only imported ''part'' or ''component'' was the bulk pasta. Nonetheless, the criterion is still satisfied because bulk pasta constitutes almost the entire finished product sold in the United States.

In other instances, packaging film and cartons are also imported into the United States from Italy along with the bulk pasta. Thus, the merchandise sold in the United States was completed or assembled in the United States entirely from parts or components produced in the foreign country with respect to which the orders apply.

(3) Whether the Process of Assembly or Completion in the United States is Minor or Insignificant

Section 781(a)(2) lists the factors the Department will consider in determining whether the process of assembly or completion is minor or insignificant. These criteria are: (A) The level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States; (D) the extent of the production facilities in the United States; and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States. With regard to the criteria listed above, the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. R. Doc. No. 103–316, at 893 (1994), states that no single factor listed in section 781(a)(2) of the Act will be controlling. The SAA also states that the Department will evaluate each of the factors as they exist in the United States depending on the particular circumvention scenario. *Id.* Therefore, the importance of any one of the factors listed under 781(a)(2) of the Act can vary from case to case depending on the particular circumstances unique to each specific circumvention inquiry.

In this anti-circumvention inquiry, we attempted to base our analysis of whether the process of repackaging bulk pasta in the United States was minor or insignificant on both qualitative and quantitative factors concerning the nature of the processing performed in the United States, in accordance with the criteria of section 781(a)(2) of the Act. This approach is consistent with our analysis in previous anti-circumvention inquiries. *See, e.g., Carbon Steel Products* and *Barilla Circumvention Inquiry*.

(A) The Level of Investment in the United States

As explained above in the *Background* section, we did not receive responses to our December 7, 2000, questionnaire from the unaffiliated U.S. repacker or the U.S. customer. Thus, the only information on the record concerning investment is the fact that Pagani sold one long-cut repackaging line to the unaffiliated U.S. repacker. After two years this line was returned to Pagani. *See* March 16, 2001, *Memorandum from Pasta Circumvention Team to the File* (*Proprietary Analysis Memo*). Thus, the record is inconclusive as to whether the level of investment in the United States is minor.

Pagani provided information showing that 25 percent of its productive assets in Italy are involved in the packing of pasta. Pagani argues that this shows that investment in packing operations is significant. However, Pagani has no investment itself in the United States. Moreover, there is no reliable way to compare the investment in productive assets of Pagani, a pasta manufacturer in Italy, with the investment in productive assets of the unaffiliated food repacker in the United States. Thus, Pagani's information and argument provide no support for finding that investment in the United States in the repackaging operation is not minor.

(B) The Level of Research and Development (R&D) in the United States

Because repackaging bulk pasta is a technically mature process, R&D into the process of repackaging is not a significant factor in this industry (*see Barilla Circumvention Inquiry*). In addition, Pagani did not perform or assist with any R&D in connection with the repackaging of bulk pasta in the United States.

(C) The Nature of the Production Process in the United States

As discussed above, the only element of the production process performed in the United States is the repackaging of the pasta into packages of five pounds or less. According to its questionnaire response, the repackaging of Pagani's pasta proceeded in accordance with three different methods:

(1) Pagani sold retail pasta to the U.S. customer and subcontracted to have the repacking done in the United States.

Pagani exported bulk pasta in plain large plastic bags (*i.e.*, ''neutro'' bags), along with the film and cartons into which it would be repackaged for shipment to the ultimate consignee. The pasta, film and cartons were shipped by Pagani to the repacker; the repacker broke open the large plastic bags, packed the pasta into the film, put the film packages into the cartons, and sent the pasta to the U.S. customer. In such transactions, the packaging company invoiced Pagani for the repackaging services (including any supplies used therein), and Pagani invoiced the U.S. customer for pasta, for film and cartons, and for the repackaging service (a tolling arrangement, in the sense that Pagani had ownership of the pasta, the film and the cartons until the repackaging was completed and the pasta was shipped and invoiced to the customer).

(2) Pagani sold bulk pasta to the U.S. customer who repacked the pasta in the United States at its own expense.

Pagani sold bulk pasta packed in large plastic bags to a U.S. customer on a delivered CIF or FOB port basis, as applicable. The merchandise was then shipped to the consignee (the U.S. customer, in care of the repackaging company's location). The U.S. customer bought the packing film and supplied it to the repacker for the subsequent repackaging into retail packages of five pounds or less. In this type of sale, Pagani invoiced the U.S. customer for the pasta, and all other expenses incurred by Pagani. Film and repackaging fees were invoiced by their respective providers directly to the importer. According to Pagani, this scenario represented a simple export sale of ''neutro'' packed pasta.

(3) Pagani sold pasta to the U.S. customer and the film to the repacking company.

Pagani invoiced the U.S. customer for the bulk pasta and then invoiced the repacking company for the packaging material. The repackaging company then invoiced the U.S. customer for the repacking fee and materials. Pagani invoiced the U.S. customer for the repacking fee which was included in the price of the bulk pasta.

For all three methods, the bulk pasta was exported in ''neutro'' bags to the unaffiliated U.S. repacker, transferred to smaller packages, and shipped to the U.S. customer by the repacker. The neutro-packed pasta is required by U.S. law to be repacked, since it is unlawful to sell food in the United States in packages without labeling information.

We have little direct information regarding the nature of the repackaging process in the Unites States actually employed by the unaffiliated U.S. repacker. The only potentially relevant information is about the general nature of packing operations conducted by

pasta manufacturers.[2] The manufacturing process for the production of pasta involves multiple steps and advanced technology. In the initial production stage, semolina flour is mixed with water to a specific moisture level. Specific pasta types are then extruded through different dies in a die block. Following extrusion, the product proceeds through several separate drying stages, after which the pasta is cooled. The cooled dry pasta is then packaged into the desired finished package size (*e.g.*, one pound bags, five pound bags, ten pound bags, etc.) and these finished packages are placed into larger shipping boxes.

In contrast to these steps, which require significant capital expenditures and labor, and which all typically would take place in Italy, the repackaging in the United States simply involves the last stage of processing. For exports of bulk pasta, the merchandise is packaged in Italy into ''neutro'' bags, rather than into the finished package size. In the United States the pasta is merely transferred from large bags into smaller packages. Thus, while we do not know what process the unaffiliated repacker actually employs, the only information we do have strongly suggests that the nature of the repackaging operation is minor relative to the entire process of pasta production.

(D) The Extent of Production Facilities in the United States

Like the level of investment, the only information we have concerns one processing line that is of comparatively little value, and was in operation only temporarily. Thus, the record is inconclusive as to the extent of production facilities in the United States.

(E) Whether the Value of the Processing Performed in the United States Represents a Small Proportion of the Value of the Merchandise Sold in the United States

Pagani calculated the value added in the United States as the price it paid for repacking on a per-unit basis, (*i.e.* per one one-pound bag of pasta). Using this calculation, Pagani asserted that the value of the processing in the United States is significant. Pagani did not provide a range of the value added in its public version of its submission. However, our analysis of Pagani's data shows that the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States (see *Proprietary Analysis Memo*).

In summary, we preliminarily find that the record evidence supports a finding that the process of assembly or completion in the United States is minor and insignificant. In fact, based on a review of the record evidence it is clear that the actual production process for the pasta is concentrated in Pagani's pasta production facilities in Italy. While some of the statutory factors are inconclusive, the information on the record tends to show that the repackaging operation in the United States is minor and insignificant. The legislative history to section 781(a) establishes that Congress intended the Department to make determinations regarding circumvention on a case-by-case basis in recognition that the facts of individual cases and the nature of specific industries vary widely. In particular, Congress directed the Department to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the imported parts or components. *See* S. Rep. No. 103–412, at 81–82 (1994). Thus, we believe that it is appropriate to place more weight on the nature of the production and packaging process (the latter of which merely involves removing pasta from larger bags and placing it in smaller packages) rather than attempt to establish a numerical standard, which would be contrary to the intentions of Congress. *See Carbon Steel Products*, 64 FR at 40347. Therefore, our decision is based more on the qualitative nature of the process rather than the quantitative amount of the value added.

(4) Whether the Value of Imported Parts or Components is a Significant Portion of the Total Value of the Merchandise

Under section 781(a)(1)(D) of the Act, the value of the imported parts or components must be a significant portion of the total value of the subject merchandise sold in the United States in order to find circumvention. The major parts and components that make up repackaged pasta consist of: pasta, packaging film, and cartons. As discussed in the section of this notice entitled *Whether Merchandise Sold in the United States is Completed or Assembled in the United States from Parts or Components Produced in the Foreign Country with Respect to which the Orders Apply,* in all instances the bulk pasta is imported from Italy. For certain scenarios where the packaging film and cartons used in the repackaging were produced in the United States, the only ''imported part or component'' was the bulk pasta. In the remaining instances, the packaging film and cartons are imported into the United States along with the bulk pasta. Based on our analysis, the value of Italian pasta imported in bulk constitutes the great majority of the value of the finished product ultimately sold to customers in the United States and thus constitutes a significant portion of the value of the repackaged pasta (*see Proprietary Analysis Memo*).

Other Factors To Consider

In making a determination whether to include parts or components within an order, section 781(a)(3) of the Act instructs us to take into account such factors as: the pattern of trade, including sourcing patterns; whether affiliation exists between the exporter of the parts and the person who assembles or completes the merchandise sold in the United States; and whether imports into the United States of the parts produced in the foreign country have increased after the initiation of the investigation which resulted in the issuance of the order. Each of these factors are examined below.

(1) Pattern of Trade

The first factor to consider under section 781(a)(3) of the Act is changes in the pattern of trade, including changes in the sourcing patterns of the bulk pasta. Before the antidumping and countervailing duty orders on pasta from Italy were issued, Pagani had a well established food service channel of trade in which it sold pasta in packages of five pounds or less. After the antidumping and countervailing duty orders were issued, Pagani began selling bulk pasta for repackaging in the United States, in order to continue to supply pasta to its food service customers. Pagani began this repackaging in 1997. Thus, the pattern of trade changed after the imposition of the orders.

(2) Affiliation

The second factor to consider under section 781(a)(3) of the Act is whether the manufacturer or exporter of the bulk pasta is affiliated with the entity that repackages the merchandise sold in the United States from the imported bulk pasta. Based on available information, Pagani and the U.S. repacker are not affiliated within the meaning of section 771(33) of the Act. There is neither common ownership, direct or indirect control, nor a joint venture between the companies.

[2] Pagani submitted an excerpt from a book that discussed pasta packaging. However, there is no way to determine whether this information is relevant to the actual operations of the unaffiliated repacker.

(3) Whether Imports Have Increased

The third factor to be considered under section 781(a)(3) is whether imports of bulk pasta into the United States have increased after the initiation of the original investigation. In our December 7, 2000, supplemental questionnaire, we requested Pagani to provide the volume and value of all Pagani pasta exported to the United States for 1994–2000. We requested Pagani to provide the information for sales of (1) pasta exported in packages of five pounds or greater that is repackaged in the United States into packages that are less than or equal to five pounds; (2) pasta sold in packages of greater than five pounds; and (3) pasta imported into the United States already in packages of five pounds or less that is subject to the antidumping and countervailing duty orders. This information is relevant to gauging the extent to which Pagani altered its exports (*i.e.*, by shifting its exports from merchandise subject to the orders to bulk pasta). Pagani failed to provide the requested information. Therefore, we are unable to determine whether imports have increased, based on record data.

Section 776(a) of the Act requires the Department to resort to facts otherwise available if necessary information is not available on the record or when an interested party or any other person ''fails to provide [requested] information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782.'' As provided in section 782 (c)(1) of the Act, if an interested party ''promptly after receiving a request from [the Department] for information, notifies [the Department] that such party is unable to submit the information requested in the requested form and manner together with a full explanation and suggested alternative forms in which such party is able to submit the information,'' the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Since Pagani did not provide any such notification to the Department, subsection (c)(1) does not apply to this situation. Furthermore, since Pagani failed to respond to the Department's questions regarding volume and value of all Pagani pasta exported to the United States during the period 1994–2000, we must base the preliminary determination in this inquiry on the facts otherwise available.

Section 776(b) of the Act permits the Department to use an inference that is adverse to the interests of an interested party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' Because Pagani refused to comply with the Department's request for information without adequate explanation or suggested alternatives, we find that Pagani failed to cooperate by not acting to the best of its ability to comply with the Department's request. Pagani's refusal to respond to our questions regarding Pagani's volume and value of exports impedes our ability not only to determine if circumvention of the antidumping and countervailing duty orders is occurring, but also to distinguish between its bulk imports for repackaging and any bulk imports which may have been exempt from the scope of the antidumping and countervailing duty orders. Therefore, the adverse inference we are relying upon in accordance with section 776(b) of the Act is that Pagani's exports of pasta in bulk packages to the United States, for repackaging in the United States prior to delivery to the ultimate customer, have increased over the relevant period.

Summary of Statutory Analysis

As discussed above, in order to make an affirmative determination of circumvention, all the elements under sections 781(a)(1) of the Act must be satisfied, taking into account the factors under section 781(a)(2) of the Act. First, the merchandise repackaged and sold in the United States is within the same class or kind of merchandise that is subject to the order. Second, bulk pasta was exported to the United States and then assembled into smaller packages of five pounds or less after importation. Third, the process of assembly or completion in the United States is minor and insignificant. Thus, we find affirmative evidence of circumvention in accordance with sections 781(a)(1) and (2) of the Act. We next considered the factors required by section 781(a)(3) of the Act, in reaching our determination. The facts concerning pattern of trade, sourcing, affiliation, and import trends indicate that there is circumvention of the pasta orders. Consequently, our statutory requirements lead us to find that during the period of time examined there was circumvention of the orders as a result of the repackaging operation discussed above.

Certification Option

Pagani certified that the U.S. repackaging operation, which began in the third quarter of 1997, was terminated for long cuts in 1999. With regard to short cuts, Pagani submitted a certification from the U.S. repacker stating that short cuts of pasta from Pagani was last invoiced on February 8, 2000. Thus, Pagani asserts that the repackaging operations have ceased.

As discussed above in *Pagani Proposed Certification Scheme*, Pagani requested that the Department implement a certification scheme, similar to the program presented in the *Barilla Circumvention Inquiry*, whereby each of Pagani's unaffiliated U.S. customers would certify that it would resell all pasta purchased from Pagani in the packaging in which the pasta was delivered to it, and would not repack any pasta from packages greater than five pounds into packages of five pounds or less. According to Pagani, this scheme would enable the Department to exclude bulk pasta that was not destined for repackaging after importation, *e.g.*, bulk pasta shipped directly to institutional or food service users, from the scope of the antidumping and countervailing duty orders.

We have preliminarily determined to adopt the certification scheme proposed by Pagani. According to that scheme, Pagani and each of Pagani's unaffiliated customers who purchase bulk pasta would certify that it would not repackage any bulk pasta into packages of five pounds or less.

Suspension of Liquidation

We have made an affirmative preliminary finding that Pagani's activities for the repacking of bulk pasta into packages of five pounds or less for sale in the United States constitute circumvention. The merchandise subject to suspension of liquidation is pasta in packages of greater than five pounds as defined in the *Scope of the Anti-circumvention Inquiry* section of this notice, unaccompanied by the appropriate certification. In accordance with section 773(d) of the Act, the Department normally directs the U.S. Bureau of Customs and Border Protection (BCBP) to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, on all unliquidated entries of bulk pasta from Italy not accompanied by appropriate certification, produced by Pagani, that were entered, or withdrawn from warehouse, for consumption on or after April 27, 2000, the date of initiation of this anti-circumvention inquiry.

However, due to cessation of Pagani's circumvention activity, the Department will not instruct BCBP to require such certification until such time as petitioner or other interested parties provide to the Department a reasonable

basis to believe or suspect that the order is being circumvented. If such information is provided, we will require certification only for the product(s) for which evidence is provided that such products are being used in the circumvention of the order. Normally we will require only the importer of record to certify to the end-use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require Pagani to provide such certification on invoices accompanying shipments to the United States. *See Notice of Final Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 25907 (May 4, 2000).

Notification of the International Trade Commission

The Department, consistent with section 781(e) of the Act, will notify the ITC of this preliminary determination to include the merchandise subject to this inquiry within the antidumping and countervailing duty orders on certain pasta from Italy. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning the Department's proposed inclusion of the subject merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days to provide written advice to the Department.

Public Comment

Interested parties may request a hearing within 10 days of publication of this notice. Case briefs and/or written comments from interested parties may be submitted no later than 20 days from the publication of this notice. Rebuttal briefs and rebuttals to comments, limited to issues raised in those briefs or comments may be filed no later than 27 days after publication of this notice. Any hearing, if requested, will be held no later than 34 days after publication of this notice. The Department will publish the final determination with respect to this anti-circumvention inquiry, including the results of its analysis of any written comments.

This affirmative preliminary circumvention determination is in accordance with section 781(a) of the Act and 19 CFR 351.225.

Dated: August 30, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–20046 Filed 8–5–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–880]

Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: August 5, 2003.

SUMMARY: We determine that barium carbonate from the People's Republic of China (PRC) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended the Act. The estimated margins of sales at LTFV are shown in the *Final Determination of Investigation* section of this notice.

FOR FURTHER INFORMATION CONTACT: David Layton or Tisha Loeper-Viti at (202) 482–0371 or (202) 482–7425, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

The preliminary determination in this investigation was published on March 17, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Barium Carbonate from the People's Republic of China*, 68 FR 12664 (March 17, 2003) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

We conducted verification of the questionnaire responses of Qingdao Red Star Chemical Import & Export Co., Ltd. (Qingdao Red Star)[1] from June 25 through June 30, 2003. Qingdao Red Star filed surrogate value information and data on April 23 and 28, 2003, and the petitioner[2] filed surrogate value information and data on April 28, 2003. Because of the unique circumstances surrounding this investigation, which led to a delay in the scheduling of verification,[3] and because both parties also suggested surrogate information after the regulatory deadline for filing such information, we have accepted the information for consideration in this final determination.

On July 18, 2003, Qingdao Red Star and the petitioner filed case briefs. Both parties filed rebuttal briefs on July 23, 2003. A public hearing was held on July 25, 2003.

Scope of Investigation

The merchandise covered by this investigation is barium carbonate, regardless of form or grade. The product under investigation is currently classifiable under subheading 2836.60.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Investigation (POI)

The POI is January 1, 2002, through June 30, 2002.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the *Appendix* to this notice and addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B–099 of the main Department building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Non-Market Economy

The Department has treated the PRC as a non-market economy (NME) country in all its past antidumping investigations. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the*

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[1] Guizhou Red Star Development Co., Ltd. (Guizhou Red Star), was the producer of the subject merchandise sold by Qingdao Red Star during the period of investigation (POI).

[2] The petitioner is Chemical Products Corporation.

[3] There was a delay in conducting the verification due to the SARS epidemic in the PRC.

People's Republic of China, 67 FR 71137, 71138 (Nov. 29, 2002); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570, 36571 (May 24, 2002). An NME country designation remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. The respondent in this investigation has not requested revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as an NME country in this investigation. For further details, *see* the *Preliminary Determination*.

Separate Rates

In our *Preliminary Determination*, we found that Qingdao Red Star met the criteria for the application of a separate, company-specific antidumping duty rate. We have not received any other information since the preliminary determination which would warrant reconsideration of our separates rates determination with respect to this company. For a complete discussion of the Department's determination that the respondent is entitled to a separate rate, see the *Preliminary Determination*.

The PRC-Wide Rate

In the preliminary determination, we found that the use of the PRC-wide rate was appropriate for other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. We applied facts otherwise available in calculating the PRC-wide rate because no other Chinese producer or exporter responded to our requests for information. We found that the failure of parties at issue to respond significantly impedes this proceeding because the Department cannot accurately determine a margin for these parties and causes the Department to find that these parties failed to cooperate by not acting to the best of their ability to comply with a request for information. Therefore, in applying facts otherwise available for the calculation of the PRC-rate, pursuant to section 776(b) of the Act we have used ''information that is adverse to the interests of that party as facts otherwise available.'' Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action (SAA) accompanying the URAA*, H.R. Doc. No. 103–316, at 870 (1994). The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from Qingdao Red Star.

When analyzing the petition for purposes of the initiation, the Department reviewed all of the data upon which the petitioners relied in calculating the estimated dumping margin and determined that the margin in the petition was appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. In order to corroborate the petition margin for purposes of using it as adverse facts available, we examined the price and cost information provided in the petition in the context of our preliminary determination. For further details, *see* Memorandum to Gary Taverman, Director, Office 5, from David Layton, Tisha Loeper-Viti and Kristina Boughton, Case Analysts, Re: Corroboration of Secondary Information, dated March 10, 2003, (Corroboration Memorandum). We received no comments on this decision and continue to find in this final determination that the rate contained in the petition, as recalculated, has probative value. With one adjustment for a clerical error, and additional adjustments to the petition information noted below, we have continued to apply this rate in the final determination. For further discussion, *see* the *Preliminary Determination*.

Since the preliminary determination, we have obtained new information regarding several surrogate values and factors applied in Chinese production. In order to take into account the more recent information, we recalculated the petition margin using, where possible, revised surrogate values and revised factors to value the petitioner's consumption rates. As a result of this recalculation, the PRC-wide rate is, for the final determination, 81.30 percent. *See* Corroboration Memorandum, and Memorandum to Gary Taverman, Director, Office 5, from David Layton, Case Analyst, Re: Recalculated PRC-Wide Rate, dated July 30, 2003, (Final PCR-Wide Rate Memo).

Surrogate Country

For purposes of the final determination, we continue to find that India remains the appropriate primary surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, *see* the *Preliminary Determination*. Consistent with the preliminary determination, where we were unable to value factor inputs using surrogate values in India, we have relied on Indonesia as the secondary surrogate country.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the *Preliminary Determination* as a result of verification, *see* the *Changes Since the Preliminary Determination* section, below. *See also* Memorandum from Scott Lindsay and Kristina Boughton, International Trade Compliance Analysts to Gary Taverman, Office Director: Verification of Sales and Factors of Production Data Submitted by Qingdao Red Star Chemical Import & Export Co., Ltd., dated July 11, 2003.

Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made the following adjustments to the calculation methodologies used in the preliminary determination. These adjustments are discussed in detail in the Issues and Decision Memorandum and in the Memorandum to Gary Taverman, Director, Office 5, from Tisha Loeper-Viti, International Trade Compliance Analyst, Re: Factors of Production Valuation for Final Determination, dated July 30, 2003, (Factors of Production Memorandum).

1. We have valued carbon dioxide as a direct input of Qingdao Red Star's barium carbonate production, instead of the upstream inputs used in Qingdao Red Star's self-produced carbon dioxide. *See* Issues and Decision Memorandum at Comment 3.

2. We valued an additional raw material input that was not valued in the preliminary determination. *See id.* at Comment 4.

3. We valued the financial ratios on the basis of a single Indian producer of barium carbonate for a fiscal year more contemporaneous with the POI. *See id.* at Comment 6.

4. We used recalculated consumption ratios for all factors based on the total production of barium carbonate during the POI including ''off-grade'' barium carbonate. *See id.* at Comment 5.

5. We updated the valuation of rail freight charges using a different source for rail rates. *See id.* at Comment 7.

6. We updated the valuation of truck freight rates. *See id.* at Comment 8.

7. We deducted from U.S. price an amount for brokerage and handling charges. *See id.* at Comment 9.

8. We deducted from U.S. price an amount for seaport charges. *See* Factors of Production Memorandum.

9. We updated all surrogate values based on the *Monthly Statistics of the Foreign Trade of India. See id.*

10. As a result of verification findings, we adjusted the reported direct labor hours to account for contract labor. *See* the Factors of Production Memorandum.

11. We corrected our calculation of electricity. *See* the Factors of Production Memorandum.

12. We corrected a ministerial error from the preliminary determination, where we inadvertently failed to weight-average U.S. prices in the margin calculation. *See* Issues and Decision Memorandum at Comment 10.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (BCBP) to continue the suspension of liquidation of entries of subject merchandise from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after March 17, 2003 (the date of publication of the *Preliminary Determination* in the **Federal Register**). We will instruct the BCBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which normal value exceeds the U.S. price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Final Determination of Investigation

We determine that the following weighted-average percentage margins exist for the period January 1, 2002 through June 30, 2002:

Manufacturer/exporter	Weighted-average margin (percent)
Qingdao Red Star Chemical Import & Export Co	34.44
PRC-Wide Rate	81.30

The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from Qingdao Red Star.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing BCBP officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 30, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

Appendix—Decision Memorandum

Comment 1: Surrogate Value of Barite Ore
Comment 2: Surrogate Values of Two Types of Coal
Comment 3: Valuation of Carbon Dioxide
Comment 4: Valuation of a Minor Input
Comment 5: Granting Offsets for Byproducts
Comment 6: Calculation of Financial Ratios
Comment 7: Valuation of Rail Freight
Comment 8: Valuation of Truck Freight
Comment 9: Deduction of Brokerage and Handling
Comment 10: Use of Weighted-Average U.S. Prices in Margin Calculation
Comment 11: Reported Consumption of Coal 1
Comment 12: Consumption Quantity Questions

[FR Doc. 03–20044 Filed 8–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–830]

Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of the Antidumping Duty Order: Coumarin From the Peoples's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In accordance with 19 CFR 351.216(b), Berjé Incorporated (Berjé), a U.S. importer of subject merchandise and an interested party in this proceeding, filed a request for a changed circumstances review of the antidumping duty order on coumarin from the People's Republic of China (PRC), as described below. In response to this request, the Department of Commerce (the Department) is initiating a changed circumstances review of the antidumping duty order on coumarin from the PRC.

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Addilyn Chams-Eddine or Dana Mermelstein, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0648 or (202) 482–1391, respectively.

Background

On February 9, 1995, the Department published in the **Federal Register** the antidumping duty order on coumarin from the PRC. *See Notice of Antidumping Order: Coumarin from the People's Republic of China,* 60 FR 7751. On June 23, 2003, Berjé, a U.S. importer of subject merchandise and an interested party in this proceedings, requested that the Department conduct a changed circumstances review for the purpose of revoking the antidumping duty order on coumarin from the PRC. According to Berjé, Rhone-Poulenc Specialty Chemicals Company (Rhone-Poulenc), the petitioner, was the only domestic coumarin producer at the time of the original investigation. Since the original investigation, Rhone-Poulenc has changed its company name and now does business under the name Rhodia, Inc. (Rhodia). Bergé informed the Department that Rhodia, in a press release dated November 28, 2001, announced its intent to cease production of coumarin in 2002. Berjé further provided information obtained

from Rhodia indicating that Rhodia no longer produces coumarin in the United States.

Scope of the Review

The product covered by this order is coumarin. Coumarin is an aroma chemical with the chemical formula ($C_9H_6O_2$) that is also known by other names, including 2H–1-benzopyran-2-one, 1, 2-benzopyrone, cis-o-coumaric acid lactone, coumarinic anhydride, 2–Oxo-1, 2-benzopyran, 5, 6-benzo-alpha-pyrone, ortho-hydroxyc innamic acid lactone, cis-ortho-coumaric acid anhydride, and tonka bean camphor.

All forms and variations of coumarin are included within the scope of the order, such as coumarin in crystal, flake, or powder form, and ''crude'' or unrefined coumarin (*i.e.*, prior to purification or crystallization). Excluded from the scope of this order are ethylcoumarins ($C_{11}H_{10}O_2$) and methylcoumarins ($C_{10}H_8O_2$). Coumarin is classifiable under subheading 2932.21.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 782(h)(2) the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (*e.g.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstance review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216 and may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if changed circumstances exist to warrant revocation.

In this case, the Department finds that the press release and other information submitted by Berjé provides sufficient evidence of changed circumstances to warrant the initiation of a changed circumstances review. The press release, dated November 28, 2001, announced Rhodia's intent to cease its U.S. production of coumarin in 2002. Given this information the Department will consider whether the U.S. industry maintains an interest in continuing the order.

Interested parties may submit comments for consideration in the Department's preliminary results not later than 20 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submissions of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any actions proposed based on the those results. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated or within 45 days if all parties agree, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**.

While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of the changed circumstances review.

This notice is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: July 31, 2003.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–20048 Filed 8–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–831]

Fresh Garlic From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of partial rescission of the antidumping duty administrative review of fresh garlic from the People's Republic of China.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. One company named in the initiation of this review, Fook Huat Tong Kee Pte., Ltd., had no exports or sales of the subject merchandise during the period of review and, consequently, we are rescinding the review of this company. In addition, the review requests for Clipper Manufacturing Ltd., Huaiyang Hongda Dehydrated Vegetable Company, Golden Light Trading Company, Ltd., Good Fate International, Phil-Sino International Trading Inc., and Mai Xuan Fruitex Co., Ltd., were withdrawn subsequent to the initiation of the administrative review and, therefore, we are rescinding the review of these six companies.

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Ellman or Minoo Hatten, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4852 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Background

On November 1, 2002, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 66612. With the exception of Huaiyang Hongda Dehydrated Vegetable Company (Hongda), the period of review (POR) is November 1, 2001, through October 31, 2002. For Hongda, the POR is May 1, 2002, through October 31, 2002, because on June 19, 2003, we issued the final results for the new shipper review of Hongda covering the period from November 1, 2001, through April 30, 2002. See *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 68 FR 36767 (June 19, 2003). We received three requests for an administrative review. For two companies, Jinan Yipin Corporation, Ltd. (Jinan Yipin), and Shandong Heze International Trade and Developing Company (Shandong Heze), the petitioners (the Fresh Garlic Producers Association and its individual members) and the respondents requested a review of sales of subject merchandise to the United States during the POR. In addition to these two respondents, the petitioners requested a review of the sales of eleven other companies. Two of the companies for which an administrative review was requested also requested that the Department initiate new shipper reviews. Based upon our initial examination of their new shipper review requests, we conditionally determined that they were new shippers of subject merchandise and subsequently initiated new shipper reviews.

On December 26, 2002, we published in the **Federal Register** the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* (67 FR 78772) in which we initiated the administrative review of the antidumping duty order on fresh garlic from the PRC.

On January 17, 2003, the petitioners withdrew their request for review for Clipper Manufacturing, Ltd (Clipper). As this withdrawal was made before the 90-day deadline established by 19 CFR 351.213(d)(1), we found it to be submitted in a timely manner and subsequently informed Clipper that it need not respond to our antidumping questionnaire. See letter from Laurie Parkhill to Clipper, dated January 31, 2003.

On February 3, 2003, the Department received a letter from Fook Huat Tong Kee Pte., Ltd. (FHTK), certifying that it had no entries, exports, or sales of the subject merchandise during the POR. Our review of import data from the Bureau of Customs and Border Protection supports the claim that there were no entries of subject merchandise produced by FHTK during the POR. We issued a memorandum notifying the parties of our intent to rescind the administrative review of FHTK. See Memorandum from Analyst to the File, dated July 21, 2003. On July 23, 2003, the petitioners responded, indicating that they had no comments on the preliminary rescission with respect to FHTK. See Memorandum from Analyst to the File, date July 23, 2003.

On April 28, 2003, the petitioners submitted a letter withdrawing their review request for Hongda and on June 10, 2003, the petitioners submitted a letter withdrawing their request for a review of four other companies Golden Light Trading Company, Ltd. (Golden Light), Good Fate International (Good Fate), Phil-Sino International Trading Inc. (Phil-Sino), and Mai Xuan Fruitex Co., Ltd. (Mai Xuan).

On July 29, 2003, Hongda and several importers of subject merchandise submitted comments in opposition to the potential rescission of the administrative review of Hongda. Hongda argues that it was the victim of identity theft and concomitant fraud during the POR. Accordingly, Hongda asserts, the Department should continue with the review to determine which imports under Hongda's name were legitimate. Similarly, the importers argue that fraudulent import schemes in recent years have been used to avoid antidumping duties, threatening to shut down completely the U.S. market for Chinese agricultural products, and that these schemes have been used against Hongda on entries during the POR. Thus, as a matter of policy, the importers contend that the Department should continue its review of Hongda to learn more about these alleged schemes and develop effective administrative techniques to counter such schemes.

Partial Rescission of Administrative Review

Because FHTK had no entries, exports, or sales of the subject merchandise, pursuant to 19 CFR 351.213(d)(3) we are rescinding the review with respect to FHTK.

With respect to the petitioners' withdrawal of their review request for Clipper, as stated above, we find the petitioners' withdrawal was submitted in a timely manner, pursuant to 19 CFR 351.213(d)(1), and we are rescinding the review of Clipper.

With respect to the petitioners' withdrawal of their review request for Hongda, Golden Light, Good Fate, Phil-Sino, and Mai Xuan, although the petitioners withdrew their review request for these five companies after the 90-day deadline, the Department's regulations at 19 CFR 351.213(d)(1) permit an extension of the deadline if ''it is reasonable to do so.'' We have not committed significant resources to date to the review of Hongda, Golden Light, Good Fate, Phil-Sino, and Mai Xuan. Furthermore, the petitioners were the only party to request an administrative review of these companies.

We have received no submissions opposing the withdrawal of the petitioners' requests as they pertain to Golden Light, Good Fate, Phil-Sino, and Mai Xuan. Although Hongda and several importers expressed concerns pertaining to the rescission of the administrative review of Hongda, the arguments they presented pertain to allegations involving fraud. The investigation of alleged fraudulent activities is within the statutory purview of the Bureau of Immigration and Customs Enforcement (ICE). See 19 USC 1592. Thus, we will refer Hongda's and the importers' allegations of inappropriate conduct to ICE.

For the above reasons, we determine that it is reasonable to extend the deadline for withdrawal of the requests for review of Hongda, Golden Light, Good Fate, Phil-Sino, and Mai Xuan, and we are rescinding the review of the antidumping duty order on fresh garlic from the PRC with respect to these companies. This administrative review will continue with respect to Jinan Yipin, Shandong Heze, Top Pearl Ltd., and Wo Hing (H.K.) Trading Co.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary

[FR Doc. 03–20045 Filed 8–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Notice of Decision of the Court of International Trade: Heavy Forged Hand Tools From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of the Court of International Trade.

SUMMARY: On July 28, 2003, the United States Court of International Trade (CIT) affirmed the Department of Commerce's results of redetermination on remand of the final results of the seventh administrative review of the antidumping duty orders on heavy forged hand tools from the People's Republic of China. *See Fujian Machinery and Equipment Import & Export Corporation, et al.* v. *United States,* Slip Op. 03–92 (CIT July 28, 2003) (*Fujian II*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department is notifying the public that *Fujian II* and the CIT's earlier opinion in this case, discussed below, were ''not in harmony'' with the Department's original results.

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Martin AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1999, the Department of Commerce (the Department) published a notice of the final results of the seventh administrative review of the antidumping duty order on heavy forged hand tools from the People's Republic of China. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Final Results and Partial Recission of Antidumping Duty Administrative Reviews,* 64 FR 43659 (August 11, 1999) (Final Results). Subsequent to the Department's *Final Results*, the respondent filed a lawsuit with the CIT challenging these results. Thereafter, the CIT issued an Order and Opinion dated July 17, 2000, in *Fujian Machinery and Equipment Import & Export Corporation, et al.* v. *United States*, 178 F. Supp. 2d 1305 (Ct. Int'l Trade 2001) (*Fujian I*), remanding several issues to the Department. Pursuant to *Fujian I*, the Department filed its remand results on February 20, 2002. The CIT reviewed and affirmed the Department's final results of redetermination in *Fujian Machinery and Equipment Import & Export Corporation, et al.* v. *United States,* Slip Op. 03–92 (CIT July 28, 2003) (*Fujian II*).

Timken Notice

In its decision in *Timken*, the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish notice of a decision of the CIT which is ''not in harmony'' with the Department's results. The CIT's decision in *Fujian II* was not in harmony with the Department's final antidumping duty results of review. Therefore, publication of this notice fulfills the obligation imposed upon the Department by the decision in *Timken*. In addition, this notice will serve to continue the suspension of liquidation. If this decision is not appealed, or if appealed, if it is upheld, the Department will publish amended final antidumping duty results.

Dated: August 1, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–20047 Filed 8–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial rescission of antidumping duty administrative review of stainless steel sheet and strip in coils from Taiwan.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (''SSSS'') from Taiwan in response to requests from respondents Yieh United Steel Corporation (''YUSCO'') and Chia Far Industrial Factory Co., Ltd. (''Chia Far''), and petitioners [1] who requested a review of YUSCO, Tung Mung Development Co., Ltd. (''Tung Mung''), Ta Chen Stainless Pipe Company Ltd. (''Ta Chen''), and Chia Far and any of their affiliates in accordance with section 351.213 of the Department's regulations. This review covers imports of subject merchandise from YUSCO, Tung Mung, Ta Chen, and Chia Far. The period of review (''POR'') is July 1, 2001 through June 30, 2002.

Our preliminary results of review indicate that Chia Far and YUSCO have sold subject merchandise at less than normal value (''NV'') during the POR. Additionally, Tung Mung did not participate in this review. Therefore, we are applying an adverse facts available (''AFA'') rate to all sales and entries of Tung Mung's subject merchandise during the POR. Lastly, we have preliminarily determined to rescind the review with respect to Ta Chen, because the evidence on the record indicates that it had no shipments of subject merchandise to the United States during the POR. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Bureau of Customs and Border Protection (''Customs'') to assess antidumping duties on entries of YUSCO's, Chia Far's and Tung Mung's merchandise during the POR, in accordance with 751(a)(2)(C) of the Tariff Act of 1930 (''The Act''), and sections 351.106(c) and 351.212(b) of the Department's regulations.

We invite interested parties to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita (Ta Chen, Tung Mung); Lilit Astvatsatrian (Chia Far); Peter Mueller (YUSCO); or Bob Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230;

[1] Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.) J&L Speciality Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC.

telephone: (202) 482–4243, (202) 482–6412, (202) 482–5811 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation,* 67 FR 44172 (July 1, 2002). On July 30, 2002, YUSCO and Chia Far, producers and exporters of subject merchandise during the POR, in accordance with section 351.213(b) of the Department's regulations, requested an administrative review of the antidumping order covering the period July 1, 2001 through June 30, 2002. On July 31, 2002, petitioners also requested a review of YUSCO, Tung Mung, Ta Chen, and Chia Far and its affiliates. On August 27, 2002, the Department published in the **Federal Register** a notice of initiation of administrative review of this order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 67 FR 55000 (August 27, 2002).

On September 4, 2002, the Department issued questionnaires to YUSCO, Tung Mung, Chia Far and Ta Chen. On September 26, 2002, Ta Chen certified to the Department that it had no sales, entries or shipments of subject merchandise to the United States during the POR, and requested an exemption from answering the questionnaire. Tung Mung did not respond to the Department's questionnaire.

On October 9 and October 23, 2002, YUSCO submitted its Sections A through D questionnaire responses. On December 10, 2002 and January 24, 2003, we issued supplemental Sections A through D questionnaires to YUSCO. On January 9 and February 14, 2003, YUSCO submitted its supplemental Sections A through D questionnaire responses. On February 21 and March 19, 2003, we issued second supplemental Sections A through D questionnaires to YUSCO and on March 19 and April 7, 2003, YUSCO submitted its second supplemental Sections A through D questionnaire responses. On April 7, 2003, we issued a supplemental questionnaire to YUSCO concerning affiliation and on April 16, 2003, YUSCO responded. On May 2, 2003, we issued a third supplemental Sections A through C questionnaire to YUSCO, and on June 11, 2003, we issued a second supplemental questionnaire to YUSCO concerning affiliation. On May 16 and June 20, 2003, YUSCO submitted its third supplemental Sections A through C questionnaire responses, and answered the second supplemental questionnaire concerning affiliation. On July 3, 2003 we issued a third supplemental questionnaire to YUSCO concerning affiliation, and on July 10, 2003, YUSCO submitted its response. Finally, on July 18, 2003, we issued a fourth supplemental questionnaire to YUSCO concerning affiliation and YUSCO submitted its response on July 28, 2003.

On October 9 and October 18, 2002, Chia Far submitted its Sections A through D questionnaire responses. We issued supplemental Sections A through D questionnaires to Chia Far on February 13 and February 26, 2003. On March 3 and March 12, 2003, Chia Far submitted its supplemental Sections A through D questionnaire responses. On March 20, 2003, we issued a second supplemental Sections A through C questionnaire to Chia Far and Chia Far responded on March 28, 2003. On April 10, 2003, we issued a third supplemental Sections A through D questionnaire to Chia Far and Chia Far submitted its response on April 24, 2003. We issued a fourth supplemental Sections B and D questionnaire to Chia Far on May 2, 2003 and Chia Far responded on May 13, 2003. On June 30, 2003, we issued a fifth supplemental Sections B through D questionnaire to Chia Far and Chia Far responded on July 10, 2003. On July 14, 2003, we issued a sixth supplemental Section B questionnaire to Chia Far and Chia Far submitted its response on July 21, 2003.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. The Department has extended the time limit for the preliminary results in this review on two separate occasions. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 14195 (March 24, 2003); and *Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 27782 (May 21, 2003). The current deadline for the preliminary results in this review is July 31, 2003.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81 , 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise covered by this order is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of

not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department also determined that certain specialty stainless steel products were excluded from the scope of the investigation and the subsequent order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[6]

Partial Rescission of Review

As noted above, Ta Chen certified to the Department that it had no shipments of subject merchandise to the United States during the POR. The Department subsequently contacted Customs and requested them to conduct an inquiry into Ta Chen's exports to the United States during the POR. The Department

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

also reviewed Customs' data available to it. *See* Memorandum from Laurel LaCivita to the File, *No Shipment Inquiry for Ta Chen Stainless Steel Pipe Co., Ltd. (''Ta Chen'')*, dated July 16, 2003. There is no evidence on the record which indicates that Ta Chen made exports of subject merchandise during the POR. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Ta Chen. *See e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35190, 35191 (June 29, 1998); and *Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (October 14, 1997).

Facts Available

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use facts available in reaching the applicable determination. In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* the Statement of Administrative Action to the URAA, H. Doc. 103–316 (1994) at 870 (''*SAA*'') (further discussing the application of adverse facts available).

For the preliminary results of review, in accordance with section 776(a)(2) of the Act, we have determined that the use of facts available is appropriate for Tung Mung, since it did not respond to the Department's questionnaire. Pursuant to section 782(d) of the Act, after the Department did not receive a response to its questionnaire, we confirmed that Tung Mung did not intend to participate in this review, and that it understood the potential results if it chose not to cooperate further in the administration of the review. *See* Memorandum from Laurel LaCivita to the File, *Third Administrative Review: Stainless Steel Sheet and Strip from Taiwan*, dated July 16, 2003. Because Tung Mung failed to provide any information on the record for this administrative review, we have no alternative but to apply total facts available to Tung Mung.

As noted above, in selecting facts otherwise available, pursuant to section 776(b) of the Act, the Department may use an adverse inference if the Department finds that an interested party, such as Tung Mung, failed to cooperate by not acting to the best of its ability to comply with requests for information. Consistent with Department's practice in cases where a respondent fails to participate in an administrative review, as adverse facts available, we have applied a margin based on the highest appropriate margin from this or any prior segment of the proceeding. *See Elemental Sulphur From Canada: Final Results of Antidumping Duty Administrative Review*, 65 FR 11980, 11981 (March 7, 2000).

The Department notes that while the highest margin calculated during this or any prior segment of the proceeding is 34.95 percent, this margin represents a combined rate applied in a channel transaction in the investigation of this proceeding based on middleman dumping by Ta Chen. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip from Taiwan*, 64 FR 30592, 30623 (June 8, 1999) (''*SSSS Investigation*''). Where circumstances indicate that a particular margin is not appropriate as adverse facts available, the Department will disregard the margin and determine another, more appropriate one as facts available. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin for use as adverse facts available because the margin was based on another company's uncharacteristic business expense, resulting in an unusually high margin). Because the middleman dumping calculated margin would be inappropriate, given that the record does not indicate that any of Tung Mung's exports to the United States during the POR involved a middleman, the Department has applied the highest margin from any segment of the proceeding for a producer's direct exports to the United States, without middleman dumping, which is 21.10 percent.

The rate of 21.10 percent was applied in the first administrative review to another respondent and constitutes secondary information. Section 776(c) of the Act requires the Department, to the extent practicable, to corroborate secondary information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. As noted in *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, there are no independent sources in this case from which the Department can derive calculated dumping margins. Therefore, unlike other types of information such as input costs or selling expenses, the only source of dumping margins is the calculated dumping margins from previous administrative determinations.

The Department corroborated the information used to establish the 21.10 percent rate in the first administrative review, finding the information to be both reliable and relevant. *See Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682, 6684 (February 13, 2002) and accompanying *Issues and Decision Memorandum* at *Comment 28.* Nothing on the record of this instant administrative review calls into question the reliability of this rate. Furthermore, with respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. As discussed above, in selecting this margin, the Department considered whether middleman dumping was relevant to Tung Mung and declined to use margins based on middleman dumping. The Department has determined that there is no evidence on the record of this case which would render the application of this selected margin inappropriate. Thus, we find that the rate of 21.10 percent from the first administrative review is sufficiently corroborated for purposes of this administrative review.

Affiliation

Petitioners argue that the Department should determine that YUSCO was affiliated with China Steel Corporation (''CSC'') during the POR. CSC is not a respondent in this administrative review, but CSC does produce black coil

which, although not subject merchandise, is used in the production of subject merchandise. Petitioners allege that affiliation existed through direct and indirect stock ownership; through control by members of the boards of directors at YUSCO, Yieh Loong Enterprise Co. Ltd. (''YL''), and CSC; and by cross-ownership through various investment companies affiliated with I.S. Lin, YUSCO, YL, and CSC. Furthermore, CSC which produces hot-rolled steel, was found to be affiliated with, and collapsed with, YL, another producer of hot-rolled steel, in *Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from Taiwan* 66 FR 49618 (September 28, 2001) and accompanying *Issues and Decision Memorandum* at Comments 1 and 2. Petitioners do not argue for collapsing in this case, but do argue that the Department find affiliation between YUSCO and CSC. Petitioners argue that because YUSCO has not responded fully to the Department's questionnaire pertaining to affiliation, it has failed to cooperate to the best of its ability. Petitioners therefore argue that the Department should assign total adverse facts available to YUSCO.

At the Department's request, YUSCO submitted information regarding CSC's, and YL's corporate structure, ownership, and relationships with YUSCO. The information on the record indicates the following: (1) Prior to the POR, CSC acquired 40 percent of the outstanding stock of YUSCO's affiliate, YL; (2) CSC maintained operational and managerial control over YL during the entire POR;[7] (3) as a result of CSC's acquisition of YL's stock, CSC gained an indirect, long-term investment in YUSCO, through YL's ownership of 2 percent of YUSCO's outstanding shares;[8] (4) Lien Shuo Investment Co., Ltd. (''Lien Shuo''), an investment company owned and controlled by YUSCO's chairman, Mr. I.S. Lin, was the chairman of the board at YL for the entire POR; and, (5) YUSCO made sales of subject merchandise to an affiliate who then sold the subject merchandise to CSC.[9]

Although there is circumstantial information on the record relating to relationships between YUSCO, YL, and CSC, that evidence does not lead us to definitively conclude that the requisite ''control'' exists (or does not exist) for a determination of the existence/nonexistence of affiliation of YUSCO and CSC on the record, pursuant to section 771(33) of the Act. However, even if the Department were to find that all of these parties were affiliated, it would have no impact on our dumping analysis. A finding of affiliation in this case would only affect our calculation of normal value. However, section 351.403(d) of the Department's regulations states that the Department will ''not normally calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity)'' of sales in the home market. The quantity of sales between YUSCO and CSC was less than five percent of the total quantity of sales in the home market. Therefore, pursuant to section 351.403(d) of the Department's regulations, even if the Department were to determine that YUSCO and CSC were affiliated, based upon the facts of the record of this case, it would not calculate normal value based on CSC's downstream sales of YUSCO's merchandise sold in the home market. Additionally, the Department would not use the sales from YUSCO's affiliate to CSC to calculate normal value because they would not be matched to any of YUSCO's U.S. sales during this review period. Thus, any affiliation between YUSCO and CSC, if any, would not effect the outcome of the review and we need not further address it.

Finally, the Department finds that YUSCO has, to date, responded to all of the Department's requests for information pertaining to this matter. Therefore, the application of facts available is not warranted.

Normal Value Comparisons

To determine whether respondent's sales of subject merchandise from Taiwan to the United States were made at less than normal value, we compared the export price (''EP'') and CEP, as appropriate, to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the description in the ''Scope of the Review'' section of this notice, *supra*, and sold by YUSCO and Chia Far in the home market during the POR to be foreign like product for the purpose of determining appropriate product comparisons to SSSS products sold in the United States. We have relied on nine product characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product: Grade, hot or cold-rolled, gauge, surface finish, metallic coating, non-metallic coating, width, temper, and edge. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the September 4, 2002 antidumping duty questionnaire and instructions, or to constructed value (''CV''), as appropriate.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

YUSCO

For purposes of this administrative review, YUSCO classified its U.S. sales as EP sales, stating that it sold its SSSS to unaffiliated customers in the United States during the POR. Therefore, we are using EP as defined in section 772(a) of the Act because the merchandise was sold, prior to importation, outside the United States by YUSCO to an unaffiliated purchaser in the United States. We based EP on packed prices to unaffiliated purchasers in the United States. We made deductions for inland freight (from YUSCO's plant to the port of export), international freight, and marine insurance in accordance with section 772(c) of the Act. We made no changes or corrections to the U.S. sales information reported by YUSCO in the calculation of YUSCO's dumping margin.

[7] *See* YUSCO's April 16, 2003 Supplemental Questionnaire Response at Page 6 and YUSCO's May 16, 2003 Supplemental Questionnaire Response at Page 8.

[8] *See* YUSCO's July 10, 2003 Supplemental Questionnaire Response at Pages 1–2.

[9] *See* YUSCO's Section October 23, 2002 Section B–D Response at Exhibit 5 and at Exhibit 7.

Chia Far

For purposes of this review, Chia Far has classified all of its sales as CEP sales. We are using CEP as defined in section 772(a) of the Act for sales of subject merchandise that were sold, after importation, by Lucky Medsup, Chia Far's affiliated reseller, to an unaffiliated purchaser in the United States. We based CEP on the packed prices to the first unaffiliated purchaser in the United States. We made deductions for movement expenses including: Foreign inland freight from the plant to the port of exportation, international freight, marine and inland insurance, brokerage and handling, container handling charges, harbor construction fees, other U.S. transportation expenses and U.S. duty. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses and indirect selling expenses.

We deducted the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-Constructed Value'' (''CV'') Comparisons'' sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(B) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (''NV'') (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared YUSCO's and Chia Far's volume of home market sales of the foreign like product to the volume of each of their U.S. sales of subject merchandise, we determined that sales in the home market provide a viable basis for calculating NV. We therefore based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities and the oridinary course of trade.

For NV, we used the prices at which the foreign like product was first sold for consumption in Taiwan, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (''LOT'') as the EP or CEP as appropriate. After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-Constructed Value (''CV'') Price Comparisons'' sections of this notice.

2. Arm's-Length Test

YUSCO reported that it made sales in the home market to affiliated and unaffiliated end users and distributors/retailers. Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, indirect selling expenses, and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated party, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c); *Antidumping Duties, Countervailing Duties; Final Rule,* 62 FR 27295, 27355 (May 19, 1997).[10] Where no affiliated customer ratio could be calculated because identifical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. *See e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model. Certain of YUSCO's affiliated home market customers did not pass the arm's length test. Therefore, we have considered the downstream sales from these customers to the first unaffiliated customer.

[10] Because this review was initiated before November 23, 2002, the 99.5 percent test applies to this review. *See Antidumping Procedures: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69197 (November 15, 2002).

3. Cost of Production (''COP'') Analysis

Because the Department determined that YUSCO and Chia Far made sales in the home market at prices below the cost of producing the subject merchandise in the previous administrative review and therefore excluded such sales from NV, the Department determined that there are reasonable grounds to believe or suspect that YUSCO and Chia Far made sales in the home market at prices below the cost of producing the merchandise in this administrative review. *See* section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiatived a cost of production inquiry for both YUSCO and Chia Far.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of YUSCO's and Chia Far's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (''SG&A''), including interest expenses, and packing costs. We relied on the COP data submitted by YUSCO in its original and supplemental cost questionnaire responses. For the purpose of these preliminary results of YUSCO, we made no changes to the COP information provided to conduct the cost test.

However, for the purpose of these preliminary results, we revised the COP information submitted by China Far as follows: We revised the total cost of manufacturing to reflect the variable and fixed costs of further processing after sale. *See Analysis Memorandum for the Preliminary Results of Review for Stainless Steel Strip in Coils From Taiwan-Chia Far Industrial Factory Co., Ltd.* (July 31, 2003) (''*Chia Far Preliminary Analysis Memo*'').

B. Test of Home Market Prices

On a product-specific basis, we compared the weighted-average COP for YUSCO and Chia Far, adjusted where appropriate, to their home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(A) and (B) of the Act. We compared the

COP to home market prices, less any applicable movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product within an extended period of time are at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the extended period were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' pursuant to section 773(b)(2)(C)(i) within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

Price-to-Price Comparisons

YUSCO

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market prices to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.We calculated NV based on the home market prices to unaffiliated home market customers. Where appropriate, we deducted rebates, warranty expenses, and movement expenses (*e.g.*, inland freight from plant to customer) in accordance with section 773(a)(6)(B) of the Act.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6)(A) and (B), we deducted home market packing costs and credit expenses and added U.S. packing costs, credit expenses, and direct selling expenses (*e.g.*, container handling fee, certification fee, fumigation fee, and document handling fee). In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (''COM'') of the U.S. product, we based NV on CV.

Chia Far

For those product comparisons for which there were sales at prices above the COP, we based NV on the prices to unaffiliated purchasers in the home market. Where appropriate, we deducted movement expenses and direct selling expenses, and added U.S. direct selling expenses (credit) in accordance with section 773(a)(6)(B) of the Act. In addition, we made adjustments to Chia Far's reported gross unit price to include post-sale processing charges. *See Chia Far Preliminary Analysis Memo* (July 31, 2003).

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6)(A) and (B), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sales observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the COM of the U.S. product, we based NV on CV.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on YUSCO's and Chia Far's cost of materials, fabrication employed in producing the subject merchandise, and SG&A, including interest expenses and profit. We calculated the COPs included in the calculation of CV as noted above in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Taiwan. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. For CV, we made the same adjustments described in the COP section above.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from YUSCO and Chia Far about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by YUSCO and Chia Far for each channel of distribution. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities should be dissimilar.

In the present review, neither YUSCO nor Chia Far requested a LOT adjustment. To determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

YUSCO

In the home market (''HM''), YUSCO reported one level of trade. *See October 23, 2002 Questionnaire Response from YUSCO*, at B–27. YUSCO sold through one channel of distribution in the HM. For these HM customers, YUSCO provided the following selling functions: inland freight, warranty services, and technical advice. Because there is only one sales channel involving similar functions for all sales, we preliminarily determine that there is one LOT in the home market.

For the U.S. market, YUSCO reported one level of trade. *See October 9, 2002 Questionnaire Response from YUSCO*, at A–11. YUSCO sold through one channel of distribution in the U.S. market: to unaffiliated local customers. For U.S. sales, YUSCO provided the following selling functions: Arranging freight and delivery; invoicing; and packing. YUSCO did not incur any expenses in the United States for its U.S. sales. Because there is only one sales channel in the United States, we preliminarily determine that there is one LOT in the United States.

Based on our analysis of the selling functions performed for sales in the HM and U.S. market, we preliminarily determine that the sales in the HM and U.S. market were made at the same LOT. Despite the existence of certain additional selling functions (*i.e.*, general consultation of technical advice and warranty services) performed by YUSCO for its HM sales, no significant difference exists in the selling functions performed in the HM and U.S. market. Therefore, a LOT adjustment is not warranted.

Chia Far

For its home market sales, Chia Far reported one channel of distribution, direct sales from inventory, and two customer categories, unaffiliated end users and unaffiliated distributors. *See Section A Questionnaire Response from Chia Far* at Exhibit A–5, dated October 9, 2002 (''AQR''). For HM sales to both distributors and end-users, Chia Far performed many of the same major selling functions, including after-sale inventory maintenance, technical advice, warranty services, freight and delivery arrangement, after-sale processing and packing. *See Supplemental Questionnaire Response from Chia Far* at Exhibit A–24, dated March 3, 2003 (''SQR''). Therefore, based on Chia Far's selling functions performed for each type of customer, we preliminarily determine that there is one LOT in the home market.

For its U.S. sales, Chia Far reported one channel of distribution: CEP sales made to order; and one customer category: Chia Far sold through Lucky Medsup, an affiliated U.S. company, which then sold to unaffiliated distributors in the United States. *See AQR* at page 2. We examined the claimed selling functions performed by Chia Far for all of its U.S. sales. Chia Far provided the same level of the following services for its sales made to Lucky Medsup (CEP sales) in the United States as its home market sales: After-sale inventory maintenance, technical advice, warranty services, freight and delivery arrangement, after-sale processing and packing. *See SQR* at Exhibit A–24.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between Chia Far and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different level of trade than the CEP level of trade. Chia Far did not request a CEP offset. Nonetheless, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Taiwan markets, including the selling functions, classes of customer, and selling expenses to determine whether a CEP offset was necessary. For CEP sales, Chia Far provided many of the same selling functions and expenses for its sale to its affiliated U.S. reseller Lucky Medsup as it provided for its home market sales, including after-sale inventory maintenance, technical advice, warranty services, freight and delivery arrangement, after-sale processing and packing. Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there is not a significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. Thus, we find that Chia Far's NV and CEP sales were made at the same LOT, and no LOT adjustment or CEP offset need be granted.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with Section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margins exist for the period July 1, 2001 through June 30, 2002:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM TAIWAN

Manufacturer/exporter/reseller	Margin (percent)
YUSCO	1.95
Chia Far	0.64
Tung Mung	21.10

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with section 351.224(b) of the Department's regulations. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* section 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* section 351.309(c)(ii) of the Department's regulations. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* section 351.309(d) of the Department's regulations. Further, we would appreciate it if parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to 751(a)(3)(A) of the Act.

Assessment

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with section 351.212(b)(1) of the Department's regulations, we will calculate exporter/importer specific assessment rates for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importers' entries during the review period.

Cash Deposit

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the rate for a particular product is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 21.10 percent, which is the ''all others'' rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under section CFR 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–20049 Filed 8–5–03; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Clarification of Determinations on Handloomed, Handmade, and Folklore Articles under the African Growth and Opportunity Act

July 31, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Clarification of Determination.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that handloomed fabrics and handmade articles made from such handloomed fabrics from Kenya, Botswana, Lesotho, Malawi, Swaziland, Namibia and Zambia shall be treated as being ''handloomed, handmade, or folklore articles'' under the African Growth and Opportunity Act (AGOA), and qualify for duty-free treatment under the AGOA when accompanied by an appropriate AGOA Visa. CITA is clarifying that these determinations include handloomed rugs, scarves, placemats, tablecloths, and other handloomed articles.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION: The Committee for the Implementation of Textile Agreements (CITA) has previously determined that handloomed fabrics and handmade articles made from such handloomed fabrics from Kenya (67 FR 56805), Botswana (67 FR 67604), Lesotho (67 FR 70413), Malawi (67 FR 77055), Swaziland (68 FR 15438), Namibia (68 FR 18597) and Zambia (68 FR 44298), shall be treated as ''handloomed, handmade, and folklore articles,'' and qualify for duty-free treatment under the AGOA when accompanied by an appropriate AGOA Visa. This notice and the accompanying letter to the Commissioner of the Bureau of Customs and Border Protection, clarify these determinations, specifying that handloomed rugs, scarves, placemats, tablecloths, and other handloomed articles shall be treated as handloomed, handmade, and folklore articles under the AGOA. In the letter published below, CITA directs the Commissioner of the Bureau of Customs and Border Protection to allow entry of such products of Kenya, Botswana, Lesotho, Malawi, Swaziland, Namibia and Zambia under Harmonized Tariff Schedule provision 9819.11.27, when accompanied by an appropriate AGOA Visa in Grouping ''9.''

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 31, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textile Agreements (CITA) has previously determined that handloomed fabrics and handmade articles made from such handloomed fabrics from Kenya (67 FR 56805), Botswana (67 FR 67604), Lesotho (67 FR 70413), Malawi (67 FR 77055), Swaziland (68 FR 15438), Namibia (68 FR 18597) and Zambia (68 FR 44298), shall be treated as ''handloomed, handmade, and folklore articles'' pursuant to Sections 112(b)(6) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200)(AGOA) and Executive Order 13101 of January 17, 2001, and that such goods qualify for duty-free treatment under the AGOA when accompanied by an appropriate AGOA Visa, and has directed you to provide such treatment. This letter clarifies these determinations, specifying that handloomed

rugs, scarves, placemats, tablecloths, and other handloomed articles shall be treated as handloomed, handmade, and folklore articles under the AGOA. CITA directs you to permit duty-free entry of such articles accompanied by the appropriate AGOA Visa in Grouping ''9'' and entered under heading 9819.11.27 of the Harmonized Tariff Schedule of the United States.

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–19955 Filed 8–5–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Amendments to the Live Cattle Futures Contract Restricting Delivery to Cattle Born and Raised in the United States; Reopening of the Public Comment Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of reopening of the public comment period for the proposed amendments to the Chicago Mercantile Exchange's live cattle futures contract restricting delivery to cattle born and raised in the United States.

SUMMARY: In the July 15, 2003, **Federal Register** (68 FR 41783), the Commodity Futures Trading Commission (Commission) requested public comment on proposed amendments to the live cattle futures contract traded on the Chicago Mercantile Exchange (CME or Exchange). The proposals were submitted for Commission approval pursuant to the provisions of Section 5c(c)(2) of the Commodity Exchange Act (Act) and Commission Regulation 40.5. The proposals will require that all cattle delivered on the futures contract must be born and raised exclusively in the United States, and the seller must provide supporting documentation that conforms to industry standards at the time of delivery. The amendments are contingent upon the promulgation by the United States Department of Agriculture (USDA) of regulations implementing Country Of Origin Labeling (COOL) requirements pursuant to Section 10816 of Public Law 107–171 (the Farm Security and Rural Investment Act of 2002), which by statute is intended to take effect on September 30, 2004. The Exchange intends to apply the amendments to newly listed contract months beginning with the October 2004 contract month.

The comment period for the proposed amendments closed on July 30, 2003. The Commission has received a number of requests for an extension of the time period in which to file comments on the amendments. The Director of the Division of Market Oversight (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that reopening the comment period to August 22, 2003, is in the public interest, and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before August 22, 2003.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418–5521 or by electronic mail to *secretary@cftc.gov.* Reference should be made to ''CME Live Cattle Amendments.''

FOR FURTHER INFORMATION CONTACT: Please contact Martin G. Murray of the Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5276. Facsimile number: (202) 418–5527. Electronic Mail: *mmurray@cftc.gov.*

Issued in Washington, DC, on August 1, 2003.

Richard A. Shilts,

Deputy Director, Division of Market Oversight.

[FR Doc. 03–20086 Filed 8–4–03; 11:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE–FG01–03ER03–23; Research and Development for the Rare Isotope Accelerator

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Nuclear Physics (NP), Office of Science (SC), U.S. Department of Energy (DOE), hereby announces interest in receiving applications for Research and Development (R&D) projects directed at the proposed Rare Isotope Accelerator (RIA). RIA is proposed as a new accelerator facility to address emerging research opportunities in low energy nuclear physics, and DOE is sponsoring pre-conceptual R&D activities on the facility.

DATES: The deadline for receipt of formal applications is 4:30 p.m., E.D.T., Wednesday, October 15, 2003, to be accepted for merit review and to permit timely consideration for award in early Fiscal Year 2004.

ADDRESSES: Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. IIPS offers the option of submitting multiple files—please limit submissions to only one file within the volume if possible, with a maximum of no more than four files. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov*, or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/ production/ grants /grants.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene A. Henry, Office Nuclear Physics, SC–23/Germantown, Office of Science, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290; telephone: (301) 903–6093; facsimile: (301) 903–3833; e-mail: *gene.henry@science.doe.gov*. The full text of Program Notice DE–FG01–03ER03–23 is available via the World Wide Web using the following Web site address: *http://www.sc.doe. gov/ production /grants/grants.html*.

SUPPLEMENTARY INFORMATION: The nuclear science community has proposed the Rare Isotope Accelerator as a new accelerator facility to address emerging research opportunities in nuclear structure, nuclear astrophysics, and fundamental interactions and symmetries. See the DOE/NSF Nuclear Science Advisory Committee's 2002 Long Range Plan available at the

following Web site address: *http://www.sc.doe. gov/production/henp/np/nsac/nsac.html*.

The Department of Energy is sponsoring pre-conceptual research and development for the Rare Isotope Accelerator. Community sponsored studies and workshops have identified a number of areas where focused R&D and prototyping could enhance performance, reduce costs, and impact the engineering and construction schedule. Among these areas are:

- Gas stopper for fast fragments. A key feature of the RIA concept is the use of intense high-energy heavy-ion beams with projectile fragmentation as the production mechanism. The gas stopper will slow the projectile fragments and deliver them for subsequent re-acceleration.
- Fragment momentum compression preceding the gas stopper. To stop fragments efficiently in a finite gas stopper volume, there must be compensation of the large fragment momentum spread.
- Fragment separators that handle beam spray and allow beam sharing. Development work on the front end of the fragment separator is required to minimize radiation damage to the magnetic elements.
- Electron cyclotron resonance (ECR) ion sources producing high intensity, high-charge-state uranium, and the low energy beam transport (LEBT). The driver linear accelerator requires ECR ion source performance for uranium greater than the current state of the art by a factor of 2 to 8.
- Driver technologies, especially superconducting radio-frequency (SRF) structures. The driver linear accelerator will require a number of distinct radio-frequency (RF) structures, likely superconducting, but possibly room temperature. Among the issues to be addressed are beam loss, SRF structure cavity cleanliness, and overall cost.
- Beam stripping. The high power of the heavy ion beams requires innovative solutions to beam strippers such as liquid lithium films, or rotating carbon foil strippers that do not degrade beam emittance.
- High-power targets including liquid lithium for fragmentation and isotope separator on-line (ISOL-type) sources with good diffusion and effusion properties. The development of ISOL-type targets with long lifetimes and fast extraction times at high beam powers are essential for the success of RIA. For in-flight fragmentation and fission, development of a liquid-lithium target, or other new high power fragmentation target concepts, is imperative.
- Other RIA accelerator and experimental facility components will also require focused effort. These include post-acceleration including radio frequency quadrupoles (RFQs) and very low velocity accelerating structures, charge-multiplying ECRs, radiation hardened magnetic equipment, innovative detector instrumentation, beam diagnostics optimized for a broad range of beam intensities, beam dumps, radio-frequency equipment, and controls.

The concept, elements and R&D issues of RIA are outlined in the Nuclear Science Advisory Committee (NSAC) ISOL Taskforce Report that can be found at: *http://www.sc.doe.gov/production/henp/np/nsac/nsac.html*.

Updated opportunities for RIA R&D can be found at the following Web site after September 15, 2003: *http://www.sc.doe.gov/henp/np/program/riard.htm*.

Applications requesting support for research and development in the areas outlined above should indicate a separate task for each area. Applications may include more than one task. For each task the application should address the goal of the effort; the method or approach to be taken; the cost and schedule of the effort; the deliverable result of the work; and the performance, cost, or schedule benefit for RIA. Institutional contributions to the effort should be clearly indicated.

Program Funding

It is anticipated that up to $3,500,000 will be available for multiple awards to be made in early Fiscal Year 2004, in the areas described above, contingent on the availability of appropriated funds. Applications should be for one year, with a continuation of up to two additional years for those tasks requiring a multi-year effort. For continuation of multi-year effort, out-year support is contingent on the availability of funds, progress of the research and programmatic needs. For multi-year tasks, intermediate milestones should be indicated.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/Colab.html*.

Formal Applications

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures are contained in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the latest version of the Office of Science's Financial Assistance Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The research project description must be five pages per task or less, exclusive of attachments, and must contain an abstract or summary of the proposed research. Projects reporting results or progress on work conducted with DOE funding under the previous RIA R&D program may include two additional pages per task. All collaborators should be listed with the abstract or summary. On the grant face page, form DOE F 4650.2, in block 15, also provide the Principal Investigator's phone number, fax number, and e-mail address. Attachments should include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be limited to no more than two pages per individual.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors, such as the relevance of the proposed research to the terms of the announcement and agency's programmatic needs. Please note that external peer reviewers are selected with regard to both their scientific

expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on July 30, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–20009 Filed 8–5–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–302–000, CP03–303–000 and CP03–304–000]

Cheyenne Plains Gas Pipeline Company; Notice of Technical Conference

July 30, 2003.

On August 27, 2003, the staff of the Federal Energy Regulatory Commission will hold a technical conference concerning issues raised by the parties related to the pro forma tariff filed by Cheyenne Plains Gas Pipeline Company (Cheyenne Plains) in the above referenced dockets.

The conference will be held at 10 a.m. in Room 3M–2B at the Commission's offices at 888 First Street NE., Washington, DC, 20426.

Any parties to this proceeding who have questions about, or plan to attend the technical conference should contact either John Wood at (202) 502–8113 or Pamela Romano at (202) 502–6854.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19958 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

El Cap II, LLC; Notice of Issuance of Order

July 30, 2003.

El Cap II, LLC (El Cap) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for wholesale sales of capacity and electric energy at market-based rates, and the resale of transmission rights and reassignment of transmission capacity. El Cap also requested waiver of various Commission regulations. In particular, El Cap requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by El Cap.

On July 28, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by El Cap should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 27, 2003.

Absent a request to be heard in opposition by the deadline above, El Cap is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of El Cap, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of El Cap's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20002 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–983–000]

Fox Energy Company, LLC; Notice of Issuance of Order

July 30, 2003.

Fox Energy Company, LLC (Fox Energy) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for sales of capacity, energy, and ancillary services at market-based rates. Fox Energy also requested waiver of various Commission regulations. In particular, Fox Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Fox Energy.

On July 28, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Fox Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 27, 2003.

Absent a request to be heard in opposition by the deadline above, Fox Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Fox Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be

adversely affected by continued approval of Fox Energy's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20001 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–891–000 and ER03–891–001]

Gulf States Energy Investments L.P.; Notice of Issuance of Order

July 30, 2003.

Gulf States Energy Investments L.P. (GSEI) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for sales of capacity and energy at market-based rates. GSEI also requested waiver of various Commission regulations. In particular, GSEI requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by GSEI.

On July 28, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by GSEI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 27, 2003.

Absent a request to be heard in opposition by the deadline above, GSEI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of GSEI, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of GSEI's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20000 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–010]

Gulfstream Natural Gas System, L.L.C.; Notice of Supplemental Filing

July 31, 2003.

Take notice that on July 14, 2003, Gulfstream Natural Gas System, L.L.C., (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sub Original Sheet No. 8H, reflecting an effective date of July 1, 2003.

Gulfstream states that this filing is being made as a supplement to its July 8, 2003 filing in this proceeding to implement a Park negotiated rate transaction under Rate Schedule PALS. Gulfstream states that the tariff sheet clarifies that the negotiated rate only applies up to a certain quantity of the shipper's Park account balance for the applicable day.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions, as well as all parties on the Commission's official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 5, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20004 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–35–003]

Midwest Independent Transmission System Operator, Inc.; Notice of Filing

July 30, 2003.

Take notice that on July 28, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), a compliance filing pursuant to the Commission's order dated May 21, 2003, 103 FERC ¶ 61,210 (2003).

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' 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. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: August 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19960 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–337–000]

Natural Gas Pipeline Company of America; Notice of Application

July 30, 2003.

Take notice that on July 18, 2003, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP03–337–000, pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission's) Regulations for permission and approval to abandon certain facilities, by sale to Panther Interstate Pipeline Energy, L.L.C. (Panther Interstate), a newly formed interstate pipeline subject to the jurisdiction of the Commission under the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Panther Interstate is simultaneously filing a related application requesting, in Docket Nos. CP03–338–000, CP03–339–000, and CP03–340–000, authorization to acquire, operate and maintain the subject facilities as an interstate pipeline under applicable Commission rules. The Natural filing, as well as the Panther Interstate filings, are available for review on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

On September 20, 2002, the Commission issued an order in Docket No. CP02–81–000 (September 20th Order) that found the subject facilities owned by Natural, to be abandoned by sale, as jurisdictional. Natural states that Panther Interstate intends to purchase these jurisdictional facilities, and additionally those facilities found to be non-jurisdictional in the September 20th Order. More specifically, the jurisdictional facilities to be abandoned in this Docket No. consist of:

- 22 miles of 16-inch diameter offshore and related onshore pipeline and appurtenances originating in the High Island (''HI'') Area Block 48, offshore Texas and terminating onshore near an interconnection with Natural's 30-inch Louisiana Mainline No. 1 in Jefferson County, Texas, a dual 8-inch meter and appurtenances located onshore at Natural's Booster Station No. 344 in Jefferson County, Texas (''BS 344''), a 12-inch subsea tap located in HI 11; and
- 3.12 miles of 20-inch onshore pipeline and appurtenances originating in Jefferson County, Texas near Natural's BS 344 and terminating near an interconnection with Natural's 30-inch Louisiana Mainline No. 2 in Jefferson County, Texas (''Sabine Pass Lateral'') and a dual 12-inch meter and appurtenances located at BS 344 (''Sabine Pass Facilities'').

The September 20th Order found the following facilities, that Panther Interstate will acquire from Natural, to be non-jurisdictional.

- 4.7 miles of 16-inch diameter HI 71A Lateral and appurtenances originating at the HI 71A Platform to and including the subsea tap assembly in HI 48.
- A forty (40) foot section of 12-inch pipe in HI–48.
- Two 12-inch taps in HI 48.
- An 8-inch tap in HI 71
- All of the HI 139A lateral Facilities

were determined to be non-jurisdictional gathering facilities.

Natural states that Panther Interstate has agreed to purchase both the jurisdictional and non-jurisdictional facilities for $400,000. Natural further states that upon receipt of the requisite abandonment authority sought in the present application and the related application being filed simultaneously by Panther Interstate, Natural will abandon and Panther Interstate will acquire, operate, and maintain both the jurisdictional and non-jurisdictional facilities.

Any questions regarding the application should be directed to Bruce H. Newsome, Vice President, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148–5072, (630) 691–3526.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: August 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19959 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2576–022 and 2597–019]

Northeast Generation Company, Connecticut; Notice of Intention to Hold Public Meetings for Discussion of the Draft Environmental Impact Statement for the Housatonic River Hydroelectric Project

July 31, 2003.

On July 11, 2003, the Commission staff mailed the Housatonic Project Draft Environmental Impact Statement (DEIS) to the U.S. Environmental Protection Agency, resource and management agencies, and interested organizations and individuals.

The DEIS was noticed in the **Federal Register** on July 18, 2003, and comments are due September 17, 2003. The DEIS evaluates the environmental consequences of the operation and maintenance of the five developments comprising the Housatonic River Project in Connecticut. About 74 acres within the project boundary are located on lands of the United States. The DEIS evaluates the environmental effects of implementing the applicant's proposals, agency and interested parties' recommendations, staff's recommendations, and the no-action alternative.

Two public meetings, which will be recorded by an official stenographer, are scheduled:

Date	Time	Location
Tuesday, August 19, 2003	7–9 p.m.	Northville Elementary School 22 Hipp Road, New Milford, CT 06776
Wednesday, August 20, 2003	7–9 p.m.	Housatonic Valley Regional High School, 246 Warren Turnpike Rd., Falls Village, CT 06031.

At these meetings, all interested persons and parties will have the opportunity to provide oral and written comments and recommendations regarding the DEIS, for the Commission's public record.

For further information, please contact Jack Duckworth, at (202) 502–6392, *jack.duckworth@ferc.gov*, Federal Energy Regulatory Commission, Office of Energy Projects, 888 First St. NE., DC 20426.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–19995 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–217–000]

Occidental Chemical Corporation, Complainant, v. Entergy Services, Inc. and Entergy Louisiana, Inc., Respondents; Notice of Complaint

July 31, 2003.

Take notice that on July 30, 2003, Occidental Chemical Corporation (Occidental), filed a Complaint Requesting Fast Track Processing against Entergy Services, Inc. and Entergy Louisiana, Inc. (collectively, Entergy). Occidental requests that the Commission find that Entergy's amended and restated Interconnection and Operating Agreement for Occidental's Taft cogeneration facility in Hahnville, Louisiana, is unjust and unreasonable. Occidental alleges that the agreement violates the Commission's prohibition against ''and'' pricing by failing to provide transmission service credits and violates Commission precedent because it does not provide interest on monies Occidental has advanced to Entergy for all network upgrades.

Occidental states that copies of the filing were served upon Energy and the Louisiana Public Service Commission.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is 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 ''FERRIS'' 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. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: August 19, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–19992 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–114–000, *et al.*]

Connecticut Valley Electric Company Inc., Public Service Company of New Hampshire, et al.; Electric Rate and Corporate Filings

July 30, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Connecticut Valley Electric Company Inc., Public Service Company of New Hampshire; and Central Vermont Public Service Corporation

[Docket Nos. EC03–114–000 and ER03–1110–000]

Take notice that on July 22, 2003, Connecticut Valley Electric Company Inc., Public Service Company of New Hampshire, and Central Vermont Public Service Corporation, (collectively, Applicants), tendered for filing with the Federal Energy Regulatory Commission a joint application pursuant to Sections 203 and 205 of the Federal Power Act, seeking approvals and acceptances relating to the restructuring of Connecticut Valley Electric Company Inc. in New Hampshire.

Comment Date: August 12, 2003.

2. Condon Wind Power, LLC; SeaWest WindPower, Inc.; SeaWest Northwest Asset Holdings, LLC; The Goldman Sachs Group, Inc.

[Docket No. EC03–115–000]

Take notice that on July 24, 2003, Condon Wind Power, LLC (Condon Wind Power), SeaWest WindPower, Inc. (SeaWest), SeaWest Northwest Asset Holdings, LLC (SeaWest NAH) and The Goldman Sachs Group, Inc. (together the Applicants), filed with the Federal Energy Regulatory Commission a joint application pursuant to Section 203 of the Federal Power Act for authorization of an indirect disposition of jurisdictional facilities in connection with (1) An intra-corporate reorganization whereby SeaWest WindPower, a wholly-owned subsidiary of SeaWest Holdings, Inc. (SeaWest Holdings), will transfer one hundred percent of its membership interests in Condon Wind Power to another wholly-owned subsidiary of SeaWest Holdings and SeaWest NAH, and (2) the subsequent issuance of new non-managing membership interests in Condon Wind Power to a not-yet-existing subsidiary of The Goldman Sachs Group, Inc. and GS Wind Power I, LLC (GS Wind), in exchange for a capital contribution by GS Wind to Condon Wind Power. Condon Wind Power owns and operates a 49.8 megawatt wind power project located near Condon, Oregon. Applicants seek expedited review of the joint application and request confidential treatment of certain documents submitted therewith.

The Applicants state that a copy of the joint application was served upon the Public Utility Commission of Oregon and the Bonneville Power Administration.

Comment Date: August 14, 2003.

3. Fast Well Investments Limited

[Docket No. EG03–86–000]

Take notice that on July 25, 2003, Fast Well Investments Limited (FWI), with its principal office at Suite 1501–7, Harbour Centre, 25 Harbour Road, Wanchai, Hong Kong, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

FWI states that it is a company organized under the laws of Malaysia and that it will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA), exclusively in owning, operating, or both owning and operating, a gas-fired electric generating facility with a total output of approximately 98 megawatts consisting of two combustion turbine generators, two heat recovery steam generators and one steam turbine generator and certain additional incidental facilities, located in Shuang Liu County, Chengdu, Sichuan, People's Republic of China. FWI states that it will, through an affiliate, sell electric energy at wholesale from the facility and may engage in other incidental activities with respect thereto consistent with PUHCA.

Comment Date: August 20, 2003.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. EL03–35–003]

Take notice that on July 28, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), a compliance filing pursuant to the Commission's order dated May 21, 2003, 103 FERC ?61,210 (2003).

Comment Date: August 27, 2003.

5. California Independent System Operator Corporation

[Docket No. ER00–2019–011]

Take notice that on July 25, 2003 the California Independent System Operator Corporation (ISO) tendered for filing revised tariff sheets in compliance with the Commission's Order on Rehearing of July 10, 2003, 104 FERC ¶ 61,062, in which the Commission held that certain transmission customers when they become Participating Transmission Owners served by certain generating facilities located ''behind the meter'' (*i.e.*, not directly interconnected to the ISO Controlled Grid) should pay transmission Access Charges on a net load basis. ISO states that the revised tariff sheets are prospectively implementing this requirement.

Comment Date: August 15, 2003.

6. Indian River Power LLC

[Docket No. ER00–2807–001]

Take notice that on July 25, 2003, Indian River Power LLC tendered for filing its triennial rate review in compliance with the Commission's Order issued July 25, 2000 in Deepwater Power LLC, *et al.*, Docket No. ER00–2805–000, *et al.*

Comment Date: August 15, 2003.

7. Vienna Power LLC

[Docket No. ER00–2808–001]

Take notice that on July 25, 2003, Vienna Power LLC tendered for filing its triennial rate review in compliance with the Commission's order issued July 25, 2000 in Deepwater Power LLC, *et al.*, Docket No. ER00–2805–000, *et al.*

Comment Date: August 15, 2003.

8. Keystone Power LLC

[Docket No. ER00–2809–001]

Take notice that on July 25, 2003, Keystone Power LLC tendered for filing its triennial rate review in compliance with the Commission's order issued July 25, 2000 in Deepwater Power LLC, *et al.*, Docket No. ER00–2805–000, *et al.*

Comment Date: August 15, 2003.

9. Conemaugh Power LLC

[Docket No. ER00–2810–001]

Take notice that on July 25, 2003, Conemaugh Power LLC tendered for filing its triennial rate review in compliance with the Commission's order issued July 25, 2000 in Deepwater Power LLC, *et al.*, Docket No. ER00–2805–000, *et al.*

Comment Date: August 15, 2003.

10. Union Power Partners, L.P.

[Docket No. ER01–930–002]

Take notice that on July 25, 2003, Union Power Partners, L.P. filed with the Federal Energy Regulatory Commission a notice of change in status in connection with the transfer by Panda GS V, LLC and Panda GS VI, LLC of their respective interests in TECO–PANDA Generating Company, L.P. to TPS GP, Inc., and TPS LP, Inc.

Comment Date: August 15, 2003.

11. TECO–PANDA Generating Company, L.P.

[Docket No. ER02–1000–001]

Take notice that on July 25, 2003, TECO–PANDA Generating Company, L.P., filed with the Federal Energy Regulatory Commission a notice of change in status in connection with the transfer by Panda GS V, LLC and Panda

GS VI, LLC of their respective interests in TECO–PANDA Generating Company, L.P. to TPS GP, Inc., and TPS LP, Inc.

Comment Date: August 15, 2003.

12. WPS Westwood Generation, LLC

[Docket No. ER02–2361–002]

Take notice that on July 24, 2003, WPS Westwood Generation, LLC (WPS Westwood) tendered for filing with the Federal Energy Regulatory Commission a refund compliance report required by Paragraph 3 of the Commission's June 6, 2003 Letter Order accepting WPS Westwood's settlement agreement in this proceeding. 103 FERC ¶ 61,298.

WPS Westwood states that copies of the filing were served upon the PJM Interconnection, LLC, the Pennsylvania Commission and the official service list in the above-captioned proceeding.

Comment Date: August 14, 2003.

13. American Electric Power Service Corporation

[Docket No. ER03–403–004]

Take notice that on July 25, 2003, American Electric Power Service Corporation (AEP), on behalf of Indiana Michigan Power Company, tendered for filing an Amended and Restated Interconnection and Operation Agreement between Indiana Michigan Power Company and South Shore Power, L.L.C. AEP states that the agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6.

AEP requests an effective date of September 22, 2003. AEP states that the filing has been served upon the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment Date: August 15, 2003.

14. Niagara Mohawk Power Corporation

[Docket No. ER03–502–001]

Take notice that on July 24, 2003, in compliance with the Commission's Order issued on April 1, 2003, in Docket No. ER03–502–000 and pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d, and part 35 of the Commission's regulations,18 CFR part 35, Niagara Mohawk Power Corporation, a National Grid Company (Niagara) submitted for filing:

(1) A revised Interconnection Facilities Agreement between

Niagara and Hydro One Networks Inc.; and

(2) A revised Interconnection Agreement between Niagara and Independent Electricity Market Operator.

Comment Date: August 14, 2003.

15. Moraine Wind LLC

[Docket No. ER03–951–001]

Take notice that on July 25, 2003, Moraine Wind LLC (Moraine Wind) filed amendments to its initial Market-Based Rate Schedule (the Schedule) filed with the Federal Energy Regulatory Commission (the Commission) on June 12, 2003. Moraine states that the amendments are made in accordance with the directive in the Commission's Order dated July 17, 2003, which required an amendment to the Schedule to conform to Commission precedent and practice regarding affiliate transactions (*see* 101 FERC ¶ 61,331).

Comment Date: August 15, 2003.

16. Exelon Framingham LLC; Exelon Mystic LLC; Exelon New Boston LLC; Exelon West Medway LLC

[Docket No. ER03–959–001]

Take notice that on July 25, 2003, Exelon Framingham LLC, Exelon Mystic LLC, Exelon New Boston LLC and Exelon West Medway LLC (the Exelon Companies) tendered for filing fixed cost information for their respective generating facilities. The Exelon Companies state that this fixed cost information relates to Peaking Unit Safe Harbor (PUSH) Reference Levels proposed by ISO New England Inc. (ISO–NE) for use regarding New England Power Pool Market Rule 1. The Exelon Companies request an effective date of June 1, 2003 for the preliminary PUSH Reference Levels, and an effective date of July 11, 2003 for the revised PUSH Reference Levels. The Exelon Companies request a waiver of all applicable Commission regulations to permit such effective date.

The Exelon Companies state that a copy of this submission has been provided to ISO–NE on the date of filing. The Exelon Companies also state that a copy of this submission has been mailed to each affected state regulatory authority.

Comment Date: August 15, 2003.

17. New England Power Pool

[Docket No. ER03–1111–000]

Take notice that on July 24, 2003, the New England Power Pool (NEPOOL) Participants Committee filed to terminate the membership of Quinnipiac Energy, LLC (Quinnipiac) in NEPOOL. The Participants Committee requests a September 1, 2003 effective date for the termination of the Participant status of Quinnipiac.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: August 14, 2003.

18. Avista Corporation

[Docket No. ER03–1112–000]

Take notice that on July 24, 2003, Avista Corporation (Avista) tendered for filing Amendatory Agreement No. 1 to the 1997 Pacific Northwest Coordination Agreement (the 1997 PNCA).

Avista states that Amendatory Agreement No. 1 amends the 1997 PNCA. Avista also states that a copy of the filing was served upon the parties to the 1997 PNCA.

Comment Date: August 14, 2003.

19. Carolina Power & Light Company

[Docket No. ER03–1113–000]

Take notice that on July 24, 2003, Carolina Power & Light Company, doing business as Progress Energy Carolinas, Inc. (CP&L), tendered for filing an executed Network Integration Transmission Service Agreement (NITSA) including an executed Network Operating Agreement (collectively, Integrated NITSA) between CP&L and the Fayetteville Public Works Commission (FPWC).

CP&L requests that the Commission accept the Integrated NITSA for filing and make it effective on July 1, 2003, the date on which service began. CP&L states that copies of the filing were served upon FPWC and the North Carolina Utilities Commission.

Comment Date: August 14, 2003.

20. Carville Energy LLC

[Docket No. ER03–1114–000]

Take notice that on July 24, 2003, Carville Energy LLC tendered for filing, under Section 205 of the Federal Power Act, a rate schedule for reactive power from the Carville Energy Center.

Comment Date: August 14, 2003.

21. Pacific Gas and Electric Company

[Docket No. ER03–1115–000]

Take notice that on July 25, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing a Revised Generator Special Facilities Agreement (GSFA), Supplemental Letter Agreement, and Generator Interconnection Agreement (GIA) between PG&E and Elk Hills Power, LLC (Elk Hills).

PG&E states that the GSFA and Supplemental Letter Agreement permit PG&E to recover the ongoing costs associated with owning, operating and maintaining the Special Facilities for Elk Hills. PG&E states that the GIA

provides terms and conditions for filling, operation, maintenance and metering.

PG&E states that copies of this filing have been served upon Elk Hills, the California Independent System Operator Corporation and the CPUC.

Comment Date: August 15, 2003.

22. PJM Interconnection, L.L.C.

[Docket No. ER03–1117–000]

Take notice that on July 25, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to establish a new Default Allocation Assessment to replace the Weighted Interest formula as the basis for determining the amount that PJM may assess and collect from a PJM member when another PJM member defaults.

PJM requests waiver of the Commission's notice provisions to permit an effective date of July 26, 2003. PJM states that copies of this filing have been served on all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: August 15, 2003.

23. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1118–000]

Take notice that on July 25, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted, in its entirety, a Third Revised, Volume No. 1, of its Open Access Transmission and Energy Markets Tariff (TEMT) in compliance with the Commission's February 24, 2003 Declaratory Order, 102 FERC ¶ 61,196. Midwest ISO states that the TEMT includes those terms and conditions necessary for the implementation of the Midwest ISO's Day-Ahead and Real-Time Energy Markets (Energy Markets) and congestion management provisions based on Locational Marginal Prices and Financial Transmission Rights. Midwest ISO also states in addition, the TEMT contains revisions that are necessary for the implementation of the new Energy Markets and congestion management within the Midwest ISO region. The Midwest ISO has requested an effective date of March 31, 2004.

The Midwest ISO has also requested waivers of the service requirements set forth in 18 CAR 385.2010. The Midwest ISO states it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO indicates that the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading ''Filings to FERC.'' for other interested parties in this matter. The Midwest ISO states that it will provide hard copies to any interested parties upon request.

Comment Date: August 15, 2003.

24. California Independent System Operator Corporation

[Docket No. ER03–1119–000]

Take notice that on July 25, 2003, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1 to the Metered Subsystem Aggregator Agreement between the ISO and Northern California Power Agency (NCPA) for acceptance by the Commission. The ISO is requesting waiver of the 60-day notice requirement to allow Amendment No.1 to the Metered Subsystem Aggregator Agreement to be made effective August 1, 2003.

The ISO states that this filing has been served upon all parties on the official service list in Docket No. ER02–2321–000.

Comment Date: August 15, 2003.

25. Florida Power & Light Company

[Docket Nos. OA03–9–000 and OA03–10–000]

Take notice that on July 25, 2003, Florida Power & Light Company (Applicant) filed with the Federal Energy Regulatory Commission (Commission) on behalf of Applicant's New England Division (FPL NED) a request for order confirming that it has complied with the requirements of Order No. 888 by placing its transmission facilities in New England under the control of the New England Independent System Operation. Applicant also requested an order confirming that FPL NED's standards of conduct submitted with its pleading comply with the requirements of Order No. 889.

Comment Date: August 25, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–19971 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Northern Power Corporation (Xcel Energy) Project No. 2056–016, Minnesota; Notice of Availability of Draft Environmental Assessment

July 31, 2003.

In accordance with the National Environmental Policy Act of 1969 and part 380 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380; FERC Order No. 486 and 52 FR 47,897, the Office of Energy Projects Staff (staff) reviewed the application for a new license for the St. Anthony Falls Hydroelectric Project, located on the Mississippi River in the city of Minneapolis in Hennepin County, Minnesota, and prepared a draft environmental assessment (DEA) for the project. The project does not use or occupy any Federal facilities or lands.

In this DEA, the staff analyzes the potential environmental effects of the existing project and concludes that licensing the project, with staff's recommended measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the DEA and application is 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix ''St. Anthony Falls Project No. 2056–016'' to all comments. For further information, please contact Monte TerHaar by e-mail at *monte.terhaar@ferc.gov* or phone (202) 502–6035.

The Commission strongly encourages electronic filings. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–19993 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1971–079]

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

July 31, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1971–079.

c. *Date Filed:* July 21, 2003.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Hells Canyon Hydropower Project.

f. *Location:* On the Snake River in Washington and Adams, Counties, Idaho; and Wallowa and Baker Counties, Oregon. About 5,270 acres of federal lands administered by the Forest Service and the Bureau of Land Management (Payette and Wallowa-Whitman National Forests and Hells Canyon National Recreational Area) are included within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Robert W. Stahman, Vice President, Secretary, and General Counsel, Idaho Power Company, PO Box 70, Boise, Idaho 83707.

i. *FERC Contact:* Alan Mitchnick, (202) 502–6074; *alan.mitchnick@ferc.gov*.

j. *Cooperating agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status*: September 19, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

m. This application is not ready for environmental analysis at this time.

n. The existing Hells Canyon Project consists of three developments: Brownlee Development consists of a 395-foot-high earth and rockfill dam, a 14,621-acre impoundment, and a powerhouse with five generating units producing 585.4 megawatts (MW); Oxbow Development consists of a 209-foot-high earth and rockfill dam, a 1,150-acre impoundment, and a powerhouse with four generating units producing 460 MW; and Hells Canyon Development consists of a 320-foot-high concrete gravity dam, a 2,412-acre impoundment, and a powerhouse with three generating units producing 391.5 MW. Idaho Power also operates four fish hatcheries and four adult fish traps. Idaho Power proposes to exclude 11 of 12 existing transmission lines from the project.

o. A copy of the application is 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Idaho STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by ''106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance letter: October 2003.

Issue Scoping Document 1 for comments: October 2003.

Request additional information: November 2003.

Issue Scoping Document 2: February 2004.

Notice of application is ready for environmental analysis: March 2004.

Notice of the availability of the draft EIS: September 2004.

Notice of the availability of the final EIS: April 2005.

Ready for Commission's decision on the application: July 2005.

The schedule will be revised based on need for correction of deficiencies and need for additional information.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20003 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2516–026–WV and Project No. 2517–010–WV]

Allegheny Energy Supply Company, LLC; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places; Project No. 2516–026–WV, Dam No. 4 Hydro Station and Project No. 2517–010–WV, Dam No. 5 Hydro Station

July 31, 2003.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the West Virginia Historic Preservation Officer (hereinafter, WVSHPO), the Maryland Historic Preservation Officer (hereinafter, MDSHPO), and the Advisory Council on Historic Preservation (hereinafter, Advisory Council) pursuant to the Council's regulations, 36 CFR part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470 f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project Nos. 2516–026 and 2517–010.

The Programmatic Agreement, when executed by the Commission, the SHPO, and the Advisory Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the licenses until the licenses expire or are terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below. The executed Programmatic Agreement would be incorporated into any licenses issued.

Allegheny Energy Supply Company, LLC, as prospective licensee for Project Nos. 2516–026 and 2517–010, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project Nos. 2516–026 and 2517–010 as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Charles L. Simons, Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146.

Nancy Herholdt, SHPO, West Virginia Division of Culture & History, Historic Preservation Office, 1900 Kanawha Boulevard East, Charleston, WV 25305–0300.

J. Rodney Little, SHPO, Maryland Historical Trust, 100 Community Place, Third Floor, Crownsville, MD 21032–2023.

Douglas Faris, Superintendent, C&O Canal NHP Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, MD 21740.

Vernon Isaac, Chief, Cayuga Nation, P.O. Box 11, Versailles, NY 14168.

Bruce Gonzalez, President, Delaware Nation, P.O. Box 825, Anadarko, OK 73005.

Larry Joe Brooks, Chief, Delaware Tribe of Indians, 220 NW Virginia Ave, Bartlesville, OK 74003.

Leo R. Henry, Clerk, Chief, Tuscarora Nation, 2006 Mt. Hope Road, Via: Lewiston, NY 14092,

Dr. James Kardatzke, Bureau of Indian Affairs, 711 Stewarts Ferry Pike, Nashville, TN 37214.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and eight copies of any such motion must be filed with the Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–19994 Filed 8–5–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[NM–46–1–7605; FRL–7540–1]

Adequacy Status of Submitted State Implementation Plans (SIP) for Transportation Conformity Purposes: MOBILE6 Motor Vehicle Emissions Budgets for the Albuquerque Carbon Monoxide Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found the on-road motor vehicle emissions budget contained in the revision to the Albuquerque Carbon Monoxide Maintenance Plan adequate for transportation conformity purposes. As a result of our finding, the budgets from the submitted attainment demonstration SIP revision must be used for future conformity determinations in the Albuquerque area.

DATES: These budgets are effective August 21, 2003.

FOR FURTHER INFORMATION CONTACT: The essential information in this notice will be available at EPA's conformity Web site: *http://www.epa.gov/oms/transp/conform/adequacy.htm.* You may also contact Ms. Peggy Wade, Air Planning Section (6PD–L), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–7247, E-mail address: *Wade.Peggy@epa.gov.*

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

[1] 18 CFR 385.2010.

''budget(s)'' refers to the mobile source emissions budget for carbon monoxide (CO). The word ''SIP'' in this document refers to the State Implementation Plan revision submitted to satisfy the commitment of the City of Albuquerque to revise its mobile source budgets for the Albuquerque maintenance area with MOBILE6. (MOBILE6 is the most recent emissions factor model, released by EPA on January 29, 2001.)

On May 15, 2003, we received the MOBILE6 SIP revision for the Albuquerque carbon monoxide maintenance area. The revised carbon monoxide budgets, reported in tons per day (tpd), are as follows:

Year	CO (in tpd)
1996	416.31
1999	373.05
2002	369.53
2005	367.28
2006	312.65

On May 23, 2003, the availability of these budgets was posted on EPA's Web site for the purpose of soliciting public comments. The comment period closed on June 23, 2003, and we received no comments.

Today's notice is simply an announcement of a finding that we have already made. EPA Region 6 sent a letter to the Albuquerque Environmental Health Department on July 15, 2003, finding that the motor vehicle emissions budgets in the Albuquerque carbon monoxide maintenance area are adequate and must be used for transportation conformity determinations.

Transportation conformity is required by Section 176(c) of the Clean Air Act. EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the National Ambient Air Quality Standards. The criteria by which EPA determines whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that such an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

On March 2, 1999, the DC Circuit Court of Appeals ruled that budgets contained in submitted SIPS cannot be used for conformity determinations unless EPA has affirmatively found the conformity budget adequate. We have described our process for determining the adequacy of submitted SIP budgets in the policy guidance dated May 14, 1999, and titled Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision. We followed this guidance in making our adequacy determination. You may obtain a copy of this guidance from EPA's conformity Web site or by contacting us at the address above.

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

Dated: July 29, 2003.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

[FR Doc. 03–20032 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7540–6]

Science Advisory Board Staff Office; Request for Nominations for Experts for a Science Advisory Board Panel on Council for Regulatory Environmental Modeling (CREM) Guidance Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office is announcing the formation of a new SAB panel to provide advice on EPA's interim guidance on environmental models and development of a models knowledge base, and is soliciting nominations for members of the panel.

DATES: Nominations should be submitted no later than August 27, 2003.

ADDRESSES: Nominations should be submitted in electronic format through the *Form for Nominating Individuals to Panels of the EPA Science Advisory Board* provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site *www.epa.gov/sab.* To be considered, all nominations must include the information required on that form. Anyone who is unable to submit nominations via this form may contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), as indicated below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nomination may contact Dr. K. Jack Kooyoomjian, (DFO), U.S. EPA Science Advisory Board Staff Office; 1200 Pennsylvania Ave., NW., Suite 6450, Washington, DC 20460; by telephone/voice mail at (202) 564–4557; by fax at (202) 501–0582; or via e-mail at *kooyoomjian.jack@epa.gov.*

SUPPLEMENTARY INFORMATION:

Summary: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office is announcing the formation of a new Advisory Panel, known as the Council for Regulatory Environmental Modeling (CREM) Guidance Advisory Panel to provide advice on issues related to EPA's Interim Guidance on Environmental Models as well as the development of a models knowledge base. The interim guidance is meant to outline best practices in the development, evaluation and use of environmental models that inform the decision-making process, while the knowledge base is a web-accessible inventory of environmental models intended to promote transparency in the data, algorithms, assumptions, and uncertainties underlying models and to enable developers and analysts to more easily identify information needs.

The CREM Guidance Advisory Panel is being formed to provide advice to the Agency, as part of the EPA SAB's mission, established by 42 U.S.C. 4365, to provide independent scientific and technical advice, and recommendations to the EPA Administrator on the technical bases for EPA decision making. The SAB is a chartered Federal Advisory Committee, which reports directly to the Administrator.

Background: In its mission to protect human health and safeguard the natural environment, EPA must often make decisions that attempt to minimize the *potential* human and ecological health risks posed by certain activities (*e.g.*, the release of toxic chemicals to the environment). EPA uses mathematical models to anticipate possible future events, and to simulate the behavior of systems where monitoring data are difficult to obtain or limited due to resource constraints.

In its continuing efforts to assist EPA maintain the scientific credibility of its decisions, the SAB has consistently recommended that EPA institutionalize a cross-Agency approach to model assessment and use. In 1989, the SAB suggested that such an approach would help avoid the inappropriate secondary use of models and reduce duplication in modeling efforts for similar applications thereby conserving Agency resources. In

subsequent years, the SAB addressed a variety of modeling issues, such as the need to conduct sensitivity and uncertainty analyses to better characterize the degree of confidence in model outputs. The SAB further suggested that EPA should collaborate with internal and external model users to obtain feedback that will ultimately facilitate continuous improvement in the Agency's modeling efforts. The EPA's Council for Regulatory Environmental Modeling (CREM) now seeks input from the SAB on two efforts the Agency believes will ultimately strengthen the scientific basis for EPA's model-based decisions: (1) Development of an *Interim Guidance on Environmental Models;* and (2) development of a *Models Knowledge Base.*

Proposed Charge to the SAB CREM Advisory Panel

Charge Issues Related to the Interim guidance on Environmental Models: As noted above, the SAB recommended that EPA establish policies and procedures for the development, evaluation, and use of environmental regulatory models. The EPA's CREM is drafting interim Agency guidance on the development and use of environmental models. These guidelines will ultimately address both policy and science issues, and EPA now turns to the SAB for advice on the latter set of issues. With regard to the *Interim Guidance on Environmental Models,* EPA proposes the following charge to the SAB:

Charge Question 1: Has EPA sufficiently and appropriately identified the best practices, such that decisions based on models developed and used in accordance with these practices may be said to be based on the best available, practicable science?

Charge Question 2: Has EPA sufficiently and appropriately described the goals and methods, and in adequate detail, such that the guidance serves as a practical, relevant, and useful tool for model developers and users? If not, what else would you recommend to achieve these ends?

Charge Question 3: Has EPA sufficiently and appropriately proposed a graded approach, such that users of the guidance can determine the appropriate level of evaluation for a particular model use. If there are deficiencies in the proposed approach, what would you recommend to correct it, and why?

Charge Question 4: Has EPA sufficiently and appropriately provided practicable advice for decision-makers who must deal with the uncertainty inherent in environmental models and their application? What additional advice should EPA consider in dealing with uncertainty, and why?

Charge Issues Related to a Models Knowledge Base: As noted above, the SAB recommended that the CREM coordinate EPA efforts to collaborate and seek input from model developers and users both inside and outside EPA. One mechanism to implement this collaboration is through a web-accessible knowledge base for environmental models. EPA is developing such a knowledge base to communicate more clearly the data, algorithms, assumptions, and uncertainties underlying each model; to facilitate the use of individual models or the combined use of multiple models; and to enable developers and analysts to more easily identify information needs. With regard to the *Models Knowledge Base*, EPA proposes the following charge to the SAB:

Charge Question 5: Has EPA identified, structured and developed the optimal set of information to request from model developers and users, *i.e.*, the amount of information that best minimizes the burden on information providers while maximizing the utility derived from the information?

Charge Question 6: Has EPA provided the appropriate nomenclature needed to elicit specific information from model developers that will allow broad intercomparisons of model performance and application without bias toward a particular field or discipline?

Charge Queston 7: Through the development of this knowledge base, has EPA succeeded in providing: (7a) Easily accessible resource material for new model developers that will help to eliminate duplication in efforts among the offices/regions where there is overlap in the modeling efforts and sometimes communication is limited? (7b) Details of the temporal and spatial scales of data used to construct each model as well as endogenous assumptions made during model formulation such that users may evaluate their utility in combination with other models and propagation of error due to differences in data resolution can be addressed? (7c) Examples of ''successful'' models (*e.g.*, widely applied, have been tested, peer reviewed etc.)? (7d) A forum for feedback on model uses outside Agency applications and external suggestion for updating/improving model structure?

Document Availability: Readers who wish to be introduced to the substance of this review may find the review documents at: *http://www.epa.gov/crem/sab* when they are available. Additional background information is also posted at the EPA's CREM site: *http://www.epa.gov/crem*.

Request for Nominations: Any interested person or organization may nominate qualified individuals for Membership on the Subcommittee. Individuals should have expertise and experience in modeling activities related to one or more of the following areas:

(a) Hazardous waste,
(b) Atmospheric Transport, Transformations and Removal,
(c) Groundwater Hydrology,
(d) Water Quality,
(e) Indoor Air,
(f) Multi-Media Environmental Fate and Transport,
(g) Environmental Management,
(h) Terrestrial and Aquatic Ecology,
(i) Epidemiology,
(j) Public Health,
(k) Sensitivity Analysis,
(l) Uncertainty Analysis,
(m) Exposure and Risk Assessment,
(n) Environmental Law,
(o) Decision Analysis,
(p) Economics,
(q) Computer Sciences,
(r) Spatial Modeling,
(s) Model documentation,
(t) Nomenclature for Environmental Models,
(u) Statistics, and
(v) Information Quality Guidelines, Data Quality and Quality Assurance Procedures.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals to add expertise in the above areas for the Panel. Nominations should be submitted in electronic format through the *Form for Nominating Individuals to Panels of the EPA Science Advisory Board* provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *www.epa.gov/sab*. To be considered, all nominations must include the information required on that form.

The EPA Science Advisory Board Staff Office will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the ''Widecast''), SAB Staff will develop a smaller subset (known as the ''Short List'') for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and their biosketch.

Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for Panel.

For the EPA SAB, a balanced advisory panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will also be required to fill-out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form, which is submitted by EPA SAB Members and Consultants, allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: (*http://www.epa.gov/sab/pdf/epaform3110–48.pdf*). Panel members will likely be asked to attend a least one public face-to-face meeting and several public conference call meetings over the anticipated course of the review.

Dated: July 31, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–20034 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7540–5]

Science Advisory Board Staff Office; Request for Nominations for an Ad Hoc Science Advisory Board Panel on Illegal Competitive Advantage Economic Benefits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.0

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces the formation of a new SAB advisory panel to provide advice to the Agency regarding economic benefit recapture issues, to be referred to as the ''Illegal Competitive Advantage (ICA) Economic Benefit (EB) Advisory Panel'' (ICA EB Advisory Panel) and is soliciting nominations for members of the panel.

DATES: Nominations should be submitted no later than August 27, 2003.

ADDRESSES: Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB website. The form can be accessed through a link on the blue navigational bar on the SAB Website, *http://www.epa.gov/sab.* To be considered, all nominations must include the information required on that form. Anyone who is unable to submit nominations via this form any contact Dr. K Jack Kooyoomijan, Designated Federal Office (DFO), as indicated below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nomination may contact Dr. K. Jack Kooyoomijan, (DFO), U.S. EPA Science Advisory Board, 1200 Pennsylvania Ave., NW., (1400A), Washington DC, 20460, by telephone/voice mail at (202) 564–4557, by fax at (202) 501–0582; or via e-mail at *kooyoomijan.jack@epa.gov.*

For technical information pertaining to the Agency's White Paper and the supporting background documents, please contact Mr. Jonathan Libber the U.S. EPA, Office of Enforcement and Compliance Assurance (Mail Code 2248A), by telephone/voice mail at (202) 564–6102, by fax at (202) 564–9001; or via e-mail at *libber.jonathan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Summary

The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office is announcing the formation of a new Advisory Panel to review and provide advice to the Agency concerning the White Paper addressing the ''illegal competitive advantage'' (ICA) issues related to EPA's policy of recapturing violator's economic benefit from environmental noncompliance. Most of the Agency's cases involving economic focus on the financial gain that arises from relatively straightforward delayed and/or avoided pollution control costs, and the Agency's ''BEN'' (Benefits) computer model calculates the economic benefit in those situations. Where ICA issues arise, the economic benefit derived from scenarios that do not fit the BEN model's simplified paradigm of avoided and/or delayed expenditures may or may not apply. The SAB is soliciting nominations to establish the members of the new Panel to be known as the Illegal Competitive Advantage (ICA) Economic Benefit (EB) Advisory Panel (ICA EB Advisory Panel).

The ICA EB Advisory Panel is being formed to provide advice to the Agency, as part of the EPA SAB's mission, established by 42 U.S.C. 4365, to provide independent scientific and technical advice, and recommendations to the EPA Administrator on the technical bases for EPA decision making. The Board is a chartered Federal Advisory Committee, which reports directly to the Administrator.

Background

A cornerstone of EPA's Office of Enforcement and Compliance Assurance (OECA) civil penalty program is recapture of the economic benefit that a violator may have gained from illegal activity, whenever EPA can effectively measure that gain. Recapture helps level the economic playing field, discouraging and preventing visitors from obtaining an unfair financial advantage over their competitors who made timely and necessary investments in environmental compliance. Since 1984, EPA's policy has been to recapture a violator's economic benefit from violating the law (See document entitled ''Policy on Civil Penalties,'' specifically at page 3 and its companion document, A Framework for Statute-Specific Approaches to Penalty Assessments at pages 6–11. EPA's Office

of Enforcement and Compliance Assurance (OECA) has taken lead to develop these approaches to capture the economic benefits. Both of the above documents, which describe such policies, can be found at the following URL *http://www.indecon.com.*

In some, but not all ways, the analysis is similar to the field of commercial damages, comparing a hypothetical ''but-for'' scenario to the actual state of the world. Often the violations involve the failure to install pollution control equipment in a timely fashion and the consequent failure to incur operational and maintenance costs during the period of noncompliance. In most of these cases, a safe assumption is that all other aspects of the company's operations are identical in both the compliance (*i.e.,* ''but for'') and noncompliance (*i.e.,* ''actual'') scenarios. Based on this assumption, the analysis becomes a relatively straightforward net present value calculation, focusing on the cost savings from delayed installation and avoided operation of the pollution control equipment. In the mid-1980s, EPA developed the ''BEN'' computer model to allow lay persons to perform the necessary present value calculations in these cases. In other situations that may involve deliberations in a courtroom setting, the Agency may rely for its economic benefit calculations upon an expert witness, who employs whatever analytical tool the expert deems most suitable for application to that particular case. That tool may sometimes be the BEN model, but the expert would be using BEN only if its analytical framework fit the expert's approach for that particular case. BEN's application in such a courtroom setting would therefore be similar to using a straight-forward spreadsheet application similar to the use of expert testimony for the basis of the expert's calculations. As a practical matter since 1995, the Agency has been mitigating civil penalties when violators agree to perform supplemental environmental projects (SEPs).

Proposed Charge to the Panel

The Agency is asking the SAB's ICA EB Advisory Panel to review and provide advice on a White Paper entitled ''Identifying and Calculating Economic Benefit that Goes Beyond Avoided and/or Delayed Costs.'' Specific charge questions include the following:

(a) Are there any categories of cases that would be useful for the Agency to consider in calculating the ICA economic benefit, other than those that are identified in the White Paper? Should any of these categories be combined?

(b) How can the Agency more accurately characterize the types of cases that are described in the White Paper? Have any of the examples and counter-examples in the White paper been misidentified with regard to whether they are amenable to the BEN model's simplifying paradigm?

(c) Are there any suggestions for modifying the described analytical approach to calculate the economic benefits and;

(d) The Agency's proposed approach strives to avoid any double-counting of the benefit by laying out all the relevant cash flows stemming from the violations, as opposed to simply adding on the additional calculations to a BEN run. What additional measures (if any) should the Agency put in place to avoid such potential double-counting?

Document Availability

The White Paper entitled ''Identifying and Calculating Economic Benefit That Goes Beyond Avoided and/or Delayed Costs'' to be reviewed by the Panel can be obtained from the EPA Web site at: *http://www.epa.gov/Compliance/civil/programs/econmodels/index.html.* For further information regarding the White Paper, please contact Mr. Jonathan Libber at the address provided earlier in this notice. The following informational background documents are also provided under *http://www.indecon.com*, and include the following: BEN Computer Model Version 2.0; BEN Users Manual dated September 1999, Policy on Civil Penalties; and A Framework for Statute-Specific Approaches to Penalty Assessments.

It is the Peer Review White Paper entitled ''Identifying and Calculating Economic Benefit That Goes Beyond Avoided and/or Delayed Costs'' that is the focal point of this upcoming advisory. The other documents serve as background information for the ICA EB Advisory Panel and the interested public. Additional information will be made available at the SAB Web site at: *http://www.epa.gov/sab* where the SAB will post notices when it develops the narrow cast list of candidates, lists the biosketches of the shortlist candidates, receives comments on the shortlist candidates, makes the final selection of the ICA EB Advisory Panel, posts copies of the **Federal Register** notices of upcoming meetings, posts agendas of the ICA EB Advisory Panel, and posts any other related information specific to the SAB Advisory on this topic.

SAB Staff Office Request for Nominations

Any interested person or organization may nominate qualified individuals for membership on the Panel. Individuals should have expertise in one or more of the following areas: (a) *Financial Economics,* which includes Corporate Finance, (b) *Economic Benefit Recapture Issues,* (c) *Business/Commercial Damages,* which includes Anti-Trust Law, Torts and Economics, (d) *Business Economics and Competitive Strategy,* which includes aspects of Statistical Decision-Making and Game Theory, as well as Competitive Effects of Vertical Integration, and Quantitative Economics, and (e) *Industrial Organization,* in the context of environmental regulations and their enforcement, as well as Environmental and Regulatory Economics, Environmental Ethics and Sustainability in this context.

Process and Deadline for Submitting Nominations

Any interested person or organization may nominate qualified individuals to add expertise in the above areas for the Pane. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB website. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *http://www.epa.gov/sab.* To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations using this form may contact Dr. K. Jack Kooyoomjian at the mailing address in the section above entitled, **FOR FURTHER INFORMATION CONTACT:** Nominations should be submitted in time to arrive no later than August 27, 2003. Any questions concerning either this process or any other aspects of the notice should be directed to Dr. Kooyoomjian.

The EPA Science Advisory Board Staff Office will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the ''Widecast''), SAB Staff will develop a smaller subset (known as the ''Short List'') for more detailed consideration. In addition to the expertise listed above in Item #5, criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB on the SAB Web site at:

http://www.epa.gov/sab, and will include, for each candidate, the nominee's name and their biosketch. Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for the Panel.

For the EPA SAB, a balanced advisory panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.,* financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will also be required to fill-out the ''Confidential Financial Disclosure Form for Special Government employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form, which is submitted by EPA SAB Members and Consultants, allows government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: (*http://www.epa.gov/sab/pdf/epaform3110–48.pdf*). The Panel members will likely be asked to attend up to two public face-to-face meetings and several public conference call meetings over the anticipated course of the review.

Dated: July 31, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–20035 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7540–2]

Availability of ''Award of Grants and Cooperative Agreements for the Special Projects and Programs Authorized by the Agency's FY 2003 Appropriations Act''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled ''Award of Grants and Cooperative Agreements for the Special Projects and Programs Authorized by the Agency's FY 2003 Appropriations Act.'' This memorandum provides information and guidelines on how EPA will award and administer grants for the special projects and programs identified in the State and Tribal Assistance Grants (STAG) account of the Agency's fiscal year (FY) 2003 Appropriations Act (Pub. L. 108–7). The STAG account provides budget authority for funding identified water, wastewater and groundwater infrastructure projects, as well as budget authority for funding the United States-Mexico Border program, the Alaska Rural and Native Villages program, the National Wastewater Treatment Demonstration Program, and the Long Island Sound Restoration Program. Each grant recipient will receive a copy of this document from EPA.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for electronic access of the guidance memorandum.

FOR FURTHER INFORMATION CONTACT: Larry McGee, (202) 564–0619 or *mcgee.larry@epa.gov.*

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from EPA's homepage, *http://www.epa.gov/owm/mab/owm0322.pdf.*

Dated: July 29, 2003.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03–20033 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7540–4]

Science Advisory Board Staff Office; Notification of Upcoming Science Advisory Board Meetings of the Multimedia, Multipathway, and Multireceptor Risk Assessment (3MRA) Modeling System Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces four conference calls and two face-to-face SAB meetings of the Multimedia, Multipathway, and Multireceptor Risk Assessment (3MRA) Modeling System Panel.

DATES: August 15, 2003. A public teleconference call meeting of the 3MRA Panel will be held from 10 a.m. to 12 noon (Eastern Time).

August 26–27, 2003. A face-to-face meeting of the 3MRA Panel will be held from 9 a.m. August 26 to 4 p.m. August 27 (Eastern Time).

September 16, 2003. A public teleconference call meeting of the 3MRA Panel will be held from 3 to 5 p.m. (Eastern Time).

October 9, 2003. A public teleconference call meeting of the 3MRA Panel will be held from 1 p.m. to 4 p.m. (Eastern Time).

October 28–30, 2003. A face-to-face meeting of the 3MRA Panel will be held from 9 a.m. October 28 to 4 p.m. October 30 (Eastern Time).

November 24, 2003. A public teleconference call meeting for the 3MRA Panel will be held from 1 to 4 p.m. (Eastern Time).

ADDRESSES: Participation in the four teleconference meetings will be by teleconference only. The meeting location for both face-to-face meetings of the 3MRA Panel will be in the greater Washington, DC. metropolitan area. The meeting location will be announced on the SAB Web site, *http://www.epa/sab* two weeks before the meeting.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the teleconference meetings may contact Ms. Sandra Friedman, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2526; or via e-mail at: *friedman.sandra@epa.gov,* or Ms. Delores Darden, EPA Science Advisory Board Staff at telephone/voice mail: (202) 564–2282; or via e-mail at *darden.delores@epa.gov.* Any member

of the public wishing further information regarding the SAB or the 3MRA Panel may contact Ms. Kathleen White, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail at (202) 564–4559; or via e-mail at *white.kathleen@epa.gov*. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Background: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, Notice is given that the 3MRA Panel will hold public teleconferences, as described above, to prepare for the public meetings, also described above, to further the Panel's review, and to discuss approval of the Panel's final report. The purpose of the public meetings is to advise the Agency on its Multimedia, Multipathway, and Multireceptor Risk Assessment (3MRA) Modeling System.

Background on the SAB, the 3MRA Panel, and this review was provided in a **Federal Register** notice published on April 11, 2003 (68 FR 17797–17800).

More information regarding this review can be found at the SAB Web site at *http://www.epa.gov/sab/panels/3mramspanel.html*. The review documents and background information are located at *http://www.epa.gov/epaoswer/hazwaste/id/hwirwste/risk.htm*. Individuals who are unable to access the documents electronically may contact Mr. Stephen Kroner of the Office of Solid Waste at (703) 308–0468 or via e-mail to *kroner.stephen@epa.gov* to make other arrangements. A very limited number of paper copies can be made available in special circumstances.

Procedures for Providing Public Comment: It is the policy of the EPA Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at the 3MRA Panel's meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) in writing (e-mail, fax or mail) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact Ms. White at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 24, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–20036 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0153; FRL–7316–7]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0153, must be received on or before September 5, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Diana Horne, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8367; e-mail address:*horne.diana@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0153. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket

facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at*http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0153. The system is an''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to*opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0153. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2003–0153.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2003–0153. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. *File symbol*: 73512–E. *Applicant*: Interregional Research Project 4 (IR-4), Rutgers University, Technology Center of New Jersey, 681 U.S. Highway 1 South, North Brunswick, NJ 08902–3390 on behalf of Morse Enterprises Limited, Inc., Brickell East, Floor Ten, 151 South East 15 Road, Miami, FL 33129. *Product name*: Yeast Hydrolysate Liquid. *Active ingredient*: Yeast extract hydrolysate from *Saccharomyces cerevisiae* at 2.5%. *Proposed classification/Use*: None. Manufacturing use product for management of plant diseases.

2. *File symbol*: 73512–R. *Applicant*: Interregional Research Project 4 (IR–4). *Product name*: KeyPlex 350. *Active ingredient*: Yeast Extract hydrolysate from *Saccharomyces cerevisiae* at 0.063%. *Proposed classification/Use*: None. For use in management of plant diseases.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: July 28, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–19917 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0261; FRL–7320–4]

Penoxsulam; Notice of Filing a Pesticide Petition To Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0261, must be received on or before September 5, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 113)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0261. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to

access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

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C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0261. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0261. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0261. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

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You may find the following suggestions helpful for preparing your comments:

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2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Dow AgroSciences LLC

PP 3F6542

EPA has received a pesticide petition (3F6542) from Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of 2-(2,2-difluoroethoxy)-6-trifluoromethyl-*N*-(5,8-dimethoxy [1,2,4]triazolo-1,5c pyrimidin-2-yl) benzenesulfonamide, (penoxsulam, DE–638) in or on the raw agricultural commodity rice raw agricultural commodities (RACS) and rice processed products at 0.01 part per million (ppm) for rice grain, 0.05 ppm for rice straw, 0.01 ppm for rice hull, 0.01 ppm for rice bran, and 0.01 ppm for polished rice. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of residue study in rice, treated with ^{14}C–labeled DE–638 (2–position on the triazolopyrimidine ring or uniformly labeled in the phenyl ring) at 100 grams (g/ha), demonstrated that no significant residues (0.003–0.022 ppm) were found in mature straw and grain. The residues were fractionated by reversed-phase high performance liquid chromotography (HPLC) and consisted of DE–638, 5–OH DE–638 (identified by retention time), and two unidentified peaks. Each component was <0.01 µg/g (DE–638 equivalents). Based on the plant metabolism studies, the tolerance expression is the parent, penoxulam.

Metabolism studies in livestock animals with ^{14}C–labeled DE–638 (2–position on the triazolopyrimidine ring or uniformly labeled in the phenyl ring) at a concentration equivalent to about 10 ppm in the diet indicated that approximately 99% of the administered dose was eliminated in the excreta. The low levels of residues (0.002–0.07 ppm) in fat and edible tissues, milk or eggs demonstrate that residues due to DE–638 would not accumulate in the animals. Additionally, the dose levels in these studies are about 200 to 1,000 times higher than the theoretical maximum exposure in the animal diet of rice commodities treated with DE–638, therefore, livestock feeding studies are not considered necessary.

A bioconcentration study on crayfish was conducted to determine the residues in edible tissues and estimate the bioconcentration factor. Crayfish (*Procambarus clarkii*) were exposed for 14 days to ^{14}C-DE–638 under flow-through conditions at an average exposure concentration of 494 µg/L (C_w), equivalent to approximately 10x the initial estimated environmental concentration (EEC) based on the maximum application rate of 50 grams active ingredient/ha and one hectare rice paddy with 10 centimeters (cm) depth water.

Plateau of residues in crayfish occurred within 5 days following initiation of exposure with residues in edible tissues reaching an average steady-state concentration of 0.009 µg/g (C_f). The bioconcentration factor (C_f/C_w) was estimated to be <0.1 milligram per liter/gram (mg/L/g), indicating that penoxsulam has very low potential to bioconcentrate in edible tissues of crayfish. Based on the very low residues of <0.01 µg/g (method limit of detection (LOD) is 0.003 µg/g) in edible tissues of crayfish exposed to 10x the peak EEC, no tolerance in crayfish is required.

2. *Analytical method*. An analytical method has been developed and validated to determine the residues of penoxsulam in rice grain, straw, and processed products. The method was based on liquid chromatography with positive ion electrospray tandem mass spectrometry molecular size (LC/MS/MS) with LOD of 0.002 µg/g and limit of quantitation (LOQ) of 0.01 µg/g. The method has been successfully validated by an independent laboratory.

B. Toxicological Profile

1. *Acute toxicity*. The acute toxicity of penoxsulam is considered low. The acute oral and dermal LD_{50s} were greater than 5,000 milligrams/kilogram (mg/kg), while the acute inhalation LC_{50} was greater than the highest attainable aerosol concentration (3.50 mg/L). Only very slight, transient dermal irritation was seen, and mild eye irritation was noted. Penoxsulam was negative for skin sensitization in a Magnussen and Kligman maximization test involving intradermal injection of penoxsulam with an adjuvant.

2. *Genotoxicity*. Penoxsulam was negative for genotoxicity when tested in *in vitro* and *in vivo* systems.

3. *Reproductive and developmental toxicity*. Penoxsulam did not have any effect on reproductive parameters at dose levels that induced treatment-related effects in parental rats. At the highest dosage tested (HDT) (300 mg/kg/day), body weights and weight gains in both males and females were depressed, liver and/or kidney weights were increased, and histologic changes were noted in the liver (males) and kidneys (females). At 100 mg/kg/day, increased liver weights were recorded in males, with no histologic correlate, and histologic changes noted in the kidneys of females. Transient decreases in pup body weights were seen at the HDT, but dietary concentrations were targeted for adults and consumption of treated diets by the pups resulted in dose levels to the pups approximately 3–fold higher than in adults. A teratogenic potential was not demonstrated for penoxsulam in either rats or rabbits.

4. *Subchronic toxicity*. Dietary exposure to penoxsulam identified the liver and/or urinary tract (kidneys and bladder) as target organs in rats, mice, and dogs following a 4–week and 13–week administration. Effects on the liver were reflected in increased liver weights and hepatocellular hypertrophy, but these effects were not associated with increases in mixed function oxidase (MFO) enzyme activity. Effects noted in the kidneys included crystal deposition, most likely from precipitation of penoxsulam from the urine, with resultant irritation, inflammation, and hyperplasia of renal pelvic transitional epithelium. Other than the crystal deposition in the kidneys, all effects following subchronic exposure to rats appeared to be reversible. Very high doses were associated with significant decreases in body weight, weight gain, and feed consumption.

5. *Chronic toxicity*. Chronic exposure in the dog indicated that the renal effects were not exacerbated with long-term exposure. Following long-term exposure in rats, the kidneys and urinary bladder were the primary target organs. Histologic changes seen at the end of 2 years of exposure consisted of inflammation and hyperplasia of the renal pelvic transitional epithelium, crystal deposition in the kidneys and urinary bladder, and hyperplasia of the mucosa of the urinary bladder. In the mouse, the liver was the primary target organ, and histologic changes consisted of hepatocellular hypertrophy. There were no treatment-related increases in tumors in either rats or mice. The incidence of mononuclear cell leukemia (Fischer rat leukemia) was increased in all groups of treated male rats compared to the concurrent controls. However, the incidences in the treated groups were identical across a 50–fold increase in dosage, and well within the range of control values reported in the literature.

Using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), it is proposed that penoxsulam be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. Dow AgroSciences LLC believes there was no evidence of carcinogenicity in an 18–month mouse feeding study and a 24–month rat feeding study at all dosages tested.

6. *Animal metabolism*. Orally administered penoxsulam is rapidly absorbed, excreted and extensively metabolized in both male and female rats, thus, indicating that penoxsulam is not expected to accumulate in biological systems. The majority of the residue was associated with the parent, penoxsulam. Several metabolites were also observed but the vast majority were <1% of the administered dose. The major route of metabolism involves O-demethylation, producing the OH-Penoxsulam metabolite followed by conjugation.

7. *Metabolite toxicology*. A metabolism study with penoxsulam in rice revealed the presence of the parent, a desmethylation metabolite (5-OH-penoxsulam), and two other polar metabolites, which may represent conjugates of the desmethylated metabolite. The 5-OH-penoxsulam metabolite and its glucuronide and glutathione conjugates have also been identified in the plasma and liver of rats; therefore, plant metabolites are considered of little toxicological concern.

8. *Neurotoxicity*. Penoxsulam has been shown to have no neurotoxicologic potential based on acute and subchronic studies.

9. *Endocrine disruption*. Penoxsulam did not have any effects on endocrine organs or tissues in mice, rats or dogs in any of the studies conducted. There were no indications of effects on fetal development in either rats or rabbits, or on reproductive performance in rats. Based on the lack of any effects on the endocrine system, penoxsulam is not considered an endocrine disrupter.

C. Aggregate Exposure

Dietary exposure. Based on the rapid degradation of penoxsulam, no surface water or ground water contamination is expected. This agrees with EPA Tier I modeling carried out on penoxsulam. Therefore, drinking water will not be a significant route of exposure. Dietary exposure is very low as previously mentioned. In addition, a rotational crop study showed no carryover of penoxsulam related residues in any representative test crop. There are no residential uses for this compound. As a result, the only potential for exposure is dietary, which is acceptable. Therefore, aggregation of exposures is not necessary.

D. Cumulative Effects

Currently, no methodologies are available to resolve the complex scientific issues concerning common mechanism of toxicity and cumulative exposure and risk. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. Thus, Dow AgroSciences LLC believes it is appropriate to consider only the potential risks of penoxsulam in its exposure assessment.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions described above, and based on the completeness and reliability of the toxicity data, the aggregate exposure to penoxsulam, as determined under the guidance of the FQPA, will utilize no more than 0.1% of the RfD from the dietary exposure for all subgroups of the U.S. population. Generally and under the Food Quality Protection Act (FQPA), EPA has no concern for exposures below 100% of the reference dose (RfD) because the RfD represents the level at or below which daily dietary exposure over a lifetime will not pose appreciable risks to human health. Additionally, the calculated drinking water levels of concern (DWLOC) was substantially higher than the potential penoxsulam concentration in water. Therefore, there is a reasonable certainty that no harm will result to the general U.S. population from aggregate exposure to penoxsulam residues from proposed use.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of penoxsulam, data from developmental toxicity studies in rats and rabbits and a multi-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects from exposure of both parents to the pesticide on the reproductive capability and potential systemic toxicity of

mating animals and on various parameters associated with the well being of offspring. FFDCA section 408 provides that EPA may apply an additional safety factor (SF) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base for penoxsulam relative to prenatal and postnatal effects for children is complete. Overall, penoxsulam had no effect on reproduction or embryo-fetal development at any dosage tested. No quantitative or qualitative susceptibility was seen following prenatal and postnatal exposures. In a rabbit developmental toxicity study, effects on *in-utero* survival were observed only at a dose level where clear maternal toxicity was seen. In a 2–generation reproductive toxicity study in rats, no effects on reproductive performance were observed and effects on neonatal growth were seen only at a dose level where parental toxicity was seen. In addition, the no observed adverse effect level (NOAEL) in the chronic rat study (5 mg/kg/day), used to calculate the chronic RfD (0.05 mg/kg/day), is already lower than the acute NOAEL from the rabbit developmental study (25 mg/kg/day). Therefore, an additional FQPA uncertainty factor (UF) is not needed and the RfD at 0.05 mg/kg/day is appropriate for assessing risk to infants and children. Using the conservative exposure assumptions previously described, the percent RfD utilized by the potential exposure to residues of penoxsulam on rice is <0.1% for non-nursing infants, the population subgroup predicted to be potentially the most highly exposed. Risk for developmental toxicity from acute exposure to penoxsulam was evaluated for pregnant females (13+ years old). The high-end margin of exposure value of >300,000 (0.03% of acute RfD) is well above the acceptable 100. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Dow AgroSciences LLC concludes with reasonable certainty that no harm will result to infants and children, females 13+ years old and the prenatal development of infants from the aggregate exposure to penoxsulam residues.

F. International Tolerances

There are no Codex maximum residue levels established for residues of penoxsulam on/in rice and rice.

[FR Doc. 03–20015 Filed 8–5–03; 8:45

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0152; FRL–7316–8]

Yeast Extract Hydrolysate from Saccharomyces Cerevisiae; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket indentification (ID) number OPP–2003–0152, must be received on or before September 5, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Diana M. Horne, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8367; e-mail address: *horne.diana@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0152. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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1. Explain your views as clearly as possible.
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3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodites under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4

Morse Enterprises Limited

PP 2E6383

EPA has received a pesticide petition (PP 2E6383) from Interregional Research Project Number 4 (IR–4), Technology Centre of New Jersey, Rutgers University, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide yeast extract hydrolysate from *Saccharomyces cerevisiae* in or on all food commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Morse Enterprises Limited has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Morse Enterprises Limited and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Yeast extract hydrolysate from *Saccharomyces cerevisiae*, the active ingredient, is mixed with micronutrients to formulate the end use product known as KeyPlex 350. KeyPlex 350 is applied at 1 to 3 quarts per acre as a foliar spray. Applications are generally repeated at 14 to 21–day intervals. KeyPlex 350 aids in the prevention of certain plant diseases, such as post-bloom fruit drop and greasy spot diseases of citrus, and bacterial leaf spot disease of tomatoes.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Yeast extract hydrolysate from *Saccharomyces cerevisiae* is mixed with micronutrients to formulate the end use product known as KeyPlex 350. KeyPlex 350 contains 0.063% yeast extract hydrolysate from *Saccharomyces cerevisiae* in combination with a micronutrient fertilizer. KeyPlex 350 is the end use product. Hereinafter the term ''yeast extract hydrolysate'' is used to mean yeast extract hydrolysate from *Saccharomyces cerevisiae*.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* This section is not applicable, as this notice proposes an exemption from the requirement of a tolerance.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method for residues is not applicable, as this notice proposes an exemption from the requirements of a tolerance.

C. Mammalian Toxicological Profile

1. *Acute toxicity.* An acute oral toxicity study (OPPTS Harmonized Guideline 870.1100) conducted in rats with the end use product KeyPlex 350 containing 0.063% yeast extract hydrolysate showed that KeyPlex 350 at 5,000 milligrams/kilogram (mg/kg) is not toxic to rats. Furthermore, no test material-related lesions were revealed on the macroscopic necropsy examinations conducted at termination of the test.

2. *A primary dermal irritation study.* (OPPTS Harmonized Guideline 870.2500) conducted in rabbits with the end use product KeyPlex 350 showed that KeyPlex 350 only caused mild or very slight irritation to the skin of 1 of 6 rabbits.

3. *A primary eye irritation study.* (OPPTS Harmonized Guideline 870.2400) conducted in rabbits with the end use product KeyPlex 350 showed that KeyPlex 350 was only moderately irritating. Conjunctiva was noticed in all rabbits 1–hour after treatment; all symptoms cleared by 72 hours post-treatment.

Yeast extracts are considered generally recognized as safe (GRAS) and are approved by the Food and Drug Administration (FDA) as direct food additives (21 CFR 184.1983). Yeast extracts are used as a flavor improver in hundreds of foods at 0.1% to 2% in the final consumed product. The other ingredients in KeyPlex 350 are already approved as inert materials or are common fertilizer ingredients.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* The potential dietary exposure of the general public to yeast extract hydrolysate residues resulting from the use of KeyPlex 350 on food crops is not expected to be significant. The public is exposed to yeast extract through its use as a direct food additive.

ii. *Drinking water.* It is not anticipated that residues of yeast extract hydrolysate will occur in drinking water due to its low application rate.

2. *Non-dietary exposure.* There may be non-dietary exposure to yeast extract hydrolysate from non-pesticidal uses of yeast extracts, but significantly increased non-dietary exposure and non-occupational exposure from yeast extract hydrolysate when used as a pesticide is not expected.

E. Cumulative Exposure

Because of the lack of toxicity of an 0.063% solution of yeast extract hydrolysate and because of the fact that yeast extracts are already present in the diet at 0.1% to 2% in hundreds of food products, no cumulative mode of exposure is expected for yeast hydrolysate and other substances having a common mode of action.

F. Safety Determination

1. *U.S. population*. The use of products containing yeast extract hydrolysate, which lacks toxicity and is used in such low concentrations, is compatible with EPA's objectives to register reduced risk pesticides. Based on its lack of toxicity and the fact that yeast extracts are already present in the diet, there is reasonable certainty that no harm will result from aggregate exposure of the U.S. population, including infants and children, to residues of yeast extract hydrolysate. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. Yeast extract hydrolysate is applied at low rates and with its lack of toxicity and its history of safe use, it does not pose a safety concern.

2. *Infants and children*. Based on the lack of toxicity of yeast extract hydrolysate, there is a reasonable certainty that no harm to children or adults will result from aggregate exposure to yeast hydrolysate. Exempting yeast extract hydrolysate from the requirement of a tolerance should pose no significant risk to humans.

G. Effects on the Immune and Endocrine Systems

Yeast extract hydrolysate is a naturally occurring biochemical. To date there is no evidence to suggest that yeast extract hydrolysate functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor.

H. Existing Tolerances

There are no existing tolerances for yeast extract hydrolysate in the United States.

I. International Tolerances

There are no known approved Codex maximum residue levels established for residues of yeast extract hydrolysate.

[FR Doc. 03–19916 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0240; FRL–7319–3]

Cyromazine; Notice of Filing of Pesticide Petitions to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0240, must be received on or before September 5, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Industry (NAICS 111, 112, 311, 32532), e.g., Crop production, Animal production, Food manufacturing, and Pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0240. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and

without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0240. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0240. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0240.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0240. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2);

however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petitions are printed below as required by FFDCA section 408(d)(3). The summary of the petitions were prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 2E6507 and PP 2E6510

EPA has received pesticide petitions (PP 2E6507 and PP 2E6510) from IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.414 by establishing tolerances for residues of cyromazine, (N-cyclopropyl-1,3,5-triazine-2,4,6-triamine) in or on the following raw agricultural commodities: Leek; onion, green; onion, potato; onion, tree; onion, welsh; and shallot, fresh leaves at 3.0 parts per million (ppm) (2E6507), garlic, bulb; garlic great-headed, bulb; onion, dry bulb; rakkyo, bulb; and shallot, bulb at 0.2 ppm (2E6507), vegetable brassica, leafy, group 5, except broccoli at 10 ppm (2E6510), broccoli at 1.0 ppm, turnip, greens; cabbage, abyssinian; cabbage, seakale; and hanover salad, leaves at 10 ppm, and kidney of cattle, goats, hogs, horses, and sheep at 0.2 ppm, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm (2E6510). IR-4 also proposed that tolerances for residues of cyromazine in or on dry bulb onion at 2.0 ppm and green onion at 0.1 ppm established under 40 CFR 180.414(a) and Chinese cabbage and Chinese mustard at 3.0 ppm established under 40 CFR 180.414(c) be deleted when the proposed tolerances are established. Chinese cabbage and Chinese mustard are included in the Brassica leafy vegetable group. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This summary has been prepared by the Syngenta Crop Protection Incorporated.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of cyromazine in plants is adequately understood for the purposes of these tolerances.

2. *Analytical method*. Methods AG-408 and AG-417 as listed in the Food and Drug Administration's Pesticide Analytical Manual (PAM), Vol-II are adequate to enforce the proposed tolerances.

3. *Magnitude of residues*. Residue field tests were conducted in typical growing regions for Brassica and bulb vegetables and turnip tops. The data collected support the proposed tolerances of 10.0 ppm for Brassica leafy vegetables, 10.0 ppm for turnip tops and 3.0 ppm for bulb vegetables.

B. Toxicological Profile

1. *Acute*. A rat acute oral toxicity study with a lethal dose $(LD)_{50}$ of approximately 3,387 milligrams/kilogram (mg/kg) (toxicity category III; moderately toxic). A rat acute dermal toxicity study with a LD_{50} greater than 3,100 mg/kg (toxicity category III; moderately toxic). A rat acute inhalation study with a lethal concentration $(LC)_{50}$ greater than 2.9 mg/kg (toxicity category IV; slightly toxic). A primary eye irritation study in the rabbit that showed no eye irritation. A primary dermal irritation study in the rabbit that showed mild irritation (toxicity category; IV). A dermal sensitization study in the guinea pig that showed no sensitization.

2. *Genotoxicity*. Studies on gene mutation and other genotoxic effects showed no evidence of point mutation in an Ames test; no indication of mutagenic effects in a dominant lethal test; and no evidence of mutagenic effects in a nucleus anomaly test in Chinese hamsters.

3. *Reproductive and developmental toxicity*. In a rat developmental toxicity study, the maternal no observed adverse effect level (NOAEL) was 100 mg/kg/day. The maternal lowest observed adverse effect level (LOAEL) was 300 mg/kg based on decreased body weight gain and clinical observations. The developmental NOAEL was 300 ppm. The developmental LOAEL was 600 mg/kg based upon an increase of minor skeletal variation.

In a rabbit developmental toxicity study, the maternal NOAEL was 10 mg/kg. The maternal LOAEL was 30 mg/kg based upon decreased body weight gain and food consumption. The developmental NOAEL/LOAEL was greater than or equal to 60 mg/kg.

In a multi-generation study in rats, the systemic NOAEL was 30 ppm (1.5 mg/kg). The systemic LOAEL was 1,000 ppm (50 mg/kg) based upon decreased body weights associated with decreased food consumption. The developmental/offspring systemic NOAEL was 1,000 ppm. The developmental/offspring systemic LOAEL was 3,000 ppm (150 mg/kg) based upon decreased body weight at birth through weaning. There were no effects on reproductive parameters at the highest dose tested (HDT) (3,000 ppm).

4. *Subchronic toxicity*. In a 6–month feeding study in dogs, the NOAEL was 30 ppm (0.75 mg/kg). The LOAEL was 300 ppm (7.5 mg/kg) based upon decreased hematocrit and decreased hemoglobin. Groups of male and female beagle dogs (4/sex/dose) were fed diets containing cyromazine at 0, 30, 300, or 3,000 ppm (0, 0.75, 7.5, or 75 mg/kg/day, respectively) for 6–months. No treatment-related effects were observed in survival, clinical signs or body weight parameters. Pronounced effects on hematologic parameters were manifested as decreases in hematocrit and hemoglobin levels at 300 and 3,000 ppm.

5. *Chronic toxicity*. In a 24–month feeding study in rats the NOAEL for the study was 30 ppm (1.5 mg/kg/day). The LOAEL was 300 ppm (15.0 mg/kg) based on decreased body weight. In a 24–month mouse chronic feeding carcinogenicity study the NOAEL was 50 ppm (7.5 mg/kg/day). The LOAEL was 1,000 ppm (150.0 mg/kg) based upon decreased body weight. There was no evidence of carcinogenicity at 3,000 ppm (450 mg/kg). In a 24–month rat chronic feeding carcinogenicity study the NOAEL was greater than 3,000 ppm (150 mg/kg) (HDT). There was no evidence of carcinogenicity at 3,000 ppm.

Cancer Peer Review Committee determined that there is no evidence of carcinogenicity in studies in either the mouse or rat. Based upon this determination it can be concluded that cyromazine does not pose a cancer risk.

6. *Animal metabolism*. The metabolism of cyromazine has been adequately characterized in the rat, goat, and chicken.

7. *Metabolite toxicology*. EPA has removed melamine, a metabolite of cyromazine, from the tolerance expression as a residue of toxicological concern. For more information on melamine, see the **Federal Register** of September 15, 1999 (64 FR 50043) (FRL–6098–7).

8. *Endocrine disruption*. Cyromazine does not belong to a class of chemicals proven to have adverse effects on the endocrine system. There is no evidence that cyromazine has any effect on endocrine function in developmental or reproduction studies.

C. Aggregate Exposure

1. *Dietary exposure—Food*. For the purposes of assessing the potential dietary exposure under the proposed tolerances, Syngenta Crop Protection has estimated aggregate exposure from all crops for which tolerances are established.

i. *Acute*. There were no toxicological effects attributed to a single exposure (dose) observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, there is a reasonable certainty of no harm from acute dietary exposure.

ii. *Chronic*. The cyromazine chronic dietary exposure assessment utilized the Dietary Exposure Evaluation Model (DEEM®), version 7.76 from Exponent. All consumption data from this assessment were taken from the USDA's Continuing Survey of Food Intake by Individuals (CSFII) with the 1994–96 consumption database and the Supplemental CSFII children's survey (1998) consumption database.

The cyromazine Tier III chronic dietary exposure assessment was based upon residue field trial results, and tolerance residues for crops when no field trial data were available. Anticipated residue estimates were used for milk, meat, fat, and meat by-products of cattle, goats, hogs, horses, and sheep; and for all other commodities tolerance level residues were assumed. The maximum percent crop treated values for cyromazine were obtained from the Doane's Market Survey Database (1999–2001) and used for lima beans (0.8%), cantaloupe (3.9%), peppers (8.6%), tomatoes (2.9%), celery (68.9%), lettuce (9.7%), spinach (19.5%), and onions (0.2%). For all other registered or proposed crop uses, it was assumed that 100% of these crops were treated.

2. *Drinking water*. EPA uses the FQPA Index Reservoir Screening Tool (FIRST) to estimate pesticide concentrations in surface water and screening concentration in ground water (SCI-GROW) to estimate pesticide concentrations in ground water. FIRST incorporates an index reservoir environment and includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact that processing (mixing, dilution, or treatment) would have on the removal of pesticides from the water source. The primary use of these models by EPA is to provide a Tier I assessment to estimate the concentration of pesticides in drinking water.

Estimated Environmental Concentrations (EECs) of cyromazine in drinking water were determined for the highest use rate of cyromazine. Based on the model outputs, the EECs of cyromazine are 1.8 parts per billion (ppb) for chronic exposure to ground water and 10 ppb for chronic exposure to surface water.

3. *Non-dietary exposure*. Cyromazine is currently registered for commercial outdoor use on landscape ornamentals and commercial interiorscapes. There are no lawn or indoor residential uses and significant residential exposure is not expected.

D. Cumulative Effects

When considering whether to establish, modify, or revoke a tolerance, section 408(b)(2)(D)(v) requires that the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residue and ''other substances that have a common mechanism of toxicity.'' Neither Syngenta nor EPA has at this time, data available to determine whether cyromazine has a common mechanism of toxicity with other substances or the methodology to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyromazine does not appear to produce a toxic metabolite produced by other substances.

E. Safety Determination.

1. *Acute risk*. There were no toxicological effects observed in oral toxicity studies, including the developmental toxicity studies in rats and rabbits, that could be attributed to a single exposure (dose). Since there is a reasonable certainty of no harm from acute dietary exposure, an acute aggregate risk assessment was not performed for cyromazine.

2. *Chronic risk*. The chronic dietary exposure risk analysis (food only) showed that exposure from all established and these proposed tolerances would be 2.9% of the chronic reference dose (cRfD) for the most exposed subpopulation, children 1 to 2 years old. EPA has determined that reliable data support using the standard margin of exposure and uncertainty factor (100 for combined interspecies and intraspecies variability) for cyromazine and an additional safety factor of 10X is not necessary to protect infants and children.

3. *Drinking water*. The chronic drinking water level of concern (DWLOC) for the most exposed subpopulation (children 1–6 years) is 728 ppb. Based upon the SCI-GROW and FIRST model outputs, the EECs of cyromazine in surface water and ground water are below the chronic DWLOC; therefore, EPA should not have a concern regarding cyromazine in drinking water.

4. *Non-dietary exposure*. Due to the nature of the non-dietary use, the commercial use of cyromazine on landscape ornamentals will not result in any significant residential exposure.

Syngenta has considered the potential aggregate exposure from food, water, and non-occupational exposure routes and concluded that aggregate exposure is not expected to exceed 100% of the cRfD. Therefore, Syngenta has concluded that there is reasonable certainty that no harm will result from aggregate exposure to cyromazine residues.

F. International Tolerances.

The U.S. tolerances and Codex Maximum Residue Levels (MRLs) are compatible for ruminant tissue, bell pepper, and tomato. Codex MRLs and U.S. tolerances are incompatible for milk, celery, cucumber, lettuce, melon, and mushroom.

[FR Doc. 03–20014 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0234; FRL–7317–6]

Benoxacor; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certainpesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0234, must be received on or before September 5, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, orthrough hand delivery/courier. Follow the detailed instructions asprovided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, EnvironmentalProtection Agency, 1200 Pennsylvania Ave., NW., Washington, DC20460–0001; telephone number: (703) 305–6304; e-mail address:*boyle.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are anagricultural producer, food manufacturer, or pesticide manufacturer.Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather providesa guide for readers regarding entities likely to be affected by this action.Other types of entities not listed in this unit could also be affected.The North American Industrial Classification System (NAICS) codeshave been provided to assist you and others in determining whetherthis action might apply to certain entities. If you have any questionsregarding the applicability of this action to a particular entity, consultthe person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0234. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the officialpublic docket, and to access those documents in the public docket thatare available electronically. Although not all docket materials may beavailable electronically, you may still access any of the publiclyavailable docket materials through the docket facility identified in UnitI.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed inEPA's electronic public docket but will be available only in printed,paper form in the official public docket. To the extent feasible, publiclyavailable docket materials will be made available in EPA's electronicpublic docket. When a document is selected from the index list in EPADockets, the system will identify whether the document is available forviewing in EPA's electronic public docket. Although not all docketmaterials may be available electronically, you may still access any ofthe publicly available docket materials through the docket facilityidentified in Unit I.B.1. EPA intends to work towards providingelectronic access to all of the publicly available docket materialsthrough EPA's electronic public docket.

For public commenters, it is important to note that EPA's policyis that public comments, whether submitted electronically or in paper,will be made available for public viewing in EPA's electronic publicdocket as EPA receives them and without change, unless the commentcontains copyrighted material, CBI, or other information whosedisclosure is restricted by statute. When EPA identifies a commentcontaining copyrighted material, EPA will provide a reference to thatmaterial in the version of the comment that is placed in EPA'selectronic public docket. The entire printed comment, including thecopyrighted material, will be available in the public docket.Public comments submitted on computer disks that are mailed ordelivered to the docket will be transferred to EPA's electronic publicdocket.

Public comments that are mailed or delivered to the docket willbe scanned and placed in EPA's electronic public docket. Whereepractical, physical objects will be photographed, and the photographwill be placed in EPA's electronic public docket along with a briefdescription written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through handdelivery/courier. To ensure proper receipt by EPA, identify theappropriate docket ID number in the subject line on the first page ofyour comment. Please ensure that your comments are submitted withinthe specified comment period. Comments received after the close of thecomment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that isotherwise protected by statute, please follow the instructions in UnitI.D. Do not use EPA dockets or e-mail to submit CBI or informationprotected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outsideof any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information

provided in the body of a comment will beincluded as part of the comment that is placed in the official publicdocket, and made available in EPA's electronic public docket. If EPAcannot read your comment due to technical difficulties and cannotcontact you for clarification, EPA may not be able to consider yourcomment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method forreceiving comments. Go directly to EPA Dockets at *http://www.epa.gov/* edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0234. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0234. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addressesthat are automatically captured by EPA's e-mail system are includedas part of the comment that is placed in the official public docket, andmade available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII fileformat. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP),Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0234.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CrystalMall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: DocketID Number OPP–2003–0234. Such deliveries are only accepted duringthe docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBIelectronically through EPA's electronic public docket or by e-mail. Youmay claim information that you submit to EPA as CBI by marking anypart or all of that information as CBI (if you submit CBI on disk or CDROM, mark the outside of the disk or CD ROM as CBI and then identifyelectronically within the disk or CD ROM the specific information thatis CBI). Information so marked will not be disclosed except inaccordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includesany information claimed as CBI, a copy of the comment that does notcontain the information claimed as CBI must be submitted for inclusionin the public docket and EPA's electronic public docket. If you submitthe copy that does not contain CBI on disk or CD ROM, mark theoutside of the disk or CD ROM clearly that it does not contain CBI.Information not marked as CBI will be included in the public docketand EPA's electronic public docket without prior notice. If you haveany questions about CBI or the procedures for claiming CBI, pleaseconsult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing yourcomments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you usedthat support your views.
4. If you estimate potential burden or costs, explain how youarrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in thisnotice.
7. To ensure proper receipt by EPA, be sure to identify the docketID number assigned to this action in the subject line on the first pageof your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing theestablishment and/or amendment of regulations for residues of a certainpesticide chemical in or on various food commodities under section 408of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a.EPA has determined that this petition contains data or informationregarding the elements set forth in FFDCA section 408(d)(2); however,EPA has not fully evaluated the sufficiency of the submitted data atthis time or whether the data support granting of the petition.Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feedadditives, Food additives, Pesticides and pests, Reporting andrecordkeeping requirements.

Dated: July 22, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed belowas required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner.The summary may have been edited by EPA if the terminology usedwas unclear, the summary contained extraneous material, or thesummary unintentionally made the reader conclude that the findingsreflected EPA's position and not the position of the petitioner. Thepetition summary announces the availability of a description of theanalytical methods available to EPA for the detection and measurementof the pesticide chemical residues or an explanation of why no suchmethod is needed.

Syngenta Crop Protection

PP 7E3489

EPA has received an amendment to pesticide petition (PP 7E3489)from Syngenta Crop Protection, 410 Swing Road, Greensboro, NC27419, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C.346a(d), to amend 40 CFR 180.460 to establish the use ofbenoxacor, (4-(dichloroacetyl)-3,4-dihydro-3-methyl-2H-1,4-benzoxazine)as an inert ingredient (safener) in pesticide formulations containing S-metolachlor in or on raw agricultural commodities (RACs) for whichtolerances have been established for S-metolachlor or that support S-metolachlor uses. The petitioner is not requesting a change in thelevel or the numerical tolerance, but is requesting that benoxacor only be used with S-metolachlor, not metolachlor. EPA has

determined that the request contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of thepetition. Additional data may be needed before EPA rules on thepetition.

The Notice of Filing was published in the **Federal Register** on November 21, 1997 (62 FR 62304)(FRL–5755–2). The petitioner at that time was Novartis Crop Protection, Inc. In the **Federal Register** of February 13, 1998 (63 FR 7299) (FRL–5771–1), EPA published a final rule establishing tolerances for residues of benoxacor at 0.01 ppm for all commodities for which tolerances have been established for metochlor. No benoxacor risk assessments have been performed by the Agency since that time.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of benoxacor in plants and animals is adequately understood for purposes of these tolerances. Identified metabolic pathways are similar in plants and animals (goat, hen, and rat).

2. *Analytical method*. Adequate enforcement methodology, gaschromatography/nitrogen phosphorous detection (GC/NPD), is availableto enforce the tolerance expression. An analytical methodology for thedetermination of benoxacor and its metabolites in plant and animalcommodities (Syngenta Analytical Method AG536(C)) is available uponrequest from EPA. Analytical Method AG536c involves extraction,filtering, dilution, partitioning, and cleanup. Samples are then analyzedby capillary gas chromatography using N/P detection. The limit ofquantitation (LOQ) is 0.01 ppm.

3. *Magnitude of residues*. The magnitude of the residue in plants is adequately understood for the purposes of these tolerances. Morethan 30 residue trials were conducted in 19 States on a variety ofagricultural crops, corn (field and sweet); soybeans, potatoes, greenbeans, radishes, sorghum, peanuts, head lettuce, and peas. There wereno detectable residues of benoxacor at the LOQ of 0.01 ppm (manysamples were analyzed at an LOQ of 0.005 ppm and no residues weredetected) in any RAC or processed commodity. No transfer of residueto animals is expected through their diet.

B. Toxicological Profile

The toxicological profile of benoxacor and the end points for usein risk assessments are discussed in the final rule published in the **Federal Register** of February 13, 1998 (63 FR 7299) (FRL–5771–1).

C. Aggregate Exposure

1. *Dietary exposure*.—i. *Food*. Tolerances have been established (40 CFR 180.460) for the residues of benoxacor in or on a variety of RACs. Risk assessments were conducted by EPA to assess dietary exposures and risks from benoxacor. In this action, Syngenta Crop Protection is requesting to amend only the tolerance expression and therefore believes that the most recent Food Quality Protection Act (FQPA) dietary assessment completed by EPA is valid in the consideration of this amendmentrequest.

ii. *Acute exposure and risk*. Since there are no acute toxicological concerns for benoxacor, EPA has previously determined that an acute dietary risk assessment was not required.

iii. *Chronic exposure and risk*. For the purpose of assessing chronic dietary exposure from benoxacor, EPA has previously considered the established benoxacor tolerance of 0.01 ppm and the RACs for which tolerances have been established for metolachlor. There are no otherestablished U.S. tolerances for benoxacor, and there are no otherregistered uses for benoxacor on food or feed crops in the United States.Benoxacor is used currently only as a herbicide safener in end-useproduct formulations that contain S-metolachlor. There are no longerany registrations of other active ingredients that contain benoxacor.

In conducting this exposure assessment, EPA previously assumedtolerance level residues and 100% crop treated, resulting in a largeoverestimation of dietary exposure and protective of any chronic dietaryexposure scenario. The chronic reference dose (cRfD) is 0.004milligram/kilogram/day (mg/kg/day). Based on the chronic dietaryexposure of 0.000205 mg/kg/day for the U.S. population and 0.000828mg/kg/day for the most highly exposed population subgroup (nonnursinginfants less than 1–year old), this chronic dietary riskassessment resulted in the use of 5.13% of the RfD for the U.S.population and 20.7% of the RfD for the most highly exposedpopulation subgroup. A cancer dietary margin of exposure (MOE) wascalculated to be 1,950 using 0.4 mg/kg/day as the point of departure.

iv. *Drinking water*. For the purposes of assessing chronic exposure in drinking water, EPA has previously considered the registered usesand the available data on persistence and mobility for benoxacor. TheAgency has determined through a qualitative risk assessment that thephysical and chemical characteristics of benoxacor are such that it isnot expected to impact water resources. While benoxacor has thepotential to be mobile, it is not persistent (half-life in soil of 49 daysunder aerobic conditions and 70 days anaerobically). In light of thesefindings, EPA has previously determined that benoxacor's use as asafener in S-metolachlor formulations will not impact ground water orsurface water resources, and therefore, is not expected to lead toexposure to humans through drinking water.

2. *Non-dietary exposure*. All registered S-metolachlor products to which benoxacor is added as a safener are commercial agriculturalproducts not registered for residential use. The potential for nonoccupationalexposure to benoxacor by the general population is therefore unlikely except for the potential residues in food crops discussed above.

D. Cumulative Effects

EPA has previously determined that a cumulative assessment is notrequired for benoxacor. Benoxacor does not share a common mode oftoxicity with any other moiety regulated by EPA further supporting thelack of a need for conducting a cumulative assessment in relation tothis requested tolerance amendment.

E. Safety Determination

1. *U.S. population*—i. *Acute risk*. Since there are no acute toxicological concerns for benoxacor, EPA has no cause for concern for acute aggregate exposure.

ii. *Chronic risk*. EPA has previously concluded that aggregate chronic exposure to benoxacor from food and water will utilize 5.13%of the RfD for the U.S. population. The major identifiable subgroup withthe highest aggregate exposure is non-nursing infants less than 1–yearold (utilizing 20.7% of the RfD). EPA generally has no concern forexposures below 100% of the RfD because the RfD represents the levelat or below which daily aggregate dietary exposure over a lifetime willnot pose appreciable risks to human health. EPA does not expect theaggregate exposure to exceed 100% of the RfD. EPA has previouslyconcluded that there is a reasonable certainty that no harm will resultfrom aggregate exposure to benoxacor residues.

The carcinogenic risk from food uses of benoxacor for the general U.S. population was calculated previously by

EPA by comparing the dietary exposure from benoxacor to the no observed adverse effect level (NOAEL) identified for use with the cancer risk assessment. Based on the NOAEL selected by EPA for cancer risk characterization of 0.4 mg/kg/day, the cancer risk was estimated to result in a MOE of 1,950 contributed through all the published uses for benoxacor. Based upon the extreme conservatism of the dietary exposure estimates and the fact that tumors were observed only at dose levels far in excess of the selected NOAEL, this MOE is at a level which the Agency does notconsider raising a concern for excess lifetime cancer.

2. *Infants and children*. EPA has previously determined that the toxicological data base for evaluating prenatal and postnatal toxicity for benoxacor is complete with respect to current data requirements. Because both developmental and reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest anincreased prenatal or postnatal sensitivity of children and infants tobenoxacor exposure. Based on the above, EPA has previously concludedthat reliable data support use of a 100-fold MOE/uncertainty factor (UF),rather than the standard 1,000-fold margin/factor to protect infants andchildren. EPA concludes that there is a reasonable certainty that noharm will result to infants and children from aggregate exposure tobenoxacor residues.

3. *Acute risk*. Since there are no acute toxicological concerns for benoxacor, EPA has no cause for concern for acute aggregate exposure.

4. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has previously concluded that aggregate exposure to benoxacor from food will range from 3.69% of the RfD for females13+ years, to 20.7% of the RfD for non-nursing infants less than 1–yearold. EPA generally has no concern for exposures below 100% of theRfD because the RfD represents the level at or below which dailyaggregate dietary exposure over a lifetime will not pose appreciablerisks to human health. EPA does not expect the aggregate exposure toexceed 100% of the RfD. EPA has previously concluded that there isa reasonable certainty that no harm will result to infants and childrenfrom aggregate exposure to benoxacor residues.

F. International Tolerances

No Codex maximum residue levels have been established forresidues of benoxacor.

[FR Doc. 03–19915 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0037; FRL–7322–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 3, 2003 to July 11, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0037 and the specific PMN number or TME number, must be received on or before September 5, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0037. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets.

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Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2003–0037. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0037 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0037 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking This Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 3, 2003 to July 11, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 104 PREMANUFACTURE NOTICES RECEIVED FROM: 06/03/03 TO 07/11/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0588	06/03/03	08/31/03	CBI	(G) Polymeric admixture for cements	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), calcium sodium salt
P–03–0589	06/03/03	08/31/03	The Dow Chemical Company	(G) Prepolymer for isocyanate polyurethane	(G) Polyurethane prepolymer
P–03–0590	06/03/03	08/31/03	PFW Aroma Chemicals - Sales Office USA	(S) Fragrance oil in detergent, fabric softener and household cleaners; fragrance oil in soaps, hair care, bath and shower and personal care; fragrance oil in fine perfumes; fragrance oil in air fresheners, candles, potpourri	(S) 1-hexanol, 3-mercapto-
P–03–0591	06/03/03	08/31/03	The Dow Chemical Company	(G) Prepolymer for isocyanate polyurethane	(G) Water dispersable polyurethane polymer
P–03–0593	06/03/03	08/31/03	CBI	(G) Chemical intermediate	(G) Alkoxylated acetal-derivative
P–03–0594	06/03/03	08/31/03	CBI	(G) Chemical intermediate	(G) Alkoxylated acetal-derivative
P–03–0595	06/05/03	09/02/03	CBI	(S) Polymerization catalyst	(G) Trialkylaluminum metal halide alkoxide reaction product
P–03–0596	06/05/03	09/02/03	CBI	(S) Aromatic acid salt used as a component in electronic polishing products	(G) Aromatic acid salt
P–03–0597	06/05/03	09/02/03	CBI	(G) Reaction intermediate/raw material	(S) Fatty acids, rape-oil, me esters
P–03–0598	06/05/03	09/02/03	CBI	(G) Lubricant additive	(G) Sulfurized vegetable oil
P–03–0599	06/05/03	09/02/03	CBI	(G) Lubricant additive	(G) Sulfurized vegetable oil
P–03–0600	06/05/03	09/02/03	CBI	(G) Lubricant additive	(G) Sulfurized vegetable oil
P–03–0601	06/05/03	09/02/03	CBI	(G) Lubricant additive	(G) Sulfurized vegetable oil
P–03–0602	06/05/03	09/02/03	CBI	(G) Lubricant additive	(G) Sulfurized vegetable oil
P–03–0603	06/05/03	09/02/03	CBI	(G) Lubricant additive	(G) Sulfurized vegetable oil
P–03–0604	06/06/03	09/03/03	3M Company	(S) Monomer	(G) Fluorinated methacrylated monomer
P–03–0605	06/06/03	09/03/03	Johnson Polymer	(G) Polymeric coating vehicle	(G) Styrene acrylic copolymer
P–03–0606	06/06/03	09/03/03	Johnson Polymer	(G) Polymeric coating vehicle	(G) Styrene acrylic copolymer
P–03–0607	06/03/03	08/31/03	CBI	(G) Photographic Chemical	(G) Disubstituted aniline

I. 104 PREMANUFACTURE NOTICES RECEIVED FROM: 06/03/03 TO 07/11/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0608	06/09/03	09/06/03	Lonza Inc.	(S) Polymer additive/adjuvant for: -polymer extrusion; -polymer film formation; antistatic agent for : -polymer films	(G) *N,N*-alkanebis-*N*-fatty acid amide
P–03–0609	06/09/03	09/06/03	BASF Corporation	(S) Auxiliary for dyeing leather	(G) Oligomer of aromatic, alkyl amines and alkyl epoxide
P–03–0610	06/03/03	08/31/03	CBI	(G) Raw material	(G) Fatty acid ester
P–03–0611	06/03/03	08/31/03	CBI	(G) Raw material	(G) Fatty acid ester
P–03–0612	06/10/03	09/07/03	BASF Corporation	(S) Scale inhibitor in desalination of seawater	(G) Maleic acid copolymer, sodium salt
P–03–0613	06/10/03	09/07/03	CBI	(G) Curing catalyst	(G) Modified diaryliodoniumhexafluoroantimonate
P–03–0614	06/10/03	09/07/03	CBI	(G) Electronic Chemical	(G) Aromatic ether
P–03–0615	06/10/03	09/07/03	The Dow Chemical Company	(S) Adhesion promoter for resins used to make microelectronic parts	(G) Hydrolyzed silane
P–03–0616	06/10/03	09/07/03	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Unsaturated alkyl grignard reagent
P–03–0617	06/10/03	09/07/03	Bedoukian Research, Inc.	(S) Fragrances uses as per Federal Food, Drug and Cosmetic Act (FFDCA); flavor uses as per FFDCA; fragrances uses; scented papers, detergents, candles, etc.	(S) 3-pentenoic acid, 2-methyl-, hexyl ester
P–03–0618	06/10/03	09/07/03	The Dow Chemical Company	(S) Adhesion promoter for resins used to make microelectronic parts.	(G) Silsesquioxane
P–03–0619	06/11/03	09/08/03	CBI	(G) Fuel additive	(G) Fatty acid, reaction product with alkylamino alcohol, propoxylated
P–03–0620	06/11/03	09/08/03	CBI	(G) Chelating agent	(G) Aminocarboxylic acid, alkaline salt
P–03–0621	06/11/03	09/08/03	CBI	(G) Chelating agent	(G) Aminocarboxylic acid, alkaline salt
P–03–0622	06/11/03	09/08/03	CBI	(G) A component of ultraviolet coating agent	(G) Substituted alkanediol diacrylate
P–03–0623	06/12/03	09/09/03	CBI	(G) Non-dispersive use.	(G) Amino epoxy silane
P–03–0624	06/12/03	09/09/03	Dupont Textiles and Interiors	(S) Chemical intermediate	(S) Dodecanedioic acid, dimethyl ester
P–03–0625	06/12/03	09/09/03	Crompton Corporation	(G) Soluble oil base	(G) Alkyl benzenesulfonic acid, sodium salt
P–03–0626	06/12/03	09/09/03	CBI	(G) Open, non-dispersive (resin)	(G) Urethane acrylate
P–03–0627	06/16/03	09/13/03	Sasol North America Inc.	(S) Surfactant used in formulation of deicing fluids	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, esters with polyethylene glycol mono-me ether
P–03–0628	06/16/03	09/13/03	CBI	(G) Raw material for manufacturing of photosensitive material	(G) Pyrrolotriazole derivative
P–03–0629	06/16/03	09/13/03	CBI	(G) Coatings and inks	(G) Polyether polyester aminoacrylate
P–03–0630	06/16/03	09/13/03	CBI	(G) Coatings and inks	(G) Polyether polyester aminoacrylate
P–03–0631	06/16/03	09/13/03	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin
P–03–0632	06/16/03	09/13/03	CBI	(S) Polyurethane coating	(G) Aqueous polyurethane dispersion
P–03–0633	06/16/03	09/13/03	CBI	(G) Raw material for manufacturing of photosensitive material	(G) Alkylamide derivative
P–03–0634	06/16/03	09/13/03	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin polymer
P–03–0635	06/16/03	09/13/03	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin polymer
P–03–0636	06/16/03	09/13/03	CBI	(S) Industrial ultraviolet coatings and inks	(G) Epoxy acrylate oligomer
P–03–0637	06/16/03	09/13/03	CBI	(G) Adhesive	(G) Polysiloxane
P–03–0638	06/16/03	09/13/03	CBI	(G) Water-borne coating	(G) Water-borne urethane polymer
P–03–0639	06/16/03	09/13/03	CBI	(G) Contained use polymer reactant	(G) Quaternary ammonium salt
P–03–0640	06/17/03	09/14/03	Cytec Engineered Materials Inc. (CEM)	(G) Resin for non-dispersive use	(G) Epoxy-bisphenol adduct
P–03–0641	06/17/03	09/14/03	BASF Corporation	(S) Nonionic surfactant for hard surface cleaners; nonionic surfactant for powder laundry detergents	(S) Alcohols, $C_{13–15}$-branched and linear, ethoxylated
P–03–0642	06/16/03	09/13/03	CBI	(G) Starting material for the manufacture of an AgroChemical intermediate.	(G) Disubstituted benzenesulfonic acid, alkali metal salt

I. 104 PREMANUFACTURE NOTICES RECEIVED FROM: 06/03/03 TO 07/11/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0643	06/16/03	09/13/03	CBI	(G) Used as an intermediate in the synthesis of an AgroChemical product.	(G) Disubstituted benzoic acid, alkali metal salt.
P–03–0644	06/18/03	09/15/03	CBI	(G) Radiation curable inks, coatings and printing plates.	(G) Acrylate ester
P–03–0645	06/18/03	09/15/03	Mitsubishi Gas Chemical America, Inc.	(S) Water retention aid for ornamental plants	(G) Polyether polyol
P–03–0646	06/19/03	09/16/03	PPG Industries, Inc.	(G) Component of a coating	(G) Cationic amine salt epoxy resin
P–03–0647	06/19/03	09/16/03	Reichhold, Inc.	(G) Ink base	(G) Amine salt of diglycidyl ether of bisphenol a, bisphenol a, fatty acids, alkeneoic acid and alkenylbenzene.
P–03–0648	06/19/03	09/16/03	Nagase America Corporation	(S) Matting agent for paint/coating; light diffussing agent for film coating/plastic compounding; anti-blocking agent for film	(S) 2-propenoic acid, 2-methyl-, 1,2-ethanediyl ester, polymer with butyl 2-methyl-2-propenoate
P–03–0649	06/19/03	09/16/03	CBI	(G) Cleaning additive for semiconductor manufacturing	(G) Acrylic acid copolymer salt; alkyl phosphonic acid salt; substituted carboxylic acid salt
P–03–0650	06/20/03	09/17/03	Harcros Chemicals Inc.	(G) A catalyst for ethoxylation/propoxylation reactions	(G) Organosulfate calcium hydroxy complex
P–03–0651	06/20/03	09/17/03	CBI	(G) Sizing agent for glass fiber manufacture	(G) Polyurethane
P–03–0652	06/20/03	09/17/03	BASF Corporation	(G) Components in composite formulations	(G) Polymethylenepolyphenylene isocyanate methacrylate polymer
P–03–0653	06/23/03	09/20/03	CBI	(G) Polymeric admixture for cements	(G) Polycarboxylate polymer with alkenylsubstituted carbomonocycle, modified with poly(oxyalkylenediyl) and polymer of heteromonocycle and alkylheteromonocycle monoalkyl ether, sodium salt
P–03–0654	06/20/03	09/17/03	CBI	(S) Adhesive raw material for lamination and heat sealing	(G) Polyurethane - polyester elastomer
P–03–0655	06/16/03	09/13/03	Archer Daniels Midland Company	(S) Reactive coalescer in architectural paint, coatings and stain; inks; color concentrates for paint coloring	(S) Fatty acids, corn-oil, esters with propylene glycol
P–03–0656	06/24/03	09/21/03	Archer Daniels Midland Company	(S) Reactive coalescer in architectural paint, coatings and stain; inks; color concentrates for paint coloring	(S) Fatty acids, sunflower-oil, esters with propylene glycol
P–03–0657	06/24/03	09/21/03	Cognis Corporation	(G) Low foaming wetting agent	(S) Oxirane, methyl-, polymer with oxirane, mono C_{8-10} alkyl ethers, ethers with 1,2-decanediol(1:1)
P–03–0658	06/24/03	09/21/03	Cognis Corporation	(G) Low foaming wetting agent	(S) Poly(oxy-1,2-ethanediyl), .alpha.-undecyl-.omega.-hydroxy-, branched and linear, ethers with 1,2-decanediol
P–03–0659	06/24/03	09/21/03	Cognis Corporation	(G) Low foaming wetting agent	(S) Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, mono C_{8-10}-alkyl ethers, ethers with 1,2-dodecanediol (1:1)
P–03–0660	06/24/03	09/21/03	Cognis Corporation	(G) Low foaming wetting agent	(S) Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, mono C_{6-12}-alkyl ethers, ethers with 1,2-decanediol (1:1)
P–03–0661	06/23/03	09/20/03	Marubeni Specialty Chemicals, Inc.	(S) Manufacture of integrated circuit chips	(G) Mixture of substituted thiobisphenol and alkyl oxirane and dimeric substance of reaction products of substituted thiobisphenol and alkyl oxirane.
P–03–0662	06/24/03	09/21/03	Essential Industries	(S) Raw material for wood coatings	(G) Aliphatic polyurethane dispersion
P–03–0663	06/25/03	09/22/03	CBI	(G) A component of ultraviolet coating agent	(G) Aliphatic epoxyacrylate
P–03–0664	06/27/03	09/24/03	CBI	(G) Open, non-dispersive (resin)	(G) Urethane acrylate resin
P–03–0665	07/01/03	09/28/03	CBI	(G) An open non-dispersive use	(G) Alkyd resin
P–03–0666	07/01/03	09/28/03	BASF Corporation	(G) Intermediate in the production of pigments	(G) Distillation residue from glycol production.
P–03–0667	07/01/03	09/28/03	CBI	(G) Open, non-dispersive	(G) Urea dimethoxyethanal resin
P–03–0668	07/02/03	09/29/03	CBI	(G) Acrylic pressure sensitive adhesive	(G) Acrylic solution polymer

I. 104 PREMANUFACTURE NOTICES RECEIVED FROM: 06/03/03 TO 07/11/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0669	07/07/03	10/04/03	CBI	(S) Binders for fibrous materials	(G) Modified acrylic acid-maleic acid copolymer
P–03–0670	07/07/03	10/04/03	CBI	(G) Coatings and inks	(G) Polyether polyester aminoacrylate
P–03–0671	07/07/03	10/04/03	CBI	(G) Coatings and inks	(G) Polyether polyester aminoacrylate
P–03–0672	07/07/03	10/04/03	Omnova Solutions, Inc.	(S) Surfactant for aqueous floor polish; surfactant, flow, level, and wetting additive for aqueous coating formulations; surfactant, flow, and wetting additive for hard surface cleaners	(S) Boron, trifluoro(tetrahydrofuran)-, (t-4)-, polymer with 3-methyl-3-[(2,2,2-trifluoroethoxy)methyl]oxetane, ether with 2,2-dimethyl-1,3-propanediol (2:1), bis(hydrogen sulfate), diammonium salt
P–03–0673	07/07/03	10/04/03	Omnova solutions, Inc.	(S) Surfactant for aqueous floor polish; surfactant, flow, level, and wetting additive for aqueous coating formulations; surfactant, flow, and wetting additive for hard surface cleaners	(S) Boron, trifluoro(tetrahydrofuran)-, (t-4)-, polymer with 3-methyl-3-[(2,2,3,3,3-pentafluoropropoxy)methyl]oxetane, ether with 2,2-dimethyl-1,3-propanediol (2:1), bis(hydrogen sulfate), diammonium salt
P–03–0674	07/08/03	10/05/03	Lubrizol metalworking additives	(S) Lubricant, metalworking fluid	(G) Polyolefin ester, amine salt
P–03–0675	07/08/03	10/05/03	Sasol North America Inc.	(S) Surfactant used in formulation of deicing fluids	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, esters with polyethylene glycol mono-me ether
P–03–0676	07/10/03	10/07/03	CIBA Specialty Chemicals Corporation, Textile Effects	(S) For oil, water, and soil repellent finish of fabrics of all fibers	(G) Alkyl polyurethane polymer with substituted fluoroalkene telomer reaction products and substituted alkyl and cycloalkyl isocyanates reaction products
P–03–0677	07/10/03	10/07/03	CIBA Specialty Chemicals Corporation, Textile Effects	(S) For oil, water, and soil repellant finish of fabrics of all fibers	(G) Substituted alkyl acid alkyl ester polymers with substituted fluoroalkene telomer reaction products
P–03–0678	07/10/03	10/07/03	Eastman Chemical Company	(G) Coating vehicle	(G) Styrene-acrylic copolymer
P–03–0679	07/10/03	10/07/03	Atofina Chemicals, Inc.	(S) Additive for hot melt adhesive	(G) Olefin acrylate copolymer
P–03–0680	07/11/03	10/08/03	CBI	(G) Raw material	(G) Fatty acid ester
P–03–0681	07/11/03	10/08/03	CBI	(G) Photographic Chemical	(G) Disubstituted aniline
P–03–0682	07/11/03	10/08/03	CBI	(G) Ultraviolet/electron beam curing agent (all categories)	(G) Acid functional acrylate
P–03–0683	07/11/03	10/08/03	CBI	(G) Coatings, adhesives and printing plates	(G) Polybutadiene acrylate
P–03–0684	07/11/03	10/08/03	CBI	(G) Coatings, adhesives and printing plates	(G) Polybutadiene acrylate
P–03–0685	07/11/03	10/08/03	CBI	(G) Raw material	(G) Fatty acid ester
P–03–0708	07/11/03	10/08/03	The Dow Chemical Company	(S) Surfactant for waterborne epoxy dispersions	(G) Polyetherester monoepoxide
P–03–0709	07/11/03	10/08/03	The Dow Chemical Company	(S) Surfactant for waterborne epoxy dispersions	(G) Polyetherester monoepoxide
P–03–0710	07/11/03	10/08/03	The Dow Chemical Company	(S) Surfactant for waterborne epoxy dispersions	(G) Polyetherester monoepoxide
P–03–0711	07/11/03	10/08/03	The Dow Chemical Company	(S) Surfactant for waterborne epoxy dispersions	(G) Polyetherester monoepoxide
P–03–0712	07/11/03	10/08/03	The Dow Chemical Company	(S) Surfactant for waterborne epoxy dispersions	(G) Polyetherester monoepoxide
P–03–0713	07/11/03	10/08/03	The Dow Chemical Company	(S) Surfactant for waterborne epoxy dispersions	(G) Polyetherester monopoxide
P–03–0738	06/25/03	09/22/03	CBI	(G) Plastic additive	(G) Silicate

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 54 NOTICES OF COMMENCEMENT FROM: 06/03/03 TO 07/11/03

Case No.	Received Date	Commencement/ Import Date	Chemical
	06/09/03	06/02/03	(G) Polyurethane-silicone
P–00–0281	07/08/03	06/24/03	(G) Alkarylsulfonic acid, sodium salts
P–01–0245	06/11/03	04/25/03	(G) Mixture of oxygenated hydrocarbons
P–01–0573	06/24/03	06/12/03	(G) Aromatic phenolic polymer
P–01–0708	06/17/03	06/13/03	(G) Polyalkoxylated aromatic amine
P–01–0829	06/10/03	05/20/03	(S) 17-oxabicyclo[14.1.0]heptadec-8-ene; 9,18-dioxatricyclo [15.1.0.08,10] octadecane
P–02–0141	06/16/03	05/15/03	(G) Polyalkenylbenzene sulfonate
P–02–0152	06/25/03	05/21/03	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-propenamide and 2-propenoic acid, sodium salt
P–02–0246	06/30/03	06/18/03	(G) Acrylic polyol
P–02–0285	07/01/03	06/10/03	(S) Silane, trimethoxy[3-oriranylmethoxy]propyl-, reaction products with wollastonite (ca(sio3)
P–02–0299	07/08/03	04/25/03	(S) 2-propenoic acid, polymer with ethyl 2-propenoate, potassium salt
P–02–0306	06/05/03	04/16/03	(S) 1-propanone, 1-[4-[(4-benzoylphenyl)thio]phenyl]-2-methyl-2-[(4-methylphenyl)sulfonyl]-
P–02–0382	06/16/03	05/15/03	(G) Alkylbenzene sulfonate
P–02–0529	06/20/03	05/20/03	(G) Diglyceride fatty acid, acetylated
P–02–0530	07/02/03	06/23/03	(G) Alpha-amino ketone
P–02–0745	06/03/03	05/21/03	(G) Aqueous solution of iminodisuccinic acid ammonium salt
P–02–0823	07/08/03	06/26/03	(G) Tertiary amine carboxylic acid salt
P–02–0825	07/08/03	06/26/03	(G) Tertiary amine
P–02–0937	06/16/03	06/05/03	(G) Alkanone oxime
P–02–1084	06/06/03	06/02/03	(S) Siloxanes and silicones, ethoxy pr, ethoxy vinyl, ethoxy-terminated, hydrolysis products with aluminum hydroxide
P–03–0001	06/09/03	06/02/03	(G) Substituted triazine derivatives
P–03–0139	07/03/03	06/14/03	(G) Tricyclic acetal
P–03–0151	07/03/03	06/12/03	(G) Benzendisulfonic acid, substituted anthraquinone derivative, ammonium sodium salt
P–03–0154	06/10/03	05/15/03	(S) 1,2-benzenedicarboxylic acid, mixed esters with benzyl alc., cyclohexanol, 2-ethyl-1-hexanol, fumaric acid and propylene glycol
P–03–0180	07/01/03	06/11/03	(S) Cytidine, 2'-deoxy-, monohydrochloride
P–03–0183	07/01/03	06/05/03	(G) Methyl styrene acrylonitrile copolymer
P–03–0184	07/01/03	06/05/03	(G) Methyl styrene acrylonitrile copolymer
P–03–0185	07/01/03	06/05/03	(G) Butadiene styrene polymer
P–03–0235	06/12/03	05/25/03	(G) 2-propenoic acid, 2-methyl-, methyl ester, polymer with alkyl 2-methyl-2-propenoate and alkyl 2-propenoate and ethenylbenzene
P–03–0246	06/24/03	06/18/03	(S) Poly(oxy-1,2-ethanediyl), alpha-hydro-.omega.-hydroxy-, ether with 2,2'-[oxybis(methylene)]bis[2-(hydroxymethyl)-1,3-propanediol] (6:1)
P–03–0248	07/01/03	06/19/03	(G) Glycerol fatty acid ester
P–03–0251	07/08/03	06/17/03	(S) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine, 7-oxabicyclo[4.1.0]hept-3-ylmethyl 7-oxabicyclol[4.1.0]heptane-3-carboxylate, piperazine, polypropylene glycol diamine and sebacic acid
P–03–0253	06/30/03	06/22/03	(G) Acrylic polyol
P–03–0275	06/03/03	05/08/03	(G) Substituted hydroxyethylcellulose ethers
P–03–0286	07/08/03	06/25/03	(G) Methoxycyclodiene
P–03–0295	06/16/03	06/11/03	(G) Modified hydroxyfunctional acrylic copolymer
P–03–0297	06/25/03	06/13/03	(G) Modified polyolefin
P–03–0300	07/01/03	06/24/03	(G) Halogenated phosphate
P–03–0309	06/23/03	05/28/03	(G) Acrylate ester
P–03–0318	06/30/03	06/10/03	(G) Urethane acrylate polymer, compounds with amine
P–03–0327	06/23/03	06/10/03	(S) 1,2-cyclohexanedicarboxylic acid, dinonyl ester, branched and linear
P–03–0332	07/11/03	06/18/03	(G) Heterocyclic sulfide ester
P–03–0333	06/11/03	05/19/03	(G) Amine salt
P–03–0335	06/16/03	06/04/03	(G) Acrylate and urethane modified polyether
P–03–0359	07/02/03	06/20/03	(G) Modified epoxy acrylate
P–03–0360	06/11/03	05/27/03	(G) Polyester polyurethane dispersion
P–03–0388	07/03/03	06/18/03	(G) Fatty acid amides
P–03–0391	07/02/03	06/23/03	(G) Amine salt of polyurethane resin
P–03–0393	06/20/03	06/16/03	(G) Aliphatic polyamine
P–03–0396	07/03/03	06/10/03	(G) Metal complexes of substituted benensulfulfonic acid derivatives
P–03–0406	07/03/03	06/11/03	(G) Potassium sodium salt of substituted thiazolesulfonic acid
P–92–1449	06/04/03	04/14/03	(G) Disubstituted veeta-naphthol
P–97–0108	06/16/03	05/29/03	(S) Phenol 2,4,6-tris 3-(dimethylaminopropylaminomethyl)phenol
P–98–1077	07/02/03	03/24/03	(G) Substituted polystyrene
P–98–1208	07/10/03	04/28/03	(G) Polyalkyl-substituted-heteromonocycle

List of Subjects

Environmental protection, Chemicals, Premanufacture notices.

Dated: July 31, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–20016 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7540–9]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and Solicitation of Requests for a Public Hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act as amended, and the National Primary Drinking Water Regulations Implementation that the Commonwealth of Pennsylvania is revising its approved Public Water System Supervision Program. Pennsylvania has adopted a Lead and Copper Rule (LCR) to control lead and copper in drinking water, Lead and Copper Rule Minor Revisions (LCRMR) to streamline and reduce reporting burden, a Public Notification (PN) Rule for public water systems to notify their customers when they violate EPA or state drinking water standards, and a Consumer Confidence Report (CCR) Rule that requires water suppliers to provide annual reports on the quality of the drinking water supplied to their customers. This revision also includes minor revisions to other drinking water rules.

EPA has determined that these revisions are no less stringent than the corresponding Federal regulations aside from two minor inconsistencies in the Lead and Copper regulations. The two items concern the requirement to include the location of each site where samples are taken and the criteria under which each site was selected for the system's sampling pool as part of the results reported to the State in the LCR. EPA does not believe that these minor inconsistencies affect compliance with the Federal regulations. They are being addressed through program implementation while the Department of Environmental Protection corrects the deficiencies in its regulations. Therefore, EPA is taking action to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by September 5, 2003. This determination shall become effective on September 5, 2003 if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect on his own to hold a hearing, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Pennsylvania Department of Environmental Protection, Bureau of Water Supply and Wastewater Management, 11th Floor Rachael Carson State Office Building Harrisburg, 400 Market Street, Harrisburg, PA 17105–8467.

FOR FURTHER INFORMATION CONTACT: Nick Tymchenko, Drinking Water Branch at the Philadelphia address given above; telephone (215) 814–2022 or fax (215) 814–2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 5, 2003, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: July 28, 2003.

Thomas Voltaggio,

Acting Regional Administrator, EPA, Region III.

[FR Doc. 03–20018 Filed 8–5–03; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Notice of Delegation of Authority—Processing Complaints Under Section 508 of the Rehabilitation Act

SUMMARY: The amendments to section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794d, which took effect in 2001 provide that each federal agency must ensure that the electronic and information technology it develops, procures, maintains, or uses is accessible to individuals with disabilities who are federal employees or applicants, or members of the public seeking information or services from the agency. Section 508 authorizes individuals to file administrative complaints and civil actions against an agency, limited to the alleged failure to procure accessible technology. The statute requires federal agencies to process section 508 complaints according to the same complaint procedures used to process section 504 complaints. *See* 29 U.S.C. 794d(f)(2).

Notice is hereby given that by Order dated July 22, 2003, the Chair of the Equal Employment Opportunity Commission (EEOC) delegated to the Director of the EEOC's Office of Equal Opportunity (OEO), without authority to redelegate, authority for processing all section 508 complaints against the EEOC. Pursuant to this delegation, the Director of the OEO shall process all section 508 complaints by applicants, employees, or members of the public, against the EEOC, pursuant to the compliance procedures set forth in 29 CFR 1615.170(d)–(m). These are the same procedures which the EEOC uses to process section 504 complaints against the EEOC by members of the public. The Order provided that the EEOC will not utilize the Federal sector equal employment opportunity administrative complaint procedures, 29 CFR part 1614, to process any section 508 complaints against EEOC, even if filed by an EEOC applicant or employee. The Order explained that as distinguished from the EEOC's authority to process section 501 claims under part 1614, the EEOC does not have authority to interpret and enforce section 508

under part 1614. The Order further provided that if a section 501 complaint filed against the EEOC in the part 1614 process includes a separate section 508 claim, OEO will process the section 501 claim through the part 1614 process, and will separately process the section 508 claim pursuant to the procedures set forth in 29 CFR 1615.170(d)–(m). By this Order, the EEOC did not alter any of its existing procedures for processing complaints under section 501 or section 504 of the Rehabilitation Act.

EFFECTIVE DATE. The delegation of authority became effective on July 22, 2003.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel, at 202–663–4689.

Dated: July 22, 2003.

Cari M. Dominguez,

Chair.

[FR Doc. 03–19986 Filed 8–5–03; 8:45 am]

BILLING CODE 6570–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Science and Technology Council Subcommittee on Research Business Models

ACTION: Request for information regarding National Science and Technology Council/Committee on Science/Subcommittee on Research Business Models.

SUMMARY: The Subcommittee on Research Business Models is undertaking a review of policies, procedures, and plans relating to the business relationship between federal agencies and research performers with the goal of improving the performance and management of federally sponsored basic and applied scientific and engineering research. As part of that effort, the Subcommittee will hold a series of regional workshops in the Fall of 2003 to solicit input and feedback from the research performer community. This notice is intended to collect data that will assist the Subcommittee in setting agendas for those regional workshops.

DATES: Submit comments on or before September 22, 2003.

ADDRESSES: Due to potential delays in OSTP's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments sent via surface mail will be received before the comment closing date.

Electronic comments may be submitted to: nstc_rbm@ostp.eop.gov. Please include in the subject line the words ''NSTC Research Business Models Comments'' and a reference to the relevant items, enumerated below as A–J. Please put the full body of your comments in the text of the electronic message and as an attachment. Be certain to include your name, title, organization, postal address, telephone number, and E-mail address in the text of the message.

Comments may be mailed to Michael J. Holland; Office of Science & Technology Policy; 1650 Pennsylvania Ave., NW., Washington, DC 20502. But again, we strongly encourage respondents to submit comments electronically.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please call Michael Holland, Office of Science & Technology Policy, (202) 456–6069 (direct) and e-mail: *mholland@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION:

Background

This notice requests data and specific examples from the general public and all interested parties regarding the activities of the Subcommittee on Research Business Models chartered under the Committee on Science of the National Science and Technology Council. The Committee on Science realizes that much has changed about the practice of scientific research over the last several years. The purpose of the Subcommittee on Research Business Models is to advise and assist the Committee on Science and the NSTC on policies, procedures, and plans relating to business models to improve the efficiency, effectiveness and accountability of the Federal research and development enterprise in a manner cognizant of currently available resources. The Subcommittee will

- Facilitate a strong, coordinated effort across federal agencies to identify and address important policy implications arising from the changing nature of basic and applied research.
- Examine the concomitant influence these changes have had or should have on business models and business practices for the conduct of basic and applied research sponsored by the Federal government and carried out by academic, industrial, and government entities.
- Review the challenges to improved performance and mechanisms for more transparent accountability of the research enterprise.

The membership of the Subcommittee includes representatives from fifteen Federal departments and agencies that support or are engaged in research activities. The Subcommittee on Research Business Models will consult and coordinate with other ongoing, relevant efforts including, but not limited to, those of the Interagency Electronic Grants Committee (IAEGC) and the CFO Grants Management Council (GMC) Public Law 106–107 Workgroups.

Request for Information

In order to assist the public in its response, the Subcommittee has identified the following areas in which they would like to receive comments, including how changes in these areas have impacted research costs. However, the Subcommittee welcomes comments and suggestions in other areas that may not be included in the following questions.

A. *Accountability.* What constitutes accountability for the Federally-supported research enterprise? How can performers best demonstrate results or return on Federal research investments? Please suggest mechanisms whereby research managers can more transparently demonstrate responsible use of public resources.

B. *Inconsistency of policies and practices among Federal agencies.* Can you identify specific Federal policies and practices that if simplified would improve the efficiency and cost effectiveness of the research enterprise? Can the impact of inconsistent policies and practices among Federal agencies on the research environment be quantified? Among the variations in policies and practices, which practices appear to be the best? Why?

C. *Inconsistency of policies and practices among universities.* Can you identify specific university policies and practices that if simplified would improve the efficiency and cost effectiveness of the research enterprise?

D. *State and Institutional requirements.* What is the prevalence and impact of state and institutional requirements that are added to Federal requirements for research funding?

E. *Regulatory requirements.* Is there a more efficient approach to meeting the intent of the current suite of administrative requirements and regulations? Please provide examples.

F. *Research support.* How can public funding mechanisms and policies encourage or discourage innovative approaches to research? Does the current process for research funding

encourage or discourage innovative research? How do support mechanisms influence the mix of investigators supported (*e.g.*, principal investigators, research scientists, postdoctoral scholars, graduate students, or technicians)? How can changes in the conduct of science and engineering necessitate modified funding models? Are data available to help decide these questions?

G. *Multidisciplinary/collaborative research.* Are any funding organizations, either inside or outside of government, employing funding mechanisms or strategies that are particularly effective in encouraging multidisciplinary work, collaborative activities, and other innovative approaches? Are there any data available relevant to these questions?

H. *Research Infrastructure.* What information is available to examine policies at the Federal, State, local or institutional level that affect research infrastructure and the costs of building, maintaining and/or operating the research infrastructure' What factors influence performers' investments in research infrastructure? What data are available to demonstrate that? What information is available on the mix of sources used to finance research infrastructure?

I. *Information Technology.* How has information technology impacted the efficiency, performance, or costs of research management? Are there data to demonstrate any effect?

J. *Technology transfer optimization.* Are data available to examine whether intellectual property and patent agreements have changed relationships among universities, industry, and the government?

Authority

The National Science and Technology Council (NSTC) was established under Executive Order 12881 on November 23, 1993, and subsequently reestablished by President Bush. The Committee on Science is chartered under the NSTC. The purpose of the Committee on Science is to advise and assist the NSTC, with emphasis on those federally supported efforts that develop new knowledge in the sciences mathematics, and engineering.

Kathie L. Olsen,

Associated Director.

[FR Doc. 03–19935 Filed 8–5–03; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 29, 2003.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 5, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 30,000.

Estimated Time per Response: 60 hours (avg).

Frequency of Response: Recordkeeping; On occasion reporting requirement; Third Party disclosure.

Total Annual Burden: 1,738,600 hours.

Total Annual Costs: $855,000.

Needs and Uses: On March 11, 2003, the Do-Not-Call Implementation Act (Do-Not-Call Act) was signed into law requiring the Commission to issue a final rule in its ongoing TCPA proceeding within 180 days of March 11, 2003, and to consult and coordinate with the Federal Trade Commission (FTC) to ''maximize consistency'' with the rule promulgated by the FTC in 2002. On March 25, 2003, the Commission released a Further Notice of Proposed Rulemaking seeking comment on the Commission's requirements under the Do-Not-Call Act. In this Report and Order, CG Docket No. 02–278, the Commission revises the current TCPA rules and adopts new rules to provide consumers with several options for avoiding unwanted telephone solicitations. The Commission establishes a national do-not-call registry for consumers who wish to avoid most unwanted telemarketing calls. This national do-not-call registry will supplement the current company-specific do-not-call rules for those consumers who wish to continue requesting that particular companies not call them. The Commission also adopts a new provision to permit consumers to provide permission to call to specific companies by an express written agreement. The TCPA rules exempt from the ''do-not-call'' requirements nonprofit organizations, companies with whom consumers have an established business relationship, and calls to persons with whom the telemarketer has a personal relationship. Any company, which is asked by a consumer, including an existing customer, not to call again must honor that request for five (5) years. The Commission retains the current calling time restrictions of 8 a.m. until 9 p.m.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–19990 Filed 8–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

July 31, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 5, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–7232, or via fax at 202–395–5167 or via internet at *Kim_A._Johnson@omb.eop.gov*, and Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB review of this revised information collection with an approval by August 15, 2003.*

OMB Control Number: 3060–0853.

Title: Receipt of Service Confirmation Form; Adjust of Funding Commitment; and Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act—Universal Service for Schools and Libraries.

Form No.: FCC Forms 479, 486, and 500.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 40,000.

Estimated Time Per Response: 1.5 hours per form.

Frequency of Response: Annual reporting requirements and third party disclosure requirement.

Total Annual Burden: 75,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Following a district court decision that portions of the Children's Internet Protection Act (CIPA) were unconstitutional, the Commission modified FCC Forms 479 and 486 to remove certain language from the certifications for libraries (language requiring compliance with the parts of CIPA the district court found unconstitutional). The Supreme Court reversed the district court decision and the Commission must revise the forms to enable libraries to certify their compliance with CIPA. Specifically, the Commission will make a few small changes to the forms in item 6.b and 11 of the Form 486 and Item 6 of the FCC 479 (FCC Form 500 remains unchanged). Additionally, the Commission is requesting contact information to conform with the contact information requested in other Schools and Libraries Universal Service forms.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–19991 Filed 8–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–2329]

Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of New York

AGENCY: Federal Communications Commission

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau seeks comment on the Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners (Nextel). Nextel is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in those portions of Nextel licensed service area located in rural and non-rural areas in the state of New York.

DATES: Comments are due on or before August 18, 2003. Reply comments are due on or before September 2, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Elizabeth Yockus, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released July 16, 2003. On April 3, 2003, Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners (Nextel), a commercial mobile radio service (CMRS) carrier, filed with the Commission a petition under section 214(e)(6) seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in designated rural and non-rural areas of its licensed service area in the state of New York. On May 28, 2003, Nextel filed an amendment to its petition further delineating its proposed service areas. Nextel contends that the New York Public Service Commission (New York Commission) has provided an affirmative statement that it does not regulate CMRS carriers; Nextel satisfies all the statutory and regulatory prerequisites for ETC designation; and designating Nextel as an ETC will serve the public interest.

Nextel must provide copies of its petition to the New York Commission. The Commission will also send a copy of this Public Notice to the New York Commission by overnight express mail to ensure that the New York Commission is notified of the notice and comment period.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: Comments are

due on or before August 18, 2003, and reply Comments are due on or before September 2, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Paul Garnett,

Acting Assistant Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–20051 Filed 8–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Wednesday, August 6, 2003

July 30, 2003.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, August 6, 2003, which is scheduled to commence at 9:30 a.m. in Room TW-C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireless Telecommunications	The Wireless Telecommunications Bureau and the Rural Utilities Service Administrator will report on the recently launched USDA/FCC initiative to increase broadband deployment and wireless access for the benefit of rural consumers.
2	International	*Title:* Policy for Licensing Domestic Satellite Earth Stations in the Bush Communities of Alaska. *Summary:* The Commission will consider a Report and Order concerning the Alaska Bush Earth Station policy (IB Docket No. 02–30, RM–7246).
3	Media	*Title:* Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations. *Summary:* The Commission will consider a Notice of Proposed Rulemaking regarding rules, policies and procedures for digital station operations for low power television, TV translators and TV booster stations, which primarily provide television service to smaller geographic regions and rural communities.
4	Wireline Competition	The Wireline Competition Bureau will report on the growth of subscribership to high-speed service during the last three years.
5	Consumer & Governmental Affairs and Office of Strategic Planning.	The Consumer & Governmental Affairs Bureau and the Office of Strategic Planning will report on the Commission's outreach and coordination initiatives to rural America.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322.

Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, (703) 834–1470, Ext. 19; Fax (703) 834–0111.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and

alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–20093 Filed 8–4–03; 10:12 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 03–172; FCC 03–185]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. This document solicits information from the public for use in preparing the competition report that is to be submitted to Congress in December 2003. The document will provide parties with an opportunity to submit comments and information to be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

DATES: Comments are due on or before September 11, 2003, and reply comments are due on or before September 26, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION, CONTACT: Andrew Wise, Media Bureau at (202) 418–7026 or via e-mail at *Andrew.Wise@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry* (NOI), MB Docket No. 03–172, adopted July 22, 2003, and released July 30, 2003. The full text of this NOI is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com* or may be viewed via the Internet at *http://www.fcc.gov/mb/*.

Synopsis of the Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report to Congress annually on the status of competition in the market for the delivery of video programming. This *Notice of Inquiry* (NOI) solicits data and information on the status of competition in the market for the delivery of video programming for our tenth annual report (''2003 Report''). We request information, comments, and analyses that will allow us to evaluate the status of competition in the video marketplace, prospects for new entrants to that market, and the effect of competition on the industry groups involved and on consumers.

2. In previous years, we have focused only on the current state of competition and changes in the competitive environment since the prior year's Report. Since the 2003 Report will be the tenth one, we have decided to take a broader view of the video marketplace, and to examine changes in the industry over the year since the last report, and in the period since the first report in 1994. Thus, we invite comments and submissions of data on the current state of competition in the video programming industry, prospects for future competition, and changes in the market since the *2002 Report*, over the last five years (*i.e.*, since 1998), and in the decade since 1994. We also seek comment, data and analyses on trends in the market, and comments on the factors that have facilitated or impeded changes in the competitive environment over these time periods.

3. The accuracy and usefulness of the 2003 Report is directly related to the data and information we receive from commenters that respond to this NOI. To facilitate our analysis of competitive trends over time, we request data as of June 30, 2003. For our historical review, we also request that, whenever possible, commenters submit data as of June 30 of the appropriate year. Comments submitted in this proceeding will be augmented with information from publicly available sources and submissions in other Commission proceedings.

Competition in the Market for the Delivery of Video Programming

4. Video distributors using both wired and wireless technologies serve the market for the delivery of video programming. Video programming distributors include cable systems, direct broadcast satellite (''DBS'') providers, home satellite dish (''HSD'') providers, private cable or satellite master antenna television (''SMATV'') systems, open video systems (''OVS''), multichannel multipoint distribution services (''MMDS''), broadband service providers (''BSPs''), and over-the-air broadcast television stations.

5. We ask commenters to provide information on the most significant changes or developments in the past year, last five years and ten years. Specifically, we seek information regarding each of the video programming distributors, including the number of homes passed, the number of subscribers, the services offered, the cost for various service options, financial information on each industry, ownership information, and data on investments in plant and facility upgrades.

6. We seek information on industry and market structure and the effect of existing Commission regulations and other provisions of the law on competition in the video marketplace. We seek comments and data on consumer access to more than one video programming distributor, such as homes passed, on the number of households subscribing to one or more multichannel video programming distributor (''MVPD''), and on the number of households relying on over-the-air broadcast television for one or more of their television sets. In this context, we seek comment on mechanisms for ascertaining or estimating the extent of ''effective competition'' beyond the statutory definition of this term. We also seek data on relative prices to help us investigate the substitution between MVPD technologies, and information on how competition has affected prices, service offerings, and quality of service.

7. We request comment on any factors that are unique to competition in the multiple dwelling units (''MDUs'') submarket. We also seek information on what barriers to entry exist in the market. Specifically, we request comment on the ability of video programming distributors to gain access to programming, rights-of-way, pole attachments, conduits, and ducts for the delivery of their services to consumers.

8. We ask commenters to provide data on existing and planned national and local programming services, and their ownership. We seek information on the extent to which programmers are affiliated with video programming distributors and to what extent programming distributors, both broadcast and non-broadcast programming services, are involved in the production of the programming they

provide, vertically integrated or not. Further, we request data on programming services including the scope of service, launch date, identification of ownership, and number of subscribers. To what extent are video programming distributors able to acquire or license unaffiliated programming? What is the extent to which video programming distributors are and have been able to acquire or license non-vertically integrated programming? To what extent are non-cable MVPDs producing their own programming or securing exclusive rights to certain programming services? Are there certain programming services or types of services without which competitive video service providers may find themselves unable to compete effectively? We also ask for information on how video programming distributors package their programming. In addition, we seek comment as to whether non-vertically integrated programming channels and independently produced programming are able to gain distribution to consumers.

9. Further, we request comment regarding children's, locally-originated, local news, community affairs, and non-English programming. To what extent do cable operators offer public, educational, and governmental (''PEG'') access and leased access channels? Commenters are asked to provide information regarding the programming provided by DBS operators in compliance with their public interest obligations. We request comment on the effectiveness of our program access, program carriage, and channel occupancy rules. We seek information regarding video programming providers' experiences offering closed captioning and video description.

10. We also ask for information on advanced service offerings (*e.g.*, high-speed Internet access services, telephony, video-on-demand, high definition television, interactive television) and new ways of offering service (*e.g.*, personal video recorders, streaming video) that are being deployed by video programming distributors. Specifically, we request information regarding the amount and type of programming being offered in high-definition television (''HDTV'') format. We seek updated statistics such as the cost of such services, the subscribership to these services, and the number of homes to which each type of service is available. Further, we seek information on the impact that the availability of non-video services offered by video programming providers has on the nature of competition in the video marketplace. In addition, to what extent do MVPDs offer video and non-video services together? How are the combined services offered and priced? We request comment on the number and types of electronic program guides (''EPGs'') that video programming distributors offer or plan to offer and the technologies used to distribute them. We seek comment on the availability and compatibility of customer premises equipment used to provide video programming and other services. How many households have one or more devices? We seek information on the retail availability of navigation devices to consumers.

Cable Television Service

11. We plan to report on the performance of the cable television industry, and request data and comments on the current and historical state of competition in this segment of the market. We seek statistical information on the cable industry generally and specifically on the financial performance of the industry, capital acquisition and disposition, rates, channel capacity, programming costs, homes passed, subscribership, viewership, new service offerings, and the investments that cable operators have made to upgrade their plant and equipment.

12. We request information on the deployment of various technical methods used to increase capacity. For individual multiple system operators (''MSOs''), we request data on the number of systems upgraded, the analog channel capacity resulting from upgrades, the digital channel capacity resulting from upgrades, the number of systems with digital tiers, the number of households where digital services are available, and the number of subscribers to digital services. What types of programming are available on digital tiers?

13. We seek information on cable system transactions, including the names of the buyer and seller, the date of the transaction, type of transaction (*i.e.*, sale, swap, or trade), name and location of the system, homes passed and number of subscribers, and the price. We seek similar information for non-cable video programming providers. We also request comment on the practice of clustering, whereby operators concentrate their operations in specific geographic areas. We request data regarding the effect of clustering by cable operators on competition in the video programming distribution market.

14. We seek comment on whether cable operators are changing the way they package programming. We also are interested in information on whether, and if so how, cable operators are restructuring their programming packages and tiers of service as a result of actual or potential competition.

15. We further request information about the advanced services provided by cable operators, such as digital video, high-speed Internet access services, telephony, video-on-demand, and the amount and type of programming being offered in HDTV format. What is the status of the cable industry certification process for interoperable cable modems and to what extent are consumers now purchasing cable modem equipment certified by Cable Television Laboratories, Inc (''CableLabs'') under their Certified Cable Modem Project, rather than renting from video programming distributors? We also seek the most recent information regarding the development of specifications for interoperable set-top boxes on CableLabs' OpenCable process. What percentage of existing equipment is compatible with the OpenCable standards? What developments have taken place in the last year relating to the POD-Host Interface, or PHI license, that affect the deployment of navigation devices or their availability at retail stores? Finally, we solicit updated information on PacketCable, a CableLabs project intended to develop interoperable interface specifications for delivering advanced, real-time multimedia services over two-way cable plant. What is the status of the testing and implementation of this standard?

16. Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70% of households within the United States and are subscribed to by 70% of those households, the Commission may promulgate any additional rules necessary to promote diversity of information sources. We request comment and supporting data that to determine whether the criteria specified under section 612(g) have been met. Under sections 614 and 615 of the Communications Act, cable operators must set aside up to one third of their channel capacity for the carriage of commercial television stations and additional channels for noncommercial stations depending on the system's channel capacity. We seek information on the extent to which cable operators currently are using all their required set-aside channels for the carriage of local broadcast signals.

Direct-to-Home Satellite Services

17. We seek current and historical information about direct-to-home (''DTH'') satellite services, which

includes direct broadcast satellite (''DBS'') and home satellite dish (''HSD'' or ''C-Band'') services. Are there identifiable differences between consumers who choose to subscribe to DBS rather than cable or another video programming distributor? How many or what percentage of households cannot receive DBS service because they are not within the line-of-sight of the satellite signal? We seek comment on the geographic locations of DBS and HSD subscribers, by state and type of area (*i.e.*, urban, suburban, rural). To what extent do DBS subscribers reside in areas not passed by cable systems?

18. We request information on the number of markets where local-into-local television service is offered, or will be offered in the near future, pursuant to Satellite Home Viewer Improvement Act of 1999 (''SHVIA''), including the number and affiliation of the stations carried. What percentage of DBS subscribers are opting for local programming packages where available? In cases in which additional equipment is needed to receive a full complement of local signals, what percentage of subscribers is obtaining this additional equipment? We also request information on the impact on DBS subscribership and penetration as well as its effect on the video programming market generally. What percentage of DBS subscribers continues to subscribe to cable in order to receive local broadcast signals?

19. We request current and historical data that will allow us to compare DBS and cable rates for programming packages and equipment. What is the typical cost of DBS equipment and installation? We request information regarding DBS operator equipment leasing program options, including the monthly rates charged for leasing equipment. To what extent do satellite operators subsidize equipment costs in order to attract subscribers? Have DBS rates for some programming packages increased over the last year? What factors affect changes in DBS prices?

20. We seek information on the status of Internet access services offered by the DBS industry. We seek information regarding other advanced services offered or co-marketed by DBS operators. To what extent are DBS operators offering programming in HDTV format? What marketing arrangements have non-DBS video programming distributors entered into to provide DBS service to their customers?

Broadcast Television Service

21. We seek information on the role of broadcast television in the market for the delivery of video programming. We request information on the number and percentage of MVPD subscribers who rely on off-air reception for local broadcast service on one or more television sets, by type of MVPD service. In addition, what percentage of households has only over-the-air broadcast television reception on all television sets?

22. We request information regarding the amount and type of programming (*e.g.*, network, local, syndicated) being broadcast on digital channels, including the extent to which DTV channels are being used for HDTV, the extent to which they are being used for multichannel program offerings (''multicasting''), and the extent to which they are being planned as ancillary and supplementary services such as subscription services. We also seek information on DTV carriage agreements between broadcasters and cable operators and the status of any such negotiations. In addition, we request information on the sales of DTV consumer equipment and the factors affecting consumer adoption of DTV equipment.

Wireless Cable Systems

23. We seek information regarding the previously identified trend towards declining subscribership for wireless cable, also revered to as MMDS-provided video. What factors affect the health and viability of the MMDS industry? We seek information about the availability of advanced services, such as digital video, high-speed Internet access services, and telephony. Where are consumers able to access these services via MMDS and how does the availability of these services affect competition?

Private Cable Operators

24. We request current and historical information on the types of services offered by private cable operators, also known as SMATV systems. We request data for private cable systems, including subscribership levels, service areas, and the identities of the largest operators. How do the programming packages offered and the price of SMATV service compare to those of incumbent cable operators? Are there services that private cable operators provide their subscribers that cable, DBS, and other technologies do not?

Local Exchange Carriers and Utilities

25. We seek information, both current and historical, regarding local exchange carriers (''LECs''), long distance telephone companies, and utility companies that provide video services. We request information on franchised cable systems operated by LECs, both within their telephone service areas and outside those regions. To what extent are LEC video programming services being bundled with telephone, Internet, or other utility services?

Broadband Service Providers, Open Video System Operators, and Overbuilders

26. We seek current and historical information regarding the provision of video, voice, and data services by broadband service providers (''BSPs''), open video system (''OVS'') operators, and overbuilders. We ask commenters to provide information regarding the video service packages that are offered and the rates charged for the various packages. Are video services offered in combination with telephone and high speed Internet access? We further seek comment on the current, historical, and potential effect of BSPs, OVS operators, and overbuilders on the status of video competition. What are the technical and economic obstacles to the successful operation of systems of this type?

Home Video Sales and Rentals

27. We seek information regarding the home video sales and rental market. We request data on the number or percentage of households with videocassette recorders, laser disc players, DVD players, and personal video recorders (''PVRs''). We request information on the amount of programming available in VCR, DVD, and laser disc formats for sale and rental, the cost of rentals, and how this compares to the cost of pay-per-view, video-on-demand, or near video-on demand movies. We seek information on the development of the Internet as a means through which some video retailers are selling their videos. Further, we seek information on the development of companies offering PVR services in conjunction with video programming distributors, equipment manufacturers, advertisers, and programmers.

Internet Video

28. We seek information on the types of video services currently being offered over the Internet and fact-based projections of when Internet video will become a viable competitor in the market for the delivery of video programming. We also solicit information on the technological, legal, and competitive factors that may promote or impede the provision of video over the Internet.

Foreign Markets

29. Finally, we seek information regarding the status of competition in the market for the delivery of video programming in markets outside of the United States that would provide insights regarding the nature of competition in the U.S. market. We seek information from these experiences that would be instructive as to the efficiency of market structures and regulations within the United States.

Procedural Matters

Ex Parte

30. There are no ex parte or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

Filing of Comments and Reply Comments

31. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 11, 2003, and reply comments on or before September 26, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

32. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Media Bureau contact for this proceeding is Andrew Wise at (202) 418–7026, or at Andrew.Wise@fcc.gov.

33. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0267 (voice), (202) 418–7365 (TTY), or *bcline@fcc.gov.* These documents also will be available electronically from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Qualex International, Portals II, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (TTY).

Ordering Clause

34. This NOI is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–20038 Filed 8–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve 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.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Clearance Officer—Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). OMB Desk Officer—Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Recordkeeping Requirements Associated with Changes in Foreign Investments (Made Pursuant to Regulation K).

Agency form number: FR 2064.

OMB control number: 7100–0109.

Frequency: On-occasion.

Reporters: State member banks (SMBs), Edge and agreement corporations, and bank holding companies (BHCs).

Annual reporting hours: 320 hours.

Estimated average hours per response: 2 hours.

Number of respondents: 40.

Small businesses are not affected.

General description of report: The recordkeeping requirements of this information collection are mandatory (section 5(c) of the BHC Act (12 U.S.C. 1844(c)); sections 7 and 13(a) of the International Banking Act of 1978 (12 U.S.C. 3106 and 3108(a)); section 25 of the Federal Reserve Act (FRA) (12 U.S.C. 601–604a); section 25A of the FRA (12 U.S.C. 611–631); and Regulation K (12 CFR 211.8(c))). Since the Federal Reserve does not collect this information no issue of confidentiality under the Freedom of Information Act (FOIA) arises. FOIA will only be implicated if the Board's examiners retain a copy of the records in their examination or supervision of the institution, and would be exempt from disclosure pursuant to FOIA (5 U.S.C. 552(b)(4), (b)(6), and (b)(8)).

Abstract: Internationally active U.S. banking organizations are expected to maintain adequate internal records to allow examiners to review for compliance with the investment provisions of Regulation K. For each investment made under Subpart A of Regulation K, records should be maintained regarding the type of investment, for example, equity (voting shares, nonvoting shares, partnerships, interests conferring ownership rights, participating loans), binding commitments, capital contributions, and subordinated debt; the amount of the investment; the percentage ownership; activities conducted by the company and the legal authority for such activities; and whether the investment was made under general consent, prior notice, or specific consent authority. With respect to investments made under general consent authority, information also must be maintained that demonstrates compliance with the various limits set out in Section 211.9 of Regulation K.

2. *Report title:* Recordkeeping Requirements Associated with Real Estate Appraisal Standards for Federally Related Transactions Pursuant to Regulations H and Y.

Agency form number: FR H–4.

OMB Control number: 7100–0250.

Frequency: Event-generated.

Reporters: SMBs and subsidiaries of BHCs.

Annual reporting hours: SMBs, 27,775; subsidiaries of BHCs, 39,813.

Estimated average hours per response: 0.25 hours.

Number of respondents: 1,785.

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 3331–3351). Since the Federal Reserve does not collect this information, no issue of confidentiality under FOIA arises.

Abstract: For federally related transactions, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 requires SMBs and BHCs with credit extending subsidiaries to use appraisals prepared in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. Generally, these standards include the methods and techniques used to analyze a property as well as the requirements for reporting such analysis and a value conclusion in the appraisal. There is no formal reporting form and the information is not submitted to the Federal Reserve.

3. *Report title:* Request for Proposal (RFP) and Request for Price Quotations (RFPQ).

Agency form number: RFP/RFPQ.

OMB Control number: 7100–0180.

Frequency: On-occasion.

Reporters: Vendors and suppliers.

Annual reporting hours: 7,858 hours.

Estimated average hours per response: RFP, 50 hours; RFPQ, 2 hours.

Number of respondents: RFP, 120; RFPQ, 929.

Small businesses are affected.

General description of report: This information collection is required to obtain a benefit (12 U.S.C. 243, 244, and 248). This information collection is not given confidential treatment unless a respondent requests that portions of the information be kept confidential and the Board's staff grants the request pursuant to the applicable exemptions provided by FOIA (5 U.S.C. 552).

Abstract: The Federal Reserve uses the RFP and the RFPQ as needed to obtain competitive bids and contracts submitted by vendors (offerors). Depending upon the goods and services for which the Federal Reserve Board is seeking bids, the offeror is requested to provide either prices for providing the goods or services (RFPQ) or a document covering not only prices, but the means of performing a particular service and a description of the qualification of the staff of the offeror who will perform the service (RFP). The Board staff uses this information to analyze the proposals and select the offer providing the best value.

Board of Governors of the Federal Reserve System, July 31, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–19972 Filed 8–5–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

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 August 29, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Northwest Equity Corp., Buffalo Grove, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of 1st Equity Bank Northwest (in organization), Buffalo Grove, Illinois.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Lauritzen Corporation, and First National of Nebraska, Inc., both of Omaha, Nebraska; to retain their interest in Inficorp Holdings, Inc., Atlanta, Georgia, upon the conversion of Infibank, N.A., Atlanta, Georgia, to a full service bank.

In connection with this proposal, Inficorp Holdings, Inc., Atlanta, Georgia has applied to become a bank holding company.

Board of Governors of the Federal Reserve System, July 31, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–19973 Filed 8–5–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 12 p.m., Monday, August 11, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 1, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–20135 Filed 8–4–03; 11:27 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 29, 2003.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. First National Bank Holding Company, Scottsdale, Arizona; to acquire 100 percent of the voting shares of Access Anytime BanCorp, Inc., Albuquerque, New Mexico, and thereby indirectly acquire FirstBank FSB, Clovis, New Mexico, and thereby operate a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 31, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–19974 Filed 8–5–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC is seeking public comments on its proposal to extend through November 30, 2006 the current PRA clearance for information collection requirements contained in its Alternative Fuel Rule. That clearance expires on November 30, 2003.

DATES: Comments must be filed by October 6, 2003.

ADDRESSES: Send comments to Secretary, Federal Trade Commission, 600 Pennsylvania Ave., NW., Room H–159, Washington, DC 20580 or by e-mail to *afv@ftc.gov.,* as prescribed below. The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All submissions should be captioned ''Alternative Fuel Rule: Paperwork comment.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Neil Blickman, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 601 New Jersey Ave., NW., Room NJ–2122, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Alternative Fuel Rule.

The FTC invites comments on: (1) 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) 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments from members of the public are invited, and may be filed with the Commission in either paper or electronic form. A public comment filed in paper form should be mailed or delivered to the following address:

Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.''[1] A public comment that does not contain any material for which confidential treatment is requested may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word), as part of or as an attachment to an email message sent to the following email box: *afv@ftc.gov.* Regardless of the form in which they are filed, all timely comments will be considered by the Commission, and will be available (with confidential material redacted) for public inspection and copying at the Commission's principal office and on the Commission web site at *www.ftc.gov.* As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives, before placing those comments on the FTC web site.

The Alternative Fuel Rule, 16 CFR part 309 (Control Number: 3084–0094), issued under the Energy Policy Act of 1992, Pub. L. 102–486, requires disclosure of specific information on labels posted on fuel dispensers for non-liquid alternative fuels and on labels on alternative fueled vehicles (AFVs). To ensure the accuracy of these disclosures, the Rule also requires that sellers maintain records substantiating product-specific disclosures they include on these labels.

Burden Statement

It is common practice for alternative fuel industry members to determine and monitor fuel ratings in the normal course of their business activities. This is because industry members must know and determine the fuel ratings of their products in order to monitor quality and to decide how to market them. ''Burden'' for PRA purposes is defined to exclude effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.2(b)(2). Moreover, as originally anticipated when the Rule was promulgated in 1995, many of the information collection requirements and the originally-estimated hours were associated with one-time start up tasks of implementing standard systems and processes.

Other factors also limit the burden associated with the Rule. Certification may be a one-time event or require only infrequent revision. Disclosures on electric vehicle fuel dispensing systems may be useable for several years. (Label specifications were designed to produce labels to withstand the elements for several years.) Nonetheless, there is still some burden associated with posting labels. There also will be some minimal burden associated with new or revised certification of fuel ratings and recordkeeping. The burden on vehicle manufacturers is limited because only newly-manufactured vehicles will require label posting and manufacturers produce very few new models each year. Finally, there will be some burden, also minor, associated with recordkeeping requirements.

Estimated total annual hours burden: 2,100 total burden hours, rounded.

Non-Liquid Alternative Fuels

Recordkeeping: Staff estimates that all 1,800 industry members will be subject to the Rule's recordkeeping requirements (associated with fuel rating certification) and that compliance will require approximately one-tenth hour each per year for a total of 180 hours.

Certification: Staff estimates that the rule's fuel rating certification requirements will affect approximately 550 industry members (compressed natural gas producers and distributors and manufacturers of electric vehicle fuel dispensing systems) and consume approximately one hour each per year for a total of 550 hours.

Labeling: Staff estimates that labeling requirements will affect approximately nine of every ten industry members (or roughly 1,600 members), but that the number of annually affected members is only 320 because labels may remain effective for several years (staff assumes that in any given year approximately 20% of 1,600 industry members will need to replace their labels). Staff estimates that industry members require approximately one hour each per year for labeling their fuel dispensers for a total of 320 hours.

Sub-total: 12,050 hours (180 + 550 + 320).

AFV Manufacturers

Recordkeeping: Staff estimates that all 58 manufacturers will require 30 minutes to comply with the Rule's recordkeeping requirements for a total of 29 hours.

Producing levels: Staff estimates 2.5 hours as the average time required of manufacturers to produce labels for each of the five new AFV models introduced among them each year for a total of 12.5 hours.

Posting labels: Staff estimates 2 minutes as the average time to comply with the posting requirements for each of the approximately 30,000 new AFVs manufactured each year for a total of 1,000 hours.

Sub-total: approximately 1,041 hours (29 + 12.5 + 1,000).

Thus, total burden for these industries combined is approximately 2,100 hours (1,050 + 1,041).

Estimated labor costs: $47,000, rounded.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. According to Bureau of Labor Statistics staff, the average compensation for producers and distributors in the fuel industry is $18.98 per hour and $8.56 per hour for service station employees; the average compensation for workers in the vehicle industry is $27.80 per hour.

Non-Liquid Alternative Fuels

Certification and labeling: Generally, all of the estimated hours except for recordkeeping will be performed by producers and distributors of fuels. Thus, the associated labor costs would be $16,512.60 (870 hours × $18.98).

Recordkeeping: only 1/6 of the total 180 hours will be performed by the producers and distributors of fuels; the other 5/6 is attributable to service station employees (1/6 = 30 hours × $18.98 = $569.40 + (5/6 = 150 hours × $8.56 = $1,284.00) = $1,853.40, for an estimated labor cost to the entire industry of $18,366.00.

AFV Manufacturers

The maximum labor cost to the entire industry is approximately $28,939.80 per year for recordkeeping and producing and posting labels (1,041 total hours × $27.80/hour). Thus, estimated total labor cost for both industries for all paperwork requirements is $47,000 ($18,366.00 + $28.939.80) per year, rounded to the nearest thousand.

Estimated annual non-labor cost burden: $12,000, rounded.

Non-Liquid Alternative Fuels

Staff believes that there are no current start-up costs associated with the Rule, inasmuch as the Rule has been effective since 1995. Industry members, therefore, have in place the capital

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 (CFR 4.9(c).

equipment and means necessary, especially to determine automotive fuel ratings and comply with the Rule. Industry members, however, incur the cost of procuring fuel dispenser and AFV labels to comply with the Rule. The estimated annual fuel labeling cost, based on estimates of 500 fuel dispensers (assumptions: an estimated 20% of 1,250 total retailers need to replace labels in any given year given an approximately five-year life for labels—*i.e.,* 250 retailers—multiplied by an average of two dispensers per retailer) at thirty-eight cents for each label (per industry sources), is $190.00.

AFV Manufacturers

Here, too, staff believes that there are no current start-up costs associated with the Rule, for the same reasons as stated immediately above regarding the non-liquid alternative fuel industry. However, based on the labeling of an estimated 30,000 new and used AFVs each year at thirty-eight cents for each label (per industry sources), the annual AFV labeling costs is estimated to be $11,400. Estimated total annul non-labor cost burden associated with the Rule, therefore, would be $12,000 ($190.00 + $11,400.00), rounded to the nearest thousand.

William E. Kovacic,

General Counsel.

[FR Doc. 03–19998 Filed 8–5–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Delegation of Authority to Disclose Certain Nonpublic Information to Consumer Reporting Agencies

AGENCY: Federal Trade Commission (FTC).

ACTION: Delegation of authority.

SUMMARY: The Commission has delegated authority to the Director of the Bureau of Consumer Protection, subject to redelegation, to share certain non-public information with consumer reporting agencies.

EFFECTIVE DATE: July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Monique F. Einhorn, Attorney, Division of Planning and Information, 202–326–2575, *meinhorn@ftc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given, pursuant to Reorganization Plan No. 4 of 1961, 26 FR 6191, that the Commission has delegated to the Director of the Bureau of Consumer Protection, subject to redelegation, the authority to disclose consumer complaint information from the Identify Theft Data Clearinghouse and Consumer Information System databases to consumer reporting agencies. The consumer complaint information will be disclosed to promote resolution of the complaints.

This delegation does not apply to competition-related investigations. When exercising its authority under this delegation, staff will require from the consumer reporting agency assurances of confidentiality. Disclosures shall be made only to the extent consistent with limitations on disclosure, including section 6(f) of the FTC Act, 15 U.S.C. 46(f), section 21 of the Act, 15 U.S.C. 57b–2, and Commission Rule 4.10(d), 16 C.F.R. 4.10(d), and with the Commission's enforcement policies and other important interests.[1]

The delegation will first be exercised on the date of the first disclosure and will continue for twelve (12) months thereafter.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–19997 Filed 8–5–03; 8:45 am]

BILLING CODE 6750–01–M

[1] The Commission's authority to share is consistent with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and section 5 of the Identity Theft and Assumption Deterrence Act of 1998, Pub. L. 105–318, 112 Stat. 3007, 3010, 18 U.S.C. 1028 note. *See* 58 FR 45678, 45700 (1992); 64 FR 57887 (1999) (FTC Privacy Act system notices for consumer compliant system generally and identity theft complaint system specifically, specifying routine uses of system records).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Thonthi Karunakaran, Boston Medical Center: Based on the report of an investigation conducted by Boston Medical Center (BMC Report) and additional analysis performed by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Thonthi Karunakaran, Ph.D., former Research Scientist at BMC, engaged in scientific misconduct by plagiarizing, falsifying, and fabricating research that he reported to his supervisor for the project ''Hemin Utilization by Porphyromonas gingivalis,'' funded by National Institute of Dental and Craniofacial Research, (NIDCR), National Institutes of Health (NIH), grant R01 DE09161–11.

Specifically, PHS found that Dr. Karunakaran engaged in scientific misconduct by:

(1) Plagiarizing a P. gingivalis strain W83 DNA sequence from an Internet database and misrepresenting to his supervisor that the Internet database printout represented his own cloning and sequencing of strain A7436 fur gene X;

(2) Fabricating the claim to have obtained sequence data for a strain A7436 cloned fur gene X from a sequencing facility at Massachusetts Institute of Technology (MIT); and

(3) Falsifying unrelated sequencing data from a graduate student's notebook in the laboratory by trimming off the identifying header and misrepresenting it to his supervisor as primary data from his sequencing of the A7436 fur gene X.

There were no published papers that required correction or retraction.

The following administrative actions have been implemented for a period of three (3) years, beginning on July 17, 2003:

(1) Dr. Karunakaran is debarred from eligibility for or involvement in Federal covered transactions (*i.e.,* any Federal transaction other than a procurement transaction) and from contracting or subcontracting with any Federal government agency; this action is being taken pursuant to the debarment regulation pertaining to grants and other forms of assistance (45 CFR part 76); and

(2) Dr. Karunakaran is prohibited from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

Lawrence J. Rhoades,

Acting Director, Office of Research Integrity.

[FR Doc. 03–19947 Filed 8–5–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–103]

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 the CDC Reports Clearance Officer on (404) 498–1210.

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. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Building Capacity to Fluoridate—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Since the first fluoridation of a public water system in Grand Rapids, Michigan in 1945, fluoridation of community water supplies has dramatically reduced the prevalence of dental caries in the United States. Scientific evidence compiled over nearly six decades demonstrates that adjusting the fluoride concentration of public water systems is a safe, cost-effective, and equitable intervention that benefits everyone in a given community regardless of financial status.

The percentage of the U.S. population living in areas with fluoridated water grew steadily from 1945 to the mid-1970s. Adoption of fluoridation is ultimately a choice made by community decision makers and often is put before the public for vote as a referendum. In spite of survey findings that roughly 70 percent of the U.S. population favors fluoridation, referenda since the 1980's have often resulted in community decisions not to fluoridate. Thus, the rate of increase in access to fluoridated water among those on public water systems has slowed. In 2000, 65.8 percent of this population had access to fluoridated water, still far short of the 75 percent fluoridation target set in both the *Healthy People 2000* and *2010 objectives*.

The purpose of this research is to identify and describe the variables that influence community fluoridation decisions made by public vote and provide enhanced knowledge that may be useful to communities considering fluoridation.

In-person interviews will be conducted with seven (7) to 13 (thirteen) key players in fluoridation referendum campaigns at eight (8) sites where fluoridation has been rejected or accepted within the last three years. Key participants in the campaigns will vary slightly by site. We expect, however, these participants to include:

- State or local health department staff
- Campaign directors
- Local elected officials
- Outside political consultants
- Grassroots leaders
- Media representatives

A total of 80 interviews will be conducted. The interviews will consist of approximately 30 questions and last 1½ hours. There are no costs to the respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Key participants in local fluoridation referendum campaigns	80	1	90/60	120

Dated: July 31, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–19978 Filed 8–5–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–104]

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 the CDC Reports Clearance Officer on (404) 498–1210.

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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Lessons Learned from Emergency Medical Responses to Chemically-Contaminated Patients—New—Agency for Toxic Substances and Disease Registry (ATSDR). Since the September 11, 2001, World Trade Center Attack, there has been increased interest in improving medical preparedness for contaminated casualties. Anecdotal evidence and observations from non-chemical disasters suggests that medical planning may be based on some assumptions that

are invalid. For example, planning is often based on the following assumptions: (1) That victims will be decontaminated by first responders on the scene; (2) that victims will be transported by ambulances that can be directed to a hospital designated for contaminated casualties; and (3) that hospitals will receive advance notice that casualties will be arriving, so that special preparations can me made to receive them (e.g., lining floors and walls with plastic tarps; donning respirators and chemical resistant clothing).

We propose assessing 10 incidents over a three-year period involving patients treated at hospitals for actual or possible contamination by chemicals which could pose a threat of illness or injury to the hospital staff that treat them. Data will be collected not only from hospitals but from other emergency medical and public safety organizations, and even members of the public who have become involved in the response. This is because the actions of these groups can have a profound effect on how hospitals carry out their emergency tasks. The lessons-learned during these responses will be collected by a field research team using semi-structured, open-ended interviews of those involved in the responses, for example: patients and their families, hospital staff, police, firefighters, emergency medical technicians, emergency dispatchers, and others who have knowledge of the response.

Certain standardized data will also be collected, such as: number of victims, chemical identity, distribution of casualties among area hospitals, time of incident, time of hospital notification, type of protective clothing and respiratory protection used by hospital staff. A review of the existing field disaster research literature has failed to identify other studies that have collected this type of information. The results of the project will be used to develop and update training materials for hospitals and other emergency responders. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Emergency Responders	100	2	1	200
Patients and/or Family	40	2	1	80
Total				280

Dated: July 31, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–19979 Filed 8–5–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–60–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Assessment of Exposure to Arsenic through Household Water, OMB No. 0920–0472—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

Arsenic is a naturally occurring element present in food and water as both organic and inorganic complexes. Epidemiologic evidence shows a strong link between ingestion of water containing inorganic arsenic and an increase in certain cancers (e.g., bladder cancer, lung cancer). Although consumption of arsenic-contaminated food is the major source of arsenic exposure for the majority of U.S. citizens, in some areas of the United States, elevated levels of arsenic occur frequently in water. In such areas, ingestion of water can be the primary source of arsenic exposure.

Currently, point-of-use (POU) devices are the preferred method of treatment of private domestic well water containing elevated levels of arsenic. Bottled water and POU treatment systems are considered effective means of managing arsenic exposure based on the assumption that people's other water exposures, such as bathing, brushing of teeth, cooking, and drinking occasionally from other taps, contribute relatively minor amounts to a person's total daily intake of arsenic.

We propose to conduct a study to methodically test the validity of the commonly made assumption that secondary water exposures, such as bathing, will not result in a significant increase in arsenic exposure above background dietary levels. Specifically, we are interested in assessing total urine arsenic levels and levels of organic and inorganic arsenic species among people in areas in which ingestion of arsenic-containing water is controlled by either POU treatment or use of bottled water.

Potential participants who are interested in being part of the study will be interviewed by telephone. Recruited participants will be asked to participate in a survey interview about potential exposures to arsenic. Participants in the study will use short-term diaries to record diet, water consumption, and bathing frequency. In addition, we will assess long-term arsenic exposure by analyzing toenail samples for total arsenic.

The total annualized burden hours are estimated to be 2,689.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Pre-screening postcard completion	16,470	1	5/60
Free Water Test Completion	3,790	1	5/60
Initial recruiting postcard completion	1,480	1	5/60
Screening/Recruiting telephone interview	490	1	15/60
Survey interview (in person)	780	1	30/60
Short-term diary completion	780	1	15/60
Biologic specimen collection	780	1	10/60
Toenail analysis phone call	260	1	5/60
Toenail analysis consent forms	260	1	5/60

Dated: July 31, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–19980 Filed 8–5–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Public Health Service (PHS) Act; Delegation of Authority

Notice is hereby given that I have delegated to the Associate Director for Science, CDC, without authority to redelegate, the authority vested in the Director, CDC, under section 301(d), of the PHS Act (42 U.S.C. 241 *et seq.*).

This delegation became effective upon date of signature.

Dated: July 29, 2003.

Julie Louise Gerberding,

Director.

[FR Doc. 03–19953 Filed 8–5–03; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0336]

Determination That Benztropine Mesylate Tablets and Nine Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the 10 drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. These are drug products with approved new drug applications (NDAs) to which one or more approved abbreviated new drug applications (ANDAs) refer. This determination means that the approval status of the ANDAs is unaffected by the withdrawal from sale of the reference product.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (the 1984 amendments) (Public Law 98–417), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)).

If a listed drug is withdrawn from sale and there are approved ANDAs that refer to that drug, under § 314.161(a)(2) (21 CFR 314.161(a)(2)), the agency must determine whether the listed drug was withdrawn from sale for reasons of safety or effectiveness. Section 314.161(d) provides that if FDA determines that the listed drug was removed from sale for safety or effectiveness reasons, the agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

The holders of the applications listed in the table in this document have informed FDA that the drug products have been withdrawn from sale. The drug products in the table are subjects of approved NDAs to which one or more approved ANDAs refer.

NDA No.	Drug	Applicant
9–193	Cogentin (benztropine mesylate) Tablets, 0.5, 1, and 2 milligrams (mg).	Merck & Co., Inc., BLA–20, P.O. Box 4, West Point, GA 19486–0004.

NDA No.	Drug	Applicant
11–835	HydroDiuril (hydro-chlorothiazide) Tablets, 25, 50, and 100 mg.	Do.
12–383	Colbenemid (colchicine; probenecid) Tablets, 0.5 mg; 500 mg.	Do.
15–921	Haldol (haloperidol) Tablets, 0.5, 1, 2, 5, 10, and 20 mg.	Ortho-McNeil Pharmaceutical, Inc. 1000 Route 202, P.O. Box 600, Raritan, NJ 08869–0600.
17–657	Cephulac (lactulose) Solution, 10 grams/15 mL.	Aventis Pharmaceuticals, 300 Somerset Corporate Blvd., Bridgewater, NJ 08807–2854.
17–814	Indocin (indomethacin) Suppositories, 50 mg.	Merck & Co., Inc.
17–851	Lioresal (baclofen) Tablets, 10 and 20 mg.	Novartis Pharmaceuticals Corp., One Health Plaza, East Hanover, NJ 07936.
18–654	Versed (midazolam hydrochloride (HCl)) Injection, 1 mg/mL and 5 mg/mL.	Roche Pharmaceuticals, Division of Hoffmann-LaRoche, Inc., 340 Kingsland St., Nutley, NJ 07110.
20–095	Zantac (ranitidine HCl) Geldose Capsules, 150 and 300 mg.	GlaxoSmithKline, P.O. Box 13398, Five Moore Dr., Research Triangle Park, NC 27709.
20–942	Versed (midazolam HCl) Syrup, 2 mg/mL.	Roche Pharmaceuticals.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Approved ANDAs that refer to the NDAs listed in this document are unaffected by the withdrawal of the products subject to those NDAs, and accordingly, the agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Dated: July 28, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–19946 Filed 8–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0201]

Minimizing Medication Errors—Methods for Evaluating Proprietary Names for Their Confusion Potential; Public Meeting; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) held a public meeting on June 26, 2003, to discuss current methods and approaches used to evaluate proprietary drug names for similarities. In the document that published in the **Federal Register** of May 30, 2003 (68 FR 32529), announcing the June 26, 2003, meeting, the agency requested comments by July 15, 2003, on questions relating to the issues discussed at the meeting. FDA is reopening the comment period until September 5, 2003, on issues discussed at that meeting in response to a request that the agency allow interested parties additional time to review and to submit comments on this issue.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic questions to *http://www.fda.gov/ohrms/dockets*.

DATES: Submit written or electronic comments by September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross, Center for Drug Evaluation and Research (HFD–400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7849, FAX: 301–443–9664.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 30, 2003, FDA published a document announcing a public meeting, which was to be held on June 26, 2003, in cooperation with the Institute for Safe Medication Practices and the Pharmaceutical Research and Manufacturers of America. The purpose of the meeting was to encourage discussion among representatives from industry, the health care professions, consumer groups, academia, and others on how best to minimize the potential for medication errors due to similarities in drug names, including a discussion of current methods and approaches. The Department of Health and Human Services (DHHS), Office of the Secretary published a recommendation (from the November 21, 2002, report from the DHHS Advisory Committee on Regulatory Reform) that called for FDA to shift, in most cases, from performing drug name safety testing to reviewing data submitted by sponsors. At the June 26, 2003, meeting, several tools with the potential to minimize naming errors resulting from look alike and sound alike drug names were considered. Potential tools included sampling, questionnaire construction, handwriting and voice recognition models, expert committees, computer assisted decision analysis, failure modes and effects analysis and premarketing risk management programs. In the document announcing that meeting, the agency requested information in response to FDA questions that had been posted at

http://www.fda.gov/cder/workshop.htm (choose Minimizing Medication Errors—Evaluating the Drug Naming Process; Public Meeting). Comments were to be received by July 15, 2003. However, in response to a request that the agency allow interested parties additional time to review and to submit comments on this issue, FDA is reopening the comment period on issues discussed at that meeting until September 5, 2003.

II. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the issues on which comments are requested at *http://www.fda.gov/cder/workshop.htm*. Paper copies of the questions may be obtained by contacting Mary Gross (*see* **FOR FURTHER INFORMATION CONTACT**).

Dated: July 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–20063 Filed 8–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Administration and National Institute of Allergy and Infectious Diseases; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop, cosponsored with the National Institute of Allergy and Infectious Diseases (NIAID), regarding clinical trial design of febrile neutropenia and antifungal combination therapy. The public workshop is intended to provide information for and gain perspectives from advocacy groups, interested health care providers, academia, and industry organizations on various aspects of febrile neutropenic and antifungal drug development.

DATES: The public workshop will be held on Thursday, September 4, 2003, from 1 p.m. to 5 p.m.

ADDRESSES: The public meeting will be held at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814. Seating is limited and available on a first-come, first-served basis. *See* the **SUPPLEMENTARY INFORMATION** section for information on electronic registration.

FOR FURTHER INFORMATION CONTACT: John Powers or Leo Chan, Center for Drug Evaluation and Research (HFD–104), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, (301) 827–2530.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop, cosponsored with NIAID, regarding two drug development scenarios: (1) Studies of empirical therapy in febrile neutropenic patients; and (2) clinical trial design considerations necessary to adequately determine safety and efficacy of antifungal combination therapies. Both agencies encourage individuals, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop. The input from this public workshop will be used to develop topics for discussion at future meetings of the Antiviral Drugs Advisory Committee.

Because seating is limited, we are asking interested persons to register on a first-come, first-served basis. To register electronically, go to FDA's Web site at *http://www.fda.gov/cder/drug/antimicrobial/default.htm*. Those without access to the Internet can call (301) 827–2530 to register.

Dated: July 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–20064 Filed 8–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[CFDA 93.145, HRSA 04–008]

AIDS Education and Training Centers, National Evaluation Center Cooperative Agreement (NECCA); Open Competition Announcement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Open Competition Cooperative Agreement.

SUMMARY: The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB) announces that applications will be accepted for fiscal year (FY) 2004 awards for a cooperative agreement to support the AIDS Education and Training Centers' (AETCs) National Evaluation Center (NEC). The NEC will provide evaluation services and support to the network of Regional and National AETCs. The purpose of the NEC is to develop, test, and disseminate methods and models for evaluating the impact of clinical education and training on provider behavior and clinical practice, with respect to changes in knowledge and skills, clinical practice behavior, and clinical outcomes.

The purpose of the Regional and National Minority AETCs is to improve the quality of HIV/AIDS clinical care through the training of health care professionals. The Regional and National Minority AETCs enhance the availability of high quality HIV care through training and support of clinical providers, and prioritize the clinical support and training needs of direct medical care providers, including physicians, nurses, physician's assistants, advance practice nurses, pharmacists, and oral health providers. The Regional and National Minority AETCs conduct assessments of regional HIV/AIDS care delivery systems and develop innovative programs to build, through training and support, HIV/AIDS care capacity to fill identified gaps. The Regional and National Minority AETCs target clinical providers caring for communities of color and populations disproportionately affected by the HIV/AIDS virus, particularly providers and those associated with Ryan White Comprehensive AIDS Resources Emergency (CARE) Act supported facilities.

As an active partner in this cooperative agreement, HRSA will have significant involvement with the applicant regarding program plans, policies, and other issues which may have major implications for any activity undertaken by the applicant under the cooperative agreement. HRSA will partner in the development of methods and tools, and selection of pilot sites. HRSA will also review and approve each phase of evaluation studies, and review and process Office of Management and Budget (OMB) Clearance package(s). Additionally, HRSA will assist and guide in program management and evaluation technical assistance. HRSA will participate, as

warranted, in the planning and coordination of meetings workgroups and workshops conducted during the term of this Agreement by reviewing activities and providing feedback and recommendations as necessary. Lastly, HRSA will approve all documents, evaluation tools, methodology, articles, and reports before they are disseminated.

Availability of Funds: It is anticipated that a single recipient will be selected for the AETCs NEC Cooperative Agreement, and a total of approximately $450,000 will be available for the first year. It is anticipated that the project funding will be for 3 years. After the first year, continuation funding will be awarded on the basis of satisfactory progress and the availability of funds. Applicants are not required to match or share in project costs if an award is made. However, applicants must propose cost-effective and efficient plans to implement project activities with funds awarded.

Eligible Applicants: Funding will be directed to activities designed for documentation and data collection, outcome evaluation, technical assistance, writing and dissemination.

Authorizing Legislation: The Authority for this grant program is Section 2692 (a) of the Public Health Service Act, as amended, 42 U.S.C 300ff–111(a).

DATES: A letter of intent to submit an application is requested by August 27, 2003. Applications for this cooperative agreement must be received in the HRSA Grant Application Center by close of business October 6, 2003. Applications shall be considered as meeting the deadline if they are (1) Received on or before the deadline date or (2) are postmarked on or before the deadline date and received in time for orderly processing and submission to the review committee. Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications postmarked after the due date will be returned to the applicant.

Where To Request and Send an Application: To obtain an application kit (PHS–5161) and program guidance materials for this announcement call the HRSA Grants Application Center at 877–477–2123 and request the OMB Catalogue of Federal Domestic Assistance number 93.145, HRSA 04–008, Program Code NECCA. HRSA anticipates accepting grant applications online in the last quarter of the fiscal year (July through September). Please refer to the HRSA Grants Schedule at *http://www.hrsa.gov/grants/* for more information. One original application plus two copies should be mailed or delivered to HRSA Grant Application Center, 901 Russell Avenue Suite 450, Gaithersburg, MD 20879. Grant applications sent to any other address are subject to being returned. Applicants will receive a Grant Application Receipt form from the HRSA Grants Application Center to confirm receipt of their application. Applicants may also contact the center directly to confirm receipt.

ADDRESSES: The letter of intent to apply for funding should be mailed to Marisol M. Rodriguez, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–46, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Additional technical information may be obtained from Faye Malitz, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane 7–90, Rockville, MD 20857; telephone number (301) 443–3259, fax number (301) 594–2511, and e-mail *fmalitz@hrsa.gov.* You may also contact Marisol M. Rodriguez, HIV Education Branch, HRSA, 5600 Fishers Lane, Room 7–46, Rockville, MD 20857; telephone number (301) 443–4082, fax number (301) 443–9887, or e-mail *mrodriguez@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Applications will be reviewed by an objective review committee using the following criteria: Understanding of the Problem, Professional Qualifications and Expertise of Applicant, Organizational Capacity, Methods and Program Plan, and Appropriateness and Justification of the Budget.

Paperwork Reduction Act: The application for the AETCs Program has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The AETCs Program is not subject to Executive Order 12372, Intergovernmental Review of Federal Programs as implemented through 45 CFR, part 100. Executive Order 12372 allows States to review applications submitted to the Federal Government by organizations located in their State through a Single Point of Contact (SPOC). For a list of States and territories that participate in the SPOC review process, please go to the following Web site address: *http://www.whitehouse.gov/omb/grants/spoc.html.*

Dated: July 13, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–19996 Filed 8–5–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2285–03]

RIN 1650–AB06

Extension of the Designation of Liberia Under the Temporary Protected Status Program

AGENCY: Bureau of Citizenship and Immigration Services, Homeland Security.

ACTION: Notice.

SUMMARY: The designation of Liberia under the Temporary Protected Status (TPS) Program will expire on October 1, 2003. This notice extends the Secretary of Homeland Security's designation of Liberia for 12 months until October 1, 2004, and sets forth procedures necessary for nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) with TPS to re-register and to apply for an extension of their employment authorization documentation for the additional 12-month period. Re-registration is limited to persons who registered under the initial designation (for which the registration period ended on April 1, 2003). Certain nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of Liberia's TPS designation is effective October 1, 2003, and will remain in effect until October 1, 2004. The 60-day re-registration period begins August 6, 2003 and will remain in effect until October 6, 2003.

FOR FURTHER INFORMATION CONTACT: Jonathan Mills, Residence and Status Services, Office of Programs and Regulations, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 ''I'' Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Extend the Designation of Liberia Under the TPS Program?

On March 1, 2003, the functions of the Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Public Law 107–296. The responsibilities for administering the TPS program held by the Service were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state or (part thereof) for TPS. The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. 8 U.S.C. 1254a(b)(3)(A). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, as provided in section 244(b)(3)(B) of the Act. 8 U.S.C. 1254a(b)(3)(B). Finally, if the Secretary of DHS does not determine that a foreign state (or part thereof) no longer meets the conditions for designation at least 60 days before the designation or extension is due to expire, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the discretion of the Secretary of DHS, a period of 12 or 18 months). 8 U.S.C. 1254a(b)(3)(C).

Why Did the Secretary of DHS Decide To Extend the TPS Designation for Liberia?

On October 1, 2002, the Attorney General published a notice in the **Federal Register** designating Liberia under the TPS program for a period of 12 months based upon an ongoing armed conflict in Liberia. 67 FR 61665. Since the date of the designation, the Department of Homeland Security and Department of State (DOS) have continued to review conditions in Liberia. A 12-month extension is warranted due to ongoing armed conflict within Liberia that would pose a serious threat to the personal safety of returning nationals of Liberia.

Fighting between government security forces and the Liberians United for Reconciliation and Democracy (LURD) rebels has intensified in western Liberia over the last three years and recently reached heightened levels. DOS Recommendation (June 4, 2003). The newly emerged rebel force Movement for Democracy in Liberia (MODEL) is now active in eastern Liberia, opening a second front. *Id.* Fighting has spread to 10 of Liberia's 13 counties. *Id.* Rebel groups currently control between 40 and 60 percent of the territory of Liberia. BCIS Resource Information Center (RIC) Report (June 17, 2003). The rebels, who want to oust President Charles Taylor, have stepped up their attacks and recently reached the capital, Monrovia. DOS Recommendation; United Nations News Service (July 21, 2003).

According to a February 2003 report from the United Nations (U.N.) Secretary-General, the situation in Liberia ''remains extremely volatile, with the rebels reportedly in control of several towns and cities.'' RIC Report. The U.N. Secretary General's representative also stated that the ''security situation had deteriorated progressively since the start of the year and the trend would continue unless concerted action was taken to bring about a ceasefire between government troops and rebels of the * * * LURD.'' *Id.*

All sides in Liberia have engaged in atrocities against civilians. DOS Recommendation. Civilians are directly threatened by the various fighting forces, all of whom continue to commit serious human rights abuses, including extrajudicial killings, disappearances, torture, forced military recruitment of children and adults, beatings, and rape. *Id.* Fighting between government and rebel forces also poses a threat. *Id.*

Civilians suffer increasingly from deteriorating humanitarian conditions related to the fighting. *Id.* Several areas of the country are inaccessible to relief organizations. *Id.* The U.N. Secretary General observed that the ''security situation in Liberia has deteriorated so badly that it has become extremely difficult to reach internally displaced persons and third-country refugees who have now fallen victim to abductions, conscriptions, and various gross violations of human rights.'' RIC Report. Liberia's internally displaced persons (IDP) population has swelled from about 200,000 to 300,000 since January 2003. DOS Recommendation. There are now 55,000 Liberian refugees in Sierra Leone, 130,000 in Guinea, and 30,000 in Ivory Coast. *Id.* Liberia's vital services, such as food, water, sanitation, shelter, and health, are on the verge of collapse. *Id.*

Based upon this review, the Secretary of DHS, after consultation with appropriate Government agencies, finds that the conditions that prompted designation of Liberia under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(A). There is an ongoing armed conflict within Liberia and, due to such conflict, requiring the return of aliens who are nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) would pose a serious threat to their personal safety. 8 U.S.C. 1254a(b)(1)(A). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Liberia should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Through the Liberia TPS Program, Do I Still Re-Register for TPS?

Yes. If you already have received TPS benefits through the Liberia TPS program, your benefits will expire on October 1, 2003. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain their TPS benefits through October 1, 2004. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I Am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted TPS under the Liberia program who wish to maintain such status must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the filing fee; (2) a Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches × 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus need not pay the $50 fingerprint fee. Children beneficiaries of TPS who have reached the age of fourteen (14) but were not previously fingerprinted must pay the fifty dollar ($50) fingerprint fee with the application for extension.

An application submitted without the required fee and/or photos will be returned to the applicant. Submit the

completed forms and applicable fee, if any, to the BCIS District Office having jurisdiction over your place of residence during the 60-day re-registration period that begins August 6, 2003 and ends October 6, 2003.

If . . .	Then . . .
You are applying for employment authorization until October 1, 2004 ...	You must complete and file the Form I–765, Application for Employment Authorization, with the $120 fee.
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765 with no fee.[1]
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: (1) Form I–765 and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

[1] An applicant who does not seek employment authorization documentation does not need to submit the $120 fee, but must still complete and submit Form I–765 for data gathering purposes.

If My Application for TPS Is Still Pending, How Can I Renew My Employment Authorization Document?

If your application for TPS is still pending and you wish to receive or renew your employment authorization document, you must file with the BCIS District Office having jurisdiction over your place of residence (1) a Form I–821 without the filing fee, (2) a Form I–765, and (3) two identification photographs (1½ inches x 1½ inches). See the chart above to determine whether you must submit the one hundred and twenty ($120) filing fee with Form I–765. An application submitted without the required filing fee or photos will be returned to the applicant.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit, and vise versa. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii); 8 U.S.C. 1254a(c)(2)(B)(ii).

Does This Extension Allow Nationals of Liberia (or Aliens Having No Nationality Who Last Habitually Resided in Liberia) Who Entered the United States After October 1, 2002, To File for TPS?

No. This is a notice of an extension of TPS, not a notice of re-designation of Liberia under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those who are not already TPS class members. To be eligible for benefits under this extension, nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) must have resided continuously in the United States since October 1, 2002, and have been continuously physically present in the United States since October 1, 2002.

What Is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A) and 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Liberia (or alien who has no nationality and who last habitually resided in Liberia);

(2) Have been continuously physically present in the United States since October 1, 2002;

(3) Have continuously resided in the United States since October 1, 2002; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period from October 1, 2002, through April 1, 2003, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g).

What Happens When This Extension of TPS Expires on October 1, 2004?

At least 60 days before this extension of TPS expires on October 1, 2004, the Secretary of DHS will review conditions in Liberia and determine whether the conditions for designation under the TPS program continue to be met at that time, or whether the TPS designation should be terminated. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the TPS designation is extended at that Time, an alien who has received TPS benefits must re-register under the extension in order to maintain TPS benefits. If, however, the Secretary of DHS terminates the TPS designation, TPS beneficiaries will maintain the immigration status they had before TPS (unless that status had since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien had no lawful immigration status prior to receiving TPS and did not obtain any status during the TPS period, he or she will revert to that unlawful status upon termination of the TPS designation.

Notice of Extension of Designation of Liberia Under the TPS Program

By the authority vested in me as Secretary of DHS under sections 244(b)(1)(B), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions that prompted designation of Liberia for TPS continue to be met (8 U.S.C. 1254a(b)(3)(A)). Accordingly, I order as follows:

(1) The designation of Liberia under section 244(b) of the Act is extended for an additional 12-month period from October 1, 2003, to October 1, 2004. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 2,400 nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Liberia (or an alien having no nationality who last habitually resided in Liberia) who was granted TPS during the initial designation period must re-register for TPS during the 60-day re-

registration period from August 6, 2003 until October 6, 2003.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). Applications submitted without the required fee and/or photos will be returned to the applicant. There is no fee for filing a Form I–821 for re-registration application. If the applicant requests employment authorization, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on October 1, 2004, the Secretary will review the designation of Liberia under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(6) Information concerning the extension of designation of Liberia under the TPS program will be available at local BCIS offices upon publication of this notice and on the BCIS Web site at *http://www.bcis.gov.*

Dated: August 1, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–20172 Filed 8–4–03; 2:20 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–14928]

Information Collection Under Review by the Office of Management and Budget (OMB): 1625–0003, Lifesaving, Report of Recreational-Boating Accident

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Report (ICR), on Lifesaving, Report of Recreational-Boating Accident, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before September 5, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–14928] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a website on which you can post your comments.

(5) Electronically through Federal eRule Portal: *http://www.regulations.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available for inspection and copying in public dockets. They are available in docket USCG 2003–14928 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov*; and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–14928], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by

11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [68 FR 22407 (April 28, 2003)] the 60-day notice required by OIRA. That notice elicited two (2) comments. Both comments supported Coast Guard efforts to update the Boating Accident Report (BAR) form and noted the form is well organized and includes greater detail. General comments emphasized the revised BAR form will improve data collection, thus allowing the Coast Guard and other boating safety organizations to better address the causes of boating accidents and fatalities. The Coast Guard provided written responses to comments submitted by the Professional Paddlesports Association and the Ohio Department of Natural Resources in correspondence dated July 22, 2003.

The first comment submitted by the Professional Paddlesports Association (PPA) that was relevant to the BAR form requested the addition of ''Canoe/Kayak Touring'' in the ''Activity at Time of Accident'' section of the report form. The Coast Guard concurs and plans to modify the form in the near future.

The Ohio Department of Natural Resources provided a number of comments in regard to the revised BAR form data elements. Relevant comments are summarized as follows:

Completion of the BAR Form by a Trained Law Enforcement Officer.

The operator of the vessel is required to submit the casualty or accident report to the appropriate reporting authority in compliance with 33 CFR, Part 173, Subpart C—Casualty and Accident Reporting, § 173.55. If the operator cannot submit the report, the owner shall. Professionally trained law enforcement officers and accident investigators file reports for practically all fatal and many serious non-fatal injury accidents.

Revised Wind Speed Categories.

The revised BAR form uses the Beaufort scale to measure wind speed in the marine environment with greater precision. As with the previous BAR form, the revised form retains numeric wind speed categories to enable comparisons across previous years. The Coast Guard concurs with a recommendation to change the lowest speed for the second category to start at one (1) mph instead of zero (0) and plans to modify the revised BAR form in the near future.

Operator Experience, Telephone Numbers, Equipment/Machinery Failure, and Activity at Time of Accident Form Elements

A comment questioned use of the term ''Other'' and requested space on the form for including additional information for a number of BAR form elements. In response, the Coast Guard includes categories termed ''Other'' in order to capture unique information that enables analysts to uncover patterns and/or emerging accident trends. The revised BAR form has room to include additional information in the Accident Description section.

Exposure (Boat Use) Information. How Would a Non-owner/Operator Be Able to Provide This Information?

The Coast Guard intends to include exposure questions that will help uncover the estimated number of hours the vessel operator involved in the accident operated the vessel over the past twelve (12) months. The comment offers alternative language for collecting exposure information that the Coast Guard will consider in efforts to capture a national estimate of boat use.

Identification of More Than Two Vessels

In compliance with 33 CFR, Part 173, Subpart C—Casualty and Accident Reporting, § 173.55, the operator of each vessel is required to submit a casualty or accident report to the appropriate reporting authority. Thus, each vessel operator involved in an accident is required to file a complete accident report form.

Layout of the BAR Form

On page three (3), the operator is not to provide information in the ''For Agency Use'' section. Pages five and six would not be required for accidents that involve only damage to the vessel and/or personal property. Essentially, pages five and six serve as an addendum and are only used for accidents that involve injuries and/or fatalities.

Instructions Provided Are too Complex in the Accident Description Section For an Operator

In an effort to ensure the privacy of boat operators involved in reported accidents, the Coast Guard is attempting to minimize the amount of personal information provided in the Accident Description section. The Coast Guard also plans to work with State agency personnel responsible for processing accident reports so the information contained in the Accident Description section is entered into an information management system (BARD–Web) in a standard uniform format.

Direction Provided on the Location of the Coast Guard PFD Approval Numbers and the Term ''Other'' as an Option for Injured Status

The Coast Guard concurs and will revise the BAR form in the near future.

Adding Options for ''Racing'' and ''Cruising/Pleasure Boating'' Under Victim Activity

This information is currently captured under the heading ''Accident Events and Contributing Factors''.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must

contain the docket number of this request, USCG 2003–14928. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

Title: Lifesaving, Report of Recreational-Boating Accident.

OMB Control Number: 1625–0003.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators of recreational vessels involved in accidents.

Form: CG–3865.

Abstract: The information collected from this report helps the Coast Guard to identify possible manufacturers' defects in boats or equipment, develop boat-manufacturing standards, formulate rules on safety, support programs in boating-safety education and awareness, and publish accident statistics.

Annual Estimated Burden Hours: The estimated burden is 3,250 hours a year.

Dated: July 29, 2003.

Clifford I. Pearson,

Director of Information and Technology.

[FR Doc. 03–20022 Filed 8–5–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4814–N–05]

Notice of Proposed Information Collection: Comment Request, State Community Development Block Grant Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 6, 2003.

ADDRESSES: Interested persons are invited to submit comment regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Diane Lobasso at (202) 708–1322, Extension 2191 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This Notice is soliciting comments from members of the public and 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: State Community Development Block Grant (CDBG) Program.

OMB Control Number, if applicable: 2506–0085

Description of the need for the information and proposed use: The information collected from grant recipients participating in the State CDBG program will be used to verify program compliance with slums or blight national objective criteria. States will be required to establish definitions and maintain records of slums or blighted areas. States will also be required to revisit the slums or blighted designation every five years and maintain documentation to verify continued qualification.

Agency form numbers, if applicable: Not applicable.

Members of affected public: States participating in the State CDBG program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 50. The proposed frequency of the response to the collection is on an annual basis. The total estimated burden is 350 annual hours.

Status of the proposed information collection: This submission is a revision of a currently approved collection. The current OMB approval expires on October 31, 2004.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 31, 2003.

Roy Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–20039 Filed 8–5–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–54]

Notice of Submission of Proposed Information Collection to OMB: Direct Endorsement Underwriter/HUD Reviewer—Analysis of Appraisal Report

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 requesting the reinstatement, without change, of a previously approved collection for which approval has expired.

The information is to be provided by lenders or FHA staff reviewers and collected for the review of deficient information contained in the appraisal report. The information is used by FHA in monitoring the quality of the lender's analysis of the appraisal report, identifying areas of weakness for future training, and removing lenders that consistently exhibit careless underwriting and subsequently pose a financial risk to the Department.

The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 5, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0477) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail: *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management

Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail: *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Direct Endorsement Underwriter/HUD Reviewer—Analysis of Appraisal Report.

OMB Approval Number: 2502–0477.

Form Numbers: HUD–54114.

Description of the Need for the Information and its Proposed Use: The information collected is for the review of appraisal reports considered deficient by the underwriter, and to document efforts to resolve any discrepancies. The basic respondents are lender underwriters.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	375,000	375,000		0.05		18,750

Total Estimated Burden Hours: 18,750.

Status: Reinstatement, without change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 31, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–20040 Filed 8–5–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–55]

Notice of Submission of Proposed Information Collection to OMB: Contract for Inspection Services—Turnkey

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.

Information is used by the PHA to obtain professional architectural services to assist in the administration of a construction contract and to inspect the installation of the work.

DATES: *Comments Due Date:* September 5, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0007) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Contract for Inspection Services-Turnkey.

OMB Approval Number: 2577–0007.

Form Numbers: HUD–5084.

Description of the Need for the Information and its Proposed Use: Information is used by the PHA to obtain professional architectural services to assist in the administration of a construction contract and to inspect the installation of the work.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: Other Per applicant.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	135	135		0.50		267

Total Estimated Burden Hours: 135.

Status: Reinstatement, without change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 31, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–20041 Filed 8–5–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–56]

Notice of Submission of Proposed Information Collection to OMB: New Approach to the Anti-Drug 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 New Approach to the Anti-Drug Program (formerly known as the Safe Neighborhood Action Grant Program) has not been appropriated since Fiscal Year 2001, however quarterly progress reports are still necessary for all active grants.

The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 5, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0520) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: New Approach to the Anti-Drug Program.

OMB Approval Number: 2502–0520.

Form Numbers: HUD–50080–SNGP, SF–269.

Description of the Need for the Information and Its Proposed Use: The New Approach to the Anti-Drug Program (formerly known as the Safe Neighborhood Action Grant Program) was authorized through yearly appropriations. Owners were eligible to apply for grants to fund security, and crime elimination activity in federally assisted low-income housing projects. Funding for this program has not been appropriated since Fiscal Year 2001, however quarterly progress reports are still required for all active grants.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: Quarterly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	250	1,750		0.37		650

Total Estimated Burden Hours: 135.

Status: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 31, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–20042 Filed 8–5–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4814–N–06]

Notice of Proposed Information Collection: Comment Request, Community Development Block Grant Entitlement Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 6, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Diane Lobasso at (202) 708–1322, Extension 2191 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and 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: Community Development Block Grant Entitlement Program.

OMB Control Number, if applicable: 2506–0077.

Description of the need for the information and proposed use: The information collected from recipients participating in the CDBG Entitlement program will be used to verify program compliance with slums or blight national objective criteria. Grantees will be required to establish definitions and maintain records of slums or blighted areas. Grantees will also be required to revisit the slums or blighted designation every five years and maintain documentation to verify continued qualification.

Agency form numbers, if applicable: Not applicable.

Members of affected public: Grant recipients (metropolitan cities and urban counties) participating in the CDBG Entitlement Program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 512. The proposed frequency of the response to the collection is on an annual basis. The total estimated burden is 3,584 annual hours.

Status of the proposed information collection: This submission is a revision of a currently approved collection. The current OMB approval expires on October 31, 2004.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 31, 2003.

Roy Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–20043 Filed 8–5–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Connect Initiative

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for Comments concerning Offshore Minerals Management Program's e-Government Initiative.

SUMMARY: This notice provides the basis and rationale for the e-Government Initiative, OCS Connect. The purpose of publishing this notice is to provide information to the public on the objectives of OCS Connect and to solicit public feedback with respect to project development.

DATES: We will consider all comments we receive by October 6, 2003. We will begin reviewing comments then and may not fully consider comments we receive after October 6, 2003.

ADDRESSES: Interested parties may send comments regarding the OCS Connect Initiative and this Notice to the Chief, e-Gov Transformation Project; Minerals Management Service; Mail 4009; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Gary L. Lore, Chief, e-Gov Project Management Office; Mail Stop 4009; Minerals Management Service; 381 Elden Street; Herndon, Virginia 20170–4817; Telephone (703) 787–1623; e-mail *ommegov@mms.gov.*

SUPPLEMENTARY INFORMATION: OCS Connect is a comprehensive reform project that will be a phased, multiyear e-Government transformation of the Offshore Minerals Management (OMM) program. OCS Connect was mandated by legislation and federal guidance under the Information Technology Management Reform Act of 1996 (Clinger-Cohen Act), the Government Paperwork Elimination Act of 1999, and the Government Paperwork Reduction Act of 1995. OCS Connect will dramatically reform and streamline business operations by fiscal year 2008. By moving to on-line services, the organization will be more ''connected'' to customers: industry, citizens, and other governmental agencies.

OMM's Vision for OCS Connect

To facilitate customized and electronic information exchange between MMS and its OCS customers—industry, citizens, and other governmental agencies.

Goals of OCS Connect

- Increase ease of use and allow better access to stakeholders for OMM's services and information.
- Decrease cycle time to receive and process stakeholder requests.
- Increase collaboration and information sharing within OMM and between constituencies.
- Increase the quantity and quality of value-added analysis of offshore resources.
- Improve data and information capabilities.

Scope of OCS Connect

Currently, OMM relies heavily on paper-based processes and systems. The recent evolution in internet technologies has presented a unique opportunity for OMM to minimize paper-based processes, to improve data management, and to increase the efficiency of its workforce. OCS Connect will allow the OMM to transform their traditional business practices to more efficient, streamlined business practices.

Traditional business practices	Streamlined business practices
Paper-based processes cause long lead times in approval process for permits.	Standardized, online electronic permit filing, reporting and approvals significantly reduce cycle times.
Multiple filings required with different government bodies.	Data standards will facilitate electronic exchange of data with different government bodies and reduce the number of redundant filings.
Multiple data sources available in different locations for information sharing.	Portals offer one-stop ''shopping'' for information exchange.

Traditional business practices	Streamlined business practices
Multiple data formats	Standardized, industry accepted data formats enable efficient information sharing throughout the E&P industry.

Benefits of OCS Connect to Stakeholders

In addition, *Industry* will be able to enter a single portal to receive information and conduct more efficient online exploration, development, and production transactions, resulting in time and cost savings.

Citizens will be able to enter a single portal that delivers customized and user-friendly information and encourages increased online participation in the oil and gas regulatory and planning processes.

Governmental agencies will share common data, exchange standards and future applications. Multiple agencies may access an online permitting system to obtain information, conduct reviews and approve industry requests.

Privacy and security will be provided through secure data architecture to ensure confidentiality of necessary data and requests by stakeholders.

The Overall Result

The OMM will be more customer-focused, efficient, and effective in serving their constituencies through streamlined business execution.

SPECIFIC DELIVERABLES DUE TO WORKFLOW AUTOMATION BY OCS CONNECT

	Explanation of the OCS connect deliverable
Data Related Deliverables from OCS Connect:	
Singular Enterprise Architecture Development.	A baseline enterprise architecture will be developed to include stakeholders, business, data, applications, technology and the relationships among them. Architecture will be leveraged into other governmental bureaus for consistency.
Consistent Established Data Standards.	Established data standards will expedite data utilization and interpretation thereby reducing cycle time. For example: • Reduces time validating data; • Expedites quality control of data; • Reduces data loading time; • Facilitates interface between software suites; • Facilitates data sharing and collaboration; • Ensures consistency in State and Local spatial data for ease of use.
Electronic Data Stores	Different data sets stored for ease of retrieval for various data interpretation such as: • G&G data—well logs and data, seismic data; • Gravity and magnetic data; • Marine cadastral data sets; • Production data; • Lease history data; • Thematic maps.
Electronic Data Submission	Data can be submitted electronically instead of in a manual, paper based process. Types of data will include, but not be limited to: • Reservoir data such as run tickets and liquid verification reports, gas verification and volume reports; • Weekly activity reports; • G&G data such as well logs and analyses, seismic data; • Plans & Permits; • Land legal requests.
Data Storage, Indexing and Retrieval of Data.	Holistic approach to data access will allow the lessee to pull all G&G, leasing, adjudication, permitting, plan, production, and reserves information on each asset.
Secure Data Architecture	Allows for privacy in data access and for submittal of operators data.
Enhanced Data Management	Improved electronic processes will ensure efficient utilization of data by allowing access to the right data at the right time.
Reduced Cycle Time for Data Analysis.	Consistency of data will allow faster, improved analysis of an asset regarding permits, plans, lease sales, and environmental analysis.
Data Repository Enabling Life Cycle Review of Leases.	A centralized repository that stores historical and current data on lessees and operators will allow for automatic information retrieval once security clearances have been approved. Lessees and operators will be able to work from prepopulated information forms reducing resubmission of information. Full lease history and interactions with the OMM can be retrieved.
Outreach Related Deliverables from OCS Connect:	
Online Rulemaking/Online Commenting.	Migration of rulemaking and customer commenting to an online forum will expedite comment review.
Integration of Multiple Government Agencies Requirements.	Coordination of reporting requirements across governmental entities reduces time as paperwork does not have to be submitted multiple times in multiple formats. For example: • The Coast Guard's requirements have been incorporated into the Well Permitting and Reporting System.
Singular Portal Interface	One portal interface will be organized around the functions for the oil and gas stakeholders to provide a full suite of services for: • Leasing; • Plans, permits, and pipelines; • Reporting; • Inspections and compliance; • OCS information; • OCS maps.

SPECIFIC DELIVERABLES DUE TO WORKFLOW AUTOMATION BY OCS CONNECT—Continued

	Explanation of the OCS connect deliverable
Electronic Environmental Assessments and Monitoring.	Shared data access to environmental studies will assist in quicker approvals and compliance as well as environmental impact mitigation monitoring.
Electronic Submission and Online Permitting.	Requests will not be paper-based, thereby, reducing complexity of submittals and submittal time because system will allow electronic submission of attachments: • G&G permits; • Platform structure permits; • Production facility permits; • Lease term pipeline applications.
Shortened Approval Processes	Electronic submission of information speeds up approval processes, and thereby, reduces tendency for stakeholders to over-submit paperwork in order to avoid re-submission caused by informal rejections. Shortens request time for: • New Producible Lease Determinations; • Lease Suspension Requests; • Miscellaneous applications such as commingling, unitization, reservoir reclassifications, abandonment zones, etc.; • Deep water royalty relief requests; • Decommissioning requests.
Electronic Notification and Tracking ..	Courtesy notifications will be sent to stakeholders from the OMM regarding needed filings. Also, the status and progress of requests can be tracked.
Time Saving Deliverables from OCS Connect:	
Online Commenting Reduces ''Time to Lease Sale''.	Expedites OMM's time to decision making over current paper-based commenting, such as: • Reduces manual reconciliation of public and industry commenting regarding regulations, laws and lease sales; • Allows faster compliance and approvals from other governmental agencies; • Reduces OMM's analysis and definition of the lease sale terms and conditions.
Automated System Reduces ''Time to Approval''.	Expedites OMM's analyses and approvals of Exploration, Development and Production plans of leases. • Faster consolidation of public, public interest groups and industry comments; • Faster access to additional data requests from the operator; • Faster approval cycle.
Comprehensive Life Cycle View of Asset.	Allows stakeholders the ability to view historical, publicly-available data surrounding the whole life cycle of an asset from: • A well life cycle perspective; • A production life cycle perspective; • A reserves perspective; • A lease life cycle perspective; • A permitting life cycle; • An approval life cycle; • A compliance life cycle.

More detailed information regarding the OCS Connect Initiative can be found at:

1. *http://www.mms.gov/ommegov/.*
2. *http://www.gomr.mms.gov.*

OMM Business Cluster

OMM has identified 14 Business Process Clusters which are listed in the table below as potential candidates for re-engineering. We are interested in your views as to the importance of these 14 Business Clusters to your organization; therefore, please give us your overall comments on the merits of re-engineering these clusters. You may note those that work well or are most in need of improvement. We are particularly interested in any suggestions you may have regarding examples of best practices for particular business processes.

1. Public Commenting.
2. Manage Regulations, Laws and NTLS.
3. Produce and Maintain Thematic Maps and Official Cadastral Descriptions.
4. Protect Environmental Resources.
5. Manage and Administer Leasing Program.
6. Monitor Lessee and Operator Activity.
7. Manage Permit Requests.
8. Manage Plan Submittals.
9. Analyze and Coordinate G&G Reviews and Interpretations.
10. Manage Reserves Inventory Program and Perform Resource Assessment.
11. Perform Data Management.
12. Develop and Support IT/IS Environment.
13. Perform Economic Analysis, Determine Fair Market Value and Forecast Production.
14. Inspect Operations and Enforce Regulations.

For a more detailed explanation of OMM's Business Process Clusters, please go to the below internet link: *http://www.mms.gov/ommegov/PDF/OMM%20Business%20Process%20Clusters.pdf.*

Comments

After reading the Notice summarizing the OCS Connect Initiative, please provide us your overall impression of the OCS Connect Initiative. We would like your comments as to OCS Connect's impact on the openness and information exchange between OMM and its Stakeholders, its overall scope, additional key elements needed for its successful implementation, any particular benefits or concerns you may have regarding the initiative. Please also tell us what type of Stakeholder you are to the OMM.

Send comments in response to this notice directly to the office listed under the **ADDRESSES** section of this notice.

Dated: July 31, 2003.

Gary L. Lore,

Chief, e-Gov Transformation Project.

[FR Doc. 03–20058 Filed 8–5–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to the Office of Management and Budget, Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice of submission to Office of Management and Budget and request for comments on information collection related to National Park Service mining regulations.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the National Park Service (NPS) invites comments on a submitted request to the Office of Management and Budget (OMB) to approve an extension, with revision, to a currently approved information budget for the NPS's minerals management regulatory program inside park units. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the park protection functions of the NPS, including whether the information has practical utility; (2) the accuracy of the NPS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used: (3) the quality, utility and clarity of the information to be collected: (4) ways to minimize the burden of the information collection on respondents, including use of automated, electronic, mechanical, or other forms of information technology; and (5) on the typical costs that prospective operators incur in preparing complete plans of operation under NPS mining regulations. OMB has up to 60 days to approve or disapprove the requested information collection budget but may respond after 30 days. Thus, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Primary Purpose of the Proposed Information Collection Request: The NPS requires the submittal of information on prospective mineral development activities associated with mining claims and non-Federal oil and gas rights within National Park System units to ensure that only operations that mitigate adverse impacts to park resources and values are permitted to operate in parks.

DATES: Public comments on this notice must be received by September 5, 2003.

ADDRESSES: Please send comments Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for the Interior Department (1024–0064), via facsimile (202–395–5806) or e-mail (*Ruth__Solomon@omb.eop.gov*). Please also forward a copy of your comments to Edward O. Kassman, Jr., Regulatory Specialist, Policy and Regulations Branch, Geologic Resources Division, NPS, P.O. Box 25287, Lakewood, Colorado 80225, (303) 969–2146.

All comments will become a matter of public record. Copies of the information collection request may be obtained by contacting Edward O. Kassman, Jr. at the above noted address or by calling him at (303) 969–2146.

SUPPLEMENTARY INFORMATION:

Title: NPS Minerals Management Program.

Form: None.

OMB Number: 1024–0064.

Expiration Date: June 30, 2003.

Type of Request: Revision of a currently approved information collection.

Description of Need: While surprising, outstanding mineral rights exist in many units of the National Park System. In most cases, these rights predate the establishment of the units. Currently, a little over 1,749 mining claims, which were located under the 1872 Mining Law, 30 U.S.C. 21 *et seq.*, exist in a total of 19 park units. The majority of these claims are located in Mojave National Preserve that was added to the National Park System through the California Desert Protection Act of 1994, 16 U.S.C. 410aaa. With respect to non-Federal oil and gas rights in park units, 703 non-Federal oil and gas operations exist in 12 park units. The potential for additional non-Federal oil and gas operations in additional units is tied to market forces and the quality and quantity of oil and gas reserves in park boundaries that coincide with the presence of private rights.

The NPS regulates mineral development activities inside park boundaries on mining claims and on non-Federal oil and gas rights under regulations codified at 36 CFR part 9, Subpart A for mining claims (*i.e.,* ''9A Regulations''), and Subpart B for non-Federal oil and gas rights (*i.e.,* ''9B Regulations''), respectively. The NPS promulgated both sets of regulations in the late 1970's. In the case of mining claims, the NPS did so under congressional authority granted under the Mining in the Parks Act of 1976, 16 U.S.C. 1901 *et seq.,* and individual park enabling statutes. For non-Federal oil and gas rights, the NPS regulates development activities pursuant to authority under the NPS Organic Act of 1916, as amended, 16 U.S.C. 1 *et seq.,* and individual enabling statues. As directed by Congress, the NPS developed the regulations in order to protect park resources and visitor values from the adverse impacts associated with mineral development in park boundaries.

The heart of the regulations is the approved ''plan of operations'' requirement. Essentially, a plan of operations is a prospective operator's blueprint setting forth all intended activities from access to extraction to reclamation related to developing a particular miner right in a given park unit. The information required in a plan of operations is set forth in NPS regulations. Before an operator can commerce development activities in a park unit, the NPS must approve the plan of operations and the operator must secure a bond in an amount sufficient to cover the cost of reclamation to the Federal Government in the event the operator defaults on his/her obligations.

Usually, an approved plan of operations covers the life of the mine or well, from development and production to reclamation. Under NPS regulations, such plans, may be revised. No set form is required for a plan of operations. Each plan is tailored to the intended activities of an operator and the particulars of the environment, *e.g.,* hardwood forest or desert, presence of endangered species or cultural resources, location and extent of water resources including wetlands.

Because of the variability among plans of operations and the duration of such plans, assessing the annual paperwork burden of complying with the NPS's mining regulations is difficult. Below is the NPS's best estimate, pro-rated on an annual basis, as to the number of respondents and number of hours involved in complying with the Service's regulations governing mining claims and non-Federal oil and gas rights.

Respondents: ¼ medium to large publicly owned companies and ¾ private entities.

Estimate of Number of Respondents: On an annual basis, the NPS estimates that it receives a range of between 13 to 20 plans of operations under its regulations: 3 to 5 plans of operations for mining claims, and 10 to 15 plans of operations for non-Federal oil and gas rights. For analysis purposes, the NPS used an overall estimate of 17 plans of operations per year: 4 plans of

operations for mining claims, and 13 plans of operations for non-Federal oil and gas rights.

Estimated Number of Responses per Respondent: One. To conduct mineral development operations in park units, a prospective operator must submit a proposed plan of operations to the NPS for review and approval. Once approved, such a plan covers the life of the operation. If the plan is for geophysical work associated with private oil and gas rights it may only cover a period of a few months. In contrast, a plan for a production oil and gas well or a hardrock mine may cover a period of 10 or more years.

Estimate of Burden Per Respondent: Public reporting burden for this collection of information is estimated to average 176 hours per response.

Estimated Total Annual Burden: 2992 hours. This number breaks down to 704 total hours to comply with the information requirements of the 9A regulations governing mining claim operations in parks, and 2288 total hours to comply with the information requirements of the 9B regulations governing non-Federal oil and gas operations in parks.

Methodology and Assumptions Underlying the Hour Estimate: Under the Service's 9A regulations and the 9B regulations, a complete plan may consist of 10 pages of text *plus* 2–10 pages of illustration inclusive of location maps, site plans and cross-sections to 100 pages of text *plus* several volumes of supporting material depending on the complexity of the proposed operations. The latter type of plan for hardrock mining is a rarity in the NPS. The time to prepare a plan could range from 24 hours to 6 months for a very complicated plan. Because the content of each plan is specific to the operation and site, and each operation and site present a unique set of circumstances, it is difficult to identify an ''average'' plan on which to base an estimate of preparation time. The NPS thus chose to use 160 hours (4 weeks) plus 10% for purposes of this analysis. In the case of the 9A regulations where an average of 4 complete proposed plans are expected per year, the estimated total amount of time involved to prepare plans of operations is 704 hours (*i.e.,* 176 hours × 4 complete proposed plans). In the case of the 9B regulations where an average of 13 complete proposed plans are expected per year, the estimated total amount of time involved to prepare plans of operations is 2288 hours (*i.e.,* 176 hours × 13 complete proposed plans).

Estimated Cost Per Respondent To Comply with the Paperwork Requirements: The NPS estimates that the annualized cost to all respondents to comply with the 9A regulations ranges from $7,040 to $70,040. The NPS estimated the cost per plan at $1,760 to $17,600. In the case of the 9B regulations, the NPS estimates the annualized cost to all respondents ranges from $65,000 to $260,000 based on a likely individual compliance cost range of $5,000 to $20,000.

Methodology and Assumptions Underlying the Cost Estimate: For the 9A regulations, the annualized estimated cost to all the respondents was determined as follows:

(1) Nationwide, 4 plans of operations and associated information (*e.g.,* bond, commercial vehicle registration) are expected annually from different operators;

(2) Using an estimate of 160 hours to prepare a plan complete with attachments at a cost of $10 to $100 per hour (assuming the use of consultants for some or all parts of the plan requirements), the cost to prepare a plan could range from $1600 to $16,000.

(3) The NPS added ten percent (*i.e.,* $160 to $1,600) of the cost to prepare a plan of operations to account for administrative costs associated with changes in claim ownership, *etc.*

An operator with experience in preparing plans of operations likely can prepare an acceptable plan for a moderately complex operation in a few weeks, since most of the components of the plan are compiled during the course of normal business activities. Many of the information requirements of the regulations should be compiled by a responsible operator as part of normal business activities, to minimize liabilities, maintain business records for tax and other purposes, obtain financial backing, and ensure a safe, efficient, and well-planned operation. Under the regulations, information may be submitted in the manner in which it is customarily maintained in the industry.

Response to 60-Day Notice: On January 31, 2003, the NPS issued a notice in the **Federal Register** as to its intent to request an extension and revision to the information collection budget associated with the Service's minerals management program pursuant to 36 CFR part 9. *See* 68 FR 5040–5041. The comment period closed on April 1, 2003. The NPS received no comments to the 60-day notice.

Dated: June 23, 2003.

Doris Lowery,

Acting Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 03–19966 Filed 8–5–03; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Draft Environmental Impact Statement, Coronado National Memorial, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Draft Environmental Impact Statement/General Management Plan, Coronado National Memorial.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (C) the National Park Service announces the availability of a Draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Coronado National Memorial, Arizona.

DATES: The DEIS/GMP will remain available for public review for 60 days following the date of this notice. No public meetings are scheduled at this time.

Comments: If you wish to comment you may submit your comments by any one of several methods. You may mail comments to Superintendent, Dale Thompson, Coronado National Memorial, 4101 East Montezuma Canyon Road, Hereford, AZ 85615. You may comment via the Internet to at *http://planning.nps.gov/plans.cfm.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: GMP Team'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, you can contact Superintendent Dale Thompson directly at telephone (520) 366–5515 or Job Captain John Paige at telephone (303) 969–9721. Finally you may hand-deliver your comments to park headquarters, 4101 East Montezuma Canyon road, Hereford, Arizona. Comments should be received no later than 60 days from the publication of this Notice of Availability. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may

request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

ADDRESSES: Copies of the DEIS/GMP are available from the Superintendent, Dale Thompson, Coronado National Memorial, 4101 East Montezuma Road, Hereford, AZ 85615. Public reading copies of the DEIS/GMP will be available for review at the following locations:

Coronado National Memorial Visitor Center, Coronado National Memorial, 4101 East Montezuma Road, Hereford, AZ 85615, Telephone: (520) 366–5515.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2851 [or (303) 969–2377].

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Room 7012, Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The DEIS/GMP analyzes a ''no-action'' alternative and four ''action'' alternatives:

- *Alternative A* (no-action) represents the continuation of existing conditions and management at the park.
- *Alternative B* (the NPS preferred alternative)—the visitor center would be rehabilitated, with an annex added for more office space and storage. New trails would be developed, and pullouts and waysides would be added to roads. Programs would help visitors understand the Coronado Expedition and its impact on the American Southwest. Grazing in the memorial would be ended.
- *Alternative C*—would focus on conserving cultural and natural resources. The visitor center's interior would be remodeled to make more space for interpretation. Grazing in the memorial would be ended.
- *Alternative D*—the memorial's international aspects would be emphasized. A structure would be built to commemorate the Coronado Expedition, and an educational center would be developed in the Montezuma ranch area. The visitor center would be expanded and rehabilitated. Grazing would continue in the Joe's Spring allotment, but not in the Montezuma allotment.
- *Alternative E*—A new visitor/educational center, to which visitors could drive on a paved two-lane road and enjoy a panoramic view of the San Pedro valley and the United States-Mexico border. The visitor center would be converted into administrative offices. Grazing would be eliminated from the Joe's Spring allotment.

The DEIS/GMP evaluates the environmental consequences of the proposed action and the other alternatives on natural resources (*e.g.,* air quality, cave resources, soils; vegetation; wildlife; water quantity; and threatened and endangered species); cultural resources (e.g. archeological resources, ethnographic resources, historic structures, and cultural landscapes); the visitor experience (e.g. visitors' experience of park resources, and access to orientation and interpretive information); and socioeconomic resources (e.g. recreational use, grazing, and the local and regional economy).

FOR FURTHER INFORMATION CONTACT: Superintendent, Dale Thompson or Job Captain John Paige at the above addresses and telephone numbers.

Dated: June 20, 2003.

Karen P. Wade,

Director, Intermountain Region, National Park Service.

[FR Doc. 03–19961 Filed 8–5–03; 8:45 am]

BILLING CODE 4312–DP–P

DEPARTMENT OF INTERIOR

National Park Service

Fire Management Plan, Environmental Impact Statement, Bandelier National Monument, NM

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the Fire Management Plan for Bandelier National Monument.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (C) the National Park Service is preparing an Environmental Impact Statement for the Fire Management Plan for Bandelier National Monument. This effort will result in a new wildland fire management plan that meets current policies, provides a framework for making fire-related decisions, and serves as an operational manual. Development of a new fire plan is compatible with the broader goals and objectives derived from the park purpose that governs resources management. Alternatives to be considered in addition to the required no-action alternative include: 1. In-park comprehensive action alternative, 2. the cooperative comprehensive management alternative, and 3. the limited strategies alternative. The no-action alternative maintains the current 1997 fire management plan strategy of suppression, wildland fire use, and prescribed burning. The In-park comprehensive alternative is a fully integrated fire management plan with all strategies available for use within park boundaries including suppression, mechanical thinning and prescribed and natural fires that meet management objectives. The cooperative comprehensive management alternative also is a fully integrated fire management plan with all strategies available. Opportunities for cooperative planning with interagency partners and adjacent land managers would be encouraged. The limited strategies alternative would allow the limited use of prescribed burning, limited manual (*i.e.*: chainsaw) thinning in developed areas only, and does not allow wildland fire use.

Major issues are environmental effects of the FMP that are potential problems. These include: protection of cultural resources, restoration of plant and wildlife habitats, habitat protection for threatened and endangered species, protection of park neighbors' properties, protection of air quality values, protection of life and property, and changes in landscape-scale vegetation patterns.

A scoping brochure has been prepared describing the issues identified to date. The brochure is available for downloading as a pdf document from Bandelier National Monument's Web site at *http://www.nps.gov/band.* To obtain a paper copy of the brochure, write to the Fire Management Office, Bandelier National Monument, HCR 1, Box 1, Suite 15, Los Alamos, New Mexico 87544.

DATES: The Park Service will accept comments from the public through September 5, 2003.

ADDRESSES: If you wish to comment on the scoping brochure, you may submit your comments by any one of several methods. You may mail comments to Fire Management Office, Bandelier National Monument, HCR 1, Box 1, Suite 15, Los Alamos, NM 87544. You may also comment via e-mail to *BAND*

Fire@nps.gov. Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation from the system that we have received your message, contact us directly at Bandelier Fire Management Office at 505–672–3861 x512. Finally you may hand-deliver comments to Bandelier National Monument or at public meetings that will be held Los Alamos and Santa Fe, New Mexico.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Jim Whittington, Bandelier National Monument, 505–672–3861 x512.

Dated: June 11, 2003.

Michael D. Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 03–19963 Filed 8–5–03; 8:45 am]

BILLING CODE 4312–EW–M

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area Fire Management Plan, Marin, San Francisco, San Mateo Counties, CA; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: Notice is hereby given, in accordance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) that the National Park Service (NPS) is undertaking a conservation planning and impact analysis process for a fire management plan for Golden Gate National Recreation Area (GGNRA) and Muir Woods National Monument and Fort Point National Historic Site, two units of the National Park system also under the administration of GGNRA. The purpose of the fire management plan and environmental impact statement (EIS) process is to develop and assess alternative strategies for reducing risks to the public, firefighters, sensitive resources and park facilities posed by unplanned and uncontrolled wildland ignitions and examine the opportunities to use fire as a tool to work towards achieving resource protection objectives. Notice is hereby given that a public scoping process has been initiated with the purpose of eliciting early public comment regarding issues and concerns, a suitable range of alternatives and appropriate mitigating measures, and the nature and extent of potential environmental impacts that should be addressed in the EIS.

Background: The current GGNRA fire management plan (FMP) was adopted in 1993 following a NEPA assessment process that culminated in the NPS approving a Finding of No Significant Impact decision (September 30, 1993). Since that time, a wide spectrum of new issues, improved information, and unforeseeable constraints have emerged which have the potential to affect the future direction of the fire management program within the park. Some of these factors include the continued decline in ecosystem health due to the absence of fire, increased risk of damage to sensitive natural and cultural resources as well as adjacent developed communities, increased suppression costs, and more stringent air quality regulations.

The new FMP will tier from the 1980 GGNRA General Management Plan which called for a park-wide vegetation management planning effort to examine major influences (including fire effects) on the health of native plant communities. Subsequently park boundaries have expanded, and as noted environmental conditions have changed. More recently, major revisions of NPS policy guidance for fire management activities have occurred (Director's Order 18 was re-issued in 2002), and the need for conformance with new Management Policies (2001), have substantially increased the necessary scope of the FMP planning process. As a result, the proposed FMP will supersede the current fire program, rather than update or supplement the 1993 FMP.

Scope of Planning and Analysis: The jurisdictional area of GGNRA covers 75,389 acres in San Mateo, San Francisco and Marin counties. Of the total acreage, 31,100 acres are directly managed by GGNRA in the three park units B GGNRA, Muir Woods National Monument and Fort Point National Historic Site. The northern lands of GGNRA, comprising 18,000 acres on Bolinas Ridge, east of Highway One in Marin County, are managed by the Point Reyes National Seashore under an agreement between the two park units. These northern lands are part of the conservation planning area for the Point Reyes National Seashore FMP currently in preparation. The Point Reyes environmental impact analysis process is in advance of the GGNRA effort, and the two parks will coordinate closely so as to develop a complementary strategy for fire management activities that meets each park's objectives.

In addition to lands under the direct management of the NPS, the scope of the pending EIS analysis and the affected area to be addressed in GGNRA FMP will include lands within the park's jurisdictional boundary that be acquired for NPS management during the implementation period of the FMP. However, the interior portion of the Presidio of San Francisco (managed by the federal corporation known as Presidio Trust,) is not under the direct management of the NPS and is not included in the planning area. Some of the existing park sites to be addressed in the EIS process are the coastal portion of the Presidio of San Francisco (Area A), Stinson Beach, Tennessee Valley, Muir Beach, the Marin Headlands, Alcatraz Island, Fort Mason, the coastal areas of the Presidio of San Francisco, Ocean Beach, Fort Funston, Milagra Ridge, Sweeney Ridge, and the Phleger Estate.

Naturally occurring fire is an important ecological process necessary for maintaining the native plant communities of the park, but wildfire poses a hazard to life and property in the park's urban-wildland interface boundary area and developed sites within the park. GGNRA practice has been to aggressively suppress all wildland fire in the park whether naturally occurring or human-caused. To that end, GGNRA has conducted fire management projects to control fuel buildup in the last decade, reviewing each project individually for conformance with federal environmental regulations. The park has employed prescribed burning and mechanical fuel reduction to reduce hazardous fuels and to enhance natural and cultural resources.

NPS management policies adopted in December 2000 requires each park with burnable vegetation to prepare a fire management plan. The purpose of the FMP will be to guide a fire management program that protects park values and its cultural and natural resources; provides for safety considerations for park visitors, employees, neighbors, and developed facilities; and addresses potential impacts to public and private property adjacent to the park. Guided by

the range of issues raised and alternative concepts identified in the scoping period, the draft EIS likely will assess potential impacts of several alternative fire management plan strategies. Issues could include, but may not be limited to: hazards to firefighters, the public and property; effects on native plant and animal species; impacts to rare and endangered species; adverse impacts to cultural resources; risk of fire spread across the wildland-urban interface; increased use of mechanical and manual vegetation management techniques; air and water quality impacts; and effects on park visitors and neighbors.

Supplementary Information and Public Scoping: As described above, the NPS is undertaking a conservation planning and environmental impact analysis effort to identify issues and concerns which should be addressed in the future fire management program, to evaluate alternative concepts for fire management, and to obtain information regarding potential impacts and appropriate mitigation strategies which should be addressed in the EIS process.

As an early step in this undertaking, public scoping meetings will be conducted in the summer and early fall of 2003 in both San Mateo and Marin counties. The San Mateo County meeting will be held in conjunction with the regularly scheduled bi-monthly GGNRA public meeting on September 16, 2003. The meeting will be held at the Pacifica City Council Chambers, 2212 Beach Boulevard, Pacifica, California. An open-house to provide information and solicit input from the public will be conducted from 6–7 p.m. The EIS FMP will also be agendized during the bi-monthly meeting (which begins at 7 p.m.). The Marin County meeting will be held September 24, 2003 from 7–9 p.m. at the U.S. Army Corps of Engineers San Francisco Bay Model Visitor's Center, 2100 Bridgeway, Sausalito, CA 94965. Information on these and all future public meetings, and status of the EIS process, will be regularly posted on the park's Web site at *http://www.nps.gov/goga/fire;* information will also be released through direct mailings and local and regional media. For those unable to attend either of these meetings, a scoping document will be available upon request. The main topics include: background information on the fire management program; a review of relevant policy and law affecting the fire management program; an assessment of current fire management needs; and the identification of issues and potential alternatives related to future fire management in the park.

All interested individuals, organizations, and agencies are encouraged to provide comments, suggestions, and relevant information. All written comments regarding the current and future fire management program must be postmarked or transmitted not later than 60 days following the date of publication of this notice in the **Federal Register**. Immediately upon determining this date it will be posted on the park's Web site. To request the scoping materials or to provide comments, please contact: Superintendent, Golden Gate National Recreation Area, Fort Mason, Building 201, San Francisco, CA 94123, Attn: Fire Management Plan. E-mail comments or requests for scoping materials and information on meeting locations may be transmitted electronically to *GOGA_Public_Affairs@nps.gov* (the subject line should indicate ''EIS Scoping for FMP'').

Our practice is to make comments, including respondent names and home addresses, available for public review during regular business hours. If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently at the beginning of the comments. There also may be circumstances wherein the NPS may withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses; and, anonymous comments may not be considered.

Decision: Availability of the draft EIS and fire management plan for review and written comment will be announced in the **Federal Register**, as well as via direct mailing and announcements in local and regional media. At this time it's expected these documents will be available for public review in August 2004. Availability of the final EIS will be similarly announced (which at this time is expected to occur not sooner than January 2005). As a delegated EIS, the official responsible for the NEPA decision is the Regional Director, Pacific West Region, National Park Service. Subsequently, the official responsible for implementation would be the Superintendent, Golden Gate National Recreation Area.

Dated: July 25, 2003.

Arthur E. Eck,

Deputy Regional Director, Pacific West Region.

[FR Doc. 03–19962 Filed 8–5–03; 8:45 am]

BILLING CODE 4312–FN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–026]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 13, 2003, at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1047 (Preliminary) (Ironing Tables and Certain Parts Thereof from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before August 14, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before August 21, 2003.)
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 4, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–20203 Filed 8–4–03; 2:27 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Mountain Health Care, P.A. Civil Action No. 1:02CV288–T (W.D.N.C.); Response to Public Comments

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that Public Comments and the Response of the United States have been filed with the United States District Court for the Western District of North Carolina in

United States v. *Mountain Health Care, P.A.* Civil Action No. 1:02CV288–T (W.D.N.C., filed December 13, 2002). On December 13, 2002, the United States filed a Complaint alleging that defendant, Mountain Health Care, P.A. (''MCH'') and its physician owners and members, restrained competition in the sale of physician services to managed health care purchasers, in violation of section 1 of the Sherman act, 15 U.S.C. 1. The proposed Final Judgment, filed at the same time as the Complaint, requires MHC to dissolve.

Public comment was invited within the statutory 60-day comment period. Such Comments, and the Responses thereto, are hereby published in the Federal Register and have been filed with the Court. Copies of the Complaint, Stipulation, proposed Final Judgment, Competitive Impact Statement, Public Comments and the Response of the United States are available for inspection in Room 4000 of the Antitrust Division, Department of Justice, 1401 H Street, NW., Washington, DC 20530 (telephone: 202–307–0001) and at the Office of the Clerk of the United States District Court for the Western District of North Carolina, Room 212, 401 West Trade Street, Charlotte, North Carolina.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–19967 Filed 8–5–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 237R]

Controlled Substances: Proposed Revised Aggregate Production Quotas for 2003

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 2003 aggregate production quotas.

SUMMARY: This notice proposes revised 2003 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before August 27, 2003.

ADDRESSES: Send comments or objections to the Acting Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn.: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations.

On December 19, 2002, DEA published a notice of established initial 2003 aggregate production quotas for certain controlled substances in Schedules I and II (67 FR 77809). This notice stipulated that the DEA would adjust the quotas in early 2003 as provided for in part 1303 of Title 21 of the Code of Federal Regulations.

The proposed revised 2003 aggregate production quotas represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 2003 to provide adequate supplies of each substance for: The estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

The proposed revisions are based on a review of 2002 year-end inventories, 2002 disposition data submitted by quota applicants, estimates of the medical needs of the United States, product development, and other information available to the DEA.

Therefore, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, the Acting Administrator hereby proposes the following revised 2003 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base:

Basic class	Previously established initial 2003 quotas	Proposed revised 2003 quotas
Schedule I		
2,5-Dimethoxyamphetamine	9,501,000	9,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2	2
3-Methylfentanyl	4	4
3-Methylthiofentanyl	2	2
3,4-Methylenedioxyamphetamine (MDA)	15	15
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	10	10
3,4-Methylenedioxymethamphetamine (MDMA)	19	19
3,4,5-Trimethoxyamphetamine	2	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2	2
4-Methoxyamphetamine.		
4-Methylaminorex	7	7
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2	2
Acetyl-alpha-methylfentanyl	2	2
Acetyldihydrocodeine	2	2
Acetylmethadol	2	3
Allylprodine	2	2
Alphacetylmethadol	7	7
Alpha-ethyltryptamine	2	2
Alphameprodine	2	2
Alphamethadol	2	2

Basic class	Previously established initial 2003 quotas	Proposed revised 2003 quotas
Alpha-methylfentanyl	2	2
Alpha-methylthiofentanyl	2	2
Aminorex	17	17
Benzylmorphine	2	2
Betacetylmethadol	2	2
Beta-hydroxy-3-methylfentanyl	2	2
Beta-hydroxyfentanyl	2	2
Betameprodine	2	2
Betamethadol	2	2
Betaprodine	2	2
Bufotenine	2	2
Cathinone	12	12
Codeine-N-oxide	202	352
Diethyltryptamine	2	2
Difenoxin	9,000	9,000
Dihydromorphine	1,101,000	1,101,000
Dimethyltryptamine	3	3
Gamma-hydroxybutyric acid	45,566,000	20,000,000
Heroin	5	5
Hydromorphinol	2	2
Hydroxypethidine	2	2
Lysergic acid diethylamide (LSD)	61	61
Marihuana	840,000	840,000
Mescaline	7	7
Methaqualone	9	9
Methcathinone	9	9
Methyldihydromorphine	2	2
Morphine-N-oxide	202	352
N,N-Dimethylamphetamine	7	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5	5
N-Ethylamphetamine	7	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2	2
Noracymethadol	2	2
Norlevorphanol	52	52
Normethadone	7	7
Normorphine	57	57
Para-fluorofentanyl	2	2
Phenomorphan	2	2
Pholcodine	2	2
Propiram	415,000	415,000
Psilocybin	2	2
Psilocyn	2	2
Tetrahydrocannabinols	131,000	131,000
Thiofentanyl	2	2
Trimeperidine	2	2
Schedule II		
1-Phenylcyclohexylamine	12	12
1-Piperidinocyclohexanecarbonitrile (PCC)	10	10
Alfentanil	700	700
Alphaprodine	2	2
Amobarbital	451,000	0
Amphetamine	10,987,000	10,987,000
Cocaine	171,000	175,000
Codeine (for sale)	43,494,000	43,494,000
Codeine (for conversion)	43,559,000	43,559,000
Dextropropoxyphene	167,365,000	167,365,000
Dihydrocodeine	741,000	741,000
Diphenoxylate	501,000	546,000
Ecgonine	31,000	33,000
Ethylmorphine	12	12
Fentanyl	733,000	804,000
Glutethimide	1,002	1,002
Hydrocodone (for sale)	29,243,000	29,543,000
Hydrocodone (for conversion)	3,800,000	3,800,000
Hydromorphone	1,409,000	1,620,000
Isomethadone	12	12
Levo-alphacetylmethadol (LAAM)	12	12
Levomethorphan	2	2
Levorphanol	8,600	8,600
Meperidine	9,649,000	9,753,000

Basic class	Previously established initial 2003 quotas	Proposed revised 2003 quotas
Metazocine	1	1
Methadone (for sale)	14,057,000	14,057,000
Methadone Intermediate	17,393,000	17,393,000
Methamphetamine [704,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,420,000 grams for methamphetamine mostly for conversion to a Schedule III product; and 1,000 grams for methamphetamine (for sale)]	2,325,000	2,125,000
Methylphenidate	20,967,000	23,726,000
Morphine (for sale)	18,218,000	20,252,000
Morphine (for conversion)	110,774,000	110,774,000
Nabilone	2	2
Noroxymorphone (for sale)	40,000	80,000
Noroxymorphone (for conversion)	4,400,000	4,400,000
Opium	1,000,000	1,000,000
Oxycodone (for sale)	34,482,000	39,090,000
Oxycodone (for conversion)	700,000	700,000
Oxymorphone	454,000	454,000
Pentobarbital	27,728,000	27,728,000
Phencyclidine	16	16
Phenmetrazine	2	2
Phenylacetone	21,975,000	21,975,000
Secobarbital	1,100	1,100
Sufentanil	3,000	3,000
Thebaine	43,292,000	56,652,000

The Acting Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in §§ 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Acting Administrator finds warrant a hearing, the Acting Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing as per 21 CFR 1303.13(c) and 1303.32.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Acting Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Acting Administrator has determined that this action does not require a regulatory flexibility analysis.

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

This action will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

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

The DEA makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

Dated: July 31, 2003.

William B. Simpkins,

Acting Administrator.

[FR Doc. 03–19954 Filed 8–5–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

August 1, 2003.

The Department of Labor has submitted the following (*see* below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). OMB approval

has been requested by August 5, 2003. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (This is not a toll free number) or email: *king.darrin@dol.gov.*

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Room 10235, Washington, DC 20503.

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Employment and Training Administration.

Title: Request for Determination of Eligibility to Apply For the Alternative Trade Adjustment Assistance (ATAA) Program for Older Workers.

OMB Number: 1205–NEW.

Affected Public: Individuals or Households; Businesses or other for-profit; and State, Local, or Tribal Government.

Annualized Reporting Burden (time measured in hours):

Number of respond-ents	Esti-mated time per response	Number of reports	Total burden
4,100	.017	4,100	68

Total Burden Hours: 68

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: The Trade Act of 2002 (Pub. L. 107–210) amends the Trade Act of 1974 and establishes an Alternative Trade Adjustment Assistance (ATAA) program for older workers effective August 6, 2003. Section 246 of Title II, Chapter 2 of the Trade Act of 1974, as amended by the Trade Act of 2002, requires the Secretary of Labor to provide the opportunity for a group of workers on whose behalf a petition for Trade Adjustment Assistance is filed to request that the group of workers be certified for the alternative trade adjustment assistance program at the time the petition is filed. The Request for Determination of Eligibility to Apply for the Alternative Trade Adjustment Assistance (ATAA) Program for Older Workers establishes a temporary format for making such a request. The Department is currently seeking approval of a new TAA petition form (ETA 9109) that includes the option to request certification for ATAA. The **Federal Register** notice was published on July 7, 2003, 68 FR 40301 with a comment due date of 9/5/2003. The Department will consider comments received in response to this notice as well as comments received in response to the July 7, 2003 notice in finalizing the petition form.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–20082 Filed 8–4–03; 10:40 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Notice of Public Availability of Department of Labor's Revised Year 2002 Inventory

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of availability of revised Department of Labor Year 2002 FAIR Act Inventory.

SUMMARY: In accordance with Section 2(c)(2)(B) of the Federal Activities Inventory Reform (FAIR) Act, 31 U.S.C. 501 *et seq.*, announcement is made of the availability of revisions to the Department of Labor's Year 2002 FAIR Act Inventory, for which the Office of Management and Budget published an initial notice of availability in the **Federal Register** on February 6, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Alejandro, Deputy Director, Business Operations Center, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–1524, Washington, DC 20210. Telephone 202–693–4026.

SUPPLEMENTARY INFORMATION: As a result of the resolution of challenges to the Inventory by interested parties under Section 3 of the FAIR Act, the Department of Labor has made subsequent revisions to its 2002 Inventory, changing the classification of four Full-Time Equivalent (FTE) positions From ''commercial'' to ''inherently governmental.'' The four FTE affected by the revisions are as follows—

1 FTE—Benefits Review Board (Function Code T820, Washington, DC)

1 FTE—Employment Standards Administration (Function Code B910, Atlanta, GA)

1 FTE—Mine Safety and Health Administration (Function Code D930, Lakewood, CO)

1 FTE—Office of the Assistant Secretary for Administration and Management (Function Code D704, Washington, DC)

The revised inventory may be viewed at the Department of Labor's public Web site at: *http://www.dol.gov/oasam/programs/boc/2002-commercial-activities.htm.* Arrangements to receive an alternative format may be made by contacting the named individual.

Signed at Washington, DC, this 30th day of July, 2003.

Patrick Pizzella,

Assistant Secretary for Administration and Management.

[FR Doc. 03–20005 Filed 8–5–03; 8:45 am]

BILLING CODE 4510–23–P

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Mainstem Amendments to Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power and Conservation Council, Council).

ACTION: Notice of final action adopting the 2003 Mainstem Amendments to the Council's Columbia River Basin Fish and Wildlife Program.

SUMMARY: Pursuant to Section 4(h) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C. 839 *et seq.*), the Council has amended its 2000 Columbia River Basin Fish and Wildlife Program by adding what are called the 2003 Mainstem Amendments.

On March 14, 2001, the Council requested that state and federal fish and wildlife agencies, Indian tribes and others submit recommendations for amendments to the Council's Fish and

Wildlife Program concerning the mainstem Columbia and Snake rivers. A memorandum accompanying the request for recommendations outlined certain points to consider in developing mainstem amendment recommendations. Council Document No. 2001–04. By the June 15, 2001, deadline for submitting mainstem amendment recommendations, the Council received nearly 1,000 pages of recommendations and supporting information from 22 entities and individuals. As required by Section 4(h)(4) of the Northwest Power Act, the Council released the recommendations to the public for an opportunity for review and comment, until October 2001. Council Document No. 2001–16 (*http://www.nwcouncil.org/library/recommend/mainstem/Default.htm*).

In October 2002, the Council released for public review and comment a draft of proposed mainstem amendments to the fish and wildlife program, and at the same time invited further comment on the mainstem amendment recommendations originally received. The Council held a number of public hearings in the four states of the Council (Washington, Oregon, Montana and Idaho) and received extensive written comments on the draft amendments and the recommendations. Written comments on the draft mainstem amendments and recommendations are posted on the Council's Web site, at *http://www.nwcouncil.org/fw/program/mainstem/2002–16Comments/default.asp.*

After reviewing the recommendations and the comments on the draft mainstem amendments, the Council revised the draft and adopted substantive mainstem amendments to the program in April 2003. In July 2003, the Council completed this process of amending the fish and wildlife program by adopting findings on the recommendations for mainstem amendments as part of the program (Appendix B to the 2003 Mainstem Amendments), as well as a final analysis of the relationship of the mainstem amendments to the adequacy, efficiency, economy and reliability of the region's power supply (Appendix A to the 2003 Mainstem Amendments).

SUPPLEMENTARY INFORMATION: The mainstem amendments are the Council's second step in what will eventually be a comprehensive revision of its Columbia River Basin Fish and Wildlife program. In the first phase, which resulted in the 2000 Fish and Wildlife Program, the Council reorganized the program around a comprehensive framework of scientific and policy principles. The fundamental elements of the revised program are the vision, which describes what the program is trying to accomplish with regard to fish and wildlife and other desired benefits from the river; basinwide biological objectives, which describe in general the fish and wildlife population and habitat characteristics needed to achieve the vision; implementation strategies, which will guide or describe the actions needed to achieve the desired ecological conditions; and a scientific foundation, which links these elements and explains why the Council believes certain kinds of actions should result in desired habitat conditions and why these conditions should improve fish and wildlife populations in the desired way.

The program amendments in 2000 set the stage for the subsequent phases of the program revision process, in which the Council will adopt specific objectives and strategies for the river's mainstem and tributary subbasins, consistent with the basinwide vision, objectives and strategies in the program and its underlying scientific foundation. This notice concludes the adoption of a set of program amendments relevant to the mainstem Columbia and Snake rivers. The Council next intends to incorporate specific objectives and measures for tributaries into the program in locally developed subbasin plans for the more than 60 subbasins of the Columbia River.

The role of the mainstem amendments was described in the 2000 Fish and Wildlife Program, in the section on Basinwide Hydrosystem Strategies and in the section entitled Schedule for Further Rulemakings. The Council repeated this guidance in the March 14, 2001, request for mainstem amendment recommendations. The mainstem amendments were to contain the specific objectives and strategies (or measures) for the federal operating agencies and others to implement in the mainstem Columbia and Snake rivers to protect, mitigate and enhance fish and wildlife affected by the development and operation of hydroelectric facilities while assuring the region an adequate, efficient, economical and reliable power supply. The final amendments thus include objectives and strategies relating to, among other matters:

- The protection and enhancement of mainstem habitat, including spawning, rearing, resting and migration areas for salmon and steelhead, resident salmonids and other anadromous and resident fish;
- System water management;
- Passage spill at mainstem dams;
- Adult and juvenile passage modifications at mainstem dams;
- Juvenile fish transportation;
- Reservoir elevations, operational requirements and habitat conditions to protect resident fish and wildlife;
- Water quality conditions; and
- Research, monitoring and evaluation.

In developing the mainstem amendments, the Council asked the recommending entities to consider, among other things, the consistency of their mainstem recommendations with the basinwide provisions in the 2000 Fish and Wildlife Program, especially the role of a mainstem plan in a multispecies, habitat-based, basinwide program. The Council evaluated the mainstem recommendations and the draft and final program amendments for consistency with the program framework elements adopted in 2000, including the vision, biological objectives, habitat and hydrosystem strategies, and underlying scientific principles. The Council also evaluated the draft and final amendments for consistency with, and a basis in, the mainstem recommendations, as explained in the findings.

FOR FURTHER INFORMATION CONTACT: The final 2003 Mainstem Amendments, which include the appendices with the findings on recommendations and the power system analysis, can be found on the Council's website, at *http://www.nwcouncil.org/fw/program/mainstem/Default.htm.* You may also contact the Council's central office for a copy, by telephone at 1–503–222–5161 or 1–800–452–5161; by fax at 1–503–795–3370; or by e-mail at *info@nwcouncil.org.*

Stephen L. Crow,

Executive Director.

[FR Doc. 03–19975 Filed 8–5–03; 8:45 am]

BILLING CODE 7905–01–P

PENSION BENEFIT GUARANTY CORPORATION

Approval of Amendment to Special Withdrawal Liability Rules for International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of approval.

SUMMARY: The International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan requested the Pension Benefit Guaranty Corporation (''PBGC'') to approve a second amendment to a special withdrawal liability rule for

employers that maintain the Plan. PBGC approved the original rule in 1984 and an amended version in 1998. 49 FR 6043 (February 16, 1984); 63 FR 27774 (May 20, 1998). PBGC published a Notice of Pendency of the Request for Approval of a second amendment on June 13, 2003 (68 FR 35462) (''Notice of Pendency''). In accordance with the provisions of the Employee Retirement Income Security Act of 1974, PBGC is now advising the public that the agency has approved the requested amendment with certain modifications.

FOR FURTHER INFORMATION CONTACT: Gennice D. Brickhouse, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; Telephone 202–326–4020 (For TTY/TDD users, call the Federal Relay Service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020).

SUPPLEMENTARY INFORMATION:

Background

As explained in the Notice of Pendency (see 68 FR 35463–65), the International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan (''Plan'') has since 1984 operated under a special modification to the usual employer withdrawal liability rules of the Employee Retirement Income Security Act of 1974 (''ERISA''), as amended by the Multiemployer Pension Plan Amendments Act of 1980, Public Law 96–364, 94 Stat. 1208–1311. Under section 4201 of ERISA, an employer who incurs either a complete or partial withdrawal from a defined benefit multiemployer pension plan becomes liable for a proportional share of the plan's unfunded vested benefits. The statute specifies that a ''complete withdrawal'' occurs whenever an employer either permanently (1) ceases to have an obligation to contribute to the plan, or (2) ceases all operations covered under the plan. See ERISA section 4203(a). Under the second test, therefore, an employer who closes or sells its operations will incur withdrawal liability. Under the first test, an employer who remains in business but who no longer has an obligation to contribute to the plan also suffers liability. The ''partial withdrawal'' provisions of sections 4205 and 4206 impose a lesser measure of liability upon employers who greatly reduce, but do not entirely eliminate, the operations that generate contributions to the plan.

The withdrawal liability provisions of ERISA are a critical factor in maintaining the solvency of these pension plans and reducing claims made on the multiemployer plan guaranty fund maintained by PBGC, which is much less robustly funded than the comparable single employer fund.[1] In the absence of withdrawal liability rules, an employer who participates in an underfunded multiemployer plan would have a powerful economic incentive to reduce expenses by withdrawing from the plan at the first convenient opportunity.

Congress nevertheless allowed for the possibility that, in certain industries, the fact that particular employers go out of business (or cease operations in a specific geographic region) might not result in permanent damage to the pension plan's contribution base. In the case of the construction industry, for example, the work must necessarily take place at the construction site; if that work generates contributions to the pension plan, it does not much matter which employer performs the work. Put another way, if a construction employer goes out of business, or stops operations in a geographic area, pension plan contributions will not diminish if a second employer who contributes to the plan fills the void. The plan's contribution base is damaged, therefore, only if the employer stops contributing to the plan but continues to perform construction work in the jurisdiction of the collective bargaining agreement.

This reasoning led Congress to adopt a special definition of the term ''withdrawal'' for construction industry plans. Section 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan, but the employer nevertheless performs previously covered work in the jurisdiction of the collective bargaining agreement at any time within five years after the employer ceased its contributions.[2] There is a parallel rule for partial withdrawals from construction plans. Under section 4208(d)(1) of ERISA, ''[a]n employer to whom section 4203(b) (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.''

Section 4203(f) of ERISA provides that PBGC may prescribe regulations under which plans that are not in the construction industry may be amended to use special withdrawal liability rules similar to those that apply to construction plans. Under the statute, the regulations ''shall permit the use of special withdrawal liability rules * * * only in industries'' that PBGC determines share the characteristics of the construction industry. In addition, each plan application must demonstrate that the special rule ''will not pose a significant risk to the [PBGC] insurance system.'' Section 4208(e)(3) of ERISA provides for parallel treatment of partial withdrawal liability rules.

The regulation on *Extension of Special Withdrawal Liability Rules* (29 CFR part 4203), prescribes the procedures a multiemployer plan must follow to request PBGC approval of a plan amendment that establishes special complete or partial withdrawal liability rules. Under 29 CFR 4203.3(a), a complete withdrawal rule must be similar to the statutory provision that applies to construction industry plans under section 4203(b) of ERISA. Any special rule for partial withdrawals must be consistent with the construction industry partial withdrawal provisions.

Each request for approval of a plan amendment establishing special withdrawal liability rules must provide PBGC with detailed financial and actuarial data about the plan. In addition, the applicant must provide PBGC with information about the effects of withdrawals on the plan's contribution base. As a practical matter, the plan must demonstrate that the characteristics of employment and labor relations in its industry are sufficiently similar to those in the construction industry that use of the construction rule would be appropriate. Relevant factors include the mobility of the employees, the intermittent nature of the employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed.

PBGC will approve a special withdrawal liability rule only if a review of the record shows that:

(1) The industry has characteristics that would make use of the special construction withdrawal rules appropriate; and

[1] The PBGC multiemployer guaranty fund receives only $25 million in annual premiums. In contrast, the single employer funds received premiums of $787 million in the 2002 fiscal year. PBGC Pension Insurance Data Book 2002 at 2.

[2] Section 4203(c)(1) of ERISA applies a similar definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. No plan has ever requested PBGC to determine that it shares the characteristics of an entertainment plan.

(2) The plan would not be aversely affected by the adoption of the special rule.

After review of the application and all public comments, PBGC may approve the amendment in the form proposed by the plan, approve the application subject to conditions or revisions, or deny the application.

Previous Agency Action Involving This Plan

The Notice of Pendency explained how the Plan operates under a modification to the employer withdrawal liability rules of ERISA, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (*see* 68 FR 35463–65). Under the initial recension of the special Plan rule-which was approved in 1984 (*see* 49 FR 6043)—a complete withdrawal occurs if a contributing employer permanently ceases to have an obligation to contribute to the Plan, and: (1) Continues to perform work of the type for which contributions to the Plan are currently or were previously required at any Pacific Coast port in the United States; (2) resumes such work— without renewal of the obligation to contribute—at any time before the end of the fifth Plan Year commencing after the obligation ceased; (3) sells or transfers a substantial portion of its business or assets to another person that performs such work without having an obligation to make contributions to the Plan; or (4) is found to have ceased Plan contributions in connection with the withdrawal of all, or substantially all, employers from the Plan as described in 4219(c)(1)(D) of ERISA. Parallel provisions were adopted for partial withdrawals.

Because the Plan had a substantial shortfall between assets and vested liabilities, the 1984 approval was conditioned upon the satisfaction of twin contribution tests crafted to protect Plan participants and the PBGC. First, the Plan was amended to provide that ''[c]ontributions for each Plan Year shall be not less than the total administrative costs and benefits to be paid by the Trustee during the Plan Year.'' Second, the Plan committed itself to satisfy a ''Funding Goal'' designed to ensure that the Plan accumulated sufficient assets to pay for the massive benefit promises already made-but not yet paid for-by the bargaining parties. The Plan was required to become 50% funded within 10 years, and had to achieve 80% funding in accordance with this schedule:

Plan year	Percent
10	50
11	53
12	56
13	59
14	62
15	65
16	68
17	71
18	74
19	77
20 and over	80

As a result of these measures, the funded status of the Plan improved over the next decade, even though the bargaining parties instituted continuous benefit improvements under which the monthly benefit accruals promised under the labor contract rose by 270%, from $26 in 1983 to $70 in 1996. This trend is illustrated by table that the Plan presented to PBGC in 1997.

TABLE 1.—SUMMARY OF ACTUARIAL VALUATION RESULTS [1]

	Valuation date					
	7/1/96	7/1/95	7/1/94	7/1/93	7/1/92	7/1/91
Number of active participants	8,185	7,856	7,682	8,141	8,339	8,469
Number of retired participants	9,049	9,236	9,244	8,979	9,132	9,214
Monthly benefit accrual rate	70	69	69	69	39	37
Maximum monthly benefit	2,450	2,415	2,415	2,415	1,365	1,295
Contributions (000)	99,700	99,696	99,023	87,316	74,139	71,074
Benefits (000)	96,900	94,963	92,437	85,293	71,321	68,848
Market value assets (000)	1,329,082	1,143,335	957,661	950,030	835,063	746,993
Net minimum funding charges w/o credit balance (000)	79,154	85,787	81,247	80,034	47,307	43,987
Normal cost, including operating expenses (000)	20,527	19,180	17,831	18,529	12,821	12,334
Unfunded accrued liability (assets at market value) (000)	534,416	637,646	710,802	664,096	341,037	360,009
Unfunded liability—vested benefits (assets at market value) (000)	354,821	462,132	530,092	476,168	N/A	N/A
Valuation interest rate	6.5	6.5	6.5	6.5	6.5	6.5

[1] Taken from actuarial reports submitted by the Plan to PBGC in 1997.

The 1997 Amendments

In 1997, the trustees of the Plan submitted a proposed revision of their special rules to the PBGC. Their submission represented that employer contributions that equaled benefit payments and administrative expenses would exceed the limits for tax-deductibility set forth in the Internal Revenue Code. The trustees requested PBGC allow them to eliminate the contribution floor requirement, and the agency approved a modified version of the request in 1998. 63 FR 27774. Under the modification, the ''annual contribution equal to annual benefit payments'' rule was waived unless the Plan became less than 85% funded; if the Plan failed the 85% Funding Goal, then employer ''[c]ontributions in the following Plan Year shall be not less than the lesser of'' the Plan's benefit payments and administrative expenses or ''the amount required to increase the Funding Percentage * * * to eighty-five percent (85%).'' 63 FR 27777. If the Plan failed to satisfy these remedial measures, the special withdrawal liability rule would become void.

The Background of the Proposed Second Amendment

In autumn 2002, the Director of the Federal Mediation and Conciliation Service (''FMCS'') urgently requested the staff of the Secretary of Labor and the Executive Director of PBGC to provide technical comments and observations about pension-related issues to the International Longshoremen's and Warehousemen's Union (''ILWU'') and U.S. based representatives of the Pacific Maritime Association (''PMA''). Those parties were then negotiating a new collective bargaining agreement for west coast

ports. Under most circumstances the PBGC would not become involved in private sector labor negotiations. As stated in the Notice of Pendency, however, the 2002 negotiations were extraordinary in several respects. Despite the personal efforts of the Chairman of the FMCS, the parties reached a bargaining deadlock and a lockout was called that paralyzed the west coast docks. For the first time in a generation, the United States government invoked the provisions of the Taft-Hartley Act and obtained an injunction from a federal court to halt the work stoppage and reopen the ports. The FMCS vouched that no agreement could be reached unless federal pension agencies provided informal reactions to proposed modifications to the 1984 and 1998 recensions of the rule.

On that basis, PBGC listened to various proposals and provided the FMCS and the parties with general guidance concerning benefit increases and temporary changes to the Funding Goal. The ILWU and PMA represented that compliance with the 85% Funding Goal would prevent them from bargaining for an increase in pension benefits to a level that was sufficiently attractive to convince current workers to acquiesce in work rule changes and employment reductions desired by the PMA shipping interests. They argued also that PMA ''could not afford'' to honor the ''equal contribution and benefit payment'' rule because PMA ''needed to invest elsewhere in the industry.''

The parties reached an agreement in November of 2002 but did not finalize their pension proposals and submit them for formal approval PBGC until March 29, 2003.

Prior to the November 2002 amendments, the Plan was said to be in compliance with the 85% Funding Goal established under the 1998 recension of the special rule.

TABLE 2.—SELECT FINANCIAL DATA SUBMITTED BY PLAN ON MARCH 28, 2003

	Plan year ending June 30, 1997	Plan year ending June 30, 1998	Plan year ending June 30, 1999	Plan year ending June 30, 2000	Plan year ending June 30, 2001	Plan year ending June 30, 2002
Assets	$1.63 billion	$1.91 billion	$2.16 billion	$2.40 billion	$2.22 billion	$1.93 billion.
Vested Benefits	$1.69 billion	$1.66 billion	$1.63 billion	$1.83 billion	$1.99 billion	$1.84 billion.
Active Participants	8,315	8,859	9,572	9,395	10,070	10,113.
Contributions	$104 million	$35.0 million	$28.8 million	$32.5 million	$26.9 million	$23.5 million.
Benefit Payments	$101.5 million	$108.0 million	$110.6 million	$126.4 million	$132.9 million	$154 million.
Plan Assets As Multiple of Benefits	16.1	17.7	19.6	19.0	16.6	12.5.

Materials that the Plan submitted to PBGC in March 2003, however, indicated that the cost of the 2002 benefit increases caused the Plan to fail the Funding Goal from July 2002 through July 2012. Thus, the Plan would require annual ''catch-up'' contributions equal to benefit payments. The ''catch up'' contributions, however, would greatly exceed the amount the Plan would otherwise need to satisfy the ''minimum funding'' provisions of the Internal Revenue Code.

TABLE 3.—SEGAL COMPANY PROJECTED PBGC FUNDING PERCENTAGES

[Submitted to plan on March 10, 2003]

Year	Funding level (percent)	Benefit payments (millions)	Code funding (millions)
2002	87	$154	23
2003	84	167	44
2004	80	179	72
2005	76	192	98
2006	71	211	122
2007	67	230	148
2008	68	238	213
2009	71	247	303
2010	76	253	304
2011	82	259	304
2012	88	264	304

Decision on the Proposed Second Amendment

The statute and the implementing regulation state that PBGC must make two factual determinations before it approves a request for an amendment that adopts a special withdrawal liability rule. ERISA section 4203(f); 29 CFR 4203.4(a). First, on the basis of a showing by the plan, PBGC must determine that the amendment will apply to an industry that has characteristics that would make use of the special rules appropriate. Second, PBGC must determine that the plan amendment will not pose a significant risk to the insurance system. PBGC's discussion on each of those issues follows. After review of the record submitted by the Plan, and having received no public comments, PBGC has entered the following determinations.

1. What Is the Nature of the Industry?

In determining whether an industry has the characteristics that would make an amendment to special rules appropriate, an important line of inquiry is the extent to which the Plan's contribution base resembles that found in the construction industry. This threshold question requires consideration of the effect of employer withdrawals on the Plan's contribution base.

The characteristics of the west coast longshore industry that supported approval of special withdrawal liability rules in 1984 and 1998 apparently continue to apply today. Specifically, work covered under the Plan is dependent on the comings and goings of ocean-going vessels at west coast ports. The work must be performed at the port of embarkation or debarkation. Thus, the work will continue to be covered by the Plan unless future shipping is diverted to Canadian, Mexican or Central American ports.

In addition, an employer in this industry cannot withdraw from the Plan while continuing to perform longshore work at Pacific ports: longshore work along the entire west coast of the United States for all ocean-going dry cargo work is covered under collective bargaining agreements that require contributions to the Plan. Because the entire coast is one bargaining unit, and all ports through which ocean-going dry cargo is shipped are completely organized by the ILWU, it is not feasible to load or unload cargo unless contributions being paid to the Plan. Moreover, a former employer who did resume operations on a noncontributory basis would incur withdrawal liability.

2. What Is the Exposure and Risk of Loss to PBGC and Participants?

Exposure. The bargaining parties have increased benefits for active workers by over 50%, from $95 a month for each year of service to $150 per month. For a participant who retires with 33 years of service (as is typical) the annual benefit rises from $37,620 to $59,400. Thus, benefit liabilities will rise substantially. It should also be noted that Congress raised the PBGC guarantee for multiemployer plans in 2001: the guaranteed benefit for a participant with 33 years of service has risen from $6435 to $13,365. It follows that PBGC's exposure has increased.

Risk of loss. When the PBGC considered this question in 1998, the record indicated that the Plan presented a low risk of loss to PBGC guaranty funds. The agency expressed this view because actuarial reports for the period from July 1991 through July 1996:

* * * show a stable Plan population, an increase in annual contributions ($71.1 million to $99.7 million), and an increase in Plan assets ($747 million to $1.329 billion). Plan income has also consistently exceeded benefit payouts. The Plan and the covered industry have unique characteristics that suggest that the Plan's contribution base is likely to remain stable. Contributions to the Plan are made with respect to all west coast dry cargo . * * * Consequently, the Plan's contribution base is secure and the departure of one employer from the Plan is not likely to have an adverse effect on the contribution base so long as the level of shipping does not decline.

As noted in the tables (*supra*) the risk of loss has increased due to the funding pressure that the Plan will encounter due to a combination of (1) reduced contributions [3]; and (2) increased benefit costs spread across a fixed or declining number of employers.

Conclusion. The Plan should continue to resemble a construction plan so long as virtually all foreign-flag shipping flows into and out of west coast ports, and so long as U.S. labor relations law continues to treat the ILWU as the exclusive bargaining representative of all west coast dockworkers. However, if either condition should change, the Plan's contribution base would be at risk. In addition, the Plan will be less robust than it was in 1998, and the economic pressures that plan funding will place on contributing employers (and, indirectly, the workforce) will increase dramatically after 2009—which is exactly the point when the Plan falls to its lowest level of funding. In view of the foregoing, approval of the amendment should be conditioned, for each of the plan years commencing from July 2003 through July 2012, upon the Plan's compliance with the enhanced reporting, disclosure and certification requirements.

Wherefore, the following amendments are approved to the enumerated sections of the ILWU-PMA Pension Agreement:

In paragraph 4.4042(c)(iv), the ''Accelerated Funding Schedule'' shall be 65% for each plan year commencing from July 2002 through July 2007; and rising by three percent each year thereafter until it reaches 80% in the plan year commencing July 1, 2012, remaining at 80% for all years thereafter;

In paragraph 4.4042(c)(vi), the table is amended to state a Funding Percentage of 65% for each plan year commencing from July 2002 through July 2007; and rising by three percent each year thereafter until it reaches 83% in the plan year commencing July 1, 2013, and then increasing to 85% for the plan year commencing July 1, 2014, and all subsequent years;

Paragraph 4.402(c)(v) may be amended to allow for revisions of certain actuarial assumptions as set forth in the experience study and recommendation of the plan actuary in January 2003, but such revised assumptions may apply only to plan years commencing after June 30, 2002; *provided, however,*

That the foregoing amendments are approved subject to the following reporting requirements;

(1) The Plan shall provide PBGC with copies of all actuarial valuation reports, as well as drafts of such reports, within 5 business days after the reports or drafts are received by any of the Plan, its trustees, the ILWU or the PMA;

(2) The Plan shall provide PBGC with copies of all independent auditor's reports and financial statements, as well as drafts thereof, within 5 business days after the reports or drafts are received by any of the Plan, its trustees, the ILWU or the PMA; and

(3) The annual actuarial certification heretofore filed by the Plan with PBGC shall, for all plan years that commence after July 1, 2003, be filed with PBGC no later than 90 days after the close of the plan year (unless this period is extended by PBGC for good cause shown), and this certification shall state whether the contributions received by the Plan are at least equal to the amounts listed under column 4 (headed ''Code Funding'') of Table 3 of this Notice of Approval.

Based on the facts of this case and the representations and statements made in connection with the request for approval, PBGC has determined that the Plan Amendment modifying special withdrawal liability rules (1) will apply only to an industry that has characteristics that would make the use of special withdrawal liability rules appropriate, and (2) will not pose a significant risk to the insurance system. Therefore, PBGC hereby grants the Plan's request for approval of a plan amendment modifying special withdrawal liability rules, as set forth herein. The Plan must agree to certify annually its compliance with the conditions set forth at 49 FR 6043 and 63 FR 27774, as modified by this Notice of Approval, with such certification to be filed within the deadlines established in this Notice of Approval. Should the Plan wish to again amend these rules at any time, PBGC approval of the amendment will be required. In the absence of extraordinary circumstances, the PBGC will not approve any amendments with retroactive effect.

Issued at Washington, DC, on this 31st day of July, 2003.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 03–19956 Filed 8–5–03; 8:45 am]

BILLING CODE 7708–01–P

[3] If the ''contributions must equal benefit payments'' provision of the 1984 amendment had been retained, this Plan would have received an additional $639 million in contributions between 1997 and 2003.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48259; File No. SR–NASD–2003–107]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers Delaying the Implementation Date of Amendments to Article VIII (District Committees and District Nominating Committees) of the By-Laws of NASD Regulation, Inc.

July 30, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 2003, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD has designated the proposed rule change as ''constituting a stated policy, practice or interpretation'' under subparagraph (f)(1) of Rule 19b–4 under the Act,[3] 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

NASD proposes to delay until January 1, 2004, the implementation date of recent amendments to Article VIII (District Committees and District Nominating Committees) of the By-Laws of NASD Regulation, Inc.[4] NASD filed SR–NASD–2003–55 to streamline the nomination and election processes governing NASD District Committees and District Nominating Committees (''Committees''), modernize communication procedures, and improve the consistency among the Committees across all districts. The proposed rule change would not involve changes to the rule text.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(1).

[4] *See* Securities Exchange Act Release No. 48015 (June 11, 2003), 68 FR 35926 (June 17, 2003) (SR–NASD–2003–55) (''SR–NASD–2003–55''). The operative date under SR–NASD–2003–55 was July 6, 2003. NASD proposes that the implementation date be delayed to January 1, 2004, notwithstanding that this proposal inadvertently was filed after the operative date under SR–NASD–2003–55.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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 notify the Commission and other interested parties of the delay in implementation of recent amendments to Article VIII of the By-Laws of NASD Regulation, Inc. (''Article VIII'') established by SR–NASD–2003–55 until January 1, 2004. On March 21, 2003, NASD filed a proposed rule change to streamline the nomination and election processes governing District Committees and District Nominating Committees, modernize communication procedures, and improve the consistency among the Committees across all districts. On June 11, 2003, the SEC published a notice of filing and immediate effectiveness of the proposed rule change. The proposed rule change was subject to a 30-day delayed operative period beginning on June 6, 2003, the date NASD filed Amendment No. 3 to the File No. SR–NASD–2003–55, and ending on July 6, 2003.

However, NASD's election cycle for District Committees and District Nominating Committees for this year is already underway. As the amendments to Article VIII were not effective prior to the start of this year's election cycle, NASD is conducting these elections in accordance with the provisions of Article VIII effective prior to the filing of SR–NASD–2003–55. In order to avoid any confusion among participants and to prevent any disruption in the election procedures by adopting amendments in the middle of the election cycle, NASD proposes to delay the implementation date of the amendments to Article VIII until January 1, 2004.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, [5] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that delaying the implementation date of the amendments to Article VIII of the By-Laws of NASD Regulation, Inc. until January 1, 2004, will permit this year's Committee elections to proceed in an orderly fashion under existing procedures. Any change to existing procedures in the middle of the current Committee election cycle may cause unnecessary confusion to participants and disrupt the election process.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by NASD as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Rule 19b–4(f)(1) under the Act,[6] which renders the proposal effective upon receipt of this filing by the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate this proposed 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] 17 CFR 240.19b–4(f)(1).

Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–107 and should be submitted by August 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20026 Filed 8–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 344–48258; File No. SR–Amex–2003–06]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Mandatory Continuing Education for All floor Members and Mandatory Continuing Education and Initial Test Requirements for Floor Clerks of Members and Member Firms

July 30, 2003.

On February 3, 2003, the American Stock Exchange LLC (''Amex'' or ''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 revise its performance evaluation and allocations procedures. On May 21, 2003, the Amex amended the proposed rule change.[3]

Under the proposed rule, Amex proposes to adopt Amex rule 359 titled the Mandatory Continuing Education for all Floor Members and Mandatory Continuing Education and Initial Test Requirements for Floor Clerks of Members and Member Firms. Specifically, newly hired floor clerks with no previous floor experience will be tested within a three-month on-the-job training period. Additionally, newly-hired specialist clerks with no previous experience as specialists or specialist clerks will be subject to the training and exam requirement of a floor clerk. Furthermore, a specialist clerk will be required to complete the on-the-job and classroom training related to the job of specialist clerk. The proposed rule change also institutes an annual, mandatory continuing education program for members and their employees. Failure to attend a mandatory continuing education session may result in a fine being imposed under the General Rule Violations Section of the Exchange's Minor rule Violation Fine System. Finally, the continuing education program will be financed by levying an annual fee of $50 for each participant.

The proposed rule change, as amended, was published for comment in the **Federal Register** on June 25, 2003.[4] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission finds that the proposed rule change promotes the objectives of Section 6(b)(5) of the Act,[6] which requires among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(6) because it provides a sanction under Amex's Minor Rule Violation Fine System for failure to comply with the continuing education requirement.

The Commission also finds that the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) because it provides the Exchange with a means to measure a newly hired floor clerk or specialist clerk's ability and qualifications as well as to ensure that Amex members and persons associated with members meet standards of training, experience, and competence. By requiring all current members and their employees to attend annual mandatory continuing education training, the Exchange assists the members and their employees admitted to the Exchange's trading floor to understand critical regulatory and operational issues affecting the exchange and the securities industry. The Commission believes that Amex's proposal to require members and their employees to participate in an education program before being permitted to act as members is appropriate and consistent with Section 6(c)(3)(B).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–2003–06), as amended, be, and hereby is, approved.

For the Commissions, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 03–20027 Filed 8–5–03; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 4433]

Culturally Significant Objects Imported for Exhibition Determinations: ''Fragments From the Temple Mount of Herod the Great: Archaeology News From the Holy Land''

AGENCY: Department of State.

ACTION: Notice.

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.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Ivonne L. Natal, Associate General Counsel, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation Commission, dated May 20, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange replaced the original filing in its entirety. The exchange stated it anticipates implementing proposed Rule 359 within eight months of approval by the Commission.

[4] *See* Securities Exchange Act Release No. 48041 (June 17, 2003), 68 FR 37882 (June 25, 2003).

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

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 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Fragments from the Temple Mount of Herod the Great: Archaeology News from the Holy Land,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Field Museum from on or about September 5, 2003, until on or about March 14, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 23, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–20011 Filed 8–5–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4432]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Romanovs Collect: European Art From the Hermitage''

AGENCY: Department of State.

ACTION: Notice.

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 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Romanovs Collect: European Art from the Hermitage,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the University of Michigan Museum of Art from on or about September 21, 2003, until on or about November 23, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 23, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–20012 Filed 8–5–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Transportation Labor-Management Board Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Transportation (DOT) announces a meeting of the Transportation Labor-Management Board (Board). Notice of the meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Board will meet on Wednesday, August 27, 2003, at 2 p.m., at the U.S. Department of Transportation, Nassif Building, room 3246, 400 Seventh Street, SW., Washington, DC 20590. The room is located on the 3rd floor.

TYPE OF MEETING: The meeting is open to the public. Please note that visitors without a government identification badge should enter the Nassif Building at the Southwest lobby, for clearance at the Visitor's Desk. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

POINT OF CONTACT: Stephen Gomez, Workforce Environment and Pay Division, M–13, U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 7411, Washington, DC 20590, (202) 366–9455 or 4088.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to receive a briefing on the Federal Personnel and Payroll System (FPPS) and hear status reports from three subcommittees on Human Capital, Competitive Sourcing, and the Labor Relations Climate Survey.

Public Participation: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Stephen Gomez at the address shown above. Comments should be received by August 18, 2003 in order to be considered at the August 27th meeting.

Issued in Washington, DC, on July 31, 2003.

For the U.S. Department of Transportation.

Linda Moody,

Associate Director, Workforce Environment and Pay Division.

[FR Doc. 03–20053 Filed 8–5–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Maryland Department of Transportation Waiver Petition Docket Number FRA–2003–15193

Maryland Department of Transportation (MARC) seeks a temporary waiver of compliance with the Passenger Equipment Safety Standards, 49 CFR part 238 section 103 as it pertains to fire Safety Analysis; Section 303 and 305 as they pertain to exterior and interior calendar day inspection; Section 307 as it pertains to periodic inspection; and Section 311 as it pertains to periodic brake equipment single car test, for nine retired passenger coaches built by the Budd Company in 1949. If the waiver is granted, MARC will perform required inspections with the exception of the fire Safety Analysis to the nine cars and store the equipment

in serviceable condition at its Brunswick, MD, facility for utilization in the event of a Public Emergency. During the day the passenger cars utilized to operate MARC's Brunswick line stored at Union Station, Washington, DC, in the event of a Public Emergency that closed or blocked access to Union Station, MARC could use any locomotive available to haul these cars. The plan would be to operate the cars between the extreme ends of the Washington, DC, Metro system and MARC's Martinsburg, WV, and Frederick, MD, stations.

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 (FRA–2003–15193) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on July 30, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–20021 Filed 8–5–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–15470]

Reopening of Comment Period on Whether Nonconforming 2003 Mitsubishi Evolution VIII Left Hand Drive Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Reopening of comment period.

SUMMARY: This document announces the reopening of the comment period on a petition for NHTSA to decide that 2003 Mitsubishi Evolution VIII left hand drive (LHD) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States.

DATES: The closing date for comments on the petition is August 6, 2003.

ADDRESSES: Comments are to be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. 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 document (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 19477–787) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION: On June 30, 2003, NHTSA published a notice (at 68 FR 38750) that it had received a petition to decide that nonconforming 2003 Mitsubishi Evolution VIII LHD passenger cars are eligible for importation into the United States. The notice solicited public comments on the petition and stated that the closing date for comments is July 30, 2003.

This is to notify the public that NHTSA is reopening the comment period on this petition, and allowing it to run until August 6, 2003. This reopening is based on a request dated July 29, 2003, from Mitsubishi Motors North America, Inc. (''Mitsubishi''), the U.S. representative of the vehicle's manufacturer. Mitsubishi stated that the reopening was needed because it had yet to complete a technical analysis of the petition that it is conducting in Japan. Mitsubishi explained that its analysis has taken ''longer than initially expected because there are a number of significant engineering issues raised by the petition's discussion of the steps required for modifying the nonconforming Mitsubishi Evolution VIII passenger cars to comply with all applicable Federal motor vehicle safety standards.'' The company stated that ''these engineering issues require careful analysis and comparison between conforming and nonconforming models.'' The company also noted that it has recently retained outside counsel to assist in preparing its comments, and that ''additional time has been needed both to familiarize counsel with the issues, to address issues raised by counsel, and to narrow the issues under review.'' Mitsubishi requested that the comment period be reopened and allowed to run for a period of one week from the original closing date.

NHTSA has granted Mitsubishi's request. All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–20056 Filed 8–5–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; DaimlerChrysler

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of DaimlerChrysler Corporation, (DaimlerChrysler) for an exemption of a high-theft line, the Chrysler Town and Country, from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted

because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington DC 20590. Ms. Proctor's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated March 19, 2003, DaimlerChrysler Corporation (DaimlerChrysler), requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Chrysler Town and Country vehicle line, beginning with MY 2005. The petition requested an exemption from parts-marking requirements pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Section 33106(b)(2)(D) of Title 49, United States Code, authorized the Secretary of Transportation to grant an exemption from the parts-marking requirements for not more than one additional line of a manufacturer for MYs 1997–2000. However, it does not address the contingency of what to do after model year 2000 in the absence of a decision under Section 33103(d). 49 U.S.C. 33103(d)(3) states that the number of lines for which the agency can grant an exemption is to be decided after the Attorney General completes a review of the effectiveness of antitheft devices and finds that antitheft devices are an effective substitute for parts-marking. The Attorney General has not yet made a finding and has not decided the number of lines, if any, for which the agency will be authorized to grant an exemption. Upon consultation with the Department of Justice, we determined that the appropriate reading of Section 33103(d) is that the National Highway Traffic Safety Administration (NHTSA) may continue to grant parts-marking exemptions for not more than one additional model line each year, as specified for model years 1997–2000 by 49 U.S.C. 33106(b)(2)(C). This is the level contemplated by the Act for the period before the Attorney General's decision. The final decision on whether to continue granting exemptions will be made by the Attorney General at the conclusion of the review pursuant to section 33103(d)(3).

DaimlerChrysler's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in §543.5 and the specific content requirements of §543.6.

In its petition, DaimlerChrysler provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. DaimlerChrysler will install its antitheft device as standard equipment on the MY 2005 Chrysler Town & Country vehicle line. The antitheft device to be installed on the MY 2005 Chrysler Town & Country incorporates an ignition immobilizer system and an unauthorized vehicle start telltale light. The system does not include an audible or visual alarm as standard equipment.

The antitheft device incorporates a Sentry Key Immobilizer Module (SKIM), a Powertrain Control Module (PCM), and a sentry key. The Sentry Key Immobilizer System (SKIS) prevents the engine from running for more than 2 seconds unless a valid key is in the ignition switch. The immobilizer feature is activated when the key is removed from the ignition switch whether the vehicle doors are open or not. Once activated, only a valid key inserted into the ignition switch will disable immobilization and allow the vehicle to start and continue to run. A visual telltale light alerts the owner that an unauthorized attempt to start the vehicle has been made.

When the sentry key is placed in the ignition, the SKIM and the key communicate via a radio-frequency (RF) signal. After the SKIM determines that the key is valid, the SKIM requests a Seed Response Message code from the PCM on all vehicles. The PCM then verifies the code from the SKIM and transmits a key status (valid/invalid signal). The foregoing communication requires approximately 2 seconds to perform. Therefore, in order to avoid any perceived delay when starting the vehicle with a valid key, and to prevent unburned fuel from entering the exhaust, the engine is permitted to run for no more than 2 seconds if an invalid key is used. If the code from the SKIM is valid, the PCM immobilizes the vehicle by shutting down the engine (after the initial 2 second run). Only 6 consecutive invalid vehicle start attempts will be permitted. All further invalid attempts are locked out by not firing fuel injectors and not engaging the starter. Only the communication with a valid key is required to permit the engine to start and run.

The SKIM also sends indicator light status messages to the Mechanical Instrument Cluster (MIC) to operate the telltale light functions. The telltale alerts the owner that an unauthorized vehicle start attempt has been made. The SKIM transmits the indicator light status messages via a J1850 Programmable Communications Interface (PCI) bus. Initially, the telltale will be illuminated for three seconds when the ignition switch is turned to the ''ON'' position. This serves as a bulb check. If the SKIM detects an invalid key when the immobilizer has not been disarmed and the ignition is in the ''ON/START'' position, or a key-related fault exists, the indicator light will flash following the indicator light test. The telltale light also functions as a system diagnostic indicator. The light comes ON and stays ON until after the indicator light test signifies that the SKIM has detected a system malfunction and/or that the SKIS has become inoperative.

Replacing the SKIM requires a secret key to decode the ignition keys. A copy of this secret key is stored in the PCM. When a SKIM is replaced, the secret key must be transferred into the SKIM. A diagnostic tool must be used to put the PCM and SKIM into secured access mode and a request to the controller to transmit the secret key to the SKIM via the J1850 PCI bus must be made.

DaimlerChrysler stated that the SKIM performs the interrogation with the transponder in the key using a Texas Instruments proprietary algorithm which results in a 40-bit number which allows for over one trillion combinations. Each ignition key used in the SKIS has an integral transponder chip. Ignition keys with this feature can be readily identified by a gray rubber cap molded onto the head of the key, while conventional ignition keys have a black molded rubber. The transponder chip is concealed beneath the molded rubber cap, where it is molded into the head of the metal key.

In order to ensure the reliability and durability of the device, DaimlerChrysler conducted tests based on its own specified standards and stated its belief that the device meets the stringent performance standards prescribed. Specifically, the device must demonstrate a minimum of 95 percent reliability with 90 percent confidence. This is the same standard that vehicle air bag systems are designed and tested to. In addition to the design and production validation test criteria, the SKIS undergoes a daily short term durability test whereby three randomly

chosen systems are tested once per shift at the production facility. DaimlerChrysler also stated that 100% of its systems undergo a series of three functional tests prior to being shipped from the supplier to the vehicle assembly plant for installation in the vehicle.

DaimlerChrysler stated that its actual theft experience with Chrysler Town & Country vehicles, where currently an immobilizer system is not offered as standard equipment, indicates that these vehicles have a theft rate significantly lower than the 1990/1991 median theft rate of 3.5826. DaimlerChrysler stated that NHTSA's theft rates for the Chrysler Town & Country vehicles for model years 1996 through 2000 are 1.0661, 1.3094, 0.8257, 1.3543, and 0.9658, respectively. DaimlerChrysler states that vehicles subject to the parts marking requirements that subsequently are equipped with ignition immobilizer systems as standard equipment indicate that even lower theft rates can be expected from a vehicle equipped with standard ignition immobilizer systems.

DaimlerChrysler offered the Jeep Grand Cherokee vehicles as an example of vehicles subject to part 541 parts marking requirements that subsequently are equipped with ignition immobilizer systems as standard equipment. NHTSA's theft rates for the Jeep Grand Cherokee vehicles for model years 1995 through 1998 were 5.5545, 7.0188, 4.3163, and 4.3557, respectively, all significantly higher than the 1990/1991 median theft rate. DaimlerChrysler indicated that, since the introduction of immobilizer systems as standard equipment on the Jeep Grand Cherokee vehicles, the MY 1999 and 2000 theft rates are 2.5630 and 2.4701, respectively, significantly lower than the 1990/1991 median theft rate of 3.5826. The Jeep Grand Cherokee vehicles were granted an exemption from the parts marking requirements beginning with MY 2004 vehicles.

On the basis of this comparison, DaimlerChrysler has concluded that the proposed antitheft device is no less effective than those devices installed on lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by DaimlerChrysler, the agency believes that the antitheft device for the Chrysler Town & Country vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes that the device performs all four functions listed in 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that DaimlerChrysler has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information DaimlerChrysler provided about its antitheft device. For the foregoing reasons, the agency hereby grants in full DaimlerChrysler's petition for an exemption for the MY 2005 Chrysler Town & Country vehicle line from the parts-marking requirements of 49 CFR part 541. If DaimlerChrysler decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if DaimlerChrysler wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Section 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Section 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: August 1, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–20055 Filed 8–5–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Michael Behe representing FRN, LLC (WB604—7/31/03) for permission to use certain data from the Board's 2002 Carload Waybill Sample. A copy of these requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 03–19999 Filed 8–5–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–441 (Sub–No. 3X)]

SWKR Operating Co.—Abandonment Exemption—in Cochise County, AZ

On July 17, 2003, SWKR Operating Co. (SWKR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 19.9-mile line of railroad extending from milepost 7.0 (formerly milepost 1040.15), near Curtis, to the end of the line at milepost 26.9 (formerly milepost 1055.8), near Charleston, in Cochise County, AZ. The line traverses United States Postal Service Zip Codes 85602, 85615, and 85621, and includes the station of Fairbank at milepost 19.1.

The line does not contain federally granted rights-of-way. Any documentation in SWKR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding

pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 4, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 26, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–441 (Sub-No. 3X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Esq., Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before August 26, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or an environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 30, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–19780 Filed 8–5–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Diamond State Insurance Co. and United National Insurance Co.

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 26 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002 at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificates of Authority issued by the Treasury to the above named companies, under the United States Code, Title 31, sections 9304–9308, to qualify as acceptable sureties on Federal bonds was terminated effective June 19, 2003.

With respect to any bonds, including continuous bonds, currently in force with the above listed Companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from these Companies.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

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 6F07, Hyattsville, MD 20782.

Dated: June 30, 2003.

Wanda J. Rogers,

Director, Financial Accounting and Services Division.

[FR Doc. 03–19952 Filed 8–5–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Scor Reinsurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 24 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002, at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9305–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 2003.

The Company was last listed as an acceptable surety on Federal bonds at 67 FR 44337, July 2, 2002.

With respect to any bonds currently in force with above listed Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

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 6F07, Hyattsville, MD 20782.

Dated: June 30, 2003.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 03–19950 Filed 8–5–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Universal Surety of America

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 25 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002 at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6696.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds was terminated effective June 30, 2003.

The Company was last listed as an acceptable surety on Federal bonds at 67 FR 44332, July 1, 2002.

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 *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

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 6F07, Hyattsville, MD 20782.

Dated: June 30, 2003.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 03–19951 Filed 8–5–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to decreasing the burden of tax administration for taxpayers. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Monday, August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227 or 206 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Monday, August 25, 2003, from 8 a.m. p.d.t. to 9 a.m. p.d.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Anne Gruber, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: July 23, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–20029 Filed 8–5–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, and the District of Columbia)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 2, 2003, from 3 p.m e.d.t. to 4:30 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, September 2, 2003, from 3 p.m. e.d.t. to 4:30 p.m. e.d.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977. The agenda will include the following: Various IRS issues.

Dated: July 31, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–20031 Filed 8–5–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–3: OTS Nos. H–3634 and 17079]

Bank Mutual Corporation, Brown Deer, Wisconsin; Approval of Conversion Application

Notice is hereby given that on July 31, 2003, the Director, Supervision Policy,

Office of Thrift Supervision (OTS), or her designee, acting pursuant to delegated authority, approved the application of Bank Mutual, Brown Deer, Wisconsin, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552; and the OTS Midwest Regional Office, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062–2326.

Dated: August 1, 2003.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 03–20057 Filed 8–5–03; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Wednesday,
August 6, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI26

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for 4 vernal pool crustaceans and 11 vernal pool plants. A total of approximately 1,184,513 ac (417,989 ha) of land falls within the boundaries of designated critical habitat. This estimate reflects the exclusion of National Wildlife Refuge lands and National fish hatchery lands (33,097 ac (13,238 ha)), and State lands within ecological reserves and wildlife management areas (20,933 ac (8,373 ha)) from the final designation. However, the area estimate does not reflect the exclusion of lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano from the final designation pursuant to section 4(b)(2) of the Act.

This critical habitat designation requires us to consult under section 7 of the Act with regard to actions authorized, funded, or carried out by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation.

DATES: This final rule is effective September 5, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage, Room W–2605, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler or Jan Knight, at the Sacramento Fish and Wildlife Office address above (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Preamble

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the ESA, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of conservation resources. The Service's present system for designating critical habitat is driven by litigation rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.''

Currently, only 306 species or 25 percent of the 1,211 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits regarding critical habitat designation, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits and to comply with the growing number of adverse court orders. As a result, the Service's own proposals to undertake conservation actions based on biological priorities are significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for additional public participation beyond those minimally required by the APA, the Act, and the Service's implementing regulations, or to take additional time for review of comments and information to ensure the rule has addressed all the pertinent issues before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed. This in turn fosters a second round of litigation in which those who will suffer adverse impacts from these decisions challenge them. The cycle of litigation appears endless, is very expensive, and in the final analysis provides little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with NEPA, all are part of the cost of critical habitat designation. These costs result in minimal benefits to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

On the basis of the final economic analysis and other relevant impacts, as outlined under section 4(b)(2) of the Act, certain exclusions have been made, as detailed below. Because of the settlement agreement that requires us to deliver this rule to the **Federal Register** by July 15, 2003, there was insufficient time to revise the rule to fully reflect these exclusions. A technical amendment to the rule to take these areas out of the maps and legal descriptions, as well to change all the

appropriate references in the text of this preamble will be completed as soon as funding allows.

The following counties are excluded from this rule under Section 4(b)(2): Butte, Madera, Merced, Solano, and Sacramento. We find that the benefits of excluding these areas from critical habitat outweigh the benefits of including them. See further discussion under the Section 4(B)(2) analysis subheading below.

Vernal pool crustaceans and plants live in vernal pools (shallow depressions that hold water seasonally), swales (shallow drainages that carry water seasonally), and ephemeral (short-lived) freshwater habitats. None are known to occur in riverine waters, marine waters, or other permanent bodies of water. The vernal pool habitats of the 4 vernal pool crustaceans and 11 plants addressed in this final rule have a discontinuous distribution west of the Sierra Nevada that extends from southern Oregon through California into northern Baja California, Mexico (Holland and Jain 1978, 1988; Eriksen and Belk 1999).

Vernal pools are a unique kind of wetland ecosystem. Central to their distinctive ecology is that they are vernal or ephemeral, occurring temporarily—typically during the spring following fall and winter rains—and then disappearing until the next year. They are wet long enough to be different in character and species composition from the surrounding upland habitats, and yet their prolonged annual dry phase prevents the establishment of species typical of more permanent wetlands. In California, where extensive areas of vernal pool habitat developed over long periods of time, unique suites of species specially adapted to the unusual conditions of vernal pools have evolved. Fish and other predators are among the species excluded by vernal pools' annual drying, so vernal pool communities have developed and flourished in the absence of many predators. California vernal pools are also renowned for their showy displays of wildflowers, blooming in concentric rings about the pools in spring.

Many areas in California and portions of southern Oregon have the combination of environmental conditions that favor the development of vernal pools (Keeley and Zedler 1998). The climate is of a type classified as Mediterranean, with a wet season when rainfall exceeds evaporation, filling the pools, and a dry season when evaporation is greater, drying the pools. Rainfall is relatively meager even in most wet seasons, so erosion by overflowing waters does not dissect the topographic irregularities that form vernal pool basins. Temperatures during the fall and winter wet season are mild, so plants and animals can grow, mature, and reproduce.

A second major factor in the development of vernal pools is soil. Vernal pools form where there is a soil layer below or at the surface that is impermeable or nearly impermeable to water (Smith and Verrill 1998). Precipitation and surface runoff become trapped or ''perched'' above this layer. In California, the restrictive soil layers underlying vernal pools are of four main types: hardpans, claypans, volcanic flows, and non-volcanic rock. Hardpans are formed by leaching, redeposition, and cementing of silica minerals from high in the soil profile to a lower (''B'') horizon (Hobson and Dahlgren 1998; Smith and Verrill 1998). Claypans are formed by another redeposition process—fine clay particles are transported to the B horizon and accumulate there. Claypans may also be augmented by redeposition of saline or alkaline compounds. Hardpans and claypans both develop gradually over thousands of years, and can be a yard (meter) or more thick. Smith and Verrill (1998) list many of the soil series associated with vernal pools in the Central Valley. Volcanic flows include basaltic lavas and cemented mudflows, and are most common along the lower western slope of the Sierra Nevada. The soil parent material underlying vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Smith and Verrill 1998). Soils beneath vernal pools are extremely variable and may not be the same as soils mapped by soil surveys (Holland and Dain 1990).

A third factor, related to soil and climate, is topography or relief. Vernal pools typically occur in landscapes that, on a broad scale, are shallowly sloping or nearly level, but on a fine scale may be quite bumpy. Complex microrelief results in shallow, undrained depressions that form vernal pools. Some vernal pool landscapes are dotted with numerous rounded soil mounds known as mima mounds (Scheffer 1947). From the air, vernal pool landscapes often show characteristic patterning, produced by plant responses to mound and trough microrelief. This patterning has allowed mapping of vernal pool habitats throughout California's Central Valley and adjacent coastal foothill areas to a scale between 10 and 40 acre units (Holland 1998, 2003).

Vernal pools come in a variety of shapes and sizes, from less than a square yard (1 meter) to 2.5 ac (1 ha) or more. Some larger vernal wetlands, such as the 90 ac (36 ha) Olcott Lake in the Jepson Prairie Preserve in Solano County, are also referred to as playa pools or lakes. Playa pools with high alkalinity are termed alkali sinks. These larger wetlands contain many of the same animals and plants of smaller vernal pools, including many rare, threatened, and endangered species.

Since appropriate combinations of climate, soil, and topography often occur over continuous areas rather than in isolated spots, vernal pools in California, particularly in the Central Valley, tend to occur in clusters called ''complexes.'' A landscape that supports a vernal pool complex is typically a grassland, with areas of obstructed drainage that form the pools. Vernal pools can also be found in a variety of other habitats, including woodland, desert, chaparral, or pine forest. The pools may be fed or connected by low drainage pathways called ''swales.'' Swales are often themselves seasonal wetlands that remain saturated for much of the wet season, but may not be inundated long enough to develop strong vernal pool characteristics. Swales, due to their connection to adjacent pools, are considered part of the vernal pool complex.

Vernal pools begin to fill with the fall and winter rains. Before ponding occurs, there is a period during which the soil is wetted and the local water table may rise. Some pools have a substantial watershed that contributes to their water inputs; others may fill almost entirely from rain falling directly into the pool (Hanes and Stromberg 1998). Although exceptions are not uncommon, the watershed generally contributes more to the filling of larger or deeper pools, especially playa pools. Even in pools filled primarily by direct precipitation, Hanes and Stromberg (1998) report that subsurface inflows from surrounding soils can help dampen water level fluctuations during late winter and early spring. Vernal pools exhibit four major phases: (1) The wetting phase, when vernal pool soils become saturated; (2) the aquatic phase, when a perched water table develops and the vernal pool contains water; (3) a water-logged drying phase, when the vernal pool begins losing water as a result of evaporation and loss to the surrounding soils but soil moisture remains high; and (4) the dry phase, when the vernal pool and underlying soils are completely dry (Keeley and Zedler 1998). Upland areas associated with vernal pools are also an important source of nutrients to vernal pool organisms (Wetzel 1975). Vernal pool

habitats derive most of their nutrients from detritus (decaying matter) washed into pools from adjacent uplands, and these nutrients provide the foundation for a vernal pool aquatic community's food chain. Detritus is a primary food source for the vernal pool crustaceans addressed in this rule (Eriksen and Belk 1999). Because vernal pools are mostly rain-fed, they tend to have low nutrient levels and dramatic daily fluctuations in pH, dissolved oxygen, and carbon dioxide (Keeley and Zedler 1998).

Both the amount and timing of rainfall in California and Oregon vary greatly from year to year. As a result, pools may fill to different extents at different times. The duration of ponding of vernal pools also varies, and in certain years some pools may not fill at all. Many characteristics of vernal pool plants and animals result from these organisms' adaptations to the highly variable and unpredictable nature of vernal pools (Holland 1976; Holland and Dains 1990; King *et al.* 1996; Hanes and Stromberg 1998).

Compared to vernal pools worldwide, vernal pools in California and Oregon are rich in species composition and contain many species that are endemic to the region (found nowhere else). In addition, while most of California's grasslands are now dominated by nonnative grasses and other introduced plants, vernal pools remain a haven for native species. Invasive nonnative plants have been introduced into California and have spread and reproduced in upland habitats so successfully that it is not unusual for nonnatives to account for a third of the species and more than 90 percent of the biomass in a California grassland. Vernal pools have dramatically resisted this invasion: 75 to 95 percent of plant species found in vernal pools are native, and natives dominate in biomass as well as in number (Holland and Jain 1978; Jokerst 1990; Spencer and Rieseberg 1998). Vernal pool plant communities are able to resist invasion of upland species because of the severe ecological constraints on plants living in vernal pool environments.

The animal communities that live in vernal pools also contain diverse groups of highly specialized species. The freshwater crustacean communities of vernal pools are particularly well developed (Simovich 1998). The most visible crustaceans in vernal pools are the large branchiopods (literally, ''gill-foots''), about 27 species in California, of which perhaps 10 are endemic (Helm 1998; Belk and Fugate 2000) and 6 are federally listed as threatened or endangered. The large branchiopods are easily visible to the naked eye, ranging up to 2 inches (in) (5 centimeters (cm)) in length, depending on the species. They include the fairy shrimps (Anostraca), tadpole shrimps (Notostraca), and clam shrimps (Spinicaudata and Laevicaudata). Smaller crustaceans that are common in California vernal pools, many large enough to see without magnification, are water fleas (Branchiopoda-Cladocera), copepods (Copepoda), and seed shrimp (Ostracoda).

Amphibians and many insect species also live in vernal pools. The Pacific tree frog (*Hyla* (*Pseudacris*) *regilla*) and western toad (*Bufo boreas*) are common and abundant in and around vernal pools. Two rarer amphibians native to vernal pools are the California tiger salamander (*Ambystoma californiense*) and the western spadefoot toad (*Scaphiopus* (*Spea*) *hammondii*) (Morey 1998). While dispersing bullfrogs (Rana *catesbeiana*), which are not native to California, are sometimes found in vernal pools, they do not successfully breed there because bullfrog tadpoles require 2 years to mature and cannot survive the dry season. These voracious introduced predators will sometimes be found resting and feeding in vernal pools close to more permanent water, frequently associated with human modifications of the landscape. Fish likewise do not inhabit vernal pools, except where temporarily introduced by humans (*e.g.*, mosquitofish (Gambusia sp.)) or by flooding of permanent waters.

The insect fauna of vernal pools is numerous, varied, and primarily native, including aquatic beetles (Coleoptera-Dytiscidae, Hydrophilidae, Gyrinidae, Halipidae, Hydraenidae); aquatic bugs, including backswimmers (Hemiptera-Notonectidae), water boatmen (Corixidae), water striders (Gerridae), springtails (Collembola), mayflies (Ephemeroptera), dragonflies, and damselflies (Odonata); and various flies with aquatic larvae, including midges (Diptera-Chironomidae), crane flies (Tipulidae) and mosquitoes (Culicidae). Rogers (1998) found that mosquitoes made up less than 2 percent of the total macroscopic invertebrate population in natural and 2-year-old constructed pools, perhaps because many of the other insects listed above are predators. Vernal pool crustaceans are an important food source for a number of aquatic and terrestrial species. Aquatic predators include insects such as backswimmers (Family Notonectidae) (Woodward and Kiesecker 1994), predaceous diving beetles and their larvae (Family Dystictidae), and dragonflies and damselfly larvae (Order Odonate). Vernal pool tadpole shrimp are another significant predator of fairy shrimp (*Branchinecta* spp.).

The plants, invertebrate and vertebrate animals of vernal pools, and vernal pool landscapes in general are important providers of food and habitat for waterfowl, shorebirds, wading birds, toads, frogs, and salamanders (Proctor *et al.* 1967; Krapu 1974; Swanson 1974; Morin 1987; Simovich *et al.* 1991; Silveira 1996). During the spring, waterfowl feed on vernal pool crustaceans and other invertebrates, which are sources of protein and calcium needed for migration and egg-laying (Proctor *et al.* 1967; Silveira 1998). Vernal pool complexes contribute to continuity of wetland habitats along the Pacific Flyway (a major bird migration route). Many species feed or nest near vernal pools; for example, cliff swallows (*Hirundo fulva*) glean mud from vernal pool beds for their nests, lesser nighthawks (*Chordeiles acutipennis*) nest in dry vernal pool beds, burrowing owl (*Athene cunicularia*) and gopher (*Thomomys* spp.) burrows are found in mima mounds, and many species graze or hunt along vernal pool shorelines. Before their populations were nearly eliminated by hunting and habitat alteration, elk (Cervus spp.) and pronghorn antelope (*Antilocarpa americana*) undoubtedly grazed vernal pool landscapes, and have been replaced by cattle. There is additionally evidence that Native Americans in California's Central Valley used vernal pool crustaceans as a food source (Silveira 1998). Fishing net weights found near vernal pools suggest that California's first human populations also made use of vernal pool resources, as do hunters today (Silveira 1998).

Classification of Vernal Pools

The variability of vernal pool types has led many researchers to try and classify these ephemeral habitats. (Holland 1986; Sawyer and Keeler-Wolf 1995; Ferren *et al.* 1996; Smith and Verrill 1998). Most of these efforts have focused on classifying vernal pools based on the factors that influence variation in their physical features. Primary physical features that influence vernal pool size, depth, and soil and water chemistry include soil type, geologic formation, and landform. Landforms are physical attributes of the landscape resulting from geomorphological processes such as erosion and deposition, and include features such as alluvial terraces and basins and volcanic mudflows and lava flows.

The types and kinds of species that are found in vernal pools are largely

determined by these physical factors (Holland and Griggs 1976; Zedler 1987; Eng *et al.* 1990; Holland and Dains 1990; Simovich 1998). The physical characteristics of the vernal pool influence the life history characteristics of vernal pool species, such as the speed with which a species can mature and reproduce, the amount of soil moisture required for germination of plant seeds or hatching of invertebrate eggs or cysts, as well as tolerance to turbidity, total dissolved solids, and other aspects of vernal pool water chemistry.

Sawyer and Keeler-Wolf (1995) classified vernal pools according to a number of physical, geographic, and biological characteristics. They identified several general vernal pool types , each of which corresponds to the nature of the impermeable layer that underlies the particular vernal pool and assisted that pool to form. The vernal pool types were identified as Northern Hardpan, Northern Claypan, Northern Basalt Flow, Northern Volcanic Mudflow, and Northern Ashflow vernal pools. Northern Hardpan vernal pools are formed on alluvial terraces with silicate-cement soil layers. These pool types are on acidic soils and exhibit well-developed mima mound topography found on the eastern margins of the Central Valley. Northern Claypan vernal pools are formed on impermeable surfaces created by an accumulation of clay particles. These pool types are often found on basin and basin rim landforms and tend to occur in the central portion of the Central Valley and tend to be alkaline. Vernal pools identified as Northern Volcanic Mudflow, Northern Basalt Flow, and Northern Volcanic Ashflow are formed by an impervious bedrock layer of volcanic origin. These pool types are found on the eastern and coastal portions of the Central Valley, and tend to be small and restricted in distribution. Northern Basalt Flow vernal pools occur at greater elevations than other vernal pool types.

The vernal pools in Southern California are associated with several soil series types including but not limited to Huerheuero, Olivenhain, Placentia, Redding, and Stockpen (Bauder and McMillan 1998). These soil types and other similar soil series like other vernal pool bearing soils and geologic formations have a nearly impermeable surface or subsurface soil layer with a flat or gently sloping topography (Service 1998). Due to local topography and geology, the pools are usually clustered into pool complexes (Bauder 1986; Holland and Jain 1988). Pools within a complex are typically separated by distances on the order of meters, and may form dense, interconnected mosaics of small pools or a more sparse scattering of larger pools. The pools within the Santa Rosa Plateau in Riverside County, California are the only known locality for the Southern Basalt Flow Vernal Pools. Other vernal pools and pool complexes within the region, such as those at Skunk Hollow are not currently classified, but some of these pools converge on vernal lakes and others are associated with vernal alkali plains (Keeler-Wolf *et al.* 1998).

The vernal pools in the Agate Desert in Southern Oregon are located on alluvial fans capped with a shallow layer of clay loam over cemented hardpan. Other vernal pools within the area include those formed on older basaltic andesite formations such as those found on Table Rock. The vernal pool complexes are characterized by patterned ground with mounds and vernal pools. These pools vary in size from 1 to 30 m (3 to 100 ft) across, and attain a maximum depth of about 30 cm (12 in) (ONHP 1998). This landform is not true desert as it receives 48 cm (19 in) of precipitation annually. The pools within the area support the vernal pool fairy shrimp and other listed vernal pool species such as the endangered Cook's lomatium (*Lomatium cookii*) and large-flowered woolly meadowfoam (*Limnanthes floccosa* ssp. *grandiflora*) (Service 2002).

Vernal Pool Crustacean Background

All of the vernal pool crustacean species addressed in this critical habitat designation have evolved unique physical adaptations to survive in vernal pools. The timing and duration of wet and dry phases can vary significantly from year to year, and in some years, vernal pools may not inundate at all. In order to take advantage of the short inundation phase, vernal pool crustaceans have evolved short reproduction times and high reproductive rates. Most of the crustacean species addressed in this rule hatch within a few days after their habitats fill with water, and can start reproducing within a few weeks (Eng *et al.* 1990; Helm 1998; Eriksen and Belk 1999). Vernal pool crustaceans can complete their entire life cycle in a single season, and some species may complete several life cycles. Vernal pool crustaceans can also produce thousands of viable cysts when environmental conditions are favorable.

To survive the prolonged heat and dessication of the vernal pool dry phase, vernal pool crustaceans have developed a dormant stage. After vernal pool crustacean eggs are fertilized in the female's brood pouch, the embryos develop a thick, usually multilayered shell. When embryonic development reaches a late stage, further maturation stops, metabolism is drastically slowed, and the egg, now referred to as a cyst, enters a dormant state called diapause. The cyst is then either dropped to the pool bottom or remains in the brood sac until the female dies and sinks. Once the cyst is desiccated, it can withstand temperatures near boiling (Carlisle 1968), fire (Wells *et al.* 1997), freezing, and anoxic (deprived of oxygen) conditions without damage to the embryo. The cyst wall cannot be affected by digestive enzymes, and can be transported in the digestive tracts of animals without harm (Horne 1967). Most fairy shrimp cysts can remain viable in the soil for a decade or longer (Belk 1998).

Although the exact signals that cause crustacean cysts to hatch are unknown, factors such as soil moisture, temperature, light, oxygen, and osmotic pressure may trigger the embryo's emergence from the cyst (Brendonck 1996). Because the cyst contains a well-developed embryo, the animal can quickly develop into a fully mature adult. This allows vernal pool crustaceans to reproduce before the vernal pool enters the dry phase, sometimes within only a few weeks (Helm 1998; Eriksen and Belk 1999). In some species (*e.g.,* vernal pool tadpole shrimp), cysts may hatch immediately without going through a dormant stage, if they are deposited while the vernal pool still contains water. These cysts are referred to as quiescent, and their presence allows the vernal pool crustacean to produce multiple generations in a single wet season as long as their habitat remains inundated.

Another important adaptation of vernal pool crustaceans to the unpredictable conditions of vernal pools is the fact that not all of the dormant cysts hatch in every season. Simovich and Hathaway (1997) found that only 6 percent of San Diego fairy shrimp (*Branchinecta sandiegonensis*) cysts hatched after initial hydration, and only 0.18 percent of Riverside fairy shrimp (*Streptocephalus woottoni*) cysts hatched. The cysts that do not hatch remain dormant and viable in the soil. These cysts may hatch in a subsequent year and form a cyst bank much like the seed bank of annual plants. Based on a review of other studies (Belk 1977; Gallagher 1996; Brendonck 1996), Simovich and Hathaway (1997) concluded that species inhabiting more unpredictable environments, such as smaller or shorter lived pools, are more likely to have a smaller percent of their

cysts hatch after their vernal pool habitats fill with water. This strategy reduces the probability of complete reproductive failure if a vernal pool dries up prematurely. This strategy has been suggested as a mechanism by which rare species may persist in unpredictable environments (Chesson and Warner 1981; Chesson and Huntly 1989; Ellner and Hairston 1994).

Although the vernal pool crustaceans, and particularly the fairy shrimp, addressed in this rule are not often found in the same vernal pool at the same time, when coexistence does occur, it is generally in deeper, longer lived pools (Eng *et al.* 1990; Thiery 1991; Gallagher 1996; Simovich 1998). In larger pools, closely related species of fairy shrimp may coexist by hatching at different temperatures, and by developing at different rates (Thiery 1991; Hathaway and Simovich 1996). Vernal pool crustacean species may also be able to coexist by utilizing different physical portions of the vernal pool, or by eating different food sources (Daborn 1978; Hamer and Appleton 1991; Mura 1991; Thiery 1991).

The primary historic dispersal mechanisms for the vernal pool crustaceans probably consisted of large-scale flooding resulting from winter and spring rains and dispersal by migratory birds. As a result of widespread flood control and agricultural water diversion projects developed during the twentieth century, large scale flooding is no longer a major form of dispersal for the vernal pool crustaceans. When being dispersed by migratory birds, the eggs of these crustaceans are either ingested (Krapu 1974; Swanson 1974; Driver 1981; Ahl 1991) and/or they adhere to the bird's legs and feathers and are thereby transported to new habitats. Cysts may also be dispersed by a number of other species, such as salamanders, toads, cattle, and humans (Eriksen and Belk 1999).

The vernal pool crustaceans addressed in this rule are generally confined to habitats that are low to moderate in alkalinity and dissolved salts when compared with other aquatic systems (Eriksen and Belk 1999). Although potentially moderated by soil type, vernal pools are generally unbuffered and exhibit wide fluctuations in pH and dissolved oxygen (Keeley and Zedler 1998). Vernal pool water ion concentrations, such as sodium, potassium, calcium, chlorine, and magnesium, also experience large daily and seasonal variations. These variations are due to the concentration of ions as a result of evaporation, and the dilution of ions with additional rainfall throughout the wet season (Barclay and Knight 1981). How vernal pool crustacean species adapt to these fluctuations in water chemistry varies. Definitive conclusions on why the species has certain water chemistry habitat preferences is unknown due to the anecdotal nature of observations.

This final rule addresses four vernal pool crustaceans: the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*) and the (*Lepidurus packardi*). Conservancy fairy shrimp , longhorn fairy shrimp, and vernal pool fairy shrimp are members of the aquatic crustacean order Anostraca, while the vernal pool tadpole shrimp is a member of the aquatic crustacean order Notostraca. Vernal pool fairy shrimp are found in California and southern Oregon, while the other three shrimp species are found only in California. These species have all evolved similar adaptations to the unique habitat conditions of their vernal pool habitats. The general appearance and life history characteristics of these four species will be described in combination below.

Conservancy fairy shrimp, longhorn fairy shrimp, and vernal pool fairy shrimp (fairy shrimp) have delicate elongate bodies, large stalked compound eyes, and 11 pairs of phyllopods, which are swimming appendages that also function as gills. They swim or glide gracefully upside down by means of complex beating movements that pass in a wavelike anterior-to-posterior direction. Fairy shrimp are filter feeders, and consume algae, bacteria, protozoa, rotifers, and bits of detritus as they move through the water. The second pair of antennae in fairy shrimp adult males are greatly enlarged and specialized for clasping the females during copulation. The females carry eggs in an oval or elongate ventral sac (brood pouch). Once fertilized, the eggs are coated (encysted) with a protective protein layer that allows them to withstand heat, cold, and prolonged dehydration. These dormant embryos are known as cysts. The cysts are either dropped to the pool bottom or remain in the brood pouch until the female dies and sinks. The cysts can remain viable in the soil for decades after deposition (Eriksen and Belk 1999). When the pools refill in the same or subsequent seasons, some but not all of the cysts may hatch (Eriksen and Belk 1999). The cyst bank in the soil may consist of cysts from several years of breeding. The cysts that hatch may do so within days after the vernal pools fill, and the hatchlings rapidly develop into adults within weeks. In pools that persist for several weeks to a few months, fairy shrimp may have multiple hatches during a single season.

Vernal pool tadpole shrimp have dorsal compound eyes, a large shieldlike carapace (shell) that covers most of their body, and a pair of long cercopods or appendages at the end of the last abdominal segment. They are primarily benthic (living on the bottoms of the pools) animals that swim with their legs down. Vernal pool tadpole shrimp climb or scramble over objects, and plow along bottom sediments as they forage for food. Their diet consists of organic detritus and living organisms, such as fairy shrimp and other invertebrates (Fryer 1987). The females disperse their fully developed cysts into the pool, where the cysts are then deposited into the sediment. Like fairy shrimp, vernal pool tadpole shrimp pass the summer months as dormant cysts in the soil. Some of the cysts hatch as the vernal pools are filled with rainwater in the next or subsequent seasons, while other cysts may remain dormant in the soil for many years. When winter rains refill inhabited pools, tadpole shrimp reestablish from dormant cysts and may become sexually mature within 3 to 4 weeks after hatching (Ahl 1991; Helm 1998). Mature adults may be present in pools until the habitats dry up in the spring (Ahl 1991; Gallagher 1996).

Additional information specific to each of the four individual vernal pool crustacean species described in this rule is provided below.

Conservancy Fairy Shrimp

Conservancy fairy shrimp were first described in 1990 by Eng, Belk, and Eriksen. The type specimens were collected in 1982 at Olcott Lake, Solano County, California. Conservancy fairy shrimp are currently known from only eight disjunct areas: Vina Plains and vicinity in southern Tehama and northern Butte County, Jepson Prairie in Solano County, Suisun Slough in southern Solano County, Sacramento National Wildlife Refuge in Glenn County, near Caswell Memorial State Park in Stanislaus County; Haystack Mountain Area in eastern Merced County, San Luis National Wildlife Refuge Complex in central Merced County, and the Mutau Flat area in the Los Padres National Forest area of northern Ventura County. Conservancy fairy shrimp are known from 18 occurrences (California Natural Diversity Database (CNDDB) 2002).

Conservancy fairy shrimp look similar to other fairy shrimp species, but can be distinguished by characteristics of the male second antenna. The second antennae of Conservancy fairy shrimp

males have a distal segment which is about 30 percent shorter than the basal segment, and has a tip bent medially about 90 degrees (Eng et al. 1990). The female brood pouch is tapered at each end, typically extends to abdominal segment 8, and has a terminal opening (Eng et al. 1990). Males may be from 0.6 to 1.0 in (14 to 27 millimeters (mm)) in length, and females have been measured between 0.6 and 1.0 in (14.5 and 23 mm) long.

Further discussion on the life history and habitat requirements of Conservancy fairy shrimp can be found in the final rule to list this species (59 FR 48136).

Longhorn Fairy Shrimp

Longhorn fairy shrimp were first collected in 1937, but were not formally described until 1990 by Eng, Belk, and Eriksen. The type specimen was collected from a sandstone outcrop pool on the Souza Ranch in Contra Costa County, California. Longhorn fairy shrimp are extremely rare, and are only known from three widely separated locations: the Altamont Pass area in Contra Costa and Alameda Counties, the western and northern boundaries of Soda Lake on the Carrizo Plain in San Luis Obispo County, and Kesterson National Wildlife Refuge in the San Joaquin Valley in Merced County. Vernal pool crustacean surveys conducted by Sugnet (1993) found only 3 occurrences of longhorn fairy shrimp out of 3,092 locations surveyed, and Helm (1998) found occurrences of longhorn fairy shrimp in only 9 of 4,008 wetlands sampled.

Longhorn fairy shrimp are distinguished from other fairy shrimp by the male's very long second antenna, which is about twice as long, relative to its body, as the second antenna of other species of *Branchinecta.* Longhorn fairy shrimp antennae range from 0.3 to 0.4 in (6.7 to 10.4 mm) in length (Eriksen and Belk 1999). Females can be recognized by their cylindrical brood pouch, which extends to below abdominal segments 6 or 7. Mature males have been measured between 0.5 to 0.8 in (12 and 21 mm) in length, and females range from 0.5 to 0.8 in (13.3 to 19.8 mm) in length (Eng et al. 1990).

Further discussion of the life history and habitat requirements of longhorn fairy shrimp can be found in the final rule to list this species (59 FR 48136).

Vernal Pool Fairy Shrimp

Vernal pool fairy shrimp were first described by Eng et al. in 1990 from a type specimen that was collected in 1982 at Souza Ranch, Contra Costa County, California. The species occurs in disjunct fragmented habitats distributed across the Central Valley of California from Shasta County to Tulare County and the central and southern coast ranges from northern Solano County to Ventura County, California. Additional disjunct occurrences have been identified in southern California and in Oregon. In Oregon, the species' distribution is limited to the vicinity of an approximately 32 square mile (mi2) 82.9 square kilometer (km2)) area known as the Agate Desert in Jackson County, north of Medford. In southern California, the distribution is equally limited, with populations occurring in three areas in Riverside County.

Vernal pool fairy shrimp are characterized by the presence and size of several bulges on the male's antenna, and by the female's short, pyriform or pear shaped brood pouch. Vernal pool fairy shrimp vary in size, ranging from 0.4 to 1.0 in (11 to 25 mm) in length (Eng et al. 1990).

Vernal pool fairy shrimp are currently found in 27 counties across the Central Valley and coast ranges of California, inland valleys of southern California, and southern Oregon. Although vernal pool fairy shrimp are distributed more widely than most other fairy shrimp species, they are generally uncommon throughout their range and rarely abundant where they do occur (Eng et al. 1990; Eriksen and Belk 1999).

Further discussion of the life history and habitat requirements of vernal pool fairy shrimp can be found in the final rule to list this species (59 FR 48136).

Vernal Pool Tadpole Shrimp

Vernal pool tadpole shrimp were initially described by Simon in 1886 and named *Lepidurus packardi.* After subsequent reclassification by Longhurst (1955), the species was given a subspecies status based primarily on the lack of apparent geographic boundaries between *L. apus* and *L. packardi* populations. Lynch (1972) resurrected *L. packardi* to full species status based on further examination of specimens, and this is the currently accepted taxonomic status of vernal pool tadpole shrimp. Vernal pool tadpole shrimp inhabit sites in California's Central Valley and San Francisco Bay area. The geographic range of this species includes disjunct occurrences found in the Central Valley from Shasta County to northern Tulare County, and in the central coast range from Solano County to Alameda County. Vernal pool tadpole shrimp are known from 160 occurrences (CNDDB 2001).

Vernal pool tadpole shrimp are distinguished by a large, shieldlike carapace, or shell, that covers the anterior half of their body. Vernal pool tadpole shrimp have 30 to 35 pairs of phyllopods, a segmented abdomen, paired cercopods or tail-like appendages, and fused eyes. Vernal pool tadpole shrimp will continue to grow as long as their vernal pool habitats remain inundated, in some cases for 6 months or longer. They periodically shed their shells, which can often be found along the edges of vernal pools where vernal pool tadpole shrimp occur. Mature vernal pool tadpole shrimp range in size from 0.6 to 3.4 in (15 to 86 mm) in length.

Vernal pool tadpole shrimp have relatively high reproductive rates. Ahl (1991) found that fecundity increases with body size. A large female greater than 0.8 in (20 mm) in carapace length could deposit as many as 6 clutches, averaging 32 to 61 eggs per clutch, in a single wet season.

Further discussion of the life history and habitat requirements of vernal pool tadpole shrimp can be found in the final rule to list this species (59 FR 48136).

Vernal Pool Plants Background

The 11 vernal pool plants described in this rule have developed a suite of highly specialized adaptations that allow them to survive in vernal pool habitats. All 11 species are annuals, meaning they germinate, grow, reproduce, and die within a single year. This allows the vernal pool plants to complete their life cycles during the relatively short inundation and drying periods of their vernal pool habitat.

Another adaptation of vernal pool plants is production of dormant seeds. This adaptation allows vernal pool plants to survive the hot summer months in the soil. The seeds may remain viable in the soil for many years. The number of plants present above ground may fluctuate dramatically from year to year. However, much of the population of these species exists as seeds in the soil. Vernal pool plant seeds germinate after winter rains in response to a complex set of environmental cues that are not well understood, but generally include various temperature and soil moisture. Not all of the dormant seeds will germinate in any given year. This strategy reduces the probability of local extirpation if environmental conditions change—for example, if a vernal pool dries up prematurely. It has also been suggested the strategy acts as a mechanism by which rare species may persist in unpredictable environments (Chesson and Warner 1981; Chesson and Huntly 1989; Ellner and Hairston 1994).

Tolerance to inundation differs greatly among species (Zedler 1987). Vernal pool plant zonation, in which characteristic rings of flowers form around vernal pools, is a result of this differential tolerance to inundation. Species that are the least tolerant to inundation grow along the margins of the pools, while those that can tolerate extended periods of inundation grow in the center of the pools.

Information for the vernal pool plants can be found in the final rules to list these species (62 FR 34029; 62 FR 14338; 57 FR 24192; 43 FR 44810) and in the criteria section of this rule. Additional information specific to each of the 11 individual vernal pool plant species described in this rule is provided below.

Limnanthes floccosa ssp. californica

Limnanthes floccosa ssp. *californica* (Butte County meadowfoam) was first collected in 1917 at a site 10 miles (mi) (16 kilometers (km)) north of Chico (Service 1991b), although it was recognized as a separate subspecies at that time. Kalin-Arroyo (1973) determined that it was a distinct taxon and gave it the scientific name *Limnanthes floccosa* ssp. *californica.* The type locality is in Butte County between Chico and Oroville, near the intersection of State Highway 99 and Shippee Road (Kalin-Arroyo 1973).

Limnanthes floccosa ssp. *californica* is a small annual of the meadowfoam or false mermaid family (Limnanthaceae). It has erect stems less than 10 in (25 cm) tall. The stem and leaves are densely pubescent (covered with short hairs). The alternate leaves are pinnately compound (divided into distinct segments which are arranged featherlike on either side of a rachis), up to 3 in (8 cm) long, and consist of 5 to 11 leaflets on a long petiole. A single flower arises in the axil (angle between the base of a leaf and the stem) of each upper leaf. The flowers are white with yellow veins, cup or bowl-shaped, and consist of 5 petals, 5 sepals, 5 pistils (female reproductive structures of a flower), and 10 stamens (male reproductive structures of a flower) on a long flower stalk (Kalin-Arroyo 1973; McNeill and Brown 1979; Ornduff 1993b).

Limnanthes floccosa ssp. *californica* has always been confined to small widely scattered occurrences in northwestern Butte County (Keeler-Wolf *et al.* 1998). In her original description, Kalin-Arroyo (1973) mentioned six collections, including the type locality. Five of those were in the areas ranging from the original collection site southeast to Oroville, and the sixth was from Table Mountain north of Oroville. However, James Jokerst (1983) did not find *L. f.* ssp. *californica* on Table Mountain and later suggested that the specimen had been misidentified (Service 1992a).

All 13 of the occurrences described by the California Natural Diversity Database (CNDDB) (2002) had been reported by 1988 (Kalin-Arroyo 1973; McNeill and Brown 1979; Dole 1988; Jokerst 1989). Five were in northern and northeastern Chico near the municipal airport, four (including the type locality) were from the area around Shippee (northwest of Oroville), and three were from southeastern Chico. The other occurrence, northeast of the town of Nord, contained only one plant that was of questionable identity (CNDDB 2002). However, the area indicated would be in the same vicinity as the 1917 collection.

Two occurrences of *Limnanthes floccosa* ssp. *californica* have been extirpated, one each in northern and southeastern Chico (Jokerst 1989; Dole and Sun 1992; Service 1992a; CNDDB 2002). Some of the other 11 extant occurrences have been reduced in distribution (CNDDB 2002).

Limnanthes floccosa ssp. *californica* normally is found in three types of seasonal wetland habitats: ephemeral drainages (swales), vernal pool depressions in swales, and occasionally around edges of isolated vernal pools (Jokerst 1989). The swales and vernal pools where *L. f.* ssp. *californica* grows are on intermediate fan terraces (Kelley and Associates Environmental Sciences 1992) in annual grasslands with mima mound topography. Large cobbles are present throughout the pools and swales (Jokerst 1989). These pools are associated with Tuscan, Redbluff, Riverbank, and Modesto geologic formations, and most of them occur on soils of the Tuscan-Anita and the Redding-Igo complexes. Anita and Igo soils are confined to the pools and swales. Tuscan and Redding soils are restricted to the mounds. The two soils are underlain by iron-silica cemented and indurated (hardened) hardpan, respectively (Kelley and Associates Environmental Sciences 1993). *Limnanthes floccosa* ssp. *californica* has been observed on Anita clay soils annually regardless of rainfall but appears on Igo soils only in years of above-average rainfall (Kelley and Associates Environmental Sciences 1992a; Crompton 1993; Schonholtz *in litt.* 1995), presumably because the former can hold approximately twice as much moisture (Kelley and Associates Environmental Sciences 1993). Confirmed occurrences have been found at 165 to 300 ft (50 to 90 m) in elevation (McNeill and Brown 1979; CNDDB 2002). The habitat associated with *L. f.* ssp. *californica* includes saturated soils and pools with a short lived inundation period.

Further discussion of the life history and habitat characteristics of *Limnanthes floccosa* ssp. *californica* can be found in the final rule to list the species (62 FR 54807).

Lasthenia conjugens

Edward Greene (1888) first described this species as *Lasthenia conjugens* (Contra Costa goldfields), from specimens collected near Antioch, California. Harvey Hall (1914) later lumped it in with *Baeria fremontii* (Fremont's goldfields). Roxana Ferris (1958) proposed the name *Baeria fremontii* var. *conjugens* to recognize the distinctiveness of *L. conjugens.* Finally, Robert Ornduff (1966) restored Greene's original name and rank, returning this species to the genus *Lasthenia.*

Lasthenia conjugens is a showy spring annual in the aster family (Asteraceae). Its stems are 4 to 12 in (10 to 30 cm) tall, somewhat fleshy, and usually are branched. The leaves are opposite and narrow; the lower leaves are entire, but stem leaves have one or two pairs of narrow lobes. The daisylike flower heads are solitary (Greene 1888; Ornduff 1993a).

Twenty extant occurrences of *Lasthenia conjugens* are found widely scattered in small vernal pool areas in Alameda, Contra Costa, Mendocino, Monterey, Napa, and Solano Counties. Of these 20 occurrences, Solano County has 11 small scattered occurrences in a general area east and south of the City of Fairfield. The Santa Barbara County and Santa Clara County occurrences of *L. conjugens* have probably been lost due to habitat alteration (CNDDB 2002). One Napa County site, Milliken Canyon, contained only a single plant in 1987 whether this individual is still in existence is unknown (CNDDB 2002).

Lasthenia conjugens typically grows in vernal pools, swales, moist flats, and depressions within a grassland matrix (CNDDB 2002). However, several historical collections were from populations growing in the saline-alkaline transition zone between vernal pools and tidal marshes on the eastern margin of the San Francisco Bay (Baye, Service, in litt. 2000a). The herbarium sheet for one of the San Francisco Bay specimens notes that the species also grew in evaporating ponds used to concentrate salt (Baye, in litt. 2000b). The vernal pool types from which this species has been reported are Northern Basalt Flow, Northern Claypan, and Northern Volcanic Ashflow (Sawyer and Keeler-Wolf 1995). The landforms and

geologic formations for sites where *L. conjugens* occurs have not yet been determined. Most occurrences are found at elevations of 6 to 200 ft (2 to 61 m), but the recently discovered Monterey County occurrences are at 400 ft (122 m), and one Napa County occurrence is at 1,460 ft (445 m) elevation (CNDDB 2002).

The soil types that maintain vernal pool habitats for *Lasthenia conjugens* have not yet been identified for most localities. The soil series from which this species is known are Aiken, Antioch, Concepcion, Conejo, Crispin, Haire, Linne, Los Robles, Rincon, Solano, and San Ysidro, plus the Arnold-Santa Ynez, Hambright-rock outcrop, and Los Osos complexes. Soil textures, where known, are clays or loams. At least in Solano County and on the shores of San Francisco Bay, *L. conjugens* grows in alkaline or saline-alkaline sites (Baye, in litt. 2000a, 2000b; CNDDB 2002).

Further discussion on the life history and habitat characteristics of *Lasthenia conjugens* can be found in the final rule to list the species (62 FR 33029; June 18, 1997).

Chamaesyce hooveri

Chamaesyce hooveri (Hoover's spurge) was originally named *Euphorbia hooveri* based on a specimen collected by Robert Hoover in Yettem, Tulare County (Wheeler 1940). Koutnik (1985) placed the species in the genus *Chamaesyce* as *C. hooveri.*

Chamaesyce hooveri is an annual herb of the spurge family (*Euphorbiaceae*). The species trails along the ground, forming gray-green mats 2 to 40 in (5 to 100 cm) in diameter (Broyles 1987, Stone *et al.* 1988). The stems are hairless and contain milky sap. The tiny (0.08 to 0.20 in (2 to 5 mm)) leaves are opposite, rounded to kidney-shaped, with an asymmetric base and a toothed margin. In the genus *Chamaesyce,* the structures that appear to be flowers actually are groups of flowers; each group is referred to as a cyathium (Koutnik 1993).

CNDDB (2002) includes 30 occurrences of *Chamaesyce hooveri.* Of these, one each in Tehama and Tulare Counties are classified as extirpated; two others, in Butte and Tehama Counties, may no longer occur because this species was not observed for 2 consecutive years (Stone *et al.* 1988; CNDDB 2002). The Vina Plains of Tehama and Butte Counties contain 14 (54 percent) of the 26 extant occurrences of *C. hooveri* (CNDDB 2002) in an area approximately 35 mi^2 (91 km^2) in size (Stone *et al.* 1988). One other site in the same region is near Chico in Butte County. Seven of the 26 extant occurrences are in the Southern Sierra Foothills Vernal Pool Region, including 5 in the Visalia-Yettem area of Tulare County and 2 in the Hickman-La Grange area of Stanislaus County. Three other occurrences are on the Sacramento National Wildlife Refuge in Glenn County, which is in the Solano-Colusa Vernal Pool Region. The one other extant occurrence is on the Bert Crane Ranch in Merced County, which is within the San Joaquin Valley Vernal Pool Region (Keeler-Wolf *et al.* 1998; CNDDB 2002).

Vernal pools from which *Chamaesyce hooveri* has been reported are classified as Northern Hardpan and Northern Claypan vernal pools (Sawyer and Keeler-Wolf 1995). The pools supporting this species vary in size from 0.47 to 600 ac (0.19 to 243 ha), with a median area of 1.43 ac (0.58 ha) (Stone *et al.* 1988). Many occurrences consist of multiple pools that vary in area and depth, yet not all pools at a site support *C. hooveri.* Deeper pools apparently provide better habitat for this species because the duration of inundation is longer. This species may occur along the margins or in the deepest portions of the dried pool bed (Stone *et al.* 1988; Alexander and Schlising 1997). A particularly important feature of *C. hooveri* microhabitat, at least in the deeper pools, is that it is nearly devoid of other vegetation, and thus competition from other plants is reduced (Stone *et al.* 1988).

Vernal pools supporting *Chamaesyce hooveri* occur mostly on alluvial fans or terraces of ancient rivers or streams, with a few on the rim of the Central Valley basin. It is found on a wide variety of soils, ranging in texture from clay to sandy loam. Soil series include Anita, Laniger, Lewis, Madera, Meikle, Riz, Tuscan, Whitney, and Willows. All of these soils may not equally support the habitat requirements for this species, however. For example, in one Vina Plains pool, *C. hooveri* grew primarily in the portion that was underlain by Tuscan loam, but were nearly absent from the portion underlain by Anita clay (Alexander and Schlising 1997).

In the Sacramento Valley, occupied pools are on acidic soils over iron-silica cemented hardpan. Most pools supporting *Chamaesyce hooveri* in the San Joaquin Valley are on neutral to saline-alkaline soils over lime-silica cemented hardpan or claypan (Broyles 1987; Stone *et al.* 1988; Sawyer and Keeler-Wolf 1995; CNDDB 2002). Occurrences have been reported from elevations ranging from 85 ft (26 m) in Glenn County to 420 ft (128 m) in Tehama County (CNDDB 2002).

Further discussion on the life history and habitat characteristics of *Chamaesyce hooveri* can be found in the final rule to list the species (62 FR 14338).

Castilleja campestris ssp. *succulenta*

Robert Hoover (1936a) first described this species as *Orthocarpus campestris* var. *succulentus* (fleshy owl's-clover). The type specimen had been collected at Ryer, in Merced County. Robert Hoover (1968) subsequently raised its rank and assigned it the name *Orthocarpus succulentus.* Chuang and Heckard (1991) reconsidered the taxonomy of *Orthocarpus* and related genera. Based on floral morphology (external structure or form), seed morphology, and chromosome number, they transferred many species into the genus *Castilleja.* Furthermore, they determined that the appropriate rank for this species was as a subspecies of *Castilleja campestris* (field owl's-clover) and assigned the plant the scientific name *Castilleja campestris* ssp. *succulenta* (Chuang and Heckard 1991).

Castilleja campestris ssp. *succulenta* is a hemiparasitic (partly parasitic) annual herb belonging to the snapdragon family (Scrophulariaceae). The plant has erect or decumbent (laying on the ground with the tip turned upward) stems up to 12 in (30 cm) long. The stems are usually unbranched and without hairs. The leaves at the base of the stem are small and scalelike, whereas those on the upper stem are lance-shaped, not lobed, thick, fleshy, brittle, and easily broken. The bracts (leaf-like structures in the flowering structure) are green, similar to but shorter than the upper leaves, and longer than the flowers. Overall, the inflorescence (entire flowering structure of a plant) may occupy as much as half of the plant's height (Hoover 1936a, 1937, 1968; Chuang and Heckard 1991, 1993).

Castilleja campestris ssp. *succulenta* is known from 63 widely scattered extant occurrences in vernal pool habitats along the Southern Sierra Foothills Vernal Pool Region ranging from Madera County to a disjunct occurrence in northern San Joaquin County. *Castilleja campestris* ssp. *succulenta* is known from 11 occurrences in Fresno County, 9 in Madera, 36 in Merced, 5 in Stanislaus and 1 in Tuolumne (Keeler-Wolf *et al.* 1998; CNDDB 2002).

Castilleja campestris ssp. *succulenta* is known mostly from vernal pools occurring on alluvial terrace landforms. These pool types have been described as both Northern Claypan and Northern Hardpan vernal pools (Sawyer and

Keeler-Wolf 1995) within annual grassland communities (CNDDB 2002). However, it is found on Northern Basalt Flow vernal pools on Hideaway soils series at one location in the San Joaquin Valley. It is known from both small and large pools (EIP Associates 1999). Although not all pools occupied by this taxon have been studied in detail, Stebbins *et al.* (1995) collected data on six occupied pools in Fresno and Madera Counties. Some were typical ''bowl-like'' pools, whereas others were more similar to swales. This subspecies has been reported from pools with both long and short inundation periods (EIP Associates 1999), and from both shallow and ''abnormally deep vernal pools,'' but approximate depth of these pools was not given (CNDDB 2002).

Soil series supporting *Castilleja campestris* ssp. *succulenta* include Amador, Anderson, Corning, Fallbrook, Keyes, Pentz, Ramona, Redding, San Joaquin, Vista, and Yokohl, as well as the Pollasky-Montpellier complex. Soil textures at those sites range from extremely stony loam to loamy clay. In the proposed University of California-Merced campus and community area, the species is found primarily on Redding gravelly loam; however, Corning, Keyes, and Pentz soils also contain occurrences of the species (EIP Associates 1999). Occurrences of *C. c.* ssp. *succulenta* have been reported from elevations of 80 ft (24 m) at the San Joaquin County site to 2,300 ft (700 m) at Kennedy Table in Madera County (CNDDB 2002). We are uncertain about specific soils that may correlate with the presence of this species, although it is irregularly found on Redding soil series. Vernal pool complexes that provide habitat for this species include pools ranging in depth from 6 in (15 cm) to 10 in (25 cm), but the species is also found less frequently in shallower and deeper pools. Soil pH values for some of the vernal pools in Merced County occupied by *C. c.* ssp. *succulenta* range from 4.3 to 6.2. Although no comprehensive study has been conducted, some vernal pools occupied by *C. c.* ssp. *succulenta* vary in size from 0.02 ac (81 m^2) to 0.12 ac (486 m^2) in Merced County. Merced County contains the largest aggregations of *C. c.* ssp. *succulenta:* occurrences are found on mild to strongly acidic soils on Laguna, Mehrten, North Merced Gravels, and Riverbank Formations, as well as on Ione, Mehrten, and Valley Springs geological formations. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Holland and Jain 1981, 1988; Hanes and Stromberg 1998). *Castilleja campestris* ssp. *succulenta* appears to prefer the more-weathered acidic, higher-terrace vernal pool complexes that are composed of volcanic tuff sand quartzite parent materials.

Further discussion on the life history and habitat characteristics of *Castilleja campestris* ssp. *succulenta* can be found in the final rule to list the species (62 FR 14338).

Orcuttieae Tribe

Neostapfia colusana (Colusa grass), *Orcuttua pilosa* (hairy Orcutt grass), *Tuctoria mucronata* (Solano grass), *Tuctoria greenei* (Greene's tuctoria), *Orcuttia viscida* (Sacramento Valley Orcutt grass), *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), and *Orcuttia tenuis* (slender Orcutt grass) belong to the tribe Orcuttieae in Poaceae, the grass family, (Reeder 1965). Many life history characteristics are common to all members of the Orcuttieae. All are wind pollinated, but pollen may not be carried long distances between occurrences (Griggs 1980,1981; Griggs and Jain 1983). Local seed dispersal is by water, which breaks up the inflorescence (Reeder 1965; Crampton 1976; Griggs 1980, 1981). Long-distance dispersal is unlikely (Service 1985c), but seed may have been carried occasionally by waterfowl (family Anatidae), tule elk (*Cervus elaphus nannoides*), or pronghorn (*Antilocapra americana*) in historical times (Griggs 1980). The seeds can remain dormant for an undetermined length of time, but at least for 3 or 4 years, and germinate underwater after they have been immersed for prolonged periods (Crampton 1976; Griggs 1980; Keeley 1998a). Unlike typical terrestrial grasses that grow in the uplands surrounding vernal pools, members of the Orcuttieae flower during the summer months (Keeley 1998a).

Members of the Orcuttieae tribe share a suite of characteristics that separate the genera within the tribe from all other grasses and have no close terrestrial relative tribes. The semi-aquatic annual plants in this distinct group contain glands that produce a viscid aromatic exudate (sticky aromatic substance) exhibit no distinction between the leaf blade and blade sheath, lack leaf ligules (small membranous appendages at the base of a leaf), and possess small sunken mushroom-shaped bicellular microhairs. These seasonally submerged species germinate and grow as submerged aquatic plants for several weeks to 3 months. With the exceptions of *Tuctoria* and the variable aquatic and terrestrial leaves of *Neostapfia, Orcuttia* species produce floating aquatic juvenile leaves that lack stomata (openings for gas exchange). These partly amphibious *Orcuttia* species within this tribe replace their juvenile leaves with terrestrial leaves as the vernal pools dry out.

All members of the Orcuttieae tribe have large soil seed banks that may be 50 times (or more) larger in numbers than the aboveground population in any given year. In general, years of above-average rainfall promote larger expressions of occurrences of Orcuttieae, but occurrence responses vary by pool and by species (Griggs 1980; Griggs and Jain 1983). Population sizes have been observed to vary by one to four orders of magnitude among successive years and return to previous levels even after 3 to 5 consecutive years when no mature plants were present (Griggs 1980; Griggs and Jain 1983; Holland 1987). Thus, many years of observation are necessary to determine whether any occurrence of a species is increasing, stable, or declining.

Eight members of the Orcuttieae tribe are endemic and restricted to vernal pools in California. The Orcuttieae tribe contains the three genera *Neostapfia, Orcuttia*, and *Tuctoria*. The genus Neostapfia contains one species, *Neostapfia colusana*. The genus *Orcuttia* has five species and *Tuctoria* has two species. Although the various species within the tribe have been found in vernal pools ranging widely in size, the vast majority are found within vernal pools of 0.03 ac (0.01 ha) to 24.7 ac (10 ha) (Stone *et al.* 1988). Larger vernal pools retain water until May or June, creating optimal conditions for Orcuttieae (Crampton 1959; Crampton 1976; Griggs 1981; Griggs and Jain 1983). Orcuttieae usually occur in patches within the pools that are essentially devoid of other plant species (Crampton 1959, 1976). Typically, these plants near the center of a vernal pool grow larger and produce more spikelets than those near the margins, but patterns vary depending on individual pool characteristics and seasonal weather conditions (Griggs 1980).

A discussion of each of the seven Orcuttieae species in this rule is provided below. The number of subject extant occurrences of the 3 genera within the tribe total 219, and an additional 80 occurrences have been extirpated or are considered possibly extirpated by intensive agriculture, land use conversions, urban development, and other factors (CNDDB 2002).

Neostapfia colusana

Joseph Burtt-Davy (1898) first described *Neostapfia colusana* (Colusa grass) and gave the Latin name *Stapfia*

colusana. He collected the type specimen near the town of Princeton in Colusa County, but soon realized that the name *Stapfia* had already been assigned to a genus of green algae, and thus changed the scientific name to *Neostapfia colusana* (Davy 1899). Two other taxonomists proposed alternate Latin names for the genus in the same year, but neither is accepted today. There are no other known species of *Neostapfia* (Reeder 1982, 1993).

Currently, CNDDB (2002) considers 41 occurrences of *Neostapfia colusana* to be extant and 19 other occurrences to no longer exist or to be possibly extirpated. Of the 41 extant occurrences, 23 occurrences of *N. colusana* are found in Merced County and 14 occurrences exist east of Hickman in Stanislaus County. Two occurrences each are found in southeastern Yolo County in central Solano County (Stone *et al.* 1988; Keeler-Wolf *et al.* 1998; CNDDB 2002). This species has been extirpated from Colusa and Glenn Counties (CNDDB 2002).

Neostapfia colusana occurs on the rim of alkaline basins in the Sacramento and San Joaquin Valleys, as well as on acidic soils of alluvial fans and stream terraces along the eastern margin of the San Joaquin Valley and into the adjacent foothills (Stone *et al.* 1988). *Neostapfia colusana* has been found in Northern Claypan and Northern Hardpan vernal pool types (Sawyer and Keeler-Wolf 1995) within rolling grasslands (Crampton 1959). This species typically grows in the deepest portion of the pool (Crampton 1959), but may also occur on the margins (Hoover 1937; Stone *et al.* 1988). Deeper pools are most likely to provide the long inundation period required for germination (EIP Associates 1999). It appears to favor somewhat larger vernal pools that are shallower as compared to other vernal pool plants. *Neostapfia colusana* occurrences vary in elevation from near 16 ft (5 m) to near 350 ft (100 m).

Vernal pool complexes that provide habitat for this species include two different physiographic and edaphic settings: (1) claypan soils of saline-alkali basins and remnant alluvial fans and (2) old stream terrace areas with strongly acidic, gravelly, and cobbly soils having an iron-silica cemented hardpan and shallow, slightly acidic residual soils of the Pentz series underlain by cemented tuffaceous alluvium. Additional settings for *Neostapfia colusana* are found in vernal pool complexes where resistant beds of tuffaceous deposits are exposed along intermittent drainages and, in Stanislaus County, neutral-to-slightly-alkaline claypan soils on dissected alluvial fans. Not all areas of *N. colusana* have been identified as to the specific soil series or soil mapping units where they occur. However, in Merced County, *N. colusana* occurs on clay soils on Merhten and Laguna formations and Riverbank, North Merced gravels. Of the Orcuttieae grasses, *N. colusana* inhabits the widest range of vernal pool sizes, with the smallest being 1,075 ft^2 (100 m^2) and the largest 618 ac (250 ha).

Solano and Yolo County sites where *Neostapfia colusana* grows contain vernal pools formed by soils in the Pescadero series, whereas those in central Merced County are formed by soils in the Landlow and Lewis series. The eastern Merced County and Stanislaus County sites include vernal pool habitats formed by the Bear Creek, Corning, Greenfield, Keyes, Meikle, Pentz, Peters, Raynor, Redding, and Whitney series (Stone *et al.* 1988; EIP Associates 1999; CNDDB 2002). The type and composition of impermeable layers underlying occupied vernal pools also vary, ranging from claypan in the Sacramento Valley to lime-silica cemented hardpan in the San Joaquin Valley basins, to iron-silica cemented hardpan in the eastern margin of the San Joaquin Valley. Tuffaceous alluvium underlies some eastern San Joaquin Valley pools and intermittent streams where *N. colusana* grows (Stone *et al.* 1988).

Further discussion on the life history and habitat characteristics of *Neostapfia colusana* can be found in the final rule to list the species (62 FR 14338).

Tuctoria greenei

George Vasey (1891) originally assigned this species the name *Orcuttia greenei.* Edward Greene had collected the type specimen in 1890 (Vasey 1891), presumably in Butte County (Hoover 1941; Crampton 1959). Citing differences in lemma morphology, arrangement of the spikelets, and other differences, Robert Reeder (1982) segregated the genus *Tuctoria* from *Orcuttia* and created the new scientific name *Tuctoria greenei* (Greene's tuctoria).

Tuctoria greenei is an erect-to-low-growing annual with fragile stems that easily break apart at the nodes, which are often purplish. The leaves are flat and curve outward and the plants are sparsely hairy. The inflorescence is crowded near the tip, with the lower spikelets more or less separated. Optimum germination of *T. greenei* seed occurs when the seed is exposed to light and anaerobic (lacking oxygen) conditions after a cold period of time (stratification) (Keeley 1988). Germination occurs several months after initial inundation (Keeley 1998a). *Tuctoria* seedlings do not develop floating juvenile leaves as does *Orcuttia* (Griggs 1980; Keeley 1998a). *Tuctoria greenei* flowers from May to July (Skinner and Pavlik 1994), with peak flowering in June and July (Griggs 1981; Broyles 1987).

Tuctoria greenei is known from 21 extant widely separated occurrences in Butte, Merced, Shasta, and Tehama Counties. Sixty percent of the extant occurrences of *T. greenei* are in the Vina Plains area of Tehama and Butte Counties. Eastern Merced County has about 30 percent of the known occurrences. Other occurrences are located in Glenn (Oswald and Silveira 1995) and Shasta Counties (CNDDB 2002). *Tuctoria greenei* has been extirpated from Fresno, Madera, San Joaquin, Stanislaus, and Tulare Counties (Stone *et al.* 1988; Skinner and Pavlik 1994; CNDDB 2002).

Tuctoria greenei has been found in three types of vernal pools: Northern Basalt Flow, Northern Claypan, and Northern Hardpan (Stone *et al.* 1988; Sawyer and Keeler-Wolf 1995). Occupied pools are (or were) underlain by iron-silica cemented hardpan, tuffaceous alluvium, or claypan (Stone *et al.* 1988). Of pools where the species was known to be extant in 1987, the median size was 1.5 ac (0.6 ha), with a range of 0.01 ac (50 m^2) to 8.4 ac (3.4 ha) (Stone *et al.* 1988). Stone *et al.* (1988) noted that *T. greenei* grew in shallower pools than other members of the tribe or on the shallow margins of deeper pools, but they did not quantify pool depth. At the Vina Plains, *T. greenei* grew in pools of ''intermediate'' size, which dried in April or early May of 1995 (Alexander and Schlising 1997). The Central Valley pools containing *T. greenei* are (or were) in grasslands; the Shasta County occurrence is surrounded by pine forest (CNDDB 2002). Occupied pools in the Central Valley are (or were) at elevations of 110 to 440 ft (33.5 to 134 m) (Stone *et al.* 1988), whereas the Shasta County occurrence is at 3,500 ft (1,067 m) (CNDDB 2002).

In Tehama and Butte Counties, *Tuctoria greenei* grows mostly on Anita clay and Tuscan loam soils, with one occurrence on Tuscan stony clay loam. Soil types are not certain for several other occurrences in this region; one is on either the Rocklin or the San Joaquin series, and the others are unknown. On the eastern margin of the San Joaquin Valley, *T. greenei* is known to grow on a number of different soil series, including Archerdale, Bear Creek, Exeter, Meikle, Ramona, Raynor, Redding, and San Joaquin.

Further discussion on the life history and habitat characteristics of *Tuctoria*

greenei can be found in the final rule to list the species (62 FR 14338).

Orcuttia pilosa

Robert Hoover (1941) described *Orcuttia pilosa* (hairy Orcutt grass) from specimens he collected in Stanislaus County in 1937. *Orcuttia pilosa* grows in tufts consisting of numerous stems. The stems are decumbent or erect and branch from only the lower nodes. Almost the entire plant is pilose or hairy, giving it a grayish appearance. The spikelets near the tip of the inflorescence are crowded together, whereas those near the base are more widely spaced.

Orcuttia pilosa is known from 28 extant occurrences at widely scattered sites in the southern portion of the Sacramento Valley and the southern Sierra foothills (Keeler-Wolf *et al.* 1998). In the Sacramento Valley, Butte County has one occurrence, Glenn County has six occurrences, and Tehama County has nine occurrences. In the Southern Sierra Foothills Vernal Pool Region, the remaining 12 occurrences of the species are found in widely scattered locations in Stanislaus, Madera, and Merced Counties (Hoover 1941; Crampton 1959; Reeder 1982, Stone *et al.* 1988; CNDDB 2002). Nineteen of those occurrences have been confirmed as existing within the past decade (CNDDB 2002).

This species is found within vernal pools formed on high or low stream terraces and alluvial fans (Stone *et al.* 1988). The median size of occupied pools measured in the late 1980s was 4.2 ac (1.7 ha), with a range of 0.8 to 617.5 ac (0.34 to 250 ha) (Stone *et al.* 1988). At the Vina Plains, *Orcuttia pilosa* was found growing only in pools that held water until May, June, or July in 1995, not in those that dried in April (Alexander and Schlising 1997). This species is known from elevations of 85 ft (26 m) in Glenn County to 405 ft (123 m) in Madera County (CNDDB 2002).

Orcuttia pilosa is found on both acidic and saline-alkaline soils, in pools with an iron-silica cemented hardpan or claypan. In Tehama and Butte Counties, pools supporting *O. pilosa* occur on the Anita and Tuscan soil series (Stone *et al.* 1988; CNDDB 2002). At one pool in the Vina Plains that spans both Anita clay and Tuscan loam soils, *O. pilosa* was found growing primarily on the Anita clay (Alexander and Schlising 1997). At the Sacramento National Wildlife Refuge, *O. pilosa* occurs on the Willows and Riz soil series, whereas in the Southern Sierra Foothills Vernal Pool Region it occurs on the Cometa, Greenfield, Hanford, Meikle, and Whitney soil series (Stone *et al.* 1988).

Further discussion on the life history and habitat characteristics of *Orcuttia pilosa* can be found in the final rule to list the species (62 FR 14338).

Orcuttia viscida

Robert Hoover (1941) first described *Orcuttia viscida* (Sacramento Orcutt grass) as *Orcuttia californica* var. *viscida* based on the type specimen he collected from in Sacramento County. John Reeder (1980) determined that the differences in morphology, seed size, and chromosome number were sufficient grounds to elevate it to the species level as *Orcuttia viscida.*

Orcuttia viscida grass resembles other members of the tribe and genus. Although all members of the Orcuttieae produce a sticky exudate, *O. viscida* is particularly sticky even when young. The plants are densely tufted, bluish green, and covered with hairs. The stems are erect or spreading, 1 to 4 in (3 to 10 cm) long, and do not branch. The inflorescence occupies the upper one-third to one-half of the stem and consists of between 5 and 15 spikelets. The spikelets are closely spaced, and although distichous (arranged in two opposing rows), they are oriented towards one side of the stem.

Orcuttia viscida is endemic to the southeastern Sacramento Valley (Keeler-Wolf *et al.* 1998) and always has been restricted to Sacramento County. From 1990, this species was known from a total of seven natural occurrences and one introduction (Stone *et al.* 1988; CNDDB 2002). Within the past decade, *O. viscida* has been discovered at one new site in Sacramento County within the previously known range. However, one entire occurrence and a portion of another have been extirpated. Thus, eight of the nine occurrences are still in existence. Five occurrences, comprising more than 70 percent of the occupied habitat, are concentrated into a single small area east of Mather Field. Two other occurrences are adjacent to each other: Phoenix Field Ecological Reserve and the introduced occurrence at Phoenix Park. The eighth existing occurrence is near Rancho Seco Lake (Stone *et al.* 1988: Cochrane, in litt. 1995a; CNDDB 2002).

Orcuttia viscida has been found in Northern Hardpan and Northern Volcanic Mudflow vernal pools (Sawyer and Keeler-Wolf 1995). It occurs on high terrace sites (Stone *et al.* 1988) at elevations of 150 to 270 ft (46 to 82 m) (CNDDB 2002). Occupied pools occur in blue oak woodland and annual grassland (Crampton 1959; Griggs 1977; CNDDB 2002). Among occupied pools discovered prior to 1988, the median area was 0.69 ac (0.28 ha) and ranged from 0.25 ac (0.1 ha) to 2.03 ac (0.82 ha). *Orcuttia viscida* grows are acidic with an iron-silica hardpan (Stone *et al.* 1988), and the pools contain numerous cobbles (Crampton 1959; Stone *et al.* 1988). Four of the known occurrences are on soils in the Redding series, two are on Red Bluff-Redding complex soils, two are (or were) on Xerarents-urban land-San Joaquin complex, and one is on Corning complex soils.

Further discussion on the life history and habitat characteristics of *Orcuttia viscida* can be found in the final rule to list the species (62 FR 14338).

Orcuttia inaequalis

Robert Hoover (1936b) described *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass) based on a collection from ''Montpellier [sic], Stanislaus County.'' Robert Hoover (1941) subsequently reduced this taxon to a variety of *californica,* using the combination *Orcuttia californica* var. *inaequalis.* Based on differences in morphology, seed size, and chromosome number, John Reeder (1980) restored the taxon to species status.

Mature plants of *Orcuttia inaequalis* grow in tufts of several erect stems. Plants of this species appear grayish-green due to the long hairs on the stem and leaves and produces exudate. *Orcuttia* plants grow underwater for 3 months or more and have evolved specific adaptations for aquatic growth (Keeley 1998a).

Of the 49 occurrences of *Orcuttia inaequalis* reported in CNDDB (2002), 28 occurrences are presumed extant; 18 are certainly extirpated and three others are possibly extirpated because the habitat has been modified (CNDDB 2002). However, only 12 of the occurrences presumed still in existence have been revisited within the past decade, so even the most recent information is outdated. Of the 28 occurrences of *Orcuttia inaequalis,* Fresno County has two, Madera County has seven, Merced County has 18, and Tulare County has one occurrence. This species has been completely extirpated from Stanislaus County (Stone *et al.* 1988; Skinner and Pavlik 1994; CNDDB 2002).

Orcuttia inaequalis occurs on alluvial fans, high and low stream terraces (Stone *et al.* 1988), and tabletop lava flows (Stebbins *et al.* 1995; CNDDB 2002). This species has been reported in Northern Claypan, Northern Hardpan, and Northern Basalt Flow vernal pools (Sawyer and Keeler-Wolf 1995) within rolling grassland (Crampton 1959). Occupied pools range in surface area from 0.05 to 12.1 ac (0.02 to 4.9 ha), with a median area of 1.54 ac (0.62 ha)

(Stone *et al.* 1988). *Orcuttia inaequalis* has been reported at elevations of 100 to 2,475 ft (30 to 755 m); the highest elevation sites are those on the volcanic tabletops of Fresno and Madera Counties (Stebbins *et al.* 1995; CNDDB 2002).

The pools where *Orcuttia inaequalis* is known to occur form on acidic soils that vary in texture from clay to sandy loam. Soil series represented include the Hideaway series on Fresno-Madera County volcanic tabletops, and Amador, Cometa, Corning, Greenfield, Los Robles, Madera, Peters, Pollasky-Montpellier complex, Raynor, Redding, and San Joaquin soil series elsewhere in the range. The impermeable layer at historical or extant occurrences included iron-silica cemented hardpan, tuffaceous alluvium, and basaltic rock from ancient volcanic flows (Stone *et al.* 1988; Stebbins *et al.* 1995; EIP Associates 1999; CNDDB 2002).

Further discussion on the life history and habitat characteristics of *Orcuttia inaequalis* can be found in the final rule to list the species (62 FR 14338).

Orcuttia tenuis

Albert Hitchcock (1934) named *Orcuttia tenuis* (slender Orcutt grass). The type specimen was collected in Goose Valley, Shasta County, in 1912. *Orcuttia tenuis* grows as single stems or in small tufts consisting of a few stems. Plants are sparsely hairy and branch only from the upper half of the stem. Although its stems typically are erect, they may become decumbent if many branches form near the stem tip (Reeder 1982). The inflorescence comprises more than half of the plant's height, and the spikelets are more or less evenly spaced throughout the inflorescence.

Similar to other vernal pool annuals, the number of individual plants within an occurrence of *Orcuttia tenuis* can vary greatly in size from year to year. Fluctuations of up to four orders of magnitude have been documented in Lake and Shasta Counties (Griggs 1980; Griggs and Jain 1983). At the Vina Plains Preserve, the single occurrence ranged in size from 1,000 to 147,700 individuals during the five times it was reported over a 13-year period (Stone *et al.* 1988; Alexander and Schlising 1997). However, *O. tenuis* occurrences do not always fluctuate in numbers of plants. Among five occurrences of *O. tenuis* that Griggs tracked from 1973 to 1979, two in the Dales area remained at the same order of magnitude for the entire period. None of the other five species of Orcuttieae included in the study remained stable for the full 7 years (Griggs 1980; Griggs and Jain 1983).

Orcuttia tenuis has the largest geographical range of all the members of the Orcuttieae. The species is known from 35 occurrences in Tehama County, 24 in Shasta County, 5 from Lassen County, 4 from Plumas County, 2 in Sacramento County, and 2 each in Butte, Lake, Modoc, Sacramento, and Siskiyou Counties (CNDDB 2002). An additional occurrence has recently been found in Sacramento County (ESA 2001). Extirpated occurrences of *O. tenuis* occur near Reading Airport and Stillwater Plains in Shasta County, and additional possibly extirpated occurrences were near Goose Valley and Battle Creek in Tehama and Shasta Counties (CNDDB 2002).

Orcuttia tenuis is found primarily on substrates of volcanic origin (Crampton 1959; Corbin and Schoolcraft 1989). Vernal pools in which *Orcuttia tenuis* grows are classified as Northern Volcanic Ashflow and Northern Volcanic Mudflow vernal pools (Sawyer and Keeler-Wolf 1995). Impervious layers range from iron-silica hardpan to bedrock (Stone *et al.* 1988; Corbin and Schoolcraft 1989; CNDDB 2001). Among the populations studied by Stone and others (1988), the median area of pools occupied by *O. tenuis* was 1.6 ac (0.65 ha) and ranged from 0.2 to 111 ac (0.08 to 45 ha). On the Modoc Plateau, occupied pools known as of 1989 ranged in size from 5 to 100 ac (2 to 40 ha) and were typically at least 11.8 in (30 cm) deep; this species was restricted to the deepest areas of these pools (Corbin and Schoolcraft 1989). *Orcuttia tenuis* occurs through a wide range of elevations corresponding to its broad geographical range. The lowest reported elevation was 90 ft (27 m) in Sacramento County (Stone et al. 1988) and the highest was 5,761 ft (1,756 m) in Plumas County (Corbin, in litt. 1999).

Soil types supporting vernal pools where *Orcuttia tenuis* is known to occur are diverse, ranging from slightly to strongly acidic (Stone *et al.* 1988), and from clay to sandy, silty, or cobbly loam (Corbin and Schoolcraft 1989; CNDDB 2001). The soil series has not been reported for all *O. tenuis* sites, but the species has been reported on Collayomi-Aiken-Whispering complex and the Konocti-Hambright complex soils. Modoc Plateau occurrences occur on the Gooval, Lasvar, Lasvar-Pitvar complex, and Nosoni soil series, whereas occurrences in northeastern Sacramento Valley are on the Anita, Guenon, Inks, Inskip, Laniger, Moda, Redding, Toomes, and Tuscan soil series. The Redding soil series also supports *O. tenuis* in Sacramento County (Stone *et al.* 1988; CNDDB 2001).

Associated species vary throughout the range of *Orcuttia tenuis.* Although *O. tenuis* grows in the same vernal pool complexes as *O. pillosa* in Tehama County (including the Vina Plains Preserve), and *Orcuttia viscida* in Sacramento County, it has not been found to share any pools with either species (Stone *et al.* 1988; Cochrane *in litt.* 1995a; Alexander and Schlising 1997; CNDDB 2001).

Further discussion on the life history and habitat characteristics of *Orcuttia tenuis* can be found in the final rule to list the species (62 FR 14338).

Tuctoria mucronata

Tuctoria mucronata (Solano grass) was originally described under the name *Orcuttia mucronata* based on specimens collected ''12 miles due south of Dixon, Solano County'' (Crampton 1959, p. 108). John Reeder (1982) transferred this species to a new genus, *Tuctoria,* resulting in the currently accepted name *Tuctoria mucronata.*

Tuctoria mucronata is grayish-green, pilose, and sticky. The tufted stems are decumbent and do not branch. The long leaves are rolled inward and have pointed tips. The base of the inflorescence is partially hidden by the uppermost leaves. As is characteristic of the genus, the spikelets are arranged in a spiral; the spikelets in the inflorescence of *Tuctoria mucronata* are crowded together.

Annual estimates or individual plant counts at Olcott Lake (Holland 1987; CNDDB 2002) indicated that occurrence sizes for this species fluctuate dramatically from year to year, as do other members of the Orcuttieae. *Tuctoria mucronata* was not observed at Olcott Lake from 1976 through 1980, then reappeared in 1981 (Holland 1987), indicating that viable seeds can persist in the soil for a minimum of 5 years. Apparently both drought years and years of excessively high rainfall are unfavorable for *Tuctoria mucronata;* the largest expressions of this species were observed after rainfall seasons of 17.7 to 23.6 in (45 to 60 cm) of precipitation (Holland 1987).

Prior to 1985, *Tuctoria mucronata* was known only from Olcott Lake in Solano County, which is believed to be the type locality (Crampton 1959; CNDDB 2002). A second occurrence was discovered in 1985 approximately 2.5 mi (4 km) southwest of Olcott Lake (CNDDB 2002). *Tuctoria mucronata* is considered to be possibly extirpated from its type locality, because only four individual plants have been found within the last decade, all in 1993 (CNDDB 2002). The other Solano

County site is still in existence. A third occurrence, comprising the largest occurrence known, was discovered in 1993 on a Department of Defense (DOD) communications facility in Yolo County (CNDDB 2002).

Tuctoria mucronata has been found only in the Northern Claypan type of vernal pool (Sawyer and Keeler-Wolf 1995) within annual grassland (CNDDB 2002). Pools where *T. mucronata* occurs tend to be milky from suspended sediments (Holland 1987). The occupied pools in Solano County are more properly described as alkaline playas or intermittent lakes due to their large surface area (Crampton 1959), whereas those at the Yolo County site are ''relatively small'' (Witham, *in litt.* 2000a). Soils underlying known *T. mucronata* sites are saline-alkaline clay or silty clay in the Pescadero series (Crampton 1959; CNDDB 2002). Known occurrences are at elevations of approximately 15 to 35 ft (5 to 11 m) (CNDDB 2002).

Further discussion of the life history and habitat characteristics of *Tuctoria mucronata* can be found in the Delta Green Ground Beetle and Solano Grass Recovery Plan (Service 1985c), and in the final rule to list the species (43 FR 44810; September 28, 1978).

Previous Federal Action

This rulemaking is being made in accordance with a consent decree reached in the U. S. District Court for the Eastern District of California, on December 5, 2002. The following outlines the previous Federal actions and litigation filed after the publication of the proposed rule. For more information regarding Federal actions prior to the publication of the proposed rule, see the Previous Federal Action section in the proposed rule (67 FR 59884).

On September 24, 2002 (67 FR 59884), we published a proposed critical habitat designation for four vernal pool crustaceans and 11 vernal pool plants. Publication of the proposed rule opened a 60-day public comment period, which closed on November 25, 2002. On October 10, 2002, we published a notice (67 FR 63067) announcing three public hearings. The public hearings were held on October 22, 2002, in San Luis Obispo, California; and October 24, 2002, in Sacramento, California, and Medford, Oregon. In addition, public workshops were held in Chico, Sacramento, and Fresno in California and Medford, Oregon. On November 21, 2002, we published a notice announcing the availability of our draft economic analysis (DEA) on the proposed critical habitat designation (67 FR 70201). The notice opened a public comment period on the DEA, and extended the comment period on the proposed critical habitat designation. This comment period was extended for approximately 30 days, closing on December 23, 2002.

On December 5, 2002, the district court approved a settlement agreement between the parties that extended the deadline for designation of critical habitat from February 14, 2003, until July 15, 2003. On March 14, 2003, we published a notice announcing the reopening of the public comment period for approximately 14 days on the proposed designation of critical habitat for these 15 vernal pool species (68 FR 12336) and the DEA, closing on March 28, 2003.

Summary of Comments and Recommendations

In the September 24, 2002, proposed critical habitat designation (67 FR 59884) and subsequent comment periods, we requested all interested parties to submit comments on the specifics of the proposal, including information related to the critical habitat designation, unit boundaries, species occurrence information and distribution, land use designations that may affect critical habitat, potential economic effects of the proposed designation, benefits associated with critical habitat designation, potential exclusions and the associated rationale for the exclusions, and methods used to designate critical habitat.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. This was accomplished through telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, interest groups and other interested individuals. In addition, we invited public comment through the publication of legal notices in numerous newspaper and news media throughout California and Oregon. We provided notification of the DEA and proposed rule to all interested parties. At the request of the Merced County Board of Supervisors, we attempted to notify all Merced County landowners within the proposed vernal pool critical habitat and requested that they provide comments. We provided them contacts where they could direct questions regarding the proposed designation. We also posted the proposed rule and DEA and associated material on our Sacramento Fish and Wildlife Office internet site following their release on September 24, 2002, and November 21, 2002, respectively. Additionally, we developed an internet site to provide interactive Geographic Information Systems (GIS) maps of the proposed critical habitat boundaries overlaid on 250K USGS. quadrangle maps.

We received a total of 955 comment letters during the 2 comment periods. Comments were received from Federal, State, and local agencies, and private organizations and individuals. We reviewed all comments received for substantive issues and comments and new information regarding the vernal pool plants and vernal pool crustaceans. Similar comments were grouped into several general issue categories relating specifically to the proposed critical habitat determination and the DEA and are identified below.

Peer Review

We requested 6 biologists, who have knowledge of vernal pool ecosystems and the 15 species addressed in this rule, to provide scientific review of the proposed designation of critical habitat. Three of the six reviewers submitted comments on the proposed designation. Two of the reviewers strongly endorsed the approach in the proposal that protecting vernal pools in the context of surrounding upland watersheds is crucial for the conservation and long-term survival of the listed vernal pool species, and stated that the rule placed appropriate emphasis on protecting intact vernal pool complexes. The reviewers also cited the importance of conserving a wide range of vernal pool habitat types and biological diversity. The reviewers recommended that additional historical locations of the listed species be considered for critical habitat, and specifically recommended inclusion of vernal pool habitat in Santa Barbara County that once supported *Lasthenia conjugens.* The third reviewer provided specific technical comments on the proposed rule and those recommendations have been incorporated into this final rule.

State Agencies

We received comments from the following California State agencies: Department of Fish and Game (CDFG), Department of Forestry and Fire Protection (CDF), Department of Transportation (Caltrans), and the Department of Housing and Community Development (HCD). Technical data provided by the CDFG has been incorporated into or addressed in this final rule, while other issues raised by State agencies are addressed below.

State Comment 1: The CDFG has considerable knowledge of wildlife resources within California, and we

should work with CDFG in developing critical habitat designations for federally listed species.

Our Response: In developing the proposed rule, we solicited information from CDFG biologists familiar with the local land areas through out California, vernal pool species, and vernal pool habitat. We used the local expertise of our counterparts in CDFG regional offices to help us determine which areas were essential to the 15 vernal pool species addressed in this rule, and to determine the appropriate boundaries for the critical habitat. Further, one of the primary data sources that was used in the development of our proposal and this final rule was the State Natural Heritage occurrence and natural diversity database—the CNDDB. We additionally consulted with the CDFG when we had questions regarding species occurrence data and if any new information was available which was not in the database. We view the CDFG as a partner in natural resource management and protection in California, and will continue to work closely with them.

State Comment 2: Some areas within the proposed critical habitat designation do not contain the necessary habitat requirements for the species (*e.g.,* Grasslands Ecological Unit, Merced County).

Our Response: On the basis of information provided by the public, the scientific community, and other Federal, State, and local government officials, we have revised the critical habitat unit boundaries for the 15 vernal pool species, including the area encompassing the Grasslands Ecological Unit, to better reflect those areas containing the primary constituent elements (PCEs) (see Methods, Summary of Changes from Proposed Rule, and Unit Maps).

State Comment 3: The CDFG believes all CDFG lands should be excluded from critical habitat, given the requirement of consultation pursuant to section 7 of the Act for Federal actions, and CDFG's trustee responsibility for protecting the State's wildlife resources, including federally listed species.

Our Response: We have excluded CDFG owned lands within the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas and State-owned lands within Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves. The total amount of land excluded for State-owned lands excluded within wildlife areas or ecological reserves is approximately 20,933 ac (8,373 ha). These exclusions are based on the CDFG's trustee responsibility for protecting the State's wildlife resources, including federally listed species.

State Comment 4: The CDFG believes that designating critical habitat on lands covered under Habitat Conservation Plans (HCPs) and Natural Community Conservation Plans (NCCPs) provides little benefits for species covered under these plans.

Our Response: We recognize that critical habitat is only one of many conservation tools for federally listed species. However, HCPs are one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. Section 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. For this designation, we find that the benefits of exclusion outweigh the benefits of designation for all approved and legally operative HCPs in which vernal pool species are covered. Please refer to the Relationship of Critical Habitat to Habitat Conservation Plans and Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan sections of this final rule for a more detailed discussion of how approved and pending HCPs have been addressed in this final designation.

State Comment 5: The CDFG believes that all future HCPs and NCCPs should be removed from critical habitat once they are approved.

Our Response: We anticipate that future HCPs in the range of the 15 vernal pool species will include them as a covered species and provide for their long term conservation. We expect that HCPs undertaken by local jurisdictions (*e.g.*, counties and cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long term conservation of the species. Section 10(a)(1)(B) of the Act states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the maximum extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. We fully expect that our future analyses of HCPs and section 10(a)(1)(B) permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and section 10(a)(1)(B) permits will not result in the destruction or adverse modification of critical habitat designated for the vernal pool species. The take minimization and mitigation measures provided under these HCPs are expected to adequately protect the essential habitat lands designated as critical habitat in this rule, such that the value of these lands for the survival and recovery of the vernal pool species is not appreciably diminished through direct or indirect alterations. If an HCP that addresses the vernal pool species as covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

The designation of critical habitat should not deter participation in the NCCP or HCP processes. Approvals issued under these processes include assurances of no additional mitigation through the HCP No Surprises regulation (63 FR 8859). The development of new HCPs or NCCPs should not be affected by designation of critical habitat primarily because we view the standards of jeopardy for listed species and of adverse modification for critical habitat as being virtually identical. We discuss these standards in detail in the Section 7 Consultation section portion of this document.

State Comment 6: CDFG expressed concern that designation of critical habitat will increase the regulatory and/or economic burden for project proponents, because many of their programs, such as vegetation management and fire hazard reduction, are administered on private lands with Federal cost-share funds. CDFG also requested us to address land management activities that benefit vernal pool habitats.

Our Response: We do not anticipate that this designation will result in significant increases in regulatory requirements for programs involving Federal cost-share funds over those which have existed since the time of the listing of each of the 15 vernal pool species. All of these activities, to the extent that they modify vernal pool habitat, have the potential to affect federally listed species and thus trigger the informal or formal consultation requirements of section 7 of the Act. Even beneficial land management actions, if they are likely to result in ''take'' of listed vernal pool crustaceans, must receive appropriate incidental take

authorization through section 7 or section 10 of the Act. The regulatory requirements of section 7 consultation that are established with the listing of a species and the requirements associated with critical habitat designation are discussed in detail in the section Effects of Critical Habitat Designation. A discussion of land management activities, including prescribed burning and grazing, that are beneficial to vernal pool habitats, can be found in the section Special Management Considerations.

State Comment 7: Caltrans requested that we exclude transportation infrastructure, particularly operating right-of-way, from the designation because these areas are not essential to the conservation of the species.

Our Response: We understand the concern of the transportation agencies over having habitat within transportation infrastructure designated as critical habitat. Such areas are included in this designation for several reasons: (1) many areas contain occurrences of the listed vernal pool species and the PCEs; and (2) we did not have the time, resources, or the appropriate GIS data layers to segregate these areas from adjacent vernal pool habitat, evaluate their importance to the conservation of the 15 vernal pool species separately from adjacent vernal pool habitat that we had determined to be essential, and then produce maps and legal descriptions of essential habitat around them, but not including them. Many transportation agency activities involving right-of-way maintenance already trigger section 7 consultation requirements because they support habitat occupied by listed vernal pool species, and because of the Federal nexus provided by the Federal Highway Administration. We do not anticipate that this designation will result in a significant increase in regulatory requirements over those that have existed since the time of the listing of each of the 15 vernal pool species. A more detailed explanation of regulatory requirements of section 7 consultation that are established with the listing of a species, and the requirements associated with critical habitat designation, are discussed in the section Effects of Critical Habitat Designation.

State Comment 8: The HCD commented that the information and public review period for the draft economic analysis was insufficient, expressed concern over the broad standardized scale of the economic analysis, and suggested that a more discrete level of analysis is necessary to credibly project economic costs and benefits of the designation through the 20-year analysis period.

Our Response: The draft economic analysis of the proposed critical habitat designation was made available to the public for review and comment on November 21, 2002, (67 FR 70201). At that time, we opened a 30-day public comment period, on both the proposal and the draft economic analysis, which closed on December 23, 2003. On March 14, 2003, we reopened the comment period for both the proposal and the draft economic analysis for an additional 14 days, ending March 28, 2003 (68 FR 12336). Consequently, the public was provided approximately 45-days to review and provide comment on the draft economic analysis. As stated in this final rule, we acknowledge the limitations imposed by conducting public rulemaking under abbreviated, court mandated schedules, and that, as a result, we are not always able to provide adequate public participation in the process.

For large designations, such as this rule, the 4(b)(2) decision will consider broad geographic areas, rather than individual parcels or projects. The level of detail provided in this analysis is appropriate to the size of areas considered for exclusion. In addition, a more detailed analysis would not necessarily produce a more accurate estimate of potential impacts. Parcel-by-parcel analysis of costs may achieve greater certainty for projects that have already been approved by local planners. However predicting the location and characteristics of future projects on a parcel-by-parcel basis using the same sources of data will result in greater uncertainty as the time frame for the analysis increases. For this rulemaking, it is unlikely that a more detailed analysis would produce a significantly different answer.

Other Public Comments and Responses

We address other substantive comments and accompanying information in the following summary. Relatively minor editing changes and reference updates suggested by commenters have been incorporated into this final rule or the final economic analysis, as appropriate.

Issue 1—Habitat and Species Specific Information

Comment 1: Several commenters, including county and local governmental representatives, stated that the designation was not based on the best scientific data available, and that we have not adequately established that the areas identified as critical habitat contain PCEs essential for the species.

Our Response: We believe that we used the best scientific and commercial information available in determined those areas essential for the 15 vernal pool species that were proposed as critical habitat and subsequently finalized. However, the mapping scale that we used resulted in a more inclusive proposal. In our final determination, we had additional information available to us, including detailed aerial imagery and other information provided by commenters to assist us in refining our mapping of essential habitat. Please refer to the Background, Criteria Used to Identify Critical Habitat, and Unit Description sections of this rule for further discussion on how we determined habitat that is essential to the conservation of the 15 vernal pool species. After refining our proposal and weighing the best available information, we conclude that the areas designated by this final rule, including currently occupied and unoccupied areas, are essential for the conservation of these species.

Comment 2: Several commenters held that nothing has changed from the listing of the species, and that our determination that the designation of critical habitat was not prudent or determinable should remain in place. One commenter stated that we did not evaluate whether critical habitat was determinable and that an analysis needs to be performed according to regulations.

Our Response: As outlined in the Prudency Redetermination section of the proposed rule, at the time of the final listing determination for the 15 vernal pool species, we found that designation of critical habitat was not prudent for the vernal pool crustaceans and plants (excluding *Tuctoria mucronata*) because of potential threats, and that a designation of critical habitat was not beneficial for these species. Case law (*Conservation Council For Hawai'i* v. *Babbitt,* 2 F. Supp.2d 1280 (D.Hawai'i 1998) and *Natural Resources Defense Council* v. *U.S. Dept. of Interior,* 113 F.3d 1121 (9th Cir. 1997)) has changed how we balance the risks and benefits of critical habitat designations since we listed the 15 vernal pool species. In *Building Industry Association* v. *Babbitt,* 979 F Supp. 893 (1997), we were directed by the court to reevaluate our not prudent determination for the four listed vernal pool crustaceans. Our record lead us to reconsider our previous not prudent determinations for the 11 plants in light of the new case law and policy. We have

determined that the threats to the vernal pool crustaceans and plants and their habitat from the specific instances of habitat destruction we identified in the final listing rules do not outweigh the broader educational, regulatory, and other possible benefits that a designation of critical habitat would provide for these species. We believe there is sufficient information available on the 15 vernal pool species to find that critical habitat is determinable for these species, and that an analysis of the impacts of the designation can be performed according to 50 CFR 424.12(a)(2)(i).

Comment 3: Several commenters stated that the species are not threatened or endangered because of their widespread distribution.

Our Response: Species may be listed under the Act if the species is in danger of extinction throughout all or a significant portion of its range by one or more of the five listing factors (endangered species), or if the species is likely to become endangered in the foreseeable future, throughout all or a significant portion of its range by one or more of the five listing factors (threatened species). The five listing factors as defined in the Act are: (A) The present or threatened destruction, modification, or curtailment of [a species'] habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural and manmade factors affecting [a species'] continued existence. These factors apply to both narrowly and widely distributed species.

As discussed in the final rules to list the 15 vernal species addressed herein, the vernal pool crustaceans and plants are threatened by habitat loss, degradation, and modification from land conversion and degradation to the extent that known populations are endangered, or likely to become endangered, throughout all or a significant portion of their range. Thus, the vernal pool species are threatened by Factor A and appear to meet the definitions of threatened or endangered, regardless of having a relatively extensive distribution.

Comment 4: Several commenters believe that we cannot realistically determine critical habitat without first developing a recovery plan, and that the determination of critical habitat should be postponed until site specific surveys have been conducted and a recovery plan is in place.

Our Response: Section 4 of the Act requires us to designate critical habitat at the time of listing to the maximum extent prudent and determinable. We concur that a recovery plan is a useful tool in assisting us with determining which areas are essential for the conservation of a species. We are currently developing a draft recovery plan for these vernal pool species, and have been able to use the information and gathered and analysis conducted to date for the draft recovery plan in helping us determine areas essential to the conservation of the 15 vernal pool species addressed herein.

Comment 5: Several commenters reported that vernal pools provide a breeding source for mosquitoes. They stated that the designation would lead to an increase in diseases such as infection of the West Nile virus (*Flavivirus* sp.) and other mosquito-vectored diseases.

Our Response: The best information available to us indicates that non-degraded vernal pools and swales do not provide a significant breeding source for mosquitoes. Mosquitoes do not appear in vernal pools until very late in the season, when they are unlikely to complete their development before the pools dry (Wright 1991). Female mosquitoes are attracted to gases produced by fermentation that indicate an abundance of decaying organic matter suitable for food for mosquito larvae (Wright 1991). This is the likely cue used by females mosquitos to select oviposition sites. Healthy vernal pools appear to have relatively low levels of decaying organic material, which makes them undesirable as oviposition sites for gravid mosquitoes (Wright 1991). Only late in the season, when the abundance of invertebrates in vernal pools begins to decline, are enough nutrients and organic material available to make the vernal pools attractive to mosquitos. By this time, however, it is often too late for the mosquito larvae to develop before the pools dry.

Comment 6: One commenter stated that there are occurrences of the vernal pool plants and vernal pool crustaceans on protected lands, and for this reason, additional lands are not needed for the conservation of the species. Other commenters contended that the acreage in the proposed rule should represent the minimum amount of land considered critical for the 15 vernal pool species.

Our Response: We recognize that while some occurrences of the vernal pool plants and vernal pool crustaceans are found on protected public and private lands, only about 16 percent of the lands designated as critical habitat are on Federal land or are protected by a conservation easement. A smaller percentage of these lands are managed for protection of vernal pool resources and specifically for the species addressed in this rule. Restricting the designation to currently protected lands would exclude areas that we believe are essential to the conservation of the 15 vernal pool species. We based the designation on the best scientific available and determined that the designation identifies those areas believed to be essential for the conservation of the species.

Comment 7: The California Army National Guard (ARNG) asks that Camp Roberts be excluded from the final critical habitat designation (ARNG 2002a). Letters from Fort Hunter Liggett and the Headquarters of the United States Army Reserve Command state they do not agree with designating critical habitat on the base, and that the designation is not necessary to protect vernal pool fairy shrimp (Fort Hunter Liggett 2002b; Department of the Army 2002).

The letters from Camp Roberts and Fort Hunter Liggett present numerous reasons why critical habitat designation is not warranted on the two bases. Some of these reasons include: suggestions that each installation has an Integrated Natural Resources Management Plan (INRMP) that provides protective measures for vernal pool fairy shrimp; the two bases are implementing numerous activities that conserve vernal pool fairy shrimp habitat; and critical habitat designation would adversely affect the National Guard and Army's abilities to meet their mission, *i.e.*, train soldiers for combat situations.

Our Response: Camp Roberts and Fort Hunter Liggett have drafted INRMPs that we have not signed. The current documents are therefore working drafts that are being revised as the National Guard and Army work together with us to finalize conservation strategies that will benefit all listed species on the two bases. After adequate conservation strategies for all listed species on the bases are incorporated into the two INRMPs, we expect to sign the documents and will consider them final. We recognize the military is implementing measures to conserve existing locations of vernal pool fairy shrimp and the habitat they occupy. These activities include periodic monitoring of selected pools, control of exotic plant species that may alter vegetation communities around vernal pool habitat, fencing or delineation of areas known to contain vernal pool fairy shrimp, and use of review processes designed to avoid or minimize effects that may arise during military training activities and base operations. We

believe additional measures are needed to promote natural ecosystem processes that benefit listed fairy shrimp and these items will continue to be the focus of future discussions with the military. We recognize that designation of critical habitat has the potential to modify military training operations and the use or development of base facilities. We have determined that the benefits of excluding these facilities outweigh the benefits of including them. Subsequently, Camp Roberts and Fort Hunter Liggett have been excluded from this final designation of critical habitat.

Comment 8: One commenter requests that the Indian Valley Cattle Company and Porter Ranch Estate properties be excluded from the Bradley-San Miguel critical habitat subunit in Monterey County. The commenter references a letter from a consulting firm which states that habitat mapping on one or both of the above-mentioned properties was done, and that suitable habitat for fairy shrimp does not appear to be present. The consultant's letter states that another company conducted fairy shrimp surveys on the Porter Ranch Estate, and these investigators did not find fairy shrimp.

Our Response: The Service's ''Interim Survey Guidelines to Permittees under Section 10(a)(1)(A) of the Endangered Species Act for the Listed Vernal Pool Branchiopods'' is used to establish the presence or absence of listed fairy shrimp on a particular property. The guidelines recommend that two wet season surveys for adult fairy shrimp, or one wet season survey for adult and one dry season survey for fairy shrimp cysts, be done at a site to determine the presence or absence of fairy shrimp. Both surveys should demonstrate that fairy shrimp are absent before the Service will concur with a determination that fairy shrimp are absent from a site. We received a report from a consultant in 2001 that states ephemeral aquatic habitat may occur on the Porter Ranch Estate. We also received documents that indicate two wet season surveys were conducted on that property. The second wet season survey was done during a year when rainfall conditions were not conducive to detecting adult fairy shrimp, *i.e.*, aquatic habitat was not present during the second survey, and it would not therefore have been possible to determine the presence or absence of fairy shrimp. We do not have appropriate documentation at this time that allows us to conclude that fairy shrimp are absent from the Porter Ranch Estate.

While we do not have specific information that demonstrates that fairy shrimp occur on the Indian Valley Cattle Company and Porter Ranch Estate properties, we know vernal pool fairy shrimp occur on the Camp Roberts military base 1 mi (1.6 km) west of Porter Ranch Estate and 0.5 mi (0.8 km) south of the Indian Valley Cattle Company property. We believe additional undocumented occurrences of listed fairy shrimp are likely to occur in suitable habitat on private property near Camp Roberts. We also believe several unmapped vernal pools are likely to occur on or near the two aforementioned properties because the presence of several hundred vernal pools on Camp Roberts suggests that these features are present within the local landscape. The Indian Valley Cattle Company and Porter Ranch Estate properties are up gradient and in close proximity to known and suspected vernal pool fairy shrimp occurrences, and it is likely that water that originates on these properties travels down gradient and contributes to the maintenance of the hydrology and water quality of vernal pools that are occupied by listed fairy shrimp on or near the Camp Roberts military base.

Following our evaluation of these lands, we still believe the Indian Valley Cattle Company and Porter Ranch Estate properties are within the localized watershed that contains essential vernal pool habitat, and they contribute to the maintenance of their hydrology. Consequently, it is our determination the land on these properties is essential to the conservation of vernal pool habitat and should not be excluded from designated critical habitat.

Comment 9: One individual asks that the Estrella Ranch area in San Luis Obispo County be removed from the Paso Robles critical habitat subunit. The landowner does not believe fairy shrimp or vernal pool habitat exist on that ranch, and they are concerned that critical habitat designation will affect their family's ranching activities.

Our Response: The Estrella Ranch occurs within a localized watershed that contains documented occurrences of listed fairy shrimp. Vernal pools complexes measuring at least 10 ac (4 ha) in size have been mapped within 1–2 mi (1.6–3.2 km) of Estrella Ranch. These complexes were identified during a habitat mapping contract (Holland 2003). The mapping contract did not attempt to map wetlands less than 10 ac (4 ha) in size, and it is likely that smaller, unmapped vernal pools or vernal pool complexes which provide the necessary conditions for vernal pool fairy shrimp to hatch, grow, and reproduce are present in the local area.

Estrella Ranch is up gradient of vernal pool complexes that have been mapped, and the topography of the ranch suggests water that originates on that property is likely to travel down gradient and contribute to the amount, duration, and frequency of water flow necessary to maintain vernal pools southwest of the ranch property boundary.

We believe Estrella Ranch occurs within a localized watershed that contains essential vernal pool habitat, and the ranch contributes to the maintenance of their hydrology. Consequently, it is our determination this property is essential to the conservation of documented vernal pool habitats, and should not be excluded from designated critical habitat.

Critical habitat designation will not affect the private landowner unless specific portions of their property possess the primary constituent elements associated with vernal pool fasiry shrimp critical habitat, and the landowner proposes a project that would involve a Federal nexus. The landowner has told Service employees he has historically avoided projects that would create a Federal nexus. Consequently, we do not believe the designation of critical habitat on Estrella Ranch will significantly affect the landowner's ranching activities.

Comment 10: One individual associated with the Coastal Alliance on Planned Expansion asks that we evaluate the possibility that fairy shrimp are adversely affected by the operation of a power plant near the Morro Bay National Estuary in San Luis Obispo County. The commentor is concerned that use of ocean water to cool various hardware components at the power plant may affect fairy shrimp.

Our Response: Fairy shrimp are inland species and are not associated with marine environments. The intake of water to cool the power plant near Morro Bay does not have the potential to adversely affect vernal pool fairy shrimp or their habitat.

Comment 11: A number of commenters expressed concern over the appropriateness of the proposal of Unit 33A for vernal pool fairy shrimp. Riverside County Flood Control and Water Conservation District stated that the Unit boundary is based on their ''approximate riverine flood plain'' boundary and suggested that a more detailed analysis of local hydrologic sources and watersheds associated with vernal pools would be more accurate. Other concerns raised were: (1) The vernal pool fairy shrimp is not associated with riverine systems; (2) the Unit contains areas which do not

contain vernal pools and do not meet the proposed rule's definition of critical habitat; (3) vernal pool fairy shrimp have not been documented in the San Jacinto Unit (33A); and (4) vernal pool fairy shrimp and the common versatile shrimp (*Branchinecta lindahli*) cannot co-occur.

Our Response: Although the boundary of the Unit 33A is the approximate 20-year floodplain as identified by Riverside County Flood Control and Water Conservation District, it was used because more than 99 percent of the known vernal pool associated species in the floodplain occur within area delineated by that boundary. The reach of the San Jacinto River included in the designation is extremely flat, causing the river to pond on the floodplain from the low-flow channel to the approximate 100-year floodplain. In the rainy season, the river floodplain contains vernal pools, moist flats, and other ephemeral wetlands. Areas which do not expressly contain ephemeral wetlands or vernal pools are included to provide hydrology to vernal pools.

Although surveys conducted in this unit during 2000 failed to detect vernal pool fairy shrimp, although the common versatile fairy shrimp was detected, it is important to note that not all of the pools in the floodplain were surveyed, and rainfall conditions were not conducive to detecting fairy shrimp. (*i.e.*, in some places pools did not fill or filled only briefly'an insufficient time for shrimp, if present, to hatch).

This unit can be characterized as an alkali playa, one of the habitat types that supports vernal pool fairy shrimp, and shares soil and hydrologic characteristics with Unit 33B, where the common versatile and vernal pool fairy shrimp co-occur. Both species are also present at Skunk Hollow. Eriksen and Belk (1999) also report that the common versatile fairy shrimp is known to co-occur with the vernal pool fairy shrimp, although the two species may be detectable at varying times during a vernal pool's wet phase.

This unit is essential to vernal pool fairy shrimp because it represents the largest unfragmented, hydrologically and ecologically functional vernal pool complex in the southern portion of the species' range. The area of habitat is large enough to allow localized occurrences to expand and contract, providing for normal population dynamics and making the populations within this unit less susceptible to environmental variation or negative impacts associated with human disturbances or naturally occurring catastrophic events. Although it is not known to be occupied, it contains the same edaphic and land form characteristics as lands within Unit 33B, which is occupied by the species.

Comment 12: One commenter stated that the Riverside County units (33–35) should be removed from designation because they represent only a small portion of the range of the vernal pool fairy shrimp, and these areas are already being protected.

Our Response: The area proposed as critical habitat for the vernal pool fairy shrimp in Riverside County does comprise a small portion of the overall area proposed as critical habitat for the species. However, the vernal pools in these units supporting populations of the vernal pool fairy shrimp represent the southernmost distribution of the species in the Unites States. They are essential to ensuring the genetic and geographic distribution of the species necessary for its long-term conservation.

We are excluding the critical habitat in Riverside County, California (Units 33, 34 and 35) from this final designation. We are excluding Unit 33 for the vernal pool fairy shrimp from final designation because the vernal pool habitat within this unit will be covered by the draft Western Riverside Multiple Species Habitat Conservation Plan (MSHCP). Although the MSHCP has not been finalized the measures afforded within the plan and the current assurances that the plan will be completed will assist in the conservation of the species. We are also excluding Unit 34 for the vernal pool fairy shrimp from final designation because the vernal pool within this unit is covered by an approved, legally operative HCP. Although the Rancho Bella Vista HCP does not include the vernal pool fairy shrimp as a covered species, the endangered Riverside fairy shrimp is covered by this HCP. Because the Riverside fairy shrimp co-occurs with the vernal pool fairy shrimp in this unit, we anticipate that management actions taken to conserve Riverside fairy shrimp will provide equal benefits to the vernal pool fairy shrimp. We have also excluded Unit 35 for vernal pool fairy shrimp from final designation because this area, which lies within the Santa Rosa Plateau Ecological Reserve, is managed for the conservation of vernal pools that support populations of the vernal pool fairy shrimp. Please refer to the Relationship of Critical Habitat to Habitat Conservation Plans, Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan, and Relationship of Critical Habitat to Santa Rosa Plateau Ecological Reserve: A State, Federal, and Local Cooperatively Managed Reserve sections of this final rule for a more detailed discussion of these exclusions.

Comment 13: Riverside County Flood Control and Water Conservation District stated that they are working with the City of Hemet to model the watershed in Unit 33B. They suggested that the designation be reduced or eliminated until the information is available.

Our Response: We have excluding Unit 33 from this final designation of critical habitat for the 15 vernal pool species on the basis of the development of the Western Riverside Multi-Species Habitat Conservation Plan (see Response to Comment 12 above).

Issue 2—Costs and Regulatory Burden

Comment 14: Regarding the Fort Ord Unit of critical habitat for *Lasthenia conjugens,* the Bureau of Land Management (BLM) provides comments about inclusion of two parcels, totaling less than 40 ac (16.2 ha), that are (or will be) transferred to the BLM and are designated for development under the Army's existing base cleanup, disposal, and reuse plan. The BLM expresses concern that inclusion of these parcels may require numerous consultations with us for small BLM development projects, such as the construction of a storage shed, that would have minor or negligible impacts on the species and its critical habitat. This would add an undue regulatory burden on BLM and the Service.

Our Response: All Federal agencies are required to evaluate whether projects they authorize, fund, or carry out, may adversely affect a federally listed species and/or its designated critical habitat. The parcels under discussion do not possess ephemeral wetlands themselves, but activities on them may affect the watershed of ephemeral wetlands located on adjacent parcels. To improve the efficiency of the consultation process, we recommend BLM staff with hydrologic expertise evaluate the potential for BLM activities to affect the hydrology of ephemeral wetlands in critical habitat. If BLM projects are not likely to adversely affect critical habitat, then a consultation with us would not be necessary. For projects that are likely to have only discountable, insignificant, or wholly beneficial effects on critical habitat, we would concur in writing and no further consultation will be necessary. For projects likely to have adverse affects on critical habitat, formal consultation would be required pursuant to section 7 of the Act. We encourage BLM to pursue a programmatic evaluation of, and consultation on, its current and future activities on former Fort Ord lands. In regard to these specific parcels, we have

adjusted the boundaries of Unit 9 to remove the steep terrain in and around Impossible and Wildcat Canyons, for reasons discussed in the Summary of Changes From the Proposed Rule section. This has resulted in the removal of one of the above-mentioned parcels from this critical habitat designation. A 13 ac (5.3 ha) BLM development parcel remains in critical habitat.

Comment 15: The Army requests that we exclude areas from *Lasthenia conjugens* critical habitat within former Fort Ord (Unit 9) that are designated for future development under the Army's Habitat Management Plan (HMP). They state that their HMP, which describes the conservation strategy for cleanup, disposal, and reuse of the former base, meets the three criteria we use to consider whether a plan provides adequate special management or protection. The Army suggests these areas be excluded pursuant to section 3(5)(A) of the Act, because they do not require additional special management or protection under the HMP. The Army also requests that we exclude these areas, pursuant to section 4(b)(2) of the Act, because the benefits of excluding them outweigh the benefits of including them in critical habitat. The specific parcels they request be excluded are the BLM development parcel, the Military Operations-Urban Terrain Facility, Wolf Hill, and those portions of East Garrison identified for future development, a total of fewer than 200 ac (90 ha).

Our Response: The 28,000 (11,331 ha) former Army base at Fort Ord is managed under an HMP that, along with several additional commitments from the Army, provided the basis for a non-jeopardy biological opinion in 1999 on the effects of base closure and reuse on *Lasthenia conjugens.* This biological opinion encompassed the full base and, therefore, the entire critical habitat unit. We determined at that time that the configuration of habitat reserve and development lands in the HMP will not jeopardize the continued existence of *Lasthenia conjugens.* The HMP requires that management of designated development parcels that border habitat reserve lands incorporate measures to avoid erosion and vehicle access that could degrade habitat reserve lands, including those designated as critical habitat for *Lasthenia conjugens.* However we conclude that, at this time, the conservation strategy outlined in the HMP for base reuse and closure does not provide sufficient management and protections to the extent that these lands do not meet the definition of critical habitat. Completion of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process in which the Army is currently engaged, and completion of an HCP by entities that are to receive transferred lands, followed by our issuance of an incidental take permit for these lands, would likely be considered adequate special management such that these lands could be removed from critical habitat.

We have reviewed the circumstances at former Fort Ord and conclude that exclusions under sections 3(5)(A) and 4(b)(2) of the Act are not appropriate for lands in this unit. In past circumstances, we have either not included or excluded lands from critical habitat, pursuant to section 3(5)(A) of the Act, when we have determined that the lands are either not essential to the conservation of the species, or have adequate special management considerations or protections. If an area has adequate management or protections for the species and its habitat then the area does not meet the definition of critical habitat and consequently either not included or excluded if originally proposed. At former Fort Ord, the lands for which exclusions were requested are designated for development under the base closure and reuse plan and the management of these lands for vernal pool habitat and species is not adequately addressed under the HMP. The lands are also not intended to receive further protection under that plan. Therefore, a definitional exclusion from critical habitat pursuant to section 3(5)(A) of the Act, where lands would not require special management considerations or protections because those provisions are already in place, would not be warranted for these lands.

We also evaluated these parcels for exclusion from critical habitat pursuant to section 4(b)(2) of the Act. Section 4(b)(2) of the Act allows the Secretary to ''exclude any area from critical habitat if [it is determined] that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, * * * unless the failure to designate such area * * * would result in the extinction of the species.'' In evaluating whether the benefits of excluding these lands outweigh the benefits of including them, we considered economic impact and any other relevant impact associated with their inclusion. In the case of former Fort Ord, we evaluated whether an increase in Federal consultations was likely to occur due to the inclusion of these lands, resulting in an economic cost. We concluded that Federal consultation requirements would be essentially unchanged by the inclusion of theselands. Therefore, none of the costs associated with increased consultation requirements base-wide are likely to result from inclusion of these lands. The Army did not indicate any other costs associated with inclusion of these lands, nor could we identify any. Therefore, we concluded there are no benefits of excluding these lands from critical habitat. We weighed this against any benefits that might accrue from inclusion of these lands in critical habitat. We determined that a small benefit of inclusion would be the increased attention the designation would bring to those parcels designated for development that are adjacent to, and likely within the watershed of, vernal pools. The inclusion of these lands in critical habitat would remind land managers of the need to consider the presence of the vernal pool watershed in planning and implementing Federal actions. We weighed this benefit of inclusion against the benefits of exclusion. We conclude that the benefits of exclusion do not outweigh the benefits of inclusion. We have, therefore, included these lands in the critical habitat designation, except as discussed below.

We have adjusted the boundaries of the Fort Ord Unit to remove the steep terrain in and around Impossible and Wildcat Canyons, for reasons discussed in the Summary of Changes From the Proposed Rule section. The Military Operations-Urban Terrain Facility and Wolf Hill parcels (totaling about 110 ac (44.5 ha) discussed above are located in this region and are therefore not part of designated critical habitat.

Comment 16: The U.S. Air Force requests that lands at Beale Air Force Base (AFB) and Travis AFB be excluded because the designation would increase the costs and regulatory requirements and hamper the Air Force on carrying out the mission objectives for the two AFBs.

Our Response: In response to the U.S. Air Force's requests that lands at Beale AFB and Travis AFB be excluded because the designation would increase the costs and regulatory requirements and hamper the Air Force's ability to carry out their mission objectives for the two AFBs, we have excluded these AFB installations from final designated critical habitat pursuant to section 4(b)(2) of the Act. Please refer to the Relationship of Critical Habitat to Military Lands section of this final rule for a detailed discussion of our rationale for excluding these AFBs pursuant to section 4(b)(2) of the Act.

Comment 17: Several commenters expressed concern that the designation would curtail or eliminate livestock grazing in areas containing vernal pools.

Our Response: Only those activities which are federally funded or authorized that may affect critical habitat would be subject to the regulations pertaining to critical habitat. We recognize and acknowledge that certain levels of livestock grazing likely have no impact on vernal pool ecosystems, and may be beneficial for maintaining them. Since the vast majority of vernal pool habitat within the designation is occupied by the listed vernal pool species and occurs on privately owned lands, the designation of critical habitat is not likely to result in a significant increase in regulatory requirements above those already in place due to the presence of the listed species.

Vernal pools and the species within this rule evolved with the presence of large ungulate grazing. Grazing deters the encroachment of grass and other upland species into the vernal pools, and reduces the vegetative cover of upland areas potentially allowing space for soil dwelling pollinator species to exist. However, the amount and timing of grazing can greatly influence species abundance and composition within each vernal pool.

Comment 18: California Army National Guard-Camp Roberts and Fort Hunter Liggett provide analyses that describe anticipated economic impacts that would arise on the military bases and in surrounding communities if critical habitat is designated for vernal pool fairy shrimp on their property. Camp Roberts estimates the impacts from critical habitat to be approximately $95.4 million (ARNG 2002b). The majority of these costs would accrue because the military believes a critical habitat designation would create a need to relocate training activities to other military bases where critical habitat is not designated. They also believe 31 projects may need to be canceled or substantially modified during the next 20 years. The letter from Camp Roberts also states that local communities around the base would also be affected by critical habitat designation, and the potential effects to these communities are estimated to be $50.5 million.

Staff at Fort Hunter Liggett believe the cost of designating critical habitat on their base would be approximately $7.35 million over a 10-year period (FHL 2002b). The Army believes a $5 million cost would be incurred because of changes to a prescribed fire program. Additional costs may be incurred because Fort Hunter Liggett staff estimate they will need to complete 36 informal and 16 formal consultations during the next 20 years as a result of the critical habitat designation. The letter also states that the Army believes our cost estimates associated with the critical habitat designation, as described in the economic analysis, are too low.

Our Response: California Army National Guard-Camp Roberts and Fort Hunter Liggett provide analyses that describe anticipated economic impacts that would arise on the military bases and in surrounding communities if critical habitat is designated for vernal pool fairy shrimp on their property. Camp Roberts estimates the impacts from critical habitat to be approximately $95.4 million (ARNG 2002b). The majority of these costs would accrue because the military believes a critical habitat designation would create a need to relocate training activities to other military bases where critical habitat is not designated. They also believe 31 projects may need to be canceled or substantially modified during the next 20 years. The letter from Camp Roberts also states that local communities around the base would also be affected by critical habitat designation, and the potential effects to these communities are estimated to be $50.5 million.

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Comment 19: A planner from the City of El Paso Robles asks that we describe what effect critical habitat designation has on new development projects. The letter suggests critical habitat designation results in the need to set aside vernal pools as ecological preserves. A facsimile transmittal from a small farming company also asks that we describe how critical habitat designation could affect their farming operations.

Our Response: The designation of critical habitat requires that Federal agencies consult with us on actions they carry out, fund, or authorize that might destroy or adversely modify the critical habitat. A critical habitat designation has no effect on actions where a Federal agency is not involved (Federal nexus). For example, a landowner undertaking a lawful project on private land that involves no Federal funding or Federal permits would not be affected by the critical habitat designation. If a Federal nexus did develop on private land that was included in a critical habitat unit, *e.g.*, a private landowner needed a permit from the U.S. Army Corps of Engineers (Corps) for fill to be placed in a wetland, the project would need to undergo a review process with the Service.

Under the Act, a critical habitat designation establishes a geographic area that is essential for the conservation of threatened or endangered species and may require special management considerations or protections. However, a designation does not affect the land ownership or establish a refuge, wilderness, reserve, preserve, or other special conservation area. It does not allow government or public access to private land, and will not result in the closure of the area to all access or use. Rather, it triggers the requirement that Federal agencies must consult with us on activities they fund or carry out that might affect critical habitat. Please refer to the Effects of Critical Habitat section below for further explanation of effects of critical habitat designation and its effects on development and farming operations.

Issue 3—Notification and Public Comment

Comment 20: A number of commenters stated that landowners were either not notified, or not notified in a timely manner, and given an adequate opportunity to comment on the proposed designation. The commenters also stated that the number of public hearings was inadequate to obtain full public input on the proposal and that additional public hearings should be held. Several commenters stated that the 30-day comment period for the DEA violated 50 CFR 424.16(c)(2) and requested that we extend the comment period on the proposed designation and draft economic analysis to allow for additional outreach to interested parties as well as hold more public hearings.

Our Response: We are obligated to hold at least one public hearing on a listing proposal if requested to do so prior to 15 days before the end of a comment period (16 U.S.C. 1533(b)(5)(E)). We held a total of 6 public hearing on our proposal to designate critical habitat for the 15 vernal pool species: two public hearings on October 22, 2002, in San Luis Obispo, California; two in Medford, Oregon, on October 24, 2002; and two on October 24, 2002, in Sacramento, California. We also organized three public workshops to notify the public of

the proposed designation and to answer questions regarding critical habitat and the proposed rule: October 3, 2002, in Chico, California; October 16, 2002, in Fresno, California; and October 17, 2002, Sacramento, California. In addition to the public hearings and public workshops, we attended a public meeting organized by the Merced County Council in Merced, California on November 12, 2002, to discuss the proposed designation of critical habitat and answer questions regarding the area designated within Merced County. We provided information on where to obtain copies of the proposed rule and how to access the critical habitat website showing maps of the designation.

Written public comments were accepted at all the public hearings, workshops, and the Merced County Council meeting and entered into the supporting record for the rulemaking. Oral comments given at the public hearings were also accepted into the supporting record. In making our decision on the critical habitat designation, written comments were given the same weight as oral comments presented at hearings. We conducted much of our outreach through legal notices in numerous regional newspapers, telephone calls, letters, and news releases faxed and/or mailed to affected officials, local jurisdictions, and interest groups. We also posted the proposed determination, schedule of workshops and hearings, and other associated material on our Sacramento Fish and Wildlife Office internet site. We believe that we went through an elaborate and extensive notification and outreach process to make the public aware of this proposal. Further, our efforts in this process satisfied the requirements of the Act and the Administrative Procedures Act (5 U.S.C. 551 *et seq.*) (APA) for promulgating Federal regulations regarding listing actions.

Comment 21: The broad scale of the proposed critical habitat maps are not specific enough to allow for reasonable public comment, therefore, violating the Act, the APA, and 50 CFR 424.12(c).

Our Response: Regulation 50 CFR 424.12(c) requires us to define critical habitat according to ''specific limits using reference points and lines as found on standard topographic maps of the area.'' We have done this by basing critical habitat legal descriptions on Universal Transverse Mercator (UTM) gridlines set every 328 feet (ft) (100 meters (m)). In addition to the legal descriptions, we also published maps providing an overview of the critical habitat boundaries in the proposed rule. While the **Federal Register** maps are only intended for illustrative purposes, we do provide more detailed critical habitat maps on request. These detailed maps show specific critical habitat areas of interest overlaid on 1:24,000 scale U.S. Geological Survey (USGS) topographic maps. Additionally, we developed an interactive internet site which shows vernal pool critical habitat boundaries overlaid on a 1:250,000 scale USGS topographic maps. The site allows users to pan to and magnify any area of interest. The Internet site was not completed by the September 24, 2002, publication date of the proposed rule, but we did direct interested parties who contacted us to the site when it became available on October 10, 2002, and posted information and a link to the internet site from our Sacramento Fish and Wildlife Office Internet site.

Issue 4—Property Rights

Comment 22: Several commenters stated that the designation will result in a loss of public property rights and will decrease land values.

Our Response: The designation of critical habitat does not affect land ownership or establish a refuge, preserve, or other special conservation area. It does not allow government or public access to private lands, and will not result in closure of private or State areas to all access or use. The designation of critical habitat on privately-owned land does not mean the government wants to acquire or control the land. Critical habitat does not require landowners to carry out any special management actions or restrict the use of their land. Activities on private lands that do not require Federal permits, funding, or authorization are not affected by the designation of critical habitat. Consequently, critical habitat should not result in effects to property rights, and as previously discussed, property values.

Comment 23: Several commenters expressed concern that the proposed rule and subsequent designation will have significant takings implications, and that the designation is a ''land grab'' by the Federal government and that the landowners should be compensated.

Our Response: As we discussed in the Takings section of our proposed rule, we believe that, in accordance with Executive Order 12630, the designation of critical habitat for the 15 vernal pool species will not have significant takings implications. Our conclusion was based on the results of an initial takings implication assessment in which we determined that: (1) The designation would result in little additional regulatory burden above that currently in place due to the 15 vernal pool species being federally listed because the majority of the designation is occupied by the species, and (2) the designation of critical habitat will not affect private lands in which there is not a Federal nexus. Consequently, we do not anticipate that property values, rights or ownership will be significantly affected by the critical habitat designation.

Comment 24: Several commenters expressed confusion regarding the types of agricultural activities and land use practices that, as a result of the designation, would may trigger a consultation under section 7 of the Act. Other commenters stated that the government will now oversee agricultural and ranching practices as a result of the Borden Ranch case (*Borden Ranch Partnership* v *U.S. Army Corps of Engineers* (9th Cir. 2001) 261F.3d 810,816.).

Our Response: Activities carried out, funded, authorized or permitted by a Federal agency (*i.e.*, Federal nexus) require consultation pursuant to section 7 of the Act if they may affect a federally listed species and/or its designated critical habitat. Our experience with consultations on the 15 listed vernal pool species is that few agricultural activities have involved a Federal nexus and have not required a consultation under section 7 of the Act. The Borden Ranch legal case, referenced above, involved the Clean Water Act and unauthorized fill of wetlands. Specifically, the activity that took place was not considered a routine agricultural practice, and thereby subject to regulation by the Army Corps of Engineers under the Clean Water Act. In regard to grazing, we do not foresee any change in the ability of private landowners to graze their property as a result of this designation. In addition, we anticipate that many activities, including grazing, presently occurring in areas designated as critical habitat can be managed to be compatible with the needs of vernal pool species and their habitat.

Issue 5—Mapping Methodology

Comment 25: Several commenters noted that the proposed critical habitat includes areas that do not contain the PCEs for the vernal pool crustaceans and vernal pool plants. This resulted in the following concerns: (a) That the boundaries of critical habitat should have been more precisely defined to exclude areas which obviously did not contain PCEs; (b) that private property would be affected by the designation even though it did not support the federally listed vernal pool species or

their PCEs; (c) that the designation would place a burden on landowners to refute the presumption that specific lands within critical habitat boundaries possess the PCEs of the species; (d) that we had incorrectly stated in the proposed rule that we would only designate areas containing the PCEs of the species; (e) that there was no biological justification for using a landscape-scale approach when more detailed information is available; and (f) that the designation, as proposed, was not in keeping with the requirement of the Act to ''narrowly define critical habitat.''

Our Response: As we have discussed in our response to Comment 21, we are required to define and delimit critical habitat ''by specific limits using reference points and lines as found on standard topographic maps of the area'' (50 CFR 424.12(c)). We have delimited the boundaries of critical habitat boundaries in this rule based on a minimum mapping scale of 100 meters. This mapping scale was based on the availability and accuracy of aerial photography and GIS data layers used to develop the designation. In drawing our lines for the proposed rule, we attempt to exclude areas that do not contain essential occurrences of the vernal pool species and habitat as defined by the PCEs. On the basis of information obtained through public comments and updated imagery and GIS data layers, we have been able to refine the boundaries of critical habitat during the development of this final rule. However, due to the limitations of our mapping scale, we were not able to exclude all areas that do not contain the PCEs. We have determined that existing man-made features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas are not likely to contain one or more of the PCEs. Because activities in these areas are unlikely to affect PCEs (*i.e.*, essential habitat for the vernal pool species), a consultation under section 7 of the Act would not be required.

We disagree with the comment that private property will be adversely affected by the designation. Without any PCEs or presence of listed species, we regard that no adverse effects to private landowners will occur. If private landowners suspect or have listed vernal pool species and PCEs on their lands, those landowners may or may not chose to ascertain any biological information absent any fill of vernal pools that would require some consultation with us. We also disagree with the comment about our approach in designating critical habitat when additional detailed information is available. We used the best scientific and commercial information available to us. We opened two comment periods to obtain as much current information that is available to assist us in developing this final rule.

Comment 26: A number of commenters identified specific areas that they thought should not be designated as critical habitat.

Our Response: Where site-specific documentation was submitted to us providing a rationale as to why an area should not be designated critical habitat, we evaluated that information in accordance with the definition of critical habitat pursuant to section 3 (5)(A) of the Act and the provisions of section 4(b)(2) of the Act. Following our evaluation of the parcels we made a determination as to whether modifications to the proposal were warranted. In the preparation of the final rule, we further examined the area proposed and refined the critical habitat boundaries to exclude, where possible within the limitations of our minimum mapping scale, those areas that did not, or were not likely to, contain the PCEs for the 15 vernal pool species. We also excluded lands from the final designation that may contain vernal pool habitat, the vernal pool species, and the PCEs, but that we determined to not be essential to the conservation of the vernal pool crustaceans and vernal pool plants. Please refer to the Summary of Changes from the Proposed Rule section of this final rule for a more detailed discussion of changes and exclusion from the proposed rule.

Comment 27: Several commenters had specific concerns relating to the upland component of the PCEs. One commenter indicated that the upland component was not well defined and would result in additional costs and regulatory burdens.

Our Response: Upland areas adjacent to vernal pools are function as part of the localized watershed and are essential to maintaining the hydrological and ecological processes essential to the conservation of the listed vernal pool species. Upland areas buffer the effects of varying rainfall patterns and establish patterns of overland and groundwater flow which help determine the timing and duration of ponding and drying. Listed vernal pool species depend on intermittent periods of ponding and drying to prevent the establishment of strictly terrestrial or aquatic competitors. The timing and duration of such ponding and drying periods affects seed germination, and production of vernal pool plants, as well as the hatching and growth of vernal pool crustaceans. Upland areas also provide a major source of food, in the form of detritus, for vernal pool crustaceans; support pollinator populations for vernal pool plants; improve pond water quality by filtering sediment and contaminants; and moderate pond water temperature (*see* Background and Primary Constituent Elements sections).

We determined the extent of essential upland areas using the best available data, as required by the Act. Such data include topological and land use features useful for identifying natural watershed boundaries, (as shown by USGS Digital Orthorectified Quarter Quadrangles (DOQQs) and other aerial photography), information provided during the comment period, watershed boundaries identified in CALWATER (CALWATER 2.2), and information on the ecology and life history of the 15 vernal pool species (*see* Background section).

Comment 28: Several commenters suggested that the area being proposed as critical habitat for the vernal pool crustaceans and vernal pool plants represents the entire range of all the species, and that this broad of a designation is in violation of the Act. Other commenters stated that we have failed to provide adequate justification for why we determined that all areas proposed as critical habitat for the 15 vernal pool species are essential to their conservation. Further, it was also suggested that there was a lack of species occurrence information for the proposed, bring into question our justification for including these areas into our designation.

Our Response: In developing our proposal of critical habitat for the 15 vernal pool species, we identified those areas that, based on the scientific and commercial data available, we have determined contain essential occurrences of each of the species and/or are defined by the physical and biological features essential to their conservation. We used a number of criteria in defining critical habitat including, but not limited to, the known species occurrence and distribution data, habitat types, degree of habitat fragmentation, soil and landform relationships, connectivity and dispersal factors, and conservation biology principles. We did not include all vernal pool landscapes within each species' range even though surveys in these area may result in the detection of other occurrences. In developing the final rule, all the critical habitat units were reviewed and, where appropriate, further refined to ensure that nonessential habitat and areas not

containing the PCEs (where identifiable) were excluded from the final designation.

We recognize that not all specific areas designated as critical habitat are occupied by the vernal pool species addressed in this rule, in that we included portions of localized upland watershed areas that we have determined to be essential to the conservation of the vernal pool species and their habitat. However, these upland areas are within the geographic range occupied by each of the respective species resulting in our designation being in compliance with section 3(5)(A) of the Act.

Comment 29: One commentor believes that habitat monitoring results from Camp Roberts can be used to understand the effects of land use activities on other areas outside the military base.

Our Response: Following a review of the reports related to the habitat monitoring at Camp Roberts, we believe that the reports provide limited insight into the effects of land use activities off the base because the activities discussed in the reports are predominantly military specific such as the use of large, tracked military vehicles. Other studies addressed in the reports examine effects associated with grazing activities may have relevance to areas outside the base boundary. Results from these studies have been taken into consideration in the development of this designation.

Issue 6—Economic Analysis

Comment 30: Several commenters stated that the economic analysis fails to recognize other Federal funding (*e.g.*, farming subsidies) which may provide nexuses and therefore, resulting in the need for additional consultations triggered solely by the designation.

Our Response: The economic analysis focuses on the principle economic areas that could be potentially effected by the designation of critical habitat. In the preface of the economic analysis, we made an attempt to forecast the effects of future section 7 formal consultations resulting from the proposed designation of critical habitat. The 20-year future forecast was based on the history of formal consultation with Federal agencies occurring to date. Historically, we have had no consultations regarding vernal pool complexes, farming activities, and any nexus with the Farm Service Agency. However, if the Farm Service Agency were to fund, authorize, permit, or conduct activities that may adversely effect designated critical habitat, then they are required to consult with us pursuant to section 7 of the Act on those activities.

Comment 31: Several commenters stated that the economic analysis neglects to consider all impacts potentially resulting from the designation of critical habitat for the 15 vernal pool species. Specifically, commenters expressed concern that the economic analysis: (1) Minimizes potential impacts and costs that may result from the designation; (2) is based on unreasonable assumptions that are incomplete and outdated; (3) fails to analyze impacts on federally authorized water activities; and (4) understated the economic impact to the agricultural industry and ranching operations, and focused on urban effects to local economies and not that of the agricultural.

Our Response: In developing the draft economic analysis of the proposed designation, we attempted to provide the best analysis of the measured differences between the world with and without the designation of critical habitat for the 15 vernal pool species. Impacts considered in the analysis include costs associated with section 7 consultations for reasonably foreseeable activities, such as real estate development, highway construction and maintenance, and the supply and delivery of water. Data to predict reasonably foreseeable activities were obtained from proposed plans currently available to the public, discussions with staff at Federal and State agencies, and local governmental jurisdictions, and urban growth projections such as the California Urban Biodiversity Assessment (CURBA) model. Estimated costs associated with section 7 consultations are composed of both administrative costs and project modification costs. Indirect costs were also considered in the economic analysis, including costs associated with the delay of planned real estate development to address critical habitat issues as well as property value effects associated with regulatory uncertainty. The final economic analysis considered many of the comments submitted by the public and accordingly made several changes to the estimates of the above impacts. In addition, the final economic analysis also included a new component of potential economic impact—losses in consumer surplus that may be associated with a foreseeable reduction in the number of new homes built because of the designation. We disagree with the viewpoint that the economic analysis focuses on urban effects and not agriculture or rural effects. All effects were considered, however the greatest economic impact is likely to occur in those areas where land is constrained and less substitute land is available for economic activities that otherwise would destroy vernal pool habitat but for the designation of critical habitat. This assessment was based upon: (1) The history of formal consultations under section 7 of the Act, to date, on locations and activities that resulted in affects to vernal pool species and their habitat; and (2) because the majority of vernal pool habitat losses expected to occur within 20 years are anticipated to occur as a result land conversions from agricultural or rural to urban as the local economies develop and bid up the value land based on its best use.

Comment 32: Several commenters stated that the economic analysis does not assess impacts on proposed or permitted HCP/NCCPs.

Our Response: The economic analysis does not address the effects of designation of critical habitat on any permitted HCP, NCCP/HCP or proposed HCPs or NCCP/HCPs. We believe the designation of critical habitat for the 15 vernal pool species will not result in significant additional regulatory impacts to any currently permitted HCPs or NCCP/HCPs having covered federally listed vernal pool species. Those plans have sufficient biological conservation for covered vernal species and their aquatic and associated upland habitats to avoid adverse modification of critical habitat. Additionally, we believe that the proposed HCPs and NCCP/HCPs that cover vernal pool species also provide sufficient biological conservation of vernal pool species and their habitats to support the long-term vernal pool species conservation. Please refer to our discussion of HCPs under Relationship of Critical Habitat to Habitat Conservation Plans later in this rule.

Comment 33: Several commenters stated that the economic analysis does not assess cost of removal of critical habitat through future rule makings.

Our Response: The scope of our economic analysis to is to reasonably assess the potential cost that may result from the proposed designation so as to provide the Secretary information to be used in the development of this final agency action. We do not take into consideration any potential costs that may occur from future modification or revisions to this designation. Those potential costs, if the designation were to be revised, are not in the scope of this analysis and would be addressed at the time of the rulemaking for those revisions.

Comment 34: Several commenters stated that the economic analysis does not assess the costs to project

proponents who want to conduct activities on their lands that do not contain the PCEs.

Our Response: As indicated in this rule, we attempted to exclude lands from the final designation that do not contain the PCEs essential to the conservation of the 15 vernal pool species. Activities, for which there is not a Federal nexus, occurring on lands with the boundaries of designated critical habitat that do not effect the species and/or their PCEs would not result in a consultation pursuant to section 7 of the Act. Consequently, we would not anticipate that the designation of critical habitat in these areas would result in an increased regulatory burden or cost to the project proponent. In areas where a Federal nexus does not exist, these is not regulatory burden of critical habitat. As such, we would not anticipate that activities in these areas would result in a significant additional regulatory burden resulting from the designation.

Comment 35: Some landowners expressed concern that because their property was located within the proposed critical habitat designation they would be subject to additional constraints, costs and regulations under CEQA and NEPA. The commenters further expressed that the draft economic analysis inaccurately characterized impact that would result from both CEQA and the National Environmental Policy Act (NEPA) following the designation of critical habitat for the 15 vernal pool species.

Our Response: According to section 15065 (California Code of Regulations Title 14, Chapter 3) of CEQA guidelines, environmental impact reports are required by local lead agencies when, among other things, a project has the potential to ''reduce the number or restrict the range of an endangered, rare or threatened species.'' Because nine of the 11 vernal pool plants are either State listed endangered or threatened, and federally listed species are presumed to meet the CEQA definition of ''endangered, rare or threatened species'' under 15380 (California Code of Regulations Title 14, Chapter 3), no significant additional constraints, or costs, should result from the designation of critical habitat beyond those now in place for all federally listed species, including the 15 vernal pool species in this rule.

We believe that we made the best 20-year estimation of what the added costs would be from impacts of the designation of critical habitat for the 15 vernal pool species. Under both the environmental review processes of CEQA and NEPA, a project proponent is required to identify biological resources or conduct an environmental assessment, including any designated critical habitat on proposed project sites, and identify any significant environmental effects to those resources that could result from the project. The processes also need to be disclosed and have opportunities for public comments. We believe that the economic analysis accurately assesses the impacts to State and Federal regulatory processes.

Comment 36: One commenter stated that, contrary to our assumption in the draft economic analysis, the Los Angeles District Office of the Corps may take regulatory jurisdiction over vernal pools that occur within their geographic jurisdication.

Our Response: The economic analysis made the assumption that the Los Angeles District may not take jurisdiction of the vernal pools that are in critical habitat for the vernal pools within their watershed-based jurisdiction based on conversations with the representatives from the Los Angeles District Office of the Corps. We believe that the Corps has the discretion of whether or not to take jurisdiction of any waters of the United States. The consequences of this discretion may increase or decrease the number of formal consultations and associated costs that may occur over the next 20 years. We made the best estimate of the number of formal consultations and their associated costs that we may have over the next 20 years based upon our history of formal consultations with the Corps across the range of the 15 vernal pool species.

Comment 37: Several commenters stated that the economic analysis should be completed and made available concurrently with the proposal to designate critical habitat, and that critical habitat should not have been proposed before an economic analysis of the proposal was complete.

Our Response: Pursuant to Act and clarified in our implementing regulations at 50 CFR 424.19, we are required to, ''after proposing designation of such an area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities.'' Following the publication of our prosed designation of critical habitat for the 15 vernal pool species, we developed a draft economic analysis of the proposed designation that was released for public review and comment. The analysis was subsequently revised based on public comment and other information made available to us and a final economic analysis was produced. This final analysis was used to assist us in developing the final designation. Consequently, we believe that we have interpreted the regulations and process correctly. Please refer to the draft and final economic analyses for this rulemaking for more detailed discussions of the methods employed in the analysis and the results.

Comment 38: Several commenters stated that the economic analysis estimates far too few section 7 consultations under the Act.

Our Response: After using our historical database of section 7 consultations, and speaking with numerous Federal agencies about the likelihood of future consultations after critical habitat is designated, we believe that we correctly and reasonably estimated the number of section 7 consultations that would occur despite the lack of certainties about 20-year growth models used to predict urban growth, multiple uses of open space that includes vernal pool preservation areas, the lack of a fixed amount of upland habitat associated with vernal pool complexes, and the locally variable values of non-residential lands.

Comment 39: Several commenters stated that the CURBA model underestimates the growth and costs associated with the impacts of critical habitat designation for the 15 vernal pool species.

Our Response: We used the CURBA model, along with information from interviews with representatives of Federal agencies, county and local government planning officials, information we had on the number of completed formal consultations, and those consultations that were initiated but not completed, to improve our attempt to correctly estimate the number and costs of formal consultations within the next 20 years. Based upon additional discussions with these representatives from the above-mentioned entities, we have revised upward the number of informal consultations from 240 to 470, and decreased the number of formal consultations from 235 to 157. Because, the pace of development in any region fluctuates broadly from year to year due to the unevenness in market timing and planning practices, the CURBA model offers a more standard method of forecasting the acreage required to accommodate new growth throughout the proposed critical habitat area.

Comment 40: Several commenters stated that the economic analysis should focus on the potential costs attributable solely to critical habitat and not on the costs associated with the listing of the species.

Our Response: In developing our draft economic analysis, we attempted to differentiate between the costs attributed to the proposed designation of critical habitat from those attributable to the species being federally listed. These impacts are presented and discussed in our draft economic analysis and the final economic analysis. However, as discussed below in response to Comment 41, the methodology of our economic analysis is consistent with the 10th Circuit Court's instructions to make our economic analyses of critical habitat meaningful, which in the Court's mind, requires the economic analysis to consider all of the potential costs associated with the designation of critical habitat, regardless of whether or not those costs are co-extensive with other parts of the Act. As a result, our economic analysis now also consider the total costs associated with section 7 of the Act. Please refer to our draft and final economic analyses for a more thorough discussion of the methodology employed in the our analysis.

Comment 41: The economic analysis not done in a manner consistent with the *New Mexico Cattle Growers Association* v. *U.S. Fish and Wildlife Service,* 248 F. 3d 1277 (10th Cir. 2001) decision.

Our Response: In this 10th Circuit Court case, the court instructed us to conduct a full analysis of all the economic impacts of critical habitat designation, regardless of whether or not those impacts are attributable co-extensively to other causes. In order to ensure that no costs of the proposed designation are omitted, the economic analysis for the 15 vernal pool species examined and fully considered all potential effects associated with all section 7 consultation effects in or near proposed critical habitat. In doing so, the economic analysis ensures that any critical habitat impacts that are co-extensive with the listing of the species are not overlooked. As a result of this approach, the economic analysis may likely overstate the regulatory effects under section 7 of the Act that are attributable to the proposed designation of critical habitat. Therefore, we believe that our analysis has been done in compliance with the Court's decision. Please refer to the draft and final economic analyses for a more detailed discussion of this issue.

Comment 42: Several commenters stated that the assumptions in the DEA suggesting that the designation of critical habitat for the 15 vernal pool species is not expected to result in significant restrictions in addition to those currently in place due to the species already being federally listed are flawed.

Our Response: In the proposed rule and DEA, we indicated that we do not expect that the designation of critical habitat would result in significant additional regulatory or economic burdens or restrictions incremental to those afforded the species pursuant to being listed under the Act. This assertion is based on the regulatory protections afforded the 15 vernal pool species from them being federally listed under the Act, and the fact that the majority of the lands designated as critical habitat are considered occupied by the species.

Comment 43: One commenter stated that the DEA failed to adequately consider the effect the proposed rule could have on the development community.

Our Response: The DEA discussed the potential impact the proposed rule could have on the development community. Specifically, the analysis discussed how the proposal would not impose any significant additional economic impacts beyond those currently in existence for occupied areas of critical habitat. We acknowledged that critical habitat designation could have slight effects on certain industries such as real estate development, farming, and ranching. But the biggest effects to these industries result from the impact their activities have on the vernal pool crustaceans, which are afforded protection due to their status as federally protected threatened or endangered species. Because the majority of critical habitat units are currently occupied by the vernal pool crustaceans or vernal pool plants, we do not expect any significant increase in consultations or related project delay or costs to be attributable to the designation of critical habitat.

Comment 44: Several commenters stated that the DEA was biased because it analyzed costs and not benefits, and that it should further expand on the value of protecting vernal pool habitats. Several commenters stated that the DEA overestimates costs. One commenter stated that the development industry would simply avoid those areas which would require compensation for vernal pool habitats focusing their efforts on adjacent properties, thus minimizing costs associated with the designation.

Our Response: There may be many opinions as to a particular species' contribution to society, including their aesthetic, scientific, or other significant contribution. However, placing a specific monetary value on endangered species, critical habitat, and other non-consumptive environmental or natural systems is subjective and not quantifiable in terms of economics. Although the recreational use aspect of natural areas can be identified, the economical benefit of a species' existence in relation to a monetary figure cannot be analyzed. The final economic analysis has taken into account the factor that the development industry would simply avoid areas which had habitat for the vernal pool crustaceans and vernal pool plants.

Comment 45: Numerous commenters said that the designation would greatly increase the costs (surveys, consultant fees, habitat compensation fees, land acquisition, etc.) and regulatory burden (California Environmental Quality Act (CEQA), section 7 or section 10 of the Act, section 404 of the Clean Water Act (CWA), etc.) on landowners and local governments, as well as delays in permit processing and issuance of biological opinions. These cost and burdens would have a negative impact on ranching/farming activities, local economies, the development industry, and personal income. A few commenters stated that we should pay for any increased costs required for surveying.

Our Response: In the development of the draft and final economic analyses for this rulemaking, our economist evaluated potential economic effects of the issues raised by the commenters that could potentially result from the proposed designation, as well as the co-extensive costs associated with the species being federally listed. Please refer to both the draft and final economic analyses for a more thorough discussion of how these issues were addressed. Additionally, while our analysis did show that approximately $23.4 million per year would be attributed to the designation, it is small in comparison to the value of new construction activities in the affected counties, which amounted to over $19 billion in 2000 alone. Critical habitat designation only affect actions with a Federal nexus, so any actions carried out on non-Federal lands without Federal funding, permitting, or authorization should not be affected. Further, critical habitat designation may actually reduce delays and help prevent the possibility of arbitrary biological opinions by establishing the habitat needs of the species prior to the evaluation of specific projects. By alerting the public to those habitat needs during the critical habitat designation process, we may also help to avoid unpleasant surprises for people who might not otherwise have been aware of the need to take section 7 considerations into account.

Comment 46: Dr. David Sunding, University of California, Berkeley, submitted an alternate economic analysis of our proposed designation of critical habitat for the 15 vernal pool species that questioned the accuracy and robustness of our draft economic analysis.

Our Response: We have thoroughly reviewed and address the substantive issues and concerns raised by Dr. Sunding's in his analysis in the final economic analysis for this rulemaking. Please refer to that document for a detailed discussion of Dr. Sunding's analysis and our responses.

Issue 7—Procedural Concerns

Comment 47: One commenter stated that we violated the Commerce Clause power and exceeded our jurisdiction by regulating species which are in no way involved in interstate commerce.

Our Response: The Federal government has the authority under the Commerce Clause of the U.S. Constitution to protect these species, for the reasons given in Judge Wald's and Judge Henderson's concurring opinion in *Nat'l Ass'n of Home Builders* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), cert. denied, 1185 S. Ct. 2340 (1998). See also *Gibbs* v. *Babbitt*, No.99–1218 (4th Cir. 2000). The Home Builders case involved a challenge to application of Act prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). As with the species at issue here, the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the Act to this fly was a proper exercise of Commerce Clause power because it prevented loss of biodiversity and destructive interstate competition.

Comment 48: One commenter stated that since the we identified the proposed rule as a significant regulatory action under Executive Order 12866, we violated it by: (1) Not submitting the economic analysis to the Office of Information and Regulatory Affairs (OIRA) along with the proposed rule prior to publication in the **Federal Register**; (2) not allowing a 60-day review period for the economic analysis; (3) not identifying changes made to the proposed rule as a result of the economic analysis; and (4) not considering the economic analysis during the proposed designation process.

Our Response: Because this rulemaking is subject to a court imposed deadline, section 6(a)(3)(D) of Executive Order 12866 allows us to comply ''to the extent practicable'' with OIRA submission requirements (commenter's point 1). We have done so by submitting both the proposed rule and the economic analysis to OIRA for review as soon as was possible prior to publication. It was not practicable to complete the economic analysis prior to publication of the proposed rule, but we did complete it and utilized it in reaching this final designation (commenter's point 4).

With regard to the length of the comment period following publication of the economic analysis (commenter's point 2), section 6(a)(1) of Executive Order 12866 states that we ''should, afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.'' The proposed regulation in this case is the proposed critical habitat designation, not the economic analysis. We provided a total of 104 days for the public to comment on the proposed critical habitat designation. Of those 104 days, 47 were after publication of the notice of availability of the economic analysis on November 21, 2002 (67 FR 70201).

With regard to the identification of changes made to the proposed rule (commenter's point 3), paragraphs 6(a)(3)(E)(ii) and (iii) of the Order require us, subsequent to publication of a proposed rule, to identify any substantive changes made to the proposed rule between submission to OIRA and to the public. We made no substantive changes to the proposed rule during that time period. Substantive changes made to the rule following public review and comment are addressed in the Summary of Changes from the Proposed Rule section of this final rule.

Comment 49: One commenter stated that due to the U.S. Supreme Court ruling in *Solid Waste Agency of Northern Cook County* v *United States Army Corp of Engineers* (2001) 531 U.S. 159 (SWANCC), we do not have the authority to list species or implement regulatory actions related to such listings in isolated vernal pools.

Our Response: The SWANCC decision pertained to the Corps and their authority under the Clean Water Act to take regulatory jurisdiction over wetlands which may be isolated from navigatable waters. The 15 vernal pool species will continue to receive the protections afforded them under the Act, including designation of critical habitat, regardless of whether vernal pools are determined to be regulated as waters of the United States under the Clean Water Act.

Comment 50: One commenter stated that we failed to comply with prescribed procedures mandated by the APA by not providing access to the administrative record for the proposed rule and economic analysis.

Our Response: In the proposed rule, we stated that all supporting documentation, including the references and unpublished data used in the preparation of the proposed rule, would be available for public inspection at the Sacramento Fish and Wildlife Office. A public viewing area was made available at the Sacramento Fish and Wildlife Office where the proposed critical habitat units, superimposed on 7.5 minute topographic maps, could be inspected. In addition, we responded to each request for GIS maps and data supporting the rulemaking in a timely manner by providing copies of detailed maps and data specific to their needs. Additionally, data concerning the occurrences of the vernal pool crustaceans and vernal pool shrimp used in the analysis for the proposed designation were also made available to the public, if requested. Therefore, we believe that we have complied with provisions of the APA as it relates to this rulemaking.

Summary of Changes From the Proposed Rule

On the basis of a review of public comments received on the proposed designation of critical habitat and DEA for the 4 vernal pool crustaceans and 11 vernal pool plants in California and southern Oregon, we reevaluated our proposed critical habitat designation and made changes as necessary. In the development of our final designation of critical habitat for these 15 vernal pool species, we considered new information provided to our office after the proposed designation was published.

The refinements to the amount of land determined to be essential for the 15 vernal pool species and incorporated into this final designation resulted in a net reduction of approximately 466,504 ac (186,601 ha) of land. Most of the units received some refinement, and a few were divided into subunits depending on the amount of nonessential lands that were removed. Information regarding the extent of the changes from the proposed rule in the individual units is in the unit descriptions for each species and acreage tables.

The common name for the species *Castilleja campestris* ssp. *succulenta* was changed in the final rule (from succulent owl's-clover to fleshy owl's-clover) to reflect the name used under the listing of the species (Service 1997a). This was done to avoid

confusion between species listing and the designation of critical habitat.

Following publication of the proposed critical habitat rule for the 15 vernal pool species (67 FR 59884), we re-evaluated the proposed critical habitat for each of the species to ensure that the areas within the designation were essential to the conservation of the species (*see* Methods section below).

In the majority of instances, we continued to used the 328 ft (100 m) grid in determining the legal boundaries for the critical habitat. As a result, some areas not containing the PCEs may still be within the critical habitat boundary. Because these areas do not have one or more of the PCEs for the 15 species, the landowners would not be required to consult as a result of this determination. In some areas where precise boundaries were required as a result of land ownership exclusions, or for small areas surrounded by nonessential habitat, we used a 32.8 ft (10 m) grid for further refinement. However due to time limits, staffing, and funding required for completion of this rule, we were not able to use the finer detailed 32.8 ft (10 m) grid for all the critical habitat boundaries.

We excluded the U.S. Fish and Wildlife Service owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes and the Coleman National Fish Hatchery. The total amount of refuge and hatchery land excluded totals approximately 33,097 ac (13,238 ha). We also excluded California Department of Fish and Game owned lands within the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas and State-owned lands within Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves. The total amount of land excluded for State-owned lands excluded within wildlife areas or ecological reserves is approximately 20,933 ac (8,373 ha). These areas were excluded based on the benefits of inclusion verses the benefits of exclusion and from information received from the California Department of Fish and Game. We have determined that the benefits of exclusion outweigh the benefits of inclusion for these areas (*see* Effects of Critical Habitat Section below).

We also excluded four military installations, three areas with HCPs, and one area containing Tribal lands. Based on information received from the military installations and the Tribal entity, we have determined that the benefits of exclusion outweigh the benefits of inclusion for these five areas (*see* Effects of Critical Habitat Section below). The total amount of land excluded is approximately 64,803 ac (25,921 ha). The specific land area for each exclusion is outlined below and in the tables.

The four military installations include Beale AFB (5,028 ac (2,011 ha) excluded) in Yuba County, Travis AFB (5,089 ac (2,036 ha) excluded) in Solano County, Fort Hunter Liggett (16,298 ac (6,519 ha) excluded) in Monterey County, and Camp Roberts (33,117 ac (13,247 ha) excluded) in San Luis Obispo and Monterey Counties, totaling approximately 59,532 ac (23,813 ha) excluded for all four military bases. The species affected as a result of this determination include: the vernal pool fairy shrimp, vernal pool tadpole shrimp, Conservancy fairy shrimp, *Tuctoria mucronata, Neostapfia colusana,* and *Lasthenia conjugens.*

In comparing the benefits of inclusion of critical habitat for the species versus benefits of exclusion of these areas, we determined that it is appropriate to exclude these military installations from this critical habitat designation under section 4(b)(2). The main benefit of this exclusion is ensuring that military training activities can continue without interruption while the INRMPs move toward full implementation. One of the management strategies for each INRMP on the four bases is to establish guidance for the conservation of vernal pool ecosystems and the species inhabiting them. We have been working closely with the various military installations to finalize the INRMPs and have made significant progress toward conservation of the resources at these facilities. In addition, after re-evaluating the habitat associated with the proposed designation and making changes to the critical habitat unit boundaries, the actual amount of habitat on several of the bases was reduced since the habitat did not contain the PCEs for the species. We expect that when the INRMPs are completed and adopted in the near future, they will provide equal or greater protection to vernal pool species habitat than a critical habitat designation.

As described in the proposed rule, the area within the proposed Unit 35 for vernal pool fairy shrimp in Riverside County may be subject to exclusion. After further evaluation, we determined that the area known as the Skunk Hollow critical habitat unit is appropriate for exclusion based on the determination that the special management considerations and protections afforded by its inclusion in a reserve established within an approved mitigation bank in the Rancho Bella Vista Habitat Conservation Plan area.

Although the vernal pool fairy shrimp is not expressly covered by the Assessment District 161 Subregional HCP (AD161 HCP), we believe that management actions undertaken in the Skunk Hollow watershed to benefit the endangered Riverside fairy shrimp, threatened *Navarretia fossalis* (spreading navarretia), and the endangered *Orcuttia californica* (California Orcutt grass)—all of which are included as covered species under the HCP—will provide equal conservation benefits for the vernal pool fairy shrimp. The total area excluded for vernal pool fairy shrimp as a result of this exclusion is approximately 239 ac (97 ha).

We are also excluding Unit 33 (Hemet-San Jacinto Unit ABC) and Unit 34 (Santa Rosa Plateau Unit) of the vernal pool fairy shrimp critical habitat based on section 4(b)(2) of the Act. The habitat within Unit 33 is included in the Draft Western Riverside HCP which will provide protections for the species and habitat. Vernal pools within the Santa Rosa Plateau Ecological Reserve, including those in Unit 34, are conserved and managed for the benefit of the species that occur within the vernal pools and surrounding watersheds. Exclusion of units 33 and 34 from vernal pool fairy shrimp critical habitat will not result in the extinction of the species. The removal of these units from critical habitat designation reduces the total amount of critical habitat designated for the species by approximately 8,425 ac (3,370 ha).

Similarly, a small portion of the area within the proposed vernal pool fairy shrimp critical habitat (Unit 18) in San Joaquin County also has an approved and legally operative NCCP/HCP (San Joaquin Multi-Species Conservation Plan), which includes measures for the conservation of these two species. It would be appropriate to exclude these units. The total amount of area excluded for vernal pool fairy shrimp as a result of this exclusion is approximately 141 ac (56 ha).

We proposed critical habitat on Tribal lands of the Mechoopda in Butte County, although at that time we were unaware that these were Tribal lands. The Mechoopda brought this to our attention during the comment period and requested that their lands be excluded from the final designation. We evaluated the lands proposed as critical habitat and find that the benefits of excluding these areas from critical habitat designation outweigh the

benefits of including these areas. The Mechoopda Tribe submitted a management plan that provides for special management considerations or protections for listed vernal pool species. The Tribe demonstrated its commitment to ensuring the long-term viability of federally listed species on Tribal lands by implementing appropriate conservation measures that will contribute to species' long-term survival by ensuring the conservation of vernal pool resources on Tribal property. The approximate amount of land which the Mechoopda Tribe requested to exclude is approximately 645 ac (260 ha). The proposed critical habitat for the area included habitat for the vernal pool tadpole shrimp (Unit 4). The benefits of including the Tribe's land are limited to minor educational benefits, since the Tribe has committed to consult with us on any effects to the species. The benefits of excluding these areas from being designated as critical habitat are more significant, and include encouraging the continued development and implementation of special management measures. The exclusion of critical habitat for the Mechoopda trust lands is consistent with our published policies (Secretarial Order 3206, Presidential Memorandum dated April 29, 1994: Government-to-Government Relations with Native American Tribal Governments (May 4, 1994, 59 FR 22951)) on Native American natural resource management because this exclusion allows the Tribe to manage its own natural resources.

Finally, as a result of comments received, we made editorial changes to the sections of the rule pertaining to the methods used, the PCEs, the criteria used to identify critical habitat, and the unit descriptions for all 15 vernal pool species. We made these changes to eliminate redundancy, improve clarity, and provide a more in-depth explanation of the biological necessity of the designation for the 15 vernal pool species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation,'' as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Section 7(a)(2) of the Act requires that Federal agencies shall, in consultation with us, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. Section 7 also requires conferences on Federal actions that are likely to jeopardize the continued existence of any species proposed to be listed or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, and consequently critical habitat designation does not afford any additional regulatory protection under the Act under those circumstances.

In order to be included in a critical habitat designation, the habitat must be essential to the conservation of the species. Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life-cycle needs of the species (*i.e.*, areas on which are found the PCEs, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all the areas essential for the conservation of the species or, alternatively, we may inadvertently include areas that later will be shown to be nonessential. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us. Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas already have the features and habitat characteristics that are necessary to sustain the species. If the information available at the time of designation does not show that an area provides essential life-cycle needs of the species, then the area should not be included in the critical habitat designation.

Our regulations state that ''The Secretary shall designate critical habitat outside the geographic areas presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in those areas outside.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires us, to the extent consistent with the Act, and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and Ccunties, scientific status surveys and studies, biological assessments, unpublished materials, and solicited expert opinion.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of the designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for the conservation of the species. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be

implemented under section 7(a)(1), the regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the applicable prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation should not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

The action of designating critical habitat does not automatically lead to recovery of a listed species, but it may contribute to species long-term conservation. Critical habitat units are not preserve areas; designation does not target and establish specific preserves and their boundaries. Critical habitat is designated to make Federal agencies aware that these areas are critical to the species. Although the designation of critical habitat can identify areas where a variety of conservation strategies may be developed to ensure the survival and recovery of target species, the development of these strategies are most appropriately taken through local planning efforts, such as the development of HCPs. The action of designating critical habitat does not result in the creation of management plans, establish numerical population goals, or prescribe specific management actions, whether inside or outside of such designated critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation, and management plans, and through consultations and permits under section 7 and section 10 of the Act.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time of the final listing determinations (62 FR 34029; 62 FR 14338; 59 FR 48136; 57 FR 24192), we found that designation of critical habitat was not prudent for the vernal pool crustaceans and plants (excluding *Tuctoria mucronata*). At the time of final listing of *Tuctoria mucronata* (43 FR 44810), we did not make any determination about whether or not designation of critical habitat was prudent.

However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For example, in *Conservation Council for Hawaii* v. *Babbitt,* the United States District Court for the District of Hawaii ruled that the Service could not rely on the ''increased threat'' rationale for a ''not prudent'' determination without specific evidence of the threat to the species at issue (2 F. Supp. 2d 1280 [D. Hawaii 1998]). Additionally, in *Natural Resources Defense Council* v. *U.S. Department of the Interior,* the United States Court of Appeals for the Ninth Circuit issued a ruling that limited the application of the no benefit justification and required the Service to balance the potential threats against any benefits to the species of designating critical habitat 113 F. 3d 1121, 1125 (9th Cir. 1997).

The courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection, even if it offers potentially greater protection to the species, does not justify a not prudent finding (*Conservation Council for Hawaii* v. *Babbitt* 2 F. Supp. 2d 1280).

On the basis of these court decisions and the decision specific to these species, we have re-evaluated our original prudency determinations for the 14 vernal pool species for which we had made a determination, using the information available at the time we made our final listing decisions and that which has become available since. We further evaluated the prudency of designation critical habitat for *Tuctoria mucronata* in light of these court decisions.

If critical habitat is designated for the 15 vernal pool species, Federal agencies will be required to consult with us on actions they carry out, fund, permit, or authorize, to ensure that their actions will not destroy or adversely modify critical habitat . It may also provide information to Federal agencies and the general public of the importance of the vernal pool species and their habitat and the need for special management considerations or protection. A critical habitat designation may assist Federal agencies in planning future actions because it establishes, in advance, those habitats that will be reviewed in section 7 consultations.

We have determined that the instances of likely vandalism, discussed in the final listing rules as the rationale for why we did not believe critical habitat to be prudent, though real, have been relatively isolated since the species have been listed. Consequently, we conclude that designating critical habitat will not increase incidences of habitat vandalism above current levels for these species. Accordingly, we withdraw our previous determinations that the designation of critical habitat is not prudent. We find that designation of critical habitat is prudent and determinable for the 15 vernal pool species addressed herein because there is not likely to be increased threats to the species that may result from the critical habitat designation. Therefore, we are subsequently designating critical habitat for the four vernal pool crustaceans and 11 vernal pool plants in this final rule.

Methods

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we are to use the best scientific and commercial data available to determine areas that contain the physical and biological features essential for the conservation of the 15 vernal pool species. This included data and information contained in, but not limited to, the final rules listing the 15 species addressed herein, the Vernal Pools of Southern California Final Recovery Plan (Service 1998), the Delta Green Ground Beetle and Solano Grass Recovery Plan (Service 1985), the California Vernal Pool Assessment Preliminary Report (Keeler-Wolf 1998), Report of Science Advisors for the Eastern Merced County Natural Community Conservation Plan Habitat Conservation Plan (Noss *et al.* 2002a), research and survey observations published in peer reviewed articles, vernal pool mapping and other data collected for the development of HCPs, reports submitted by biologists holding section 10(a)(1)(A) recovery permits, biological assessments provided to us through section 7 consultations, data collected for the development of a Wetland Conservation Plan in Oregon, reports and documents that are on file in our field offices, and personal discussions with experts outside of our agency with extensive knowledge of vernal pool species and habitats.

The critical habitat units were delineated by using ArcView (Environmental Systems Research Institute, Inc.), a computer GIS program to evaluate GIS data derived from a variety of Federal, State, and local agencies, and from private organizations and individuals. Data layers included current and historic species occurrence locations (CNDDB 2002), mapped vernal pool grassland habitats (Holland 1998, 2003), and/or other vernal pool location information. We presumed occurrences identified in CNDDB to be extant unless there was affirmative documentation that an occurrence had been extirpated. We also relied on unpublished species occurrence data contained within our files including section 10(a)(1)(A) reports and biological assessments. These data layers were then mapped onto SPOT imagery (satellite aerial photography) (CNES/SPOT Image Corporation 1993–2000) for each vernal pool region identified by Keeler-Wolf *et al.* 1998 to help us identify which specific areas contained the vernal pool species and their habitat.

We then evaluated the areas defined by the overlap of the combined coverages (data layers) to initially focus on which areas may provide those physical and biological features essential to the conservation of the 15 vernal pool species. The areas were further refined by using satellite imagery, watershed boundaries, geologic landform coverages, elevational modeling data, soil type coverages, vegetation/land cover data, and agricultural/urban land use data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, housing developments, and other areas that are unlikely to contribute to the conservation of the 15 vernal pool species. Each of the factors identified above had a bearing on the total size and spatial configuration of the conglomeration of units for each species, as well as the size and location of each of the individual units. Whenever possible, geographic features (*e.g.*, ridge lines, valleys, streams, plateaus, geologic formations, shorelines, etc.) or manmade features (*e.g.*, roads or obvious land use) that created an obvious boundary for a unit were used as unit area boundaries.

The resulting delimited areas or lands for each species were then considered to define all habitat for that species, including occupied and unoccupied habitat. These lands were further evaluated to determine which of specific areas are essential to the conservation of each of the 15 listed vernal pool species. Several tools were used to assist us in delineating the specific areas that we believed to contain the primary constituent elements for each species and therefore essential to the species' conservation. These included: (1) Generally accepted conservation biology principles as described below; (2) information in recovery plans covering the subject species; (3) peer reviewed, published literature; (4) expert opinion for each of the species. The resulting areas were subsequently proposed as critical habitat for the 15 vernal pool species.

Following publication of the proposed critical habitat rule for the 15 vernal pool species (67 FR 59884), we re-evaluated the lands proposed based on information received during the public comment period, from local habitat and species experts, or otherwise made available to us. We also used updated detailed aerial photography provided by county planning departments, and DOQQs from the USGS. In Merced County, local experts including National Wildlife Refuge and CDFG biologists were consulted to identify and verify habitat areas. We also visited selected locations to determine if they contained the PCEs.

Because the minimum mapping unit of the Holland (1998) vernal pool habitat data was 40 ac (16 ha), and the resolution of the SPOT imagery did not allow us to identify all vernal pool habitat, we refined unit boundaries based on additional GIS data layers when necessary and available, including soils information from the Soil Survey Geographic data bases (U.S. Department of Agriculture (USDA) 1998–2001), and the California State Soil Geographic data bases (USDA 1994). We used geologic information developed by the California Department of Mines and Geology (2000) and Liss (2001). To identify the extent of flat or gently sloping topography where vernal pools are found, we evaluated Digital Elevation Models from the USGS (2000).

We also used a number of local GIS data sets for specific areas, including information developed through the Riverside Multiple Species HCP and the Vernal Pools of Southern California Final Recovery Plan (Service 1998), habitat mapping for Butte County (U.S. Environmental Protection Agency (EPA) 1994), Tehama County (2001), Shasta County (2001), Placer County (Glazner 2001), Solano County (2000), Yolo County (1995), Sacramento County (1999), and San Joaquin County (2000) in California, and by the Rogue Valley Council of Governments in Oregon (Evans 2000). Other smaller scale mapping efforts were reviewed from Solano County Farmlands and Open Space (2000) and East Bay Regional Parks District (2001). Aerial photographs for eastern Merced County were used to determine habitat conditions. The specific layers used and the methodology employed for each unit is described within the Unit Descriptions section. To determine land ownership within each unit, we used data from the State of California (Davis *et al.* 1998) and the U.S. Bureau of Indian Affairs in Sacramento, California (2001).

We excluded areas that do not contain one or more of the PCEs or were not essential for the conservation of the vernal pool species because: (1) The area is highly degraded and may not be restorable; (2) the area is small, highly fragmented, or isolated, and may provide little or no long-term conservation value; or (3) the area is excluded under section 4(b)(2) of the Act for military, economic or other reasons (*See* Exclusions Under section 4(b)(2)). The critical habitat units were further refined to remove lands determined not to be essential to the conservation of the vernal pool species through analysis conducted through the section 7 or section 10 process. The specific modifications are described in the Summary of Changes from the Revised Proposed Rule section of this rule.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to propose as critical habitat, we consider those physical and biological features essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, the following: (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, rearing of offspring, germination, or seed dispersal; and, generally; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. Our regulations at 50 CFR 424.12(b) further direct that when considering the designation of critical habitat, we are to focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species, and we are to list known PCEs with the critical habitat description. Our regulations

describe known PCEs in terms that are more specific than the description of physical and biological features. Specifically, PCEs may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species of plant pollinator, geological formation, vegetation type, tide, and specific soil types.

Based on our current knowledge of the life history and ecology of the 15 listed vernal pool species, the relationship of their essential life history functions to their habitat, and the ecological and hydrologic functions of vernal pool complexes, as summarized above in the Background section, we determined that all of the 15 vernal pool species share the following two PCEs. These are:

(1) Vernal pools, swales, and other ephemeral wetland features of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for the 15 species to complete their life cycle.

(2) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, maintain suitable periods of pool inundation, and maintain water quality and soil moisture to enable the 15 vernal pool species to carry out their lifecycles.

The first PCE provides the necessary soil moisture and aquatic environment required for seed germination, cyst hatching, growth, maturation, reproduction, and dispersal, and the appropriate periods of dry-down for seed and cyst dormancy. Both the wet and dry phases of the vernal pool help to reduce competition with strictly terrestrial or strictly aquatic plant or animal species. The wet phase provides the necessary cues for hatching, germination, and growth, while the drying phase allows the vernal pool plants to flower and produce seeds and the vernal pool crustaceans to mature and produce cysts. We conclude this element is essential to the conservation of the 15 vernal pool species because these species are ecologically dependent on seasonal fluctuations, such as absence or presence of water during specific times of the year, and duration of inundation and the rate of drying of their habitats. They cannot persist in perennial wetlands or wetlands that are inundated for the majority of the year, nor can they persist without periodic seasonal inundation.

The second PCE (the entire vernal pool complex, including the pools, swales, and associated uplands) is essential to maintain both the aquatic phase and the drying phase of the vernal pool habitat. Although the vernal pool species addressed in this rule do not occur in the strictly upland areas surrounding vernal pools, they are dependent on these upland areas to maintain the aquatic and drying phases of the vernal pool. The germination of vernal pool plants and hatching of cysts is dependent on the timing and length of inundation of the vernal pool habitat. The rate of vernal pool drying, during which vernal pool plants must flower and produce seeds, is also largely controlled by interactions between the vernal pool and the surrounding uplands (Hanes *et al.* 1990; Hanes and Stromberg 1998). The uplands also provide a source of nutrients and food sources for the 15 vernal pool species and provide habitat for pollinator species that may be specifically adapted to some of the plant species in this rule (Thorp 1998; Eriksen and Belk 1999). The uplands also provide habitat for avian species and other animals known to aide in the dispersal of the 15 vernal pool species (Zedler and Black 1992; Silveira 1998).

The first of these PCEs provides for space, physiological requirements, shelter, and reproduction sites for the 15 vernal pool species. Vernal pools and other ephemeral wetlands provide space during their wetted periods for individual and population growth and normal behavior of vernal pool species by providing still, freshwater habitat of appropriate depth, duration, temperature, and chemical characteristics for: (1) Juvenile and adult vernal pool crustaceans to hatch, swim, grow, reproduce and behave normally; (2) the aquatic stage of the seven Orcuttieae tribe plants to germinate and grow under water; and (3) saturating areas of ground to the extent and duration necessary to allow the four non-Orcuttiae plants to germinate and grow. Vernal pools and other ephemeral wetlands also provide soil space during both dry and wetted periods for the maintenance of dormant cyst and seed banks, which allow populations of vernal pool species to maintain themselves throughout the unpredictable and highly variable environmental conditions experienced by their nondormant life history stages.

Vernal pools and other ephemeral wetlands also provide various physiological requirements for both vernal pool plants and crustaceans. For crustaceans they provide water, oxygen, and food such as plankton, detritus, and (in the case of vernal pool tadpole shrimp) other small crustaceans. For vernal pool plants, they provide water and various nutrients from detritus that sinks to the bottom. They also provide oxygen for the aquatic leaves of Orcuttieae tribe plants.

By drying seasonally, ephemeral wetlands provide cover or shelter from many aquatic predators and competitors (*see* background section). Similarly, by undergoing seasonal inundation, these areas provide shelter for vernal pool plants from terrestrial plants which would otherwise outcompete them for space, light, water, or nutrients.

Finally, vernal pool crustaceans require wetted ephemeral wetlands in which to mate, and both vernal pool crustaceans and vernal pool plants deposit cysts or eggs in these wetland areas, which must then dry to allow hatching or germination. Wetted ephemeral wetlands may also tend to attract waterfowl, which act as important seed and cyst dispersers (Proctor 1965; Silveira 1998).

The second PCE, upland areas and vernal swales hydrologically associated with ephemeral wetlands, is essential for maintaining the seasonal cycle of ponding and drying in the ephemeral wetland areas. Upland areas are therefore essential for providing the same physical and biological factors as are provided by the ephemeral wetland areas. Additionally, they provide an important (and often primary) source of detritus, which is an important food source for vernal pool crustaceans and nutrient source for vernal pool plants. Upland and swale areas also provide habitat for waterfowl, amphibians, mammals, or insects, all of which are important for seed, pollen, or cyst dispersal. Certain upland and swale areas may also help disperse seeds and cysts more directly, and also provide for population growth by channeling flood waters from overflowing ephemeral wetland areas so that seeds, cysts, or adult individuals are washed from one such wetland to another.

We have used vernal pool complexes as the basis for determining populations of vernal pool crustaceans since the species were first proposed for listing. The final rule to list the four vernal pool crustaceans states that ''[t]he genetic characteristics of the three fairy shrimp and vernal pool tadpole shrimp, as well as ecological conditions, such as watershed contiguity, indicate that

populations of these animals are defined by pool complexes rather than by individual vernal pools'' (Fugate 1992, 1998; King 1996). Therefore, the most accurate indication of the distribution and abundance of the four vernal pool crustaceans is the number of inhabited vernal pool complexes. Individual vernal pools occupied by the four species listed herein are most appropriately referred to as ''subpopulations'' (59 FR 48136). Our use of vernal pool complexes to define populations of the four listed crustaceans was upheld by the U.S. District Court in post-listing challenge to the listing (*Building Industry Association of Superior California, et al.* v. *Babbit et al.,* CIV 95–0726 PLF). The July 25, 1997, court decision stated that the plaintiffs were on notice that the Service would consider vernal pool complexes as a basis for determining fairy shrimp populations. The court also concluded that the use of this methodology was neither arbitrary nor capricious. The Court of Appeals for the D.C. Circuit upheld the district court's decision, and the Supreme Court has declined to hear the case.

Each of the critical habitat units likely includes some areas that are unoccupied by the vernal pool crustaceans and vernal pool plants. ''Unoccupied'' is defined here as an area that contains no hatched vernal pool crustaceans or observed above-ground vernal pool plants, and that is unlikely to contain a viable cyst or seed bank. Determining the specific areas that the vernal pool crustaceans or vernal pool plants occupy is difficult because, depending on climatic factors and other natural variations in habitat conditions, the size of the localized area in which above-ground plants or hatched crustaceans appear may fluctuate dramatically from one year to another. In some years, individuals may be observed throughout a large area, and in other years they may be observed in a smaller area or not at all. Because it is logistically difficult to determine how extensive the cyst or seed bank is at any particular site, and because hatched vernal pool crustaceans or above-ground vernal pool plants may or may not be present in all vernal pools within a site every year, we cannot quantify in any meaningful way what proportion of each critical habitat unit may actually be occupied by the vernal pool crustaceans or vernal pool plants. Therefore, areas of unoccupied habitat are probably interspersed with areas of occupied habitat in each unit. The inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of the vernal pool crustaceans and vernal pool plants. Unoccupied areas provide areas into which populations might expand, provide connectivity or linkage between groups of organisms within a unit, and support populations of pollinators and seed dispersal organisms. Both occupied and unoccupied areas that are designated as critical habitat are essential to the conservation of the species.

All of the above described PCEs do not have to occur simultaneously within a unit for the unit to constitute critical habitat for any of the 15 vernal pool species. We determined the PCEs of critical habitat for the 15 species based on studies on their habitat and population biology, including but not limited to Kalin-Arroyo 1973; Ellias 1986; Corbin and Schoolcraft 1989; Jokerst 1989; Eng *et al.* 1990; Alexander and Schlising 1997; Helm 1998; Witham 1998; Eriksen and Belk 1999; Grosberg 2002. Additional information on species-specific PCEs are outlined below in Descriptions of Critical Habitat Units for each species.

Conservation Criteria Used to Identify Critical Habitat

Based on the best scientific information available, all areas identified as critical habitat for the 15 vernal pool species addressed by this rule are within the historical and current ranges of each of the species and contain the two PCEs identified above. Rather than designate every area containing PCEs, however, we designated only those areas which available evidence clearly demonstrated were essential to the conservation of each species. Areas for which the evidence available at this time was less certain were not included in this designation, although we believe these areas to be important to the species and may include them in future recovery plans. Areas essential to the conservation of the species are those that are necessary to advance at least one of the following conservation criteria:

(1) The conservation of areas representative of the geographic distribution of the species. Species that are protected across their ranges have lower chances of extinction (Soule and Simberloff 1986; Murphy *et al.* 1990; Primack 1993; Given 1994; Hunter 1996; Pavlik 1996; Noss *et al.* 1999; Grosberg 2002). Maintenance of representative occurrences of the species throughout its geographic range helps ensure the conservation of regional adaptive differences and makes the species less susceptible to environmental variation or negative impacts associated with human disturbances or natural catastrophic events across the species' entire range at any one time (Primack 1993; New 1995; Hunter 1996; Helm 1998; Redford and Richter 1999; Rossum *et al.* 2001; Grosberg 2002). Additionally, the conservation of the geographic distribution of the species is one of the physical and biological features we are required to consider under our regulations (50 CFR 424.13(b)). Accordingly, we considered the number of occupied areas in each vernal pool region (Sawyer and Keeler-Wolf 1995), and determined roughly the extent to which each occupied area would likely be necessary for the conservation of the species in the region or as a whole.

(2) The conservation of areas representative of the ecological distribution of the species. Each of the 15 vernal species is associated with various combinations of soil types, vernal pool chemistry, geomorphic surfaces (landforms), and vegetation community associations. Maintaining the full range of varying habitat types and characteristics for a species is essential because it would include the full extent of the physical and environmental conditions necessary for the species (Zedler and Ebert 1979; Ikeda and Schlising 1990; Fugate 1992; Gonzales *et al.*1996; Fugate 1998; Platenkamp 1998; Bainbridge 2002; Noss *et al.* 2002a). Vernal pool species are extremely adapted to the physical and chemical characteristics of the habitat in which they occur. Additionally, the conservation of the ecological distribution of the species is one of the physical and biological features we are required to consider under our regulations 50 CFR 424.13(b), and was also strongly endorsed by at least one peer reviewer (*see* Peer Review section). Accordingly, we considered the extent to which habitat types occupied by the species could be expected to be conserved in light of the number of occupied areas and the threats involved.

(3) The conservation of areas necessary to allow movement of cysts, pollen, and seeds between areas representative of the geographic and ecological distribution of the species. As a result of dispersal events within and between vernal pool complexes, and environmental conditions that may prevent the emergence of dormant cysts and seeds for up to several decades, the presence of vernal pool species is dynamic in both space and time (Eriksen and Belk 1999; Noss *et al.* 2002a). We therefore determined that essential habitat for the vernal pool

species must provide for movement within and between vernal pool complexes to provide for the varying nature and expression of vernal pool species,and also allow for gene flow and dispersal and habitat availability that accommodate natural processes of local extirpation and colonization over time (Stacey and Taper 1992; Falk *et al.* 1996; Davies *et al.* 1997; Husband and Barrett 1998; Holt and Keitt 2000; Keymer *et al.* 2000; Donaldson *et al.* 2002).

(4) In cases where more occupied areas were present than were needed for the conservation of the geographic or ecological distribution of the species, we gave priority to areas which already possessed a measure of protection or which possessed the largest unfragmented vernal pool complexes. Other criteria being equal, such areas are likely to contribute more to the conservation of the species because threats posed by habitat fragmentation are more easily minimized within them. Small, isolated habitat populations are more likely to be extirpated by direct or indirect natural or human impacts (Fahrig 1997; Noss and Csuti 1997; Debinski and Holt 2000; Grosberg 2002; Noss *et al.* 2002a), and are less likely to maintain the hydrological processes of pooling and drying on which the vernal pool species depend.

Based on these criteria, we determined that all currently known extant occurrences of the 11 vernal pool plants and 2 of the 4 vernal pool crustaceans (Conservancy fairy shrimp and longhorn fairy shrimp) are essential to the conservation of the species, due to their limited geographic and ecological distributions (criteria 1 and 2), low overall number of populations (criterion 1), and the seriousness of the threats posed to remaining populations, including fragmentation of habitat. For the other two vernal pool crustaceans (vernal pool fairy shrimp and vernal pool tadpole shrimp), we were able to meet the criteria listed above without designating all occupied areas.

Special Management Considerations

In designating critical habitat, we also have considered how this designation highlights habitat that needs special management considerations or protection. For example, we have many regional HCPs under development, and this designation will be useful in helping applicants determine what vernal pool habitat areas should be highest priority for special management or protection, and where there may be more flexibility in conservation options. This designation will guide them and us in ensuring that all local habitat conservation planning efforts are consistent with conservation objectives for these species.

Once a vernal pool habitat has been protected from direct filling, it is still necessary to ensure that the habitat is not rendered unsuitable for vernal pool species because of factors such as altered hydrology, contamination, nonnative species invasions, or other incompatible land uses. Even the best-designed vernal pool preserve may still be susceptible to alterations that render it unsuitable for vernal pool species. Many of the factors that cause the decline and localized extirpation of vernal pool species can be controlled through special management actions. Examples of special management actions that may be necessary to prevent further declines and loss of populations of species addressed in this rule include the following:

(1) Actions to prevent or reduce competition of vernal pool plants with invasive species. Many of the species addressed in this rule are threatened by invasion of nonnative species (CNDDB 2001). Special management actions can be taken to reduce the negative effects of such invasions. For example, grazing can be effectively used to control a variety of upland exotic plants. However, the timing and intensity of grazing is critical to its success as a management tool, and these factors should be closely monitored. Alternatively, inappropriate grazing can also pose a threat to many of the vernal pool plant species (CNDDB 2001). Prescribed burning is another management tool that may be effective in controlling nonnative plant species (Pollack and Kan 1998).

Fire must be appropriately timed, and fire frequency is important. The potential for alteration of nutrient cycling must be also considered. Other management techniques for control of invasive species include mowing, hand removal, and selective herbicide applications. Any technique employed must be carefully controlled and monitored to ensure that it does not negatively affect the vernal pool species.

(2) Actions to restore vernal pool hydrology. Alteration of natural hydrology threatens many of the species addressed in this rule (CNDDB 2001). In many cases other threats, such as the invasion of nonnative species or contamination, are facilitated by alterations of natural vernal pool hydrology. Special management actions, such as the removal of dams or other structures that artificially increase the length of vernal pool inundation, the removal of ditches that artificially drain vernal pools, or the construction of berms or reconstruction of culverts to prevent water from flowing artificially into vernal pools from adjacent areas, can be taken to restore natural vernal pool hydrology. Modification of grazing regimes may also restore natural vernal pool hydrology (Barry 1998). Monitoring of vernal pool hydrology is important to ensure that restoration actions are successful.

(3) Actions to reduce human degradation of vernal pools. Special management actions such as fencing, trail building, and posting signs can help to reduce human activities that threaten vernal pool species. These actions may reduce the damage resulting from off-road vehicle use, dumping, and vandalism that threatens many of the species addressed in this rule.

(4) Actions to restore severely degraded habitats. Active restoration of highly degraded vernal habitats may be necessary in some areas. Such restoration may involve earth-moving activities designed to restore historic pool and swale topography and to reestablish natural vernal pool hydrology (Ferren and Hubbard 1998; Black and Zedler 1998). These types of actions are extremely complex, and require diligent planning and monitoring to ensure their success. Active restoration is only recommended for seriously degraded habitats that otherwise would not maintain natural vernal pool ecosystem processes.

Critical Habitat Designation

The approximate area of critical habitat by county and land ownership is shown in Tables 1 and 2. Because many of the units of overlap due to species occurrences within the same area, the total of all critical habitat designated is much less than the sum of critical habitat areas for each species. Lands designated are under private, State, and Federal ownership and divided into 125 Critical Habitat Units. The tables provide separate columns for privately owned land subject to conservation easements or agreements and other privately owned lands. The amount of land area identified as critical habitat for vernal pool tadpole shrimp unit 15, Butte County meadowfoam unit 3, San Joaquin Valley Orcutt grass unit 2, and Contra Costa goldfields unit 3, differ from those identified in the tables due to changes in the GIS coverages used to calculate those areas. The total amount of critical habitat for all species is not affected.

Table 1. Approximate areas of critical habitat for the vernal pool crustaceans and plants in California and Oregon.

TABLE 1.—APPROXIMATE AREAS OF CRITICAL HABITAT FOR THE VERNAL POOL CRUSTACEANS AND PLANTS IN CALIFORNIA AND OREGON

	Federal lands			State/County lands			Private lands			Total lands		
	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)
Conservancy Fairy Shrimp:												
Unit 1	0	0	0	0	0	0	20,546	16,182	−4,346	20,546	16,182	−4,364
	(0)	(0)	(0)	(0)	(0)	(0)	(50,769)	(39,986)	(−10,783)	(50,769)	(39,986)	(−10,783)
Unit 2	5,187	1,307	−3,880	0	0	0	531	1	−530	5,718	1,308	−4,410
	(12,816)	(3,229)	(−9,587)	(0)	(0)	(0)	(1,313)	(4)	(−1,309)	(14,129)	(3,233)	(−10,896)
Unit 3	241	0	−241	329	161	−168	9,356	9,475	119	9,927	9,637	−290
	(596)	(1)	(−595)	(814)	(399)	(−415)	(23,119)	(23,413)	(294)	(24,529)	(23,812)	(−717)
Unit 4	0	0	0	0	0	0	603	448	−155	603	448	−155
	(0)	(0)	(0)	(0)	(0)	(0)	(1,490)	(1,106)	(−384)	(1,490)	(1,106)	(−384)
Unit 5	299	299	0	0	0	0	3	3	0	302	302	0
	(739)	(739)	(0)	(0)	(0)	(0)	(7)	(7)	(0)	(746)	(746)	(0)
Unit 6	427	3	−424	11	0	−11	63,312	53,782	−9,530	63,750	53,785	−9,965
	(1,056)	(8)	(−1,048)	(26)	(0)	(−26)	(156,443)	(132,894)	(−23,549)	(157,525)	(132,902)	(−24,623)
Unit 7 A–F	12,765	8,470	−4,295	3,096	0	−3,095	30,282	1,356	−28,926	46,142	9,827	−36,316
	(31,542)	(20,929)	(−10,614)	(7,649)	(1)	−7,648	(74,825)	(3,351)	(−71,474)	(114,016)	(24,281)	(−89,735)
Unit 8	18,042	18,042	0	0	0	0	789	789	0	18,831	18,831	0
	(44,581)	(44,581)	(0)	(0)	(0)	(0)	(1,950)	(1,950)	(0)	(46,531)	(46,531)	(0)
Species total	36,961	20,784	−16,177	3,435	162	−3,274	125,423	82,037	−43,386	165,820	102,983	−62,837
	(91,330)	(51,357)	(−39,973)	(8,489)	(400)	(−8,089)	(309,916)	(202,711)	(−107,205)	(409,735)	(254,467)	(−155,268)
Longhorn Fairy Shrimp:												
Unit 1 A–B	0	0	0	0	0	0	321	320	−1	321	320	−1
	(0)	(0)	(0)	(0)	(0)	(0)	(794)	(791)	(-3)	(794)	(791)	(-3)
Unit 2	9,413	2,604	−6,808	3,096	0	−3,096	17,308	525	−16,784	29,817	3,130	−26,688
	(23,258)	(6,435)	(−16,823)	(7,651)	(1)	(−7,650)	(42,768)	(1,297)	(−41,472)	(73,677)	(7,733)	(−65,944)
Unit 3	6,293	6,293	0	94	95	0	4,079	4,079	0	10,466	10,466	0
	(15,549)	(15,549)	(0)	(233)	(234)	(1)	(10,080)	(10,079)	(−1)	(25,862)	(25,862)	(0)
Species total	15,705	7,421	−8,284	3,191	95	−3,096	21,709	4,924	−16,785	40,605	12,440	−28,165
	(38,807)	(18,337)	(−20,470)	(7,884)	(235)	−7,649	(53,642)	(12,167)	(−41,475)	(100,333)	(30,739)	(−69,594)
Vernal Pool Fairy Shrimp:												
Unit 1 A–G	0	0	0	0	0	0	862	862	0	862	862	0
	(0)	(0)	(0)	(0)	(0)	(0)	(2,130)	(2,130)	(0)	(2,130)	(2,130)	(0)
Unit 2 A–E	0	0	0	0	0	0	911	911	0	931	931	0
	(0)	(0)	(0)	(0)	(0)	(0)	(2,251)	(2,251)	(0)	(2,251)	(2,251)	(0)
Unit 3 A–G	0	0	0	0	0	0	931	931	(0)	931	931	0
	(0)	(0)	(0)	(0)	(0)	(0)	(2,301)	(2,301	(0)	(2,301)	(2,301)	(0)
Unit 4 A–B	175	175	0	0	0	0	186	186	0	361	361	0
	(432)	(432)	(0)	(0)	(0)	(0)	(460)	(460)	(0)	(892)	(892)	(0)
Unit 5	17	17	0	0	0	0	1,832	1,468	−364	1,849	1,485	−364
	(42)	(41)	(−1)	(0)	(0)	(0)	(4,527)	(3,627)	(−900)	(4,569)	(3,668)	(−901)
Unit 6	0	0	0	175	174	−1	18,386	15,863	−2,523	18,562	16,037	−2,524
	(0)	(0)	(0)	(433)	(431)	(−2)	(45,432)	(39,198)	(−6,234)	(45,865)	(39,629)	(−6,236)
Unit 7	0	0	0	0	0	0	23,883	19,438	−4,445	23,883	19,438	−4,445
	(0)	(0)	(0)	(0)	(0)	(0)	(59,015)	(48,030)	(−10,985)	(59,015)	(48,030)	(−10,985)
Unit 8	0	0	0	0	0	0	5,760	5,130	−630	5,760	5,130	−630
	(0)	(0)	(0)	(0)	(0)	(0)	(14,233)	(12,676)	(−1,557)	(14,233)	(12,676)	(−1,557)
Unit 9	76	0	−76	0	0	0	1,380	1,131	−250	1,456	1,131	−326
	(187)	(0)	(−187)	(0)	(0)	(0)	(3,411)	(2,794)	(−617)	(3,598)	(2,794)	(−804)
Unit 10	5,187	1,307	−3,880	0	0	0	531	1	−530	5,718	1,308	−4,410
	(12,816)	(3,230)	(−9,586)	(0)	(0)	(0)	(1,313)	(3)	(−1,310)	(14,129)	(3,233)	(−10,896)
Unit 11	2,035	0	2,035	0	0	0	818	536	−282	2,853	536	−2,317
	(5,028)	(0)	(−5,028)	(0)	(0)	(0)	(2,021)	(1,324)	(−697)	(7,049)	(1,324)	(−5,725)
Unit 12	0	0	0	0	0	0	19,387	13,043	−6,344	−19,387	13,043	−6,344
	(0)	(0)	(0)	(0)	(0)	(0)	(47,905)	(32,230)	(−15,675)	47,905)	(32,230)	(−15,675)
Unit 13	6	0	−6	0	0	0	14,859	9,851	−5,009	−14,866	9,851	−5,015
	(16)	(0)	(−16)	(0)	(0)	(0)	(36,717)	(24,341)	(−12,376)	(36,733)	(24,341)	(−12,392)
Unit 14	0	0	0	630	0	−630	25,970	18,856	−7,114	26,600	18,856	−7,744
	(0)	(0)	(0)	(1,557)	(0)	(−1,557)	(64,171)	(46,593)	(−17,578)	(65,728)	(46,593)	(−19,135)
Unit 15	0	0	0	60	60	0	1,563	496	−1,067	1,624	556	−1,067
	(0)	(0)	(0)	(149)	(149)	(0)	(3,863)	(1,226)	(−2,637)	(4,012)	(1,375)	(−2,637)
Unit 16	1,015	12	−1,002	1,038	488	−550	32,858	25,754	−7,104	34,910	26,254	−8,656
	(2,507)	(31)	(−2,476)	(2,564)	(1,205)	(−1,359)	(81,190)	(63,637)	(−17,553)	(86,261)	(64,873)	(−21,388)
Unit 17	0	0	0	170	126	−44	486	503	17	656	629	−27
	(0)	(0)	(0)	(420)	(311)	(−109)	(1,201)	(1,244)	(43)	(1,621)	(1,555)	(−66)
Unit 18	0	0	0	0	0	0	7,105	5,805	−1,301	7,105	5,805	−1,301
	(0)	(0)	(0)	(0)	(0)	(0)	(17,557)	(14,343)	(−3,214)	(17,557)	(14,343)	(−3,214)
Unit 19 A–C	0	0	0	64	44	−20	3,292	3,154	−138	3,356	3,198	−158
	(0)	(0)	(0)	(157)	(108)	(−49)	(8,135)	(7,795)	(−340)	(8,292)	(7,903)	(−389)
Unit 20	299	299	0	0	0	0	3	3	0	302	302	0
	(739)	(739)	(0)	(0)	(0)	(0)	(7)	(7)	(0)	(746)	(746)	(0)
Unit 21	7	7	0	25	17	−8	25,285	19,644	−5,641	25,317	19,668	−5,649
	(17)	(17)	(0)	(61)	(41)	(−20)	(62,479)	(48,590)	(−13,889)	(62,557)	(48,649)	(−13,908)
Unit 22	3	3	0	11	0	−11	51,713	45,104	−6,609	−51,727	45,107	−6,620
	(8)	(8)	(0)	(26)	(0)	(−26)	(127,782)	(111,452)	(−16,330)	(127,782)	(111,460)	(−16,356)
Unit 23 A–G	13,943	8,470	−5,472	3,096	1	−3,095	38,872	4,944	−33,928	−55,911	13,415	−42,495
	(34,452)	(20,930)	(−13,522)	(7,649)	(2)	(−7,647)	(96,052)	(12,216)	(−83,836)	(138,153)	(33,148)	(−105,005)
Unit 24 A–B	0	0	0	0	0	0	17,231	16,606	−625	17,232	16,606	−626
	(0)	(0)	(0)	(1)	(0)	(−1)	(42,578)	(41,032)	(−1,546)	(42,579)	(41,032)	(−1,547)
Unit 25	65	65	0	0	0	0	929	929	0	994	994	0
	(161)	(161)	(0)	(0)	(0)	(0)	(2,295)	(2,295)	(0)	(2,456)	(2,456)	(0)
Unit 26 A–C	0	0	0	348	86	−263	2,845	2,981	136	3,193	3,067	−126
	(0)	(0)	(0)	(861)	(212)	(−649)	(7,030)	(7,367)	(337)	(7,891)	(7,579)	(−312)
Unit 27 A–B	2,742	3,025	283	490	1,297	808	4,610	2,803	−1,807	7,842	7,126	−716
	(6,776)	(7,475)	(699)	(1,210)	(3,206)	(1,996)	(11,391)	(6,923)	(−4,468)	(19,377)	(17,604)	(−1,773)
Unit 28	1,581	1,581	0	2	2	0	46,542	46,542	0	48,125	48,125	0

TABLE 1.—APPROXIMATE AREAS OF CRITICAL HABITAT FOR THE VERNAL POOL CRUSTACEANS AND PLANTS IN CALIFORNIA AND OREGON—Continued

	Federal lands			State/County lands			Private lands			Total lands		
	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)
	(3,906)	(3,906)	(0)	(5)	(5)	(0)	(115,004)	(115,004)	(0)	(118,915)	(118,915)	(0)
Unit 29 A–C	20,586	588	−19,998	0	118	118	20,468	20,268	−200	41,054	20,974	−20,081
	(50,868)	(1,452)	(−49,416)	(0)	(291)	(291)	(50,576)	(50,081)	(−495)	(101,444)	(51,824)	(−49,620)
Unit 30	6,293	6,293	0	94	95	0	4,079	4,079	0	10,466	10,466	0
	(15,549)	(15,549)	(0)	(233)	(234)	(1)	(10,080)	(10,079)	(−1)	(25,862)	(25,862)	(0)
Unit 31	2,236	2,237	0	0	0	0	6,163	6,163	0	8,399	8,399	0
	(5,526)	(5,527)	(1)	(0)	(0)	(0)	(15,228)	(15,228)	(0)	(20,754)	(20,755)	(1)
Unit 32	18,042	18,042	0	0	0	0	790	789	0	18,831	18,831	0
	(44,580)	(44,581)	(1)	(0)	(0)	(0)	(1,951)	(1,951)	(0)	(46,531)	(46,531)	(0)
Unit 33 A–C	0	0	0	0	0	0	2,319	0	−2,319	2,319	0	−2,319
	(0)	(0)	(0)	(0)	(0)	(0)	(5,729)	(0)	(−5,729)	(5,729)	(0)	(−5,729)
Unit 34	0	0	0	761	0	−761	958	0	−958	1,718	0	−1,718
	(0)	(0)	(0)	(1,880)	(0)	(−1,880)	(2,366)	(0)	(−2,366)	(4,246)	(0)	(−4,246)
Unit 35	0	0	0	0	0	0	97	0	−97	97	0	−97
	(0)	(0)	(0)	(0)	(0)	(0)	(239)	(0)	(−239)	(239)	(0)	(−239)
Species total	74,307	42,121	−32,186	6,963	2,507	−4,456	388,509	301,674	−86,834	469,779	344,004	−125,775
	(183,960)	(104,427)	(−79,532)	(17,206)	6,194)	(−11,012)	(948,992)	(734,480)	(−214,513	(1,150,124)	(839,460)	(−310,664)
Vernal Pool Tadpole Shrimp:												
Unit 1	17	17	0	0	0	0	1,832	1,417	−415	1,849	1,434	−415
	(42)	(41)	(−1)	(0)	(0)	(0)	(4,527)	(3,502)	(−1,025)	(4,569)	(3,543)	(−1,026)
Unit 2	6,226	6,000	−226	437	287	−151	13,783	13,867	84	20,446	20,154	−293
	(15,383)	(14,826)	(−557)	(1,081)	(709)	(−372)	(34,058)	(34,265)	(207)	(50,522)	(49,799)	(−723)
Unit 3	0	0	0	0	0	0	23,883	19,438	−4,445	23,883	19,438	−4,445
	(0)	(0)	(0)	(0)	(0)	(0)	(59,015)	(48,030)	(−10,985)	(59,015)	(48,030)	(−10,985)
Unit 4	127	36	−91	0	0	0	15,848	13,922	−1,926	15,975	13,958	−2,017
	(313)	(89)	(−224)	(0)	(0)	(0)	(39,161)	(34,401)	(−4,760)	(39,474)	(34,490)	(−4,984)
Unit 5	5,187	1,307	−3,880	0	0	0	531	1	−530	5,718	1,308	−4,410
	(12,816)	(3,230)	(−9,586)	(0)	(0)	(0)	(1,313)	(3)	(−1,310)	(14,129)	(3,233)	(−10,896)
Unit 6	0	0	0	0	0	0	526	397	−129	526	397	−129
	(0)	(0)	(0)	(0)	(0)	(0)	(1,299)	(980)	(−319)	(1,299)	(980)	(−319)
Unit 7	2,035	0	−2,035	0	0	0	818	536	−282	2,853	536	−2,317
	(5,028)	(0)	(−5,028)	(0)	(0)	(0)	(2,021)	(1,324)	(−697)	(7,049)	(1,324)	(−5,725)
Unit 8	6	0	−6	0	0	0	14,859	9,851	−5,009	14,866	9,851	−5,015
	(16)	(0)	(−16)	(0)	(0)	(0)	(36,717)	(24,341)	(−12,376)	(36,733)	(24,341)	(−12,392)
Unit 9	0	0	0	630	0	−630	28,433	18,856	−9,577	29,063	18,856	−10,207
	(0)	(0)	(0)	(1,557)	(0)	(−1,557)	(70,256)	(46,593)	(−23,663)	(71,813)	(46,593)	(−25,220)
Unit 10	130	125	−4	0	0	0	62	53	−9	192	178	−14
	(321)	(310)	(−11)	(0)	(0)	(0)	(153)	(130)	(−23)	(474)	(440)	(−34)
Unit 11	760	12	−748	1,038	488	−550	32,812	26,195	−6,617	34,610	26,695	−7,915
	(1,879)	(31)	(−1,848)	(2,565)	(1,205)	(−1,360)	(81,077)	(64,727)	(−16,350)	(85,521)	(65,963)	(−19,558)
Unit 12	0	0	0	0	0	0	603	448	−155	603	448	−155
	(0)	(0)	(0)	(0)	(0)	(0)	(1,490)	(1,106)	(−384	(1,490)	(1,106)	(−384
Unit 13	0	0	0	0	0	0	9,408	6,606	−2,802	9,408	6,606	−2,802
	(0)	(0)	(0)	(0)	(0)	(0)	(23,246)	(16,323)	(−6,923)	(23,246)	(16,323)	(−6,923)
Unit 14	10	287	277	0	0	0	448	38	−410	458	325	−133
	(24)	(709)	(685)	(0)	(0)	(0)	(1,108)	(93)	(−1,015)	(1,132)	(802)	(−133)
Unit 15	3	0	−3	11	0	−11	71,062	24,840	−46,222	71,076	24,840	−46,236
	(8)	(0)	(−8)	(26)	(0)	(−26)	(175,592)	(61,379)	(−114,213)	(175,626)	(61,379)	(−114,247)
Unit 16	13,943	15,886	1,943	3,096	0	−3,095	38,872	4,944	−33,928	55,911	20,830	−35,080
	(34,452)	(39,253)	(4,801)	(7,649)	(1)	(−7,648	(96,052)	(12,216)	(−83,836)	(138,153)	(51,470)	(−86,683)
Unit 17	85	77	−8	174	170	−4	482	483	1	740	729	−11
	(209)	(190)	(−19)	(430)	(419)	(−11)	(1,190)	(1,193)	(3)	(1,829)	(1,802)	(−27)
Unit 18	0	0	0	348	86	−263	2,845	2,981	136	3,193	3,067	−126
	(0)	(0)	(0)	(861)	(212)	(−649)	(7,030)	(7,367)	(337)	(7,891)	(7,579)	(−312)
Species total	28,612	23,830	−4,782	5,734	1,030	−4,704	266,162	151,876	−114,286	300,508	176,736	−123,772
	(82,942)	(70,678)	(−12,264)	(15,044)	(3,119)	(−11,925)	(662,872)	(385,707)	(−277,164)	(760,858)	(459,505)	(−301,353)
Butte County Meadowfoam:												
Unit 1	0	0	0	0	0	0	6,105	5,608	−497	6,105	5,608	−497
	(0)	(0)	(0)	(0)	(0)	(0)	(15,086)	(13,858)	(−1,228)	(15,086)	(13,858)	(−1,228)
Unit 2	0	0	0	0	0	0	3,508	2,413	−1,094	3,508	2,413	−1,094
	(0)	(0)	(0)	(0)	(0)	(0)	(8,667)	(5,964)	(−2,704)	(8,667)	(5,964)	(−2,704)
Unit 3	9	0	−9	0	0	0	1,687	414	−1,274	1,696	414	−1,283
	(22)	(0)	(−22)	(0)	(0)	(0)	(4,169)	(1,022)	(−3,147)	(4,191)	(1,022)	(−3,169)
Unit 4	0	0	0	0	0	0	5,011	4,230	−781	5,011	4,230	−781
	(0)	(0)	(0)	(0)	(0)	(0)	(12,382)	(10,451)	(−1,931)	(12,382)	(10,451)	(−1,931)
Species total	9	0	−9	0	0	0	16,311	12,665	−3,646	16,320	12,665	−3,655
	(22)	(0)	(−22)	(0)	(0)	(0)	(40,304)	(31,294)	(−9,010)	(40,326)	(31,294)	(−9,032)
Contra Costa Goldfields:												
Unit 1	0	0	0	0	0	0	1,067	1,067	0	1,067	1,067	0
	(0)	(0)	(0)	(0)	(0)	(0)	(2,637)	(2,637)	(0)	(2,637)	(2,637)	(0)
Unit 2	0	0	0	0	0	0	411	411	0	411	411	0
	(0)	(0)	(0)	(0)	(0)	(0)	(1,016)	(1,016)	(0)	(1,016)	(1,016)	(0)
Unit 3	0	0	0	0	0	0	240	275	34	240	275	34
	(0)	(0)	(0)	(0)	(0)	(0)	(594)	(678)	(84)	(594)	(678)	(84)
Unit 4	1,954	0	−1,954	122	0	−122	5,809	4,304	−1,505	7,885	4,305	−3,581
	(4,828)	(0)	(−4,828)	(301)	(0)	(−301)	(14,355)	(10,636)	(−3,719)	(19,484)	(10,637)	(−8,847)
Unit 5 A–B	0	0	0	0	0	0	410	353	−57	410	353	−57
	(0)	(0)	(0)	(0)	(0)	(0)	(1,014)	(872)	(−142)	(1,014)	(872)	(−142)
Unit 6	0	0	0	0	0	0	242	162	−81	242	162	−81
	(0)	(0)	(0)	(0)	(0)	(0)	(599)	(399)	(−200)	(599)	(399)	(−200)
Unit 7	0	0	0	291	40	−251	1,088	1,289	201	1,378	1,329	−49
	(0)	(0)	(0)	(718)	(99)	(−619)	(2,688)	(3,185)	(497)	(3,406)	(3,284)	(−122)

TABLE 1.—APPROXIMATE AREAS OF CRITICAL HABITAT FOR THE VERNAL POOL CRUSTACEANS AND PLANTS IN CALIFORNIA AND OREGON—Continued

	Federal lands			State/County lands			Private lands			Total lands		
	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)
Unit 8	448	287	−162	0	0	0	10	38	28	458	325	−133
	(1,108)	(709)	(−400)	(0)	(0)	(0)	(24)	(93)	(69)	(1,132)	(802)	(−331)
Unit 9	3,370	2,782	−588	2	0	−2	0	0	0	3,372	2,782	−589
	(8,326)	(6,874)	(−1,452)	(4)	(0)	(−4)	(1)	(1)	(0)	(8,331)	(6,874)	(−1,457)
Species total	5,772	3,069	−2,703	414	40	−374	9,279	7,899	−1,380	15,465	11,008	−4,457
	(14,262)	(7,582)	(−6,680)	(1,023)	(99)	(−924)	(22,928)	(19,517)	(−3,411)	(38,213)	(27,199)	(−11,014)
Hoover's Spurge:												
Unit 1	0	0	0	0	0	0	11,673	10,159	−1,514	11,674	10,159	−1,515
	(0)	(0)	(0)	(1)	(0)	(−1)	(28,844)	(25,102)	(−3,742)	(28,845)	(25,102)	(−3,743)
Unit 2	0	0	0	0	0	0	979	979	0	979	979	0
	(0)	(0)	(0)	(0)	(0)	(0)	(2,418)	(2,418)	(0)	(2,418)	(2,418)	(0)
Unit 3	5,187	1,307	−3,880	0	0	0	531	1	−530	5,718	1,308	−4,410
	(12,816)	(3,230)	(−9,586)	(0)	(0)	(0)	(1,313)	(3)	(−1,310)	(14,129)	(3,233)	(−10,896)
Unit 4	0	0	0	0	0	0	16,839	15,799	−1,041	16,839	15,799	−1,041
	(0)	(0)	(0)	(0)	(0)	(0)	(41,609)	(39,038)	(−2,571)	(41,609)	(39,038)	(−2,571)
Unit 5	0	0	0	24	17	−7	19,826	14,353	−5,473	19,850	14,370	−5,480
	(0)	(0)	(0)	(60)	(41)	(−19)	(48,989)	(35,466)	(−13,523)	(49,049)	(35,508)	(−13,541)
Unit 6	3,232	5,865	2,633	0	0	0	11,078	831	−10,247	14,310	6,696	−7,614
	(7,985)	(14,493)	(6,508)	(0)	(0)	(0)	(27,374)	(2,054)	(−25,320)	(35,359)	(16,547)	(−18,812)
Unit 7A –D	13	14	0	355	88	−267	12,007	9,424	−2,583	−12,375	9,526	−2,849
	(33)	(33)	(0)	(877)	(218)	(−659)	(29,668)	(23,286)	(−6,382)	(30,578)	(23,537)	(−7,041)
Species total	8,432	7,186	−1,246	380	105	−275	72,933	51,545	−21,388	81,744	58,836	322,908
	(20,834)	(17,756)	(−3,078)	(938)	(259)	(−679)	(180,215)	(127,368)	(−52,847)	(201,987)	(145,383)	(−56,604)
Fleshy Owl's-Clover:												
Unit 1	0	0	0	0	0	0	1,051	980	−71	1,051	980	−71
	(0)	(0)	(0)	(0)	(0)	(0)	(2,598)	(2,422)	(−176)	(2,598)	(2,422)	(−176)
Unit 2	0	0	0	0	0	0	14,131	13,640	−490	14,131	13,640	−490
	(0)	(0)	(0)	(0)	(0)	(0)	(34,917)	(33,705)	(−1,212)	(34,917)	(33,705)	(−1,212)
Unit 3 A–B	427	3	−424	11	0	−11	62,915	55,839	−7,076	63,353	55,842	−7,510
	(1,056)	(8)	(−1,048)	(26)	(0)	(−26)	(155,460)	(137,977)	(−17,483)	(156,542)	(137,985)	(−18,557)
Unit 4	5	5	0	56	23	−33	33,009	30,710	−2,299	33,071	30,738	−2,332
	(13)	(13)	(0)	(139)	(56)	(−83)	(81,565)	(75,884)	(−5,681)	(81,717)	(75,954)	(−5,763)
Unit 5	0	0	0	0	0	0	11,888	10,686	−1,202	11,888	10,686	−1,201
	(0)	(0)	(0)	(1)	(0)	(−1)	(29,374)	(26,406)	(−2,968)	(29,375)	(26,406)	(−2,969)
Unit 6 A–B	150	142	−8	174	170	−4	1,399	1,412	12	1,723	1,723	0
	(371)	(350)	(−21)	(429)	(419)	(−10)	(3,458)	(3,488)	(30)	(4,258)	(4,258)	(0)
Species total	583	150	−433	241	193	−48	124,393	113,268	−11,125	125,217	113,611	−11,606
	(1,440)	(371)	(−1,069)	(595)	(476)	(−119)	(307,372)	(279,882)	(−27,490)	309,407	280,729	(−28,678)
Colusa Grass:												
Unit 1	130	125	−5	0	0	0	62	53	−9	192	178	−14
	(322)	(310)	(−12)	(0)	(0)	(0)	(152)	(130)	(−22)	(474)	(440)	(−34)
Unit 2	94	0	−94	258	161	−96	6,801	6,878	77	7,153	7,039	−114
	(233)	(0)	(−233)	(637)	(399)	(−238)	(16,805)	(16,995)	(190)	(17,675)	(17,394)	(−281)
Unit 3	0	0	0	0	0	0	16,475	15,544	−931	16,475	15,544	−931
	(0)	(0)	(0)	(0)	(0)	(0)	(40,709)	(38,408)	(−2,301)	(40,709)	(38,408)	(−2,301)
Unit 4	0	0	0	0	0	0	35,134	28,657	−6,477	35,134	28,657	−6,477
	(0)	(0)	(0)	(0)	(0)	(0)	(86,814)	(70,810)	(−16,004)	(86,814)	(70,810)	(−16,004)
Unit 5	0	0	0	25	17	−8	19,825	14,353	−5,472	19,850	14,370	−5,480
	(0)	(0)	(0)	(61)	(41)	(−20)	(48,988)	(35,466)	(−13,522)	(49,049)	(35,508)	(−13,541)
Unit 6	427	3	−424	11	0	11	45,204	37,685	−7,519	45,642	37,688	−7,954
	(1,055)	(8)	(−1,047)	(26)	(0)	(−26)	(111,698)	(93,118)	(−18,580)	(112,779)	(93,125)	(−19,654)
Unit 7 A–B	1,422	2,927	1,505	0	0	0	6,741	2,562	−4,179	8,163	5,489	−2,674
	(3,514)	(7,232)	(3,718)	(0)	(0)	(0)	(16,656)	(6,330)	(−10,326)	(20,170)	(13,562)	(−6,608)
Species total	1,849	2,930	1,081	35	17	−18	106,904	83,257	−23,647	108,788	86,203	−22,585
	(4,569)	(7,240)	(2,671)	(87)	(41)	(−46)	(264,156)	(205,724)	(−58,432)	(268,812)	(213,005)	(−55,807)
Greene's Tuctoria:												
Unit 1	903	619	−284	0	0	0	70	70	0	972	689	−283
	(2,231)	(1,530)	(−701)	(0)	(0)	(0)	(172)	(172)	(0)	(2,403)	(1,703)	(−700)
Unit 2	0	0	0	0	0	0	11,673	10,159	−1,514	11,674	10,159	−1,515
	(0)	(0)	(0)	(1)	(0)	(−1)	(28,844)	(25,102)	(−3,742)	(28,845)	(25,102)	(−3,743)
Unit 3	0	0	0	0	0	0	979	979	0	979	979	0
–	(0)	(0)	(0)	(0)	(0)	(0)	(2,418)	(2,418)	(0)	(2,418)	(2,418)	(0)
Unit 4	0	0	0	0	0	0	299	125	−174	299	125	−174
–	(0)	(0)	(0)	(0)	(0)	(0)	(738)	(309)	(−429)	(738)	(309)	(−429)
Unit 5	5,187	1,307	−3,880	0	0	0	531	1	−530	5,718	1,308	−4,410
–	(12,816)	(3,230)	(−9,586)	(0)	(0)	(0)	(−1,313)	(3)	(−1,310)	(14,129)	(3,233)	(−10,896)
Unit 6	0	0	0	0	0	0	36,414	29,588	−6,826	−36,414	29,588	−6,826
–	(0)	(0)	(0)	(0)	(0)	(0)	(89,978)	(73,111)	(−16,867)	(89,978)	(73,111)	(−16,867)
Unit 7	427	3	−424	11	0	−11	73,269	54,008	−19,261	73,707	54,011	−19,695
–	(1,056)	(8)	−(1,048)	(26)	(0)	(−26)	(181,045)	(133,452)	(−47,593)	(182,127)	(133,460)	(−48,667)
Unit 8	0	0	0	0	0	0	13,222	11,126	−2,096	13,222	11,126	−2,096
	(0)	(0)	(0)	(0)	(0)	(0)	(32,670)	(27,491)	(−5,179)	(32,670)	(27,491)	(−5,179)
Species total	−6,517	1,929	−4,587	−11	0	−11	136,456	106,055	−30,401	142,984	107,985	−34,999
	(16,103)	(4,768)	(−11,335)	(27)	(0)	(−27)	(337,178)	(262,059)	(−75,119)	(353,308)	(266,827)	(−86,481)
Hairy Orcutt Grass:												
Unit 1	0	0	0	0	0	0	8,748	7,813	−935	8,748	7,813	−935
	(0)	(0)	(0)	(0)	(0)	(0)	(21,617)	(19,306)	(−2,311)	(21,617)	(19,306)	(−2,311)
Unit 2	0	0	0	0	0	0	979	979	0	979	979	0
	(0)	(0)	(0)	(0)	(0)	(0)	(2,418)	(2,418)	(0)	(2,418)	(2,418)	(0)

TABLE 1.—APPROXIMATE AREAS OF CRITICAL HABITAT FOR THE VERNAL POOL CRUSTACEANS AND PLANTS IN CALIFORNIA AND OREGON—Continued

	Federal lands			State/County lands			Private lands			Total lands		
	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)	Proposed hectare (acres)	Final hectares (acres)	Change hectares (acres)
Unit 3	5,187	1,307	−3,880	−0	0	0	531	1	−530	5,718	1,308	4,410
	(12,816)	(3,230)	(−9,586)	(0)	(0)	(0)	(1,313)	(3)	(−1,310)	(14,129)	(3,233)	(−10,896)
Unit 4	7	7	0	25	17	−8	25,286	19,664	−5,622	25,318	19,688	−5,630
	(17)	(17)	(0)	(61)	(41)	(−20)	(62,482)	(48,590)	(−13,892)	(62,560)	(48,649)	(−13,911)
Unit 5	0	0	0	0	0	0	9,085	9,029	−56	9,085	9,029	−56
	(0)	(0)	(0)	(0)	(0)	(0)	(22,448)	(22,311)	(−137)	(22,448)	(22,311)	(−137)
Unit 6	0	0	0	4	0	−4	15,820	14,426	−1,394	15,824	14,426	−1,398
	(0)	(0)	(0)	(10)	(0)	(−10)	(39,090)	(35,646)	(−3,444)	(39,100)	(35,646)	(−3,454)
Species total	5,194	1,314	−3,880	29	17	−12	60,449	51,912	−8,537	65,671	53,243	−12,428
	(12,833)	(3,247)	(−9,586)	(71)	(41)	(−30)	(149,368)	(128,274)	(−21,094)	(162,272)	(131,562)	(−30,710)
Sacramento Orcutt Grass:												
Unit 1	0	0	0	3	3	0	26	11	−16	29	14	−15
	(0)	(0)	(0)	(7)	(7)	(0)	(65)	(27)	(−38)	(72)	(34)	(−38)
Unit 2	0	0	0	0	0	0	8,853	6,774	−2,079	8,853	6,774	−2,079
	(0)	(0)	(0)	(0)	(0)	(0)	(21,875)	(16,738)	(−5,137)	(21,875)	(16,738)	(−5,137)
Unit 3	0	0	0	247	0	−247	15,503	14,196	−1,307	15,750	14,196	−1,554
	(0)	(0)	(0)	(610)	(0)	(−610)	(38,308)	(35,078)	(−3,230)	(38,918)	(35,078)	(−3,840)
Species total	0	0	0	250	3	−247	24,382	20,981	−3,402	24,632	20,984	−3,649
	(0)	(0)	(0)	(617)	(7)	(−610)	(60,248)	(51,842)	(−8,406)	(60,865)	(51,850)	(−9,015)
San Joaquin Valley Orcutt Grass:												
Unit 1	427	3	−424	11	0	−11	45,205	37,685	−7,521	45,643	37,688	−7,955
	(1,056)	(8)	(−1,048)	(26)	(0)	(−26)	(111,701)	(93,118)	(−18,583)	(112,783)	(93,125)	(−19,658)
Unit 2	0	0	0	0	0	0	21,495	13,012	−8,483	21,495	13,012	−8,483
	(0)	(0)	(0)	(0)	(0)	(0)	(53,114)	(32,152)	(−20,962)	(53,114)	(32,152)	(−20,962)
Unit 3	0	0	0	0	0	0	20,936	18,267	−2,669	20,936	18,267	−2,669
	(0)	(0)	(0)	(0)	(0)	(0)	(51,733)	(45,137)	(−6,596)	(51,733)	(45,137)	(−6,596)
Unit 4	0	0	0	0	0	0	3,233	3,016	−218	3,234	3,016	−218
	(0)	(0)	(0)	(1)	(0)	(−1)	(7,989)	(7,451)	(−538)	(7,990)	(7,451)	(−539)
Unit 5 A–B	150	142	−8	0	170	170	1,573	1,412	−162	1,723	1,723	0
	(370)	(350)	(−20)	(0)	(419)	(419)	(3,888)	(3,488)	(−400)	(4,258)	(4,258)	(0)
Unit 6 A–B	0	0	0	199	88	−111	7,829	6,081	−1,748	8,028	6,169	−1,859
	(0)	(0)	(0)	(491)	(218)	(−273)	(19,345)	(15,026)	(−4,319)	(19,836)	(15,243)	(−4,593)
Species total	577	145	−432	210	258	48	100,273	79,472	−20,801	101,059	79,875	−21,185
	(1,426)	(358)	−(1,068)	(518)	(637)	(119)	247,770	196,373	(−51,397)	(249,714)	(197,367)	(−52,347)
Slender Orcutt Grass:												
Unit 1 A–I	18,527	9,306	−9,221	37	0	−37	4,702	1,699	−3,003	23,266	11,005	−12,261
	(45,780)	(22,994)	(−22,786)	(92)	(0)	(-92)	(11,618)	(4,198)	(−7,420)	(57,490)	(27,192)	(−30,298)
Unit 2 A–C	33	33	0	0	0	0	5,067	4,161	−906	5,100	4,194	−905
	(81)	(81)	(0)	(0)	(0)	(0)	(12,520)	(10,282)	(−2,238)	(12,601)	(10,364)	−2,237)
Unit 3	6,226	6,005	−221	437	287	−150	13,783	13,465	−318	20,446	19,757	−689
	(15,384)	(14,839)	(−545)	(1,080)	(709)	(−371)	(34,058)	(33,272)	(−786)	(50,522)	(48,820)	(−1,702)
Unit 4	0	0	0	0	0	0	11,673	10,159	−1,514	11,674	10,159	−1,515
	(0)	(0)	(0)	(1)	(0)	(−1)	(28,844)	(25,102)	(−3,742)	(28,845)	(25,102)	(−3,743)
Unit 5 A–B	0	0	0	5	5	0	1,691	1,691	0	1,696	1,696	0
	(0)	(0)	(0)	(13)	(13)	(0)	(4,178)	(4,178)	(0)	(4,191)	(4,191)	(0)
Unit 6	0	0	0	0	0	0	8,853	6,774	−2,079	8,853	6,774	−2,079
	(0)	(0)	(0)	(0)	(0)	(0)	(21,875)	(16,738)	(−5,137)	(21,875)	(16,738)	(−5,137)
Species total	24,786	15,344	−9,442	480	292	−188	45,769	37,949	−7,820	71,035	53,585	−17,450
	(61,245)	(37,914)	(−23,331)	(1,186)	(721)	(−465)	(113,093)	(93,771)	(−19,322)	(175,524)	(132,406)	(−43,118)

Note: Table area estimates do not reflect the exclusion of National Wildlife Refuge lands, National fish hatchery lands, State lands within ecological reserves and wildlife management areas, and lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano from the final designation pursuant to section 4(b)(2) of the Act.

Table 2. Land ownership of approximate areas of critical habitat for the vernal pool crustaceans and plants in California and Oregon.

VERNAL POOL CRITICAL HABITAT—OWNERSHIP FOR ALL UNITS COMBINED

	Proposed critical habitat		Final critical habitat		Amount of change	
	Hectares	(Acres)	Hectares	(Acres)	Hectares	(Acres)
Federal:						
Air Force	6,276	(15,509)	0	(1)	−6,276	(−15,508)
Army	22,538	(55,692)	2,928	(7,234)	−19,610	(−48,458)
Other Military	258	(638)	140	(345)	−119	(−293)
BLM	12,007	(29,671)	15,155	(37,449)	3,148	*(7,778)
Bureau of Reclamation	8	(20)	8	(20)	0	(0)
Fish and Wildlife Service	22,153	(54,742)	13,394	(33,097)	−8,759	(−21,645)
Forest Service	36,901	(91,185)	29,590	(73,118)	−7,311	(−18,067)
National Park Service	60	(148)	2	(5)	−58	(−143)

VERNAL POOL CRITICAL HABITAT—OWNERSHIP FOR ALL UNITS COMBINED—Continued

	Proposed critical habitat		Final critical habitat		Amount of change	
	Hectares	(Acres)	Hectares	(Acres)	Hectares	(Acres)
Total Federal	100,203	(247,605)	61,216	(151,268)	−38,986	(−96,337)
State/County/City:						
City/County Park	2	(4)	0	(0)	−2	(−4)
CDFG	5,529	(13,662)	1,363	(3,369)	−4,165	(−10,293)
State	79	(194)	0	(0)	−79	(−194)
State Land Commission	260	(642)	318	(787)	59	*(145)
State Parks & Recreation	1,447	(3,575)	17	(41)	−1,430	(−3,534)
Total State/County/City	7,316	(18,077)	1,698	(4,197)	−5,617	(−13,880)
Private (Conservation):						
CDFG Administered	33,873	(83,701)	390	(963)	−33,483	(−82,738)
Other Conservancy	453	(1,120)	0	(0)	−453	(−1,120)
TNC ** Owned	8,844	(21,853)	7,687	(18,995)	−1,157	(−2,858)
TNC Easement	17,383	(42,954)	16,676	(41,207)	−707	(−1,747)
WRP ** Easement	688	(1,699)	617	(1,525)	−70	(−174)
Total Private (Conservation)	61,240	(151,327)	25,370	(62,690)	−35,870	(−88,637)
Private (All Other)	502,972	(1,242,866)	418,012	(1,032,489)	−84,960	(−209,851)
Grand Total	671,730	(1,659,875)	502,488	(1,241,145)	−169,242	(−418,027)

* Increase in acreage shown for these categories is due to use of updated ownership data for final critical habitat calculations. Updated data was received after proposed critical habitat calculations had been completed.

** TNC = The Nature Conservancy; WRP = Wetlands Reserve Program

Note: Table area estimates do not reflect the exclusion of National Wildlife Refuge lands, National fish hatchery lands, State lands within ecological reserves and wildlife management areas, and lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano from the final designation pursuant to section 4(b)(2) of the Act.

Description of Species Specific Criteria and Critical Habitat Units

As discussed in the''Exclusions Under Section 4(b)(2) of the Act'' section of this final rule, we have excluded from the final designation National Wildlife Refuge lands, National fish hatchery lands, State wildlife areas and ecological reserves, as well as all critical habitat units in the following California counties: Butte, Madera, Merced, Sacramento, and Solano. The descriptions below are for the units entirely or partially included in the final critical habitat designation. The descriptions, including acreage of units, do not necessarily reflect all of the subsequent exclusions of areas pursuant to section 4(b)(2) of the Act in the final designation. Please refer to that section of the rule for additional discussion of areas excluded from the final designation.

Except where otherwise noted, all units contain known occurrences of the species in question, as well as both of the PCEs listed above, and at least one of the specific PCEs of the species (*e.g.*, involving specific soil types, ponding depths). Each unit was chosen for its ability to advance at least one of the conservation criteria listed above.

Conservancy Fairy Shrimp

Most occurrences of Conservancy fairy shrimp are limited to large clay-bottomed pools that are rare within the vernal pool landscapes within California (Vollmar 2002). Helm (1998) observed that most Conservancy fairy shrimp occurrences were on Anita, Pescadero, or Peters Clay soils. Conservancy fairy shrimp are typically found in turbid and large ((0.4 ha to 0.8 ha)(1 to 2 ac)) to very large ((35 ha (88 ac)) vernal pools (Helm and Vollmar 2002). However, the pools inhabited by conservancy fairy shrimp near the Montezuma Hills in Solano County and in Butte County are relatively small and have a low turbidity (Vollmar 2002). The species is found in large playa pools on Tuscan or Mehrten geologic formations and on Basin Rim landforms in Tehama, Merced, and Solano Counties (Helm 1998) on various soil types. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Smith and Verrill 1998). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary by location (Holland and Dain 1990). The Vina Plains area in Tehama County supports occurrences of the species within numerous large pools throughout the area (Eriksen and Belk 1999; Helm 1998; Helm and Vollmar 2002). The pools in the Sacramento National Wildlife Refuge area in Glenn and Colusa Counties as well as in parts of the San Luis National Refuge Complex in Merced County are associated with alkaline sink areas and tend to be higher in pH and salinity than in other pools where the species is found. The primary constituent elements of critical habitat for Conservancy fairy shrimp are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for Conservancy fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, including but not limited to large playa vernal pools often found on basin rim landforms and alkaline soils, but which are dry during the summer and do not necessarily fill with water every year; and

(ii) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes.

These features contribute to the filling and drying of the vernal pool and

maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

Unit 1, Vina Plains Unit, Butte and Tehama Counties (41,733 ac (16,890 ha))

This unit contains vernal pools found on Anita clay and Tuscan loam soils (EPA 1994; Holland 1998; Tehama County 1999; USDA 2001), and represents the northern extent of Conservancy fairy shrimp range. Conservancy fairy shrimp in this area occupy vernal pools that are classified as Northern Hardpan by Sawyer and Keeler-Wolf (1995) and occur on the Tuscan, Red Bluff, and Riverbank geologic formations. Within this unit vernal pools occur in complexes with a range of pool sizes, from over several acres (hectares) to less than a 0.1 ac (500 m^2), in areas of hummocky ground on old terraces above recent river flood plains below the foothills (Alexander and Schlising 1997; Keeler-Wolf *et al.* 1998). The unit is essential to ensure the conservation of the species in general, as well as in the northern extent of its range (criterion 1). It is also essential to the conservation of the ecological distribution of the species, because of the wide range of occupied pool sizes and because the combination of soils, geologic formations, and pool type is not otherwise well represented for the species (criterion 2). The unit is also important because it includes relatively undisturbed, hydrologically intact vernal pool habitats that will likely continue to support natural vernal pool ecosystem processes and meet the appropriate habitat conditions for Conservancy fairy shrimp (criterion 4), and because it provides seasonal habitat for waterfowl and other migratory bird species that aid in the dispersal of Conservancy fairy shrimp among vernal pools within the unit, as well as between other habitats across the species range (criterion 3).

The majority of the lands included within this unit are privately owned. This unit contains The Nature Conservancy's (TNC) Vina Plains preserve as well as other TNC lands 5,660 ac (2,264 ha) and conservation easements 10,870 ac (4,348 ha). The Natural Resource Conservation Services (NRCS) also holds Wetlands Reserve Program (WRP) conservation easements or agreements on 142 ac (57 ha).

The Vina Plains Unit extends from south of Deer Creek to north of Rock Creek and the Chico Airport near the City of Chico. State Highway 99 bisects this unit. The western boundary generally parallels the Southern Pacific Railway line. The eastern boundary of this unit extends to the boundary of the East Red Bluff watershed.

Unit 6, Merced Unit, Merced and Mariposa Counties (132,902 ac (53,785 ha))

This unit contains Conservancy fairy shrimp occurrences within large playa vernal pools found on Raynor Cobbly clay soils on the Mehrten Formation (EIP Associates 1999; CNDDB 2001). This soil and geologic formation combination is not represented by any of the other units (criterion 2). The Merced Unit encompasses the largest block of pristine, high-density vernal pool grasslands remaining in California (Vollmar 2002). The relatively undisturbed, hydrologically intact condition of the unit increases the likelihood that it will continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for Conservancy fairy shrimp (criterion 4). The Conservancy fairy shrimp occurrence at the Flying M Ranch is already being managed through a conservation easement with TNC that conserves over 5,000 ac (2,023 ha) of vernal pool and upland habitat (criterion 4). Land ownership within the unit includes approximately 8 ac (3 ha) of Federal lands and TNC has a total of 11,283 ac (4,513 ha) of conservation easements within this unit.

A majority of the vernal pool habitat in the Merced Unit is in eastern Merced County. The eastern edge of the unit overlaps into western Mariposa County, and in the south, it extends to Deadman Creek. The northern boundary parallels the Merced River. The unit is located east of Highway 99 and the City of Merced, Planada, and Le Grand. The eastern boundary extends into the low elevation foothills of the Sierra Nevada.

Unit 8, Ventura County Unit, Ventura County (46,531 ac (18,831 ha))

The Ventura County Unit is located in the north-central portion of Ventura County. With the exception of 1,951 ac (790 ha) that are privately owned, all other land within this unit occurs within the Los Padres National Forest. Vernal pool fairy shrimp and Conservancy fairy shrimp co-occur at relatively high-elevation (5,500 ft (1,700 m)) forested sites within this unit. This combination of attributes is ecologically unique because these species normally occur at much lower elevations in grassland habitat. The critical habitat perimeter encompasses an area that is known to contain vernal pool and Conservancy fairy shrimp and isolated pools that provide habitat for both species. Few fairy shrimp surveys exist for this unit. However, listed fairy shrimp probably occur at several additional locations with suitable ephemeral aquatic habitat. A further potential benefit of designating this unit is that it may help to promote efforts to identify and proactively manage such locations, which are not typically associated with these invertebrates. The Ventura County Unit is essential for the conservation of Conservancy fairy shrimp because it contains high elevation ephemeral aquatic environments that are rarely associated with fairy shrimp (criterion 2). This unit also represents the extreme southern end of the species range, and is 124 mi (200 km) from other species occurrences in the Great Central Valley (criterion 1).

Longhorn Fairy Shrimp Criteria

Longhorn fairy shrimp occurrences are highly disjunct and scarce within the geographic range in which they occur. There are fewer areas in which this species is known to occur than any other listed vernal pool crustacean. The specific pool characteristics that determine suitability for longhorn fairy shrimp reproduction and growth are not well understood. We identified critical habitat areas essential to the conservation of longhorn fairy shrimp in three areas in which it is known to occur. In determining areas that are essential to conserve longhorn fairy shrimp, we used the best scientific and commercial data available. Longhorn fairy shrimp occurrences are known from Contra Costa County to San Luis Obispo County with an elevational variation of near 15 m (50 ft) to near 600 m (2,000 ft). A broad distribution of longhorn fairy shrimp across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species range. The vernal pool types and soils associated with the three general areas of concentration of longhorn fairy shrimp differ greatly across the geographic range of the species and leads to different species compositions and environmental conditions between longhorn fairy shrimp occurrences. Providing for a mosaic of habitat types both between and among vernal pool species is essential because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992; Fugate 1998; Gonzales *et al.* 1996; Ikeda and Schlising 1990; Noss *et al.* 2002a, Platenkamp 1998; Zedler *et al.* 1979). The Altamont Pass subunits (unit 1abc)

support occurrences of the species within clear depression pools in sandstone outcrops (Eriksen and Belk 1999; EBRPD 2001; CNDDB 2002). Midway in the species' range, the alkaline pools supporting longhorn fairy shrimp are found on Edminster loam and Turlock sandy loam. In the species' southern range, they are found on shallow alkaline Northern Claypan type vernal pools within a valley saltbush scrub matrix. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions which vary upon location (Holland and Dain 1990). The primary constituent elements of critical habitat for longhorn fairy shrimp are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for longhorn fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, including but not limited to, large playa vernal pools often on basin rim landforms and alkaline soils, but which are dry during the summer and do not necessarily fill with water every year; and

(ii) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

Unit 1, Altamont Hills Unit A and B, Contra Costa and Alameda Counties (791 ac (320 ha))

This unit supports occurrences of the species within clear depression pools in sandstone outcrops (Eriksen and Belk 1999; EBRPD 2001; CNDDB 2002). The essential habitat for the species occurs in sandstone rock outcroppings with the pools sometimes being less than a meter (3 ft) across. This is a unique habitat for longhorn fairy shrimp, and helps to maintain a diversity of habitats for the species (criterion 2). The Altamont Hills Unit is also an important area for the species because it represents the northern limit of its range, and is one of only three locations where the species is known to occur (criterion 1).

This unit is located in Altamont Hills north and northeast of the City of Livermore, and consists of two subunits, both near the Contra Costa and Alameda County line. Subunit A is located in Contra Costa County directly north of the Alameda County line near the Vasco Caves. Subunit B is located directly in Alameda County just south of the Contra Costa County line in the vicinity of Brushy Peak. This unit is located primarily on East Bay Regional Park District and Contra Costa Water District land.

Unit 3, Carrizo Plain Unit, San Luis Obispo, Kern, and Monterey Counties (10,466 ha (25,862 ac))

This unit contains occurrences of the species living within Northern Claypan type vernal pools as described by Sawyer and Keeler-Wolf (1995) (CNDDB 2001). Longhorn fairy shrimp in the Carrizo Unit are found in shallow alkaline vernal pools within a valley saltbush scrub matrix. These ecological characteristics are not represented by the other units (criterion 2). The Carrizo Plain Unit also represents the southern extent of the range of longhorn fairy shrimp (criterion 1).

This unit is located in the vicinity of California Valley and Soda Lake. State Highway 58 is located north of the unit. Most of the habitat is east of Soda Lake Road. To the east, the unit is bordered by the San Andreas Rift Zone. The Carrizo Plain Unit contains portions of the Carrizo Plain National Monument administered by the BLM, TNC, and the CDFG. The BLM lands within the unit total approximately 15,549 ac (6,220 ha), and CDFG lands total approximately 234 ac (95 ha). Other vernal pool habitats in the unit are located on private land.

Vernal Pool Fairy Shrimp

Vernal pool fairy shrimp are distributed across a large geographic range from southern Oregon to southern California (Eriksen and Belk 1999). Although the habitat of vernal pool fairy shrimp is highly fragmented and occurrences are isolated from each other by varying degrees across the species' range, the distribution of remaining extant occurrences is somewhat evenly spread throughout its range. Vernal pool fairy shrimp occur in a wide variety of habitat types from the Agate Desert area in southern Oregon, to throughout the Sacramento and San Joaquin valleys, the central Coast Range, and into Riverside County, California. Although some of the habitat characteristics of the species are known, specific pool characteristics that determine suitability for vernal pool fairy shrimp hatching, growth, and reproduction are not well understood. Vernal pool fairy shrimp occurrences are known to occur in eight general areas of concentration on basin rim, low terrace, high terrace, volcanic mudflow, valley floor, alkaline playa, and coastal mountain landforms. The elevational differences in the distribution of vernal pool fairy shrimp range from near 8 m (25 ft) in the Central and Sacramento Valleys to near 150 m (500 ft) in Shasta County. A broad distribution of vernal pool fairy shrimp across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species' range.

The vernal pool types and soils associated with the eight general areas of concentration of vernal pool fairy shrimp differ greatly across the geographic range of the species and lead to different species compositions and ecological conditions between vernal pool fairy shrimp occurrences. Providing for a mosaic of habitat types both between and among vernal pool species is essential because it would include the full extent of the physical and environmental conditions for the species (Barclay and Knight 1984; Bauder and McMillan 1998; Fugate 1992, 1998; Gonzales *et al.*1996; Noss *et al.* 2002a; Noss *et al.* 2002b; Platenkamp 1998; Zedler *et al.* 1979).

Vernal pool fairy shrimp are usually found in vernal pools (79%), although they are sometimes found in a range of natural and artificially created ephemeral habitats such as alkali pools, seasonal drainages, stock ponds, vernal swales, and rock outcrops (Vollmar 2002). Vernal pool fairy shrimp are most frequently found in small ((<200 m^2)(<2,125 ft^2)) and shallow ((mean of 5 cm)(2 in)) pool habitats; however, this species can be found in large (44,534 m^2)(480,967 ft^2) and very deep (122 cm) (48 in) pool habitats as well (Helm and Vollmar 2002). The landform associations for the vernal pool fairy shrimp include alluvial fans, bedrock, bedrock escarpments, basin rim, floodplain, high terrace, stream terrace, volcanic mudflow, and low terrace formations (Helm 1998). The soils that contain occurrences of vernal pool fairy shrimp in the delineated units vary significantly throughout the species' range. In the north, the rare Northern Mudflow formation underlies vernal pools in Shasta and Tehema Counties.

Tehema and Butte Counties contain Northern Basalt Flow vernal pools that are limited to ancient terraces and hilltops that comprise some of the oldest geologic formations in California. Northern Volcanic Mudflow vernal pools are delineated in Butte and Yuba Counties. Throughout the Central Valley, the habitat ranges from high terrace landforms to claypan and hardpan pool types. Northern Basalt Flow vernal pools are found in Fresno County in the low elevation foothills. In the Suisun Marsh area, vernal pool fairy shrimp are found in the saline-alkaline transition zone. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions which vary upon location (Holland and Dain 1990). The primary constituent elements of critical habitat for vernal pool fairy shrimp are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for vernal pool fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, including but not limited to Northern Hardpan, Northern Claypan, Northern Volcanic Mud Flow, and Northern Basalt Flow vernal pools formed on a variety of geologic formations and soil types, but which are dry during the summer and do not necessarily fill with water every year; and

(ii) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

Oregon

Vernal pool fairy shrimp is the only species addressed in this final rule that occurs in Oregon. Four units in Oregon are designated as essential to the conservation of vernal pool fairy shrimp, and there are 29 units in California. The Oregon units occur approximately 200 km (125 mi) north of the nearest unit designated for this species in California. We identified critical habitat areas essential to the conservation of vernal pool fairy shrimp to reflect the species geographic distribution and varying habitat types and species associations across its range. Maintaining vernal pool fairy shrimp across their full geographic distribution would make the species less susceptible to environmental variation or negative impacts associated with human disturbances or natural catastrophic events across the species entire range at any one time (Grosberg 2002, Helm 1998; Hunter 1996, New 1995, Primack 1993; Redford and Richter 1999; Rossum *et al.* 2001). Variation in environmental conditions such as precipitation amount, precipitation timing, and temperature, influence vernal pool species including hatching and reproduction of vernal pool fairy shrimp from year to year (Eriksen and Belk 1999, Grosberg 2002, Helm 1998, Helm and Vollmar 2002, Service 1994c, Simovich 1998).

Unit 1A, B, C ,D, E, F, and G, North Agate Desert Unit, Jackson County (2,130 ac (862 ha))

This unit consists of seven subunits, all located to the north of Little Butte Creek. This unit represents the northern limit of the species' distribution (criterion 1). It is of sufficient size to sustain the natural ecosystem processes (*e.g.*, fires) that have historically influenced vernal pool habitat, and is separated from the nearest other unit designated for Oregon, Unit 4, by over 2 mi (3.2 km). Three of the subunits are west of the Rogue River, and the remaining four are to the east. All but one of these subunits are located to the south of U.S. Route 234 (Sam's Valley Highway). The one remaining unit is located to the east of the Rogue River, about 1.5 mi (2.4 km) north of the confluence with Reese Creek.

Unit 2A, B, C, D, and E, White City East Unit, Jackson County (2,251 ac (911 ha))

This unit consists of five subunits, located east of U.S. Route 62 (Crater Lake Highway) and south and southeast of Dutton Road. This unit provides the easternmost extent of the species' range in Oregon (criterion 1). It represents a significant component of the species' original range in the State and is of a sufficient size to sustain the natural ecosystem processes (*e.g.*, fires) that have historically influenced vernal pool habitat (Borgias 2003). The largest and easternmost of the subunits occurs just to the east and north of Agate Lake. It is separated by more than 1 mi (1.6 km) from Unit 3, White City West, and by approximately 3.5 mi (5.6 km) from the North Agate Desert Unit.

Unit 3A, B, and C, White City West Unit, Jackson County (2,301 ac (931 ha))

This unit consists of three subunits, located west of Agate Road, south of the Rogue River, and east of Bear Creek. This unit contains the least fragmented intact examples of the original Agate Desert mounded vernal pool grassland habitat (criterion 3). It is of sufficient size to sustain the natural ecosystem processes (*e.g.*, fires) that have historically influenced vernal pool habitat; it is separated from the White City East Unit by more than 1 mi (1.6 km) and from the Table Rocks Unit by over 1.5 mi (2.4 km).

We believe that, taken together, the designated Agate Desert units (Units 1–3) comprise a functional vernal pool complex consisting of vernal pools, mounded grassland and associated uplands, where natural processes, including connectivity, function within or near the natural range of variability. Each of the three designated Agate Desert units is essential to the conservation of vernal pool fairy shrimp in the Agate Desert.

Unit 4A and B, Table Rocks Unit, Jackson County (892 ac (361 ha))

This unit consists of two subunits, located on two flat-topped mesas known as Upper and Lower Table Rocks, situated north and west of the Rogue River. These rimrock features are remnants of ancient lava flows that filled portions of the Rogue River nearly 10 million years ago (BLM 1998). Subsequent erosion of softer geologic layers has left these harder andesite (volcanic rock) formations rising some 800 ft (245 m) above the present Rogue Valley. Vernal pools on the Table Rocks differ from those of the Agate Desert, in that they are formed over an impervious layer of bedrock. This unit represents a unique habitat for vernal pool fairy shrimp in Oregon (criterion 2). The Table Rocks Unit is disjunct from the North Agate Desert Unit by over 2 mi (3.2 km), and from the White City West Unit by approximately 1.5 mi (2.4 km).

California

Unit 5, Redding Unit, Shasta County (3,666 ac (1,485 ha))

This unit contains the largest intact vernal pool habitat in the Sacramento Valley and represents the northern portion of vernal pool fairy shrimp's range in California (criteria 1 and 4).

Occurrences of the species (CNDDB 2002) within vernal pools mapped by Holland (1998) are found on old alluvial terraces above the Sacramento River and often on Redding and Corning soil complexes (Shasta County 2001). Generally these pools are small in size, although the Stillwater Plains area supports unique pools that are several acres in size.

Most of the land included within this unit is privately owned. The BLM owns 41 ac (17 ha) within this unit, and 130 ac (52 ha) of private land is protected under conservation easement or agreement as part of the WRP. The Stillwater Plains Conservation Bank, specifically established to contribute to the recovery of vernal pool fairy shrimp, is located within this unit, thereby increasing the likelihood that the unit will persist (criterion 4). The City of Redding and other local and State planning organizations are currently developing an HCP to provide for the conservation of vernal pool fairy shrimp. This unit would provide an area where conservation efforts for vernal pool fairy shrimp could take place.

This unit is located in the area east of the Redding Municipal Airport between Airport Road to the west and Deschutes Road to the east. The unit extends to Dersch Road in the south and towards Lassen Park Highway in the north. This unit comprises a portion of the Stillwater Plains.

Unit 6, Red Bluff Unit, Tehama County (39,629 ac (16,038 ha))

This unit contains vernal pools formed on alluvial terraces west of the Sacramento River and associated with Newville/Corning and Redding/Corning soil complexes (USDA 2001) exhibiting well-developed mima mound topography. The vernal pools within this unit are generally small and may not be inundated long enough to support other longer-lived vernal pool species.

This unit contains several large (*e.g.*, over 10,000 ac (4,068 ha)) vernal pool habitat complexes. These areas are relatively undisturbed, hydrologically intact vernal pool habitats that will likely continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool fairy shrimp (criterion 4). This unit also provides essential habitat for migratory waterfowl that aid in the dispersal of vernal fairy shrimp and other vernal pool crustacean cysts (criterion 3).

The majority of the lands included within this unit are privately owned, although CDFG owns 430 ac (174 ha) within this unit. This unit also contains large private conservation areas established specifically to contribute to the recovery of vernal pool fairy shrimp and compensate for the loss of vernal pool habitat, including the 5,000-ac (2,023-ha) Tehama Fiber Farm mitigation area (criterion 4). CDFG's Thomes Creek Ecological Reserve is also located within this unit.

This unit extends from southwest of Red Bluff at Red Bank Creek south to Thomes Creek. The eastern boundary includes the vernal pool habitat from the Southern Pacific Railroad near Coyote Creek south paralleling Interstate 5 to Thomes Creek.

Unit 7, Vina Plains Unit, Tehama and Butte Counties (48,588 ac (19,663 ha))

This unit contains Northern Volcanic Mudflow vernal pools. These pools are generally small and tend to be inundated for relatively short periods of time. Vernal pool fairy shrimp are also found within larger vernal pools forming on hardpans within this unit. These pools tend to be larger and longer lasting than Northern Volcanic Mudflow pools, providing a variety of habitats available for the species to expand and contract in size and place over time.

The pool types within this unit maintain the diversity of habitats in which vernal pool fairy shrimp are known to occur and provide relatively undisturbed, hydrologically intact vernal pool habitats that will likely continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool fairy shrimp (criterion 4). This unit also provides habitat for migratory waterfowl that aid in the dispersal of vernal pool fairy shrimp and other vernal pool crustacean cysts (criterion 3).

The majority of the lands included within this unit are privately owned. This unit contains TNC's Vina Plains preserve as well as other TNC lands (5,660 ac (2,264 ha)) and conservation easements (10,870 ac (4,348 ha)), thereby increasing the likelihood that the habitat will persist (criterion 4). Other ownership within this unit includes 142 ac (57 ha) of private land protected under conservation easement or agreement under the NRCS's WRP.

This unit is located in the northeastern portion of the Sacramento Valley from Deer Creek in Tehama County to Chico in Butte County. The unit extends south and east of the Sacramento River paralleling the low elevation foothill region of the Sierra Nevada and represents the northeastern extent of vernal pool fairy shrimp's range in California.

Unit 8, Orland Unit, Tehama County (12,676 ac (5,130 ha))

This unit contains vernal pools formed on alluvial terraces of Northern Hardpan formations west of the Sacramento River and associated with Anita clay and Tuscan loam soils (USDA 1994). These vernal pools are generally small and exhibit well-developed mima mound topography.

This unit contains large vernal pool habitat areas in the northwestern portion of the range of vernal pool fairy shrimp (criterion 1). These areas provide relatively undisturbed, hydrologically intact vernal pool habitats that will likely continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool fairy shrimp (criterion 4).

This unit extends from the Tehama/Glenn County border in the south, west of Ingrahm Road and east of the Black Butte Reservoir, to the vicinity of Rice Creek in the north. It also contains a Pacific Gas and Electric pipeline mitigation area established specifically for the conservation of vernal pool fairy shrimp.

Unit 11, Beale Unit, Yuba County (1,324 ac (536 ha))

This unit is adjacent to Beale AFB which contains large, relatively undisturbed vernal pool grassland habitats and an unusual diversity of vernal pool habitat types supporting vernal pool fairy shrimp (Jones and Stokes 1997b; Platenkamp 1998; CNDDB 2001; Jones and Stokes 2002). Vernal pool fairy shrimp within the area are found throughout several large vernal pool complexes of which this unit is a part. These complexes occur on four major geologic formations: the Modesto Formation, the Riverbank Formation, the Laguna Formation, and the Mehrten Formation (Platenkamp 1998). Different geologic formations provide a diversity of habitats for vernal pool fairy shrimp primarily through their effects on pool size and depth (Helm 1998; Platenkamp 1998). The unit, therefore, represents an important subsection of the ecological diversity of the species (criterion 2).

The critical habitat boundary identified in the proposed rule included a portion of Beale AFB. Since the portion of land within the base has been excluded based on the benefits of exclusion versus benefits of inclusion, this unit only covers those areas adjacent to the base which provide the necessary habitat characteristics to support the species. All the lands within this unit are privately owned. This unit is found east of Yuba City and

State Highway 65, generally south of Hammonton Road and north of South Beale Road and 6th Street adjacent to Beale AFB.

Unit 12, Western Placer County Unit (32,230 ac (13,043 ha))

The Western Placer Unit contains numerous occurrences of the species (CNDDB 2002) within functionally intact vernal pool complexes. Vernal pool fairy shrimp within this unit occur in both Northern Hardpan and Northern Volcanic Mudflow vernal pools as described by Sawyer and Keeler-Wolf (1995). This unit also supports vernal pool fairy shrimp found in vernal pools on Exchequer soils on the Mehrten geologic formation, a rare type of Northern Volcanic Mudflow vernal pool which has been reduced to only a few acres within Placer County (criterion 2). The pools are relatively short-lived and do not provide habitat for most other species of fairy shrimp (CNDDB 2002).

This unit includes a large number of conservation areas established specifically to contribute to the recovery of vernal pool fairy shrimp, and partly established through conservation efforts under section 7 of the Act. It is, therefore, more likely to maintain its occupied habitat over time (criterion 4). These protected areas include the Ahart Preserve, one of the few remaining examples of Northern Volcanic Mudflow vernal pools in the region (criterion 2), as well as the Orchard Creek Conservation Bank. This conservation bank was established for the protection of vernal pool fairy shrimp, and to compensate for the loss of thousands of acres of vernal pool grassland habitats throughout Placer and Sacramento Counties. Additional smaller conservation areas in this unit are located within the cities of Lincoln and Roseville, and in Placer County. Approximately 20 percent of all mitigation areas established for the long-term protection of vernal pool fairy shrimp are found within this unit. Placer County is currently developing a NCCP/HCP for the conservation of vernal pool fairy shrimp in this area. A WRP easement of 157 ac (63 ha) for the protection of wetland resources occurs within this unit.

The Western Placer Unit contains 70 percent of the remaining vernal pool habitats in Placer County. TNC identified this area as one of the outstanding vernal pool sites remaining in the Sacramento Valley (criterion 4). This unit generally occurs in western Placer County immediately north of the Sacramento County line, north of the City of Roseville, and northeast of the City of Rocklin. The northern boundary occurs just north of the City of Lincoln. This unit occurs mostly west of State Highway 65.

Unit 17, Napa River Unit, Napa and Sonoma Counties (1,554 ac (629 ha))

The Napa River unit represents the western extent of the species' range (criterion 1). This unit represents the only area where vernal pool fairy shrimp occur in vernal pool habitats forming a transition zone with tidal marshes (criterion 2). The boundaries of this unit were designed to include vernal pool complexes mapped by Holland (1998) and within the Fagan Marsh Ecological Area owned by CDFG (901 ac (420 ha)).

The Napa River parallels the western boundary of this unit. This unit is located on private and CDFG land, including the Napa-Sonoma Marsh and Fagan Marsh Wildlife Areas. Most of this unit is situated south and southwest of the City of Napa, primarily west of Highway 29, south of Highway 12, and east of Highway 121. This unit forms a narrow strip following the northwestern banks of the Napa River and extending westward along Hudeman and Schell sloughs.

Unit 18, San Joaquin Unit, San Joaquin County (14,343 ac (5,805 ha))

This unit contains vernal pool habitats identified by Holland (1998) and San Joaquin County (1998) that support populations of vernal pool fairy shrimp (CNDDB 2002) found within Northern Volcanic Mudflow vernal pools on the Laguna geologic formation, as well as high terrace pools on the Valley Springs geologic formation. The Northern Volcanic Mudflow vernal pools tend to be short-lived, and are a relatively rare habitat type for vernal pool fairy shrimp (criterion 2). This unit contains the largest vernal pool complex remaining in San Joaquin County and the southern Sacramento Valley (criterion 1).

This unit occupies the area from the Calaveras River south to Duck Creek. The eastern boundary extends to near Valley Springs at the intersection of State routes 12 and 26. The western boundary extends to near Tully Road east of the City of Lodi.

Unit 19A, B, and C, Altamont Hills Unit, Contra Costa, and Alameda Counties (7,902 ac (3,198 ha))

This unit contains vernal pool habitats mapped by Holland (1998) and East Bay Regional Parks District (2001) supporting vernal pool fairy shrimp occurrences identified by CNDDB (2002) within unique sandstone outcrops. These habitats include very small (less than 3.3 ft (1 m) in diameter) clear water depression pools in sandstone outcrops which provide the necessary inundation to support vernal pool fairy shrimp (Eriksen and Belk 1999). The unit represents the only known location that supports vernal pool fairy shrimp within sandstone outcrop pools (criterion 2) (Eriksen and Belk 1999).

The unit is comprised of three subunits in the general vicinity of Mount Diablo and Morgan Territory Regional Park. The unit primarily consists of private land, with 108 ac (44 ha) owned by the State, and an additional 711 ac (288 ha) administered by the CDFG for conservation purposes.

The unit lies north of Corral Hollow Road, west of Clifton Court Forebay, east of the City of Danville, southeast of Concord, and south of Antioch. It includes vernal pool habitat within the Altamont Hills, around the northern and eastern boundaries of the City of Livermore, and east of the Altamont Hills and west of Clifton Court Forebay.

Unit 21, Stanislaus Unit, Stanislaus and Merced Counties (48,599 ac (19,668 ha))

This unit contains occurrences of the species within large, relatively intact, and contiguous vernal pool complexes ranging from the floor of the valley to the low-elevation foothills (Holland 1998; CNDDB 2001). These areas are essential to the conservation of vernal pool fairy shrimp because they provide relatively undisturbed, hydrologically intact vernal pool habitats that will likely continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool fairy shrimp (criterion 4). This unit contains vernal pool fairy shrimp living within hardpan pools that occur on soils of alluvial fans and terraces forming numerous small pools and swales on mima mound topography. Soils supporting these vernal pools are typically older than those of the alluvial terraces in the Sacramento area.

The Stanislaus Unit is in the northern portion of the chain of vernal pools that runs through the southern Sierra Nevada foothills, within the Southern Sierra Foothill vernal pool region described by Keeler-Wolf *et al.* (1998). This vernal pool region contains 35 percent of all remaining vernal pool habitat in the Central Valley, and is extremely important to the conservation of vernal pool fairy shrimp and other vernal pool species (criterion 1 and 2). Land ownership within this unit includes the BLM (7 ha (17 ac)) and California State Parks (61 ac (25 ha). The well-known Hickman vernal pool complex is located within this unit as well as Hickman Pool, one of the largest

vernal lakes in California, at more than 300 ac (121 ha) (Medeiros 2000).

The Stanislaus Unit is located in the southeast corner of Stanislaus County and the northeast corner of Merced County. It lies between the Tuolumne River and the Merced River. The Mariposa County line is located east of the unit. Turlock Lake and Dawson Lake are adjacent to the northern boundary. County Road J9 and the High Line Canal are west of the unit.

Unit 22, Merced Unit, Merced and Mariposa Counties (111,459 ac (45,108 ha))

This unit encompasses the largest block of pristine, high density vernal pool grasslands supporting the species remaining in California (criterion 4) (Holland 1998; Vollmar 1999; CNDDB 2001). There are more documented occurrences of vernal pool fairy shrimp in this unit than any other area throughout the species range, implying it contains ecological features that are unusually supportive of vernal pool fairy shrimp populations (criterion 2) (CNDDB 2002). Almost 15 percent of all remaining vernal pool habitats in the Central Valley are located within this unit (criterion 1) (Holland 1998).

The Merced Unit is located midway in a chain of vernal pool complexes that straddles the valley floor and the foothills of the southern Sierra Nevada. Forty percent of vernal pool habitats in the Southern Sierra Foothill vernal pool region are found within this unit (criterion 1). This unit helps to maintain connectivity between vernal pool fairy shrimp habitats on the valley floor and habitats to the north and south of the Merced Unit (criterion 4).

A majority of vernal pool habitat in the Merced Unit is in Merced County. The eastern edge of the unit overlaps into Mariposa County. Bear Creek flows along the southern boundary of the unit, crossing through it in several locations. The City of Merced is south of the unit, Bear Reservoir is southeast of the unit, and the Castle Airport is located outside of the southwest boundary. The northern boundary parallels the Merced River. The entire unit is located east of Highway 99. Land ownership within the unit includes mostly private lands and approximately 8 ac (3 ha) of BLM lands. TNC has a total of 11,283 ac (4,513 ha) of conservation easements within this unit.

Unit 24B, Madera Unit, Fresno Counties (41,032 ac (16,606 ha))

The Madera Unit contains occurrences of the species living within hardpan vernal pool complexes composed of numerous small pools and swales on mima mound topography (Holland 1998; Keeler-Wolf *et al.* 1998; CNDDB 2001). These vernal pools occur on alluvial fans and terraces. South of this unit, in Fresno County, these pools become less common, because the soils that support them are less widespread (Keeler-Wolf *et al.* 1998).

Located in western Madera County, this unit is located between the Fresno River and San Joaquin River. All lands within this unit are privately owned. All vernal pools in this unit are located east of Highway 99 and the Atchison, Topeka, and Santa Fe Railroad, extending east toward the low-elevation foothill region of the Sierra Nevada. State Route 145 bisects the unit.

This unit consists of two subunits. Subunit A contains vernal pool habitats south of Millerton Lake. The western boundary of this unit is bordered by the San Joaquin River. Gordon Road cuts through the southernmost tip of the unit. Owens Mountain and Table Mountain Rancheria are located east of the Unit. The Friant Kern Canal crosses through the unit in a southeasterly direction. Subunit B is located mostly west of State Route 41 along Little Dry Creek and Cottonwood Creek.

Unit 26A, B, and C, Cross Creek Unit, Tulare and Kings Counties (7,579 ac (3,067 ha))

This unit contains vernal pools that support occurrences of the species (Holland 1998; CNDDB 2001) formed on Lewis and Youd soils (USDA 2001). This area represents the southern extent of vernal pool fairy shrimp range along the eastern margin of the Central Valley, and is the largest contiguous vernal pool habitat in this region (criteria 1 and 4) (Holland 1998; CNDDB 2001).

This unit contains CDFG's Sequoia Field and Stone Corral Ecological Reserves in Tulare County. These reserves are one of the few vernal pool conservation areas in the eastern portion of the San Joaquin Valley, and they have been the focus of several monitoring and management efforts (criterion 4). Land ownership within this unit includes 213 ac (86 ha) of CDFG lands. All other land within this unit is privately owned. TNC, Tulare County, and the Sierra Los Tulares Land Trust have identified this area as one of the best remaining examples of vernal pool habitats in the region. Much of the remaining vernal pool habitat within Tulare County has been severely degraded and converted.

This unit is comprised of three subunits. Subunit A is located in northwest Tulare County and contains vernal pool habitat located west of Seville. The Friant Kern Canal is north of the unit and the Cottonwood Creek Levee is south of the unit. Road 140 runs west of the unit. Subunit B contains vernal pools in northeastern Kings County and northwestern Tulare County. Highway 99 and St. Johns River cut through the unit in a southeasterly direction. Cross Creek and Cottonwood Creek cut through the unit in a southwesterly direction. Road 112 is east of the unit and the Lakeland Canal is west of the unit. The towns of Goshen and Visalia are south of the unit and Traver and London are north of the unit. Subunit C is known as Sequoia Field Unit and is located in northwestern Tulare County. This unit is south of County Road J36. Road 112 crosses through the western edge of the unit, Avenue 352 crosses through the southern edge, and State Route 63 crosses through the eastern edge.

Unit 27A and B, Pixley Unit, Tulare County (16,706 ac (6,761 ha))

This unit contains the largest contiguous area of habitat for the species in the southern portion of the San Joaquin Valley (criteria 1 and 4) (Holland 1998; CNDDB 2001). Vernal pool fairy shrimp in this area occur within Northern Claypan vernal pools that tend to be alkaline and larger than other vernal pool fairy shrimp habitats, such as those found on the eastern margin of the San Joaquin Valley (criterion 2).

This unit contains wintering areas for migratory waterfowl, shorebirds, marsh, and waterbirds in the southern San Joaquin Valley, and includes natural valley grasslands and developed marsh habitats within the Pixley National Wildlife Refuge complex (3,366 ac (1,362 ha)) (criterion 4). Other ownership within this unit include TNC lands (3,274 ac (1,309 ha)). All other lands within this unit are privately owned. These habitats are important for migratory waterfowl that aid in the dispersal of vernal pool fairy shrimp and other vernal pool crustacean cysts (criterion 3). This unit represents one of only three areas designated for vernal pool fairy shrimp in the San Joaquin Valley vernal pool region described by Keeler-Wolf *et al.* (1998) (criterion 1).

This unit consists of two subunits that lie south of the Cities of Hanford and Lemoore, north of the City of Wasco, and east of the City of the Tulare. In addition to vernal pool fairy shrimp, western spadefoot toad and California tiger salamander are present within this unit.

Unit 28, San Benito County Unit, San Benito and Monterey Counties (118,869 (48,125 ha))

The San Benito County Unit is located in the southwestern portion of San Benito County and the easternmost portion of Monterey County. Land ownership within this unit includes parcels that are managed by the BLM (3,906 ac (1,581 ha)) and State Land Commission (5 ac (2 ha)). All other lands within this unit are privately owned. The critical habitat unit perimeter is defined by the presence of low slope areas within watershed boundaries that are known to contain vernal pool habitats and the primary constituent elements for vernal pool fairy shrimp to occur. This unit consists of a distinct collection of ephemerally flooded wetlands west of the Great Central Valley, and overlaps a portion of the Central Coast vernal pool region that has been delineated by CDFG (Keeler-Wolf *et al.* 1998). The unit contains a minimum of 13 vernal pool complexes that are 17 to 356 ac (7 to 144 ha) in size, and includes a number of unmapped vernal pools or pool complexes that are less than 10 ac (4 ha) in size. Systematic surveys designed to determine the presence and distribution of vernal pool fairy shrimp have not been conducted for this unit. However, the habitat in the 13 vernal complexes is likely to be similar to other local habitats that are known to contain the species. Therefore, the species is probably present in many of the pools in this unit. Conservation of vernal pools in this unit is necessary to maintain and restore occurrences of vernal pool fairy shrimp that are disjunct from other listed fairy shrimp localities in the Great Central Valley (criterion 1). The need for conserving vernal pool habitats within this unit is further highlighted by the loss of eight large vernal pool complexes totaling 3,155 ac (1,276 ha) outside of the critical habitat unit in northern San Benito County between 1994 and 2000 (Holland 2003). Data from systematic surveys are not available for these areas, but the loss of such a large area of ephemeral aquatic habitat is symptomatic of the challenge currently facing the species.

Unit 29A, B, and C, Central Coastal Ranges Unit, Monterey and San Luis Obispo Counties (51,825 ac (20,974 ha))

For the sake of clarity, the Fort Hunter Liggett subunit described in the proposed rule is now the Lockwood subunit in the final rule. This reflects the removal of Fort Hunter Liggett lands from the final rule. Also, the Camp Roberts subunit in the proposed rule is now the Bradley-San Miguel subunit in the final rule. This reflects the removal of Camp Roberts lands from the final critical habitat rule.

The Central Coastal Ranges Unit includes three subunits that occur in Monterey and San Luis Obispo Counties. The three subunits include areas adjacent to the town of Lockwood, the towns of Bradley and San Miguel, and the City of Paso Robles.

The Lockwood subunit (29A) includes a single parcel that is located directly east of the Fort Hunter Liggett military base. Land ownership in the subunit is mostly private, and includes a 2–ac (1–ha) parcel managed by the BLM. Intensive surveys on Fort Hunter Liggett document the occurrence of listed fairy shrimp in a minimum of 65 pools within the base boundary (Fort Hunter Liggett 2000). The Lockwood subunit is present within one or more hydrologic units that contribute to the amount, duration, and frequency of water flow that is necessary to maintain seasonally flooded habitats that possess vernal pool fairy shrimp at Fort Hunter Liggett.

The Bradley-San Miguel subunit (29B) consists of five separate parcels that are privately owned. Four of these parcels are located immediately adjacent to the northern or eastern boundary of the Camp Roberts military base, and the fifth is immediately adjacent to the western boundary of the base. Surveys on Camp Roberts document the presence of vernal pool fairy shrimp at 61 sites (Jones and Stokes Associates 1997a). The Bradley-San Miguel subunit is present within one or more hydrologic units that contribute to the amount, duration, and frequency of water flow that is necessary to maintain seasonally flooded habitats that possess vernal pool fairy shrimp on the Camp Roberts military base.

The Paso Robles subunit (29C) consists of a polygon that is 2 to 15 mi (3.2 to 24 km) northeast of the Paso Robles city boundary. All of the land within this subunit is privately owned. Surveys along State Highway 46 document the occurrence of vernal pool fairy shrimp within the subunit (Mitch Dallas, Catrans, pers. comm.). The Paso Robles subunit possesses several large vernal pool complexes that are 105–776 ac (42–314 ha) in size. The discovery of vernal pool fairy shrimp in an area 4 mi (6 km) east of Paso Robles suggests that the species is likely to be widely dispersed in remnant vernal pools or complexes that still exist within the critical habitat subunit. The Paso Robles subunit perimeter is defined by the presence of low slope areas within watershed boundaries that are known to contain vernal pool fairy shrimp and vernal pool habitats.

The Lockwood subunit occurs within the Central Coast vernal pool region that has been delineated by the CDFG (Keeler-Wolf *et al.* 1998), and the Bradley-San Miguel and Paso Robles subunits occur within the Carrizo vernal pool region. Conservation of vernal pools in the region is necessary to stabilize and recover remnant populations of vernal pool fairy shrimp in the central coastal county area of southern California (criterion 1).

Unit 30, Carrizo Plain Unit, San Luis Obispo County (25,851 ac (10,466 ha))

This unit contains Northern Claypan vernal pools (Sawyer and Keeler-Wolf 1995) in numerous shallow alkaline depressions within a Valley Saltbush Scrub matrix. This is the only area where vernal pool fairy shrimp are known from saline salt brush scrub vernal pool habitats (criterion 2). Many vernal pools in the region are adjacent to the 3,000 ac (1,214 ha) Soda Lake, the largest alkali wetland in central and southern California, which provides a winter haven for thousands of migratory birds that provide dispersal mechanisms for the species (criterion 3). Vernal pool fairy shrimp in the Carrizo Plain Unit are located 146 mi (235 km) southeast of the closest known occurrences at Kesterson National Wildlife Refuge in Merced County, and represent an unusual geographic area (criterion 1).

The Carrizo Plain unit contains examples of native bunch grass, needle grass, and blue grass uplands which assist in maintaining the hydrology of the vernal pools and vernal pool complexes. Most of the habitat within this unit is part of the Carrizo Plain National Monument, which is administered by BLM, TNC, and CDFG for the protection of natural habitat (criterion 4). BLM lands within the unit total approximately 15,549 ac (6,293 ha) and CDFG lands total approximately 233 ac (93 ha). Other vernal pool habitats in the unit are located on private land.

This unit includes vernal pool habitat in the interior basin of the Carrizo Plain. It encompasses California Valley and Soda Lake. State Highway 58 is located north of the unit. Most of the habitat is east of Soda Lake Road; however, Soda Lake Road crosses through the western edge of the unit in several areas. To the east, the unit is bordered by the San Andreas Rift Zone.

Unit 31, Lake Cachuma Area Unit, Santa Barbara County (20,754 ac (8,399 ha))

The Lake Cachuma critical habitat unit is located within a 10 mi (16 km) radius of the northwestern portion of Lake Cachuma in central Santa Barbara County. Land ownership includes the U.S. Forest Service (USFS) (5,434 ac (2,199 ha)) and BLM (92 ac (37 ha)). All other land within the unit is privately owned. The unit boundary contains four vernal pool complexes that are at least 10 ac (4 ha) in size (Holland 2003); these complexes vary in size from 40 to 199 ac (16 to 81 ha). The unit also contains one documented occurrence of vernal pool fairy shrimp. Limited survey data for fairy shrimp exist for this unit. We believe listed fairy shrimp probably occur at several additional locations with suitable ephemeral aquatic habitat. A portion of the critical habitat unit overlaps the Santa Barbara vernal pool region delineated by the CDFG (Keeler-Wolf *et al.* 1998). The Lake Cachuma unit is essential for the conservation of vernal pool fairy shrimp because it contains seasonally flooded aquatic habitats that are located at least 36 mi (60 km) from other wetlands that are known to possess the species. Compared to most counties mentioned in this rule, Santa Barbara County contains a relatively small acreage of remaining vernal pool habitat, thereby highlighting the need to proactively manage the ephemeral aquatic habitats that still remain (criterion 1).

Unit 32, Ventura County Unit, Ventura County (46,531 ac (18,830 ha))

The Ventura County Unit is located in the north-central portion of Ventura County. With the exception of 1,951 ac (790 ha) that are privately owned, all other land within this unit occurs within the Los Padres National Forest. Vernal pool fairy shrimp and Conservancy fairy shrimp co-occur at relatively high-elevation (5,500 ft (1,700 m)) forested sites within this unit. This combination of attributes is unique because these species normally occur at much lower elevations in grassland habitat. The critical habitat perimeter encompasses an area that is known to contain vernal pool and Conservancy fairy shrimp and isolated pools that provide habitat for both species. Few fairy shrimp surveys exist for this unit. However, listed fairy shrimp probably occur at several additional locations with suitable ephemeral aquatic habitat. The Ventura County Unit is essential for the conservation of vernal pool fairy shrimp because it contains ephemeral aquatic environments that are rarely associated with fairy shrimp, and the occupied sites are disjunct from others, in that they are located at least 36 mi (60 km) from the closest known site (criteria 1 and 2).

Vernal Pool Tadpole Shrimp

Vernal pool tadpole shrimp occurrences are known from Shasta County to Tulare County, California, with an elevational variation of near 3 m (10 ft) to near 150 m (500 ft). The vernal pool types and soils associated with areas of concentration of vernal pool tadpole shrimp differ greatly across the geographic range of the species; these differences lead to different species compositions and environmental conditions between vernal pool tadpole shrimp occurrences. Providing for a mosaic of habitat types and conditions both between and among vernal pool species is essential because it would include the full extent of the physical and environmental conditions for the species (Barclay and Knight 1984; Bauder and McMillan 1998; Fugate 1992 and 1998; Gonzales *et al.* 1996, Noss *et al.* 2002a, Noss *et al.* 2002b; Platenkamp 1998; Zedler *et al.* 1979). The soils that contain occurrences of vernal pool tadpole shrimp in the delineated units vary significantly throughout the species' range. In the north, the rare Northern Mudflow formation underlies vernal pools in Shasta and Tehema Counties. Tehema and Butte Counties contain Northern Basalt Flow vernal pools that are limited to ancient terraces and hilltops that comprise some of the oldest geologic formations in California. Northern Volcanic Mudflow vernal pools are delineated in Butte and Yuba Counties. Throughout the Central Valley, the habitat ranges from high terrace landforms to claypan and hardpan pool types. Northern Basalt Flow vernal pools are found in Fresno County in the low elevation foothills. In the Suisun Marsh area, vernal pool tadpole shrimp are found in the saline-alkaline transition zone. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions which vary upon location (Holland and Dain 1990). The primary constituent elements of critical habitat for vernal pool tadpole shrimp are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for vernal pool tadpole shrimp incubation, reproduction, dispersal, feeding, and sheltering, but which are dry during the summer and do not necessarily fill with water every year, including but not limited to, vernal pools on Redding and Corning soils on high terrace landforms, and

(ii) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

Unit 1, Stillwater Plains Unit, Shasta County (3,538 ac (1,432 ha))

This unit contains the species (CNDDB 2002) within vernal pools mapped by Holland (1998) that are found on old alluvial terraces above the Sacramento River, often on Redding and Corning soil complexes (Shasta County 2001). Generally, these pools range in size from small (30 ft^2 (10 m^2)) to several acres (hectares) in size at the Stillwater Plains area. This unit is geographically important because it comprises the northern extent of the species range in California (criterion 1). The vernal pool tadpole shrimp within this unit were found to be genetically different from other populations, particularly those in the foothills of the Sierra Nevada (King 1996).

This unit is located in the area east of the Redding Municipal Airport between Airport Road to the west and Deschutes Road to the east. The unit is north of Dersch Road and south of Lassen Park Highway. This unit comprises a portion of the Stillwater Plains. This unit includes the Stillwater Plains Conservation Bank. Most of the land included within this unit is privately owned, but 130 ac (52 ha) of that is protected by WRP easements or agreements. The BLM owns 42 ac (17 ha).

Unit 2, Dales Unit, Shasta and Tehama Counties (33,975 ac (13,750 ha))

This unit is ecologically important because it is one of the few areas where vernal pool tadpole shrimp are known

to occur in Northern Mudflow vernal pools (criterion 2). Northern Mudflow vernal pools are generally small and tend to be inundated for relatively short periods of time (Keeler-Wolf *et al.* 1998). This unit contains some of the largest remaining vernal pool complexes supporting vernal pool tadpole shrimp in the northern portion of the species' range, including the Dales Plains. These areas provide relatively undisturbed, hydrologically intact vernal pool habitats that will likely continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool tadpole shrimp (criterion 4). The unit also provides habitat for migratory waterfowl that aid in the dispersal of vernal pool tadpole shrimp and other vernal pool crustacean cysts (criterion 3).

The Dales Unit is located in northern Tehema County. A portion of the unit overlaps into Shasta County. The vernal pool habitats west of Inskip Hill are included in this unit, as well as the area west of the Sacramento River known as Table Mountain and Table Mountain Lake. Land ownership within this unit includes BLM (14,826 ac (6,000 ha)) and State lands 709 ac (287 ha). CDFG administers approximately 42 ac (17 ha) and TNC has conservation easements on 15,575 ac (6,230 ha) within this unit. The remaining lands are privately owned.

Unit 3, Vina Plains Unit, Tehama and Butte Counties (31,195 ac (12,916 ha))

This unit is ecologically important (criterion 2) because it is one of the few areas where vernal pool tadpole shrimp are known to occur in Northern Basalt Flow vernal pools. Northern Basalt Flow vernal pools are limited to ancient terraces and hilltops that comprise some of the oldest geologic formations in California. This unit also provides habitat for migratory waterfowl that aid in the dispersal of vernal pool tadpole shrimp and other vernal pool crustacean cysts (criterion 3).

This unit is located in the northeastern portion of the Sacramento Valley, from south of Deer Creek in Tehama County to Big Chico Creek north of Chico in Butte County. The unit is geographically important (criterion 1) because it is one of only two vernal pool tadpole shrimp units within the Northeastern Sacramento Valley vernal pool region identified by CDFG (Keeler-Wolf *et al.* 1998). The unit extends south and east of the Sacramento River, paralleling the low-elevation foothill region of the Sierra Nevada. A majority of the lands included within this unit are privately owned. This unit may be more likely to support the species over time (criterion 4) because it includes protected areas such as TNC's Vina Plains preserve as well as other TNC lands 5,660 (2,264 ha) and conservation easements 10,870 ac (4,348 ha). The unit also includes 142 ac (57 ha) of private lands protected by WRP easements or agreements.

Unit 6, Dolan Unit, Colusa County (980 ac (397 ha))

This unit, like Unit 5, is noteworthy for its Northern Claypan vernal pools, as defined by Sawyer and Keeler-Wolf (1995). These vernal pools occur on alkaline soils and typically form alkali playas which are larger and contain a more diverse species composition than the hardpan pools further south (criterion 2) (Keeler-Wolf *et al.* 1998). They may display white salt deposits following pool drying.

This unit occurs east of Interstate 5, south of the City of Colusa, and west of the Colusa National Wildlife Refuge. All the lands within this unit are privately owned. This unit is primarily located on the Dolan Ranch Conservation bank.

Unit 7, Beale Unit, Yuba County (1,324 ac (536 ha))

The Beale Unit is ecologically important (criterion 2) because it contains vernal pool grasslands occurring on four major geologic formations: the Modesto Formation; the Riverbank Formation; the Laguna Formation; and the Mehrten Formation. Different geologic formations provide a diversity of habitats for vernal pool tadpole shrimp primarily through their effects on pool size and depth (Helm 1998; Platenkamp 1998). King (1996) found that vernal pool tadpole shrimp within this unit were genetically different from occurrences in other portions of the species' range, particularly those on the floor of the Central Valley. This unit is also important because it can help maintain an opportunity for long-distance dispersal of vernal pool tadpole shrimp cysts (criterion 3); the nearest unit to the north is over 28 mi (45 km) away, and the nearest unit to the south is over 40 mi (65 km) away.

The Beale Unit is located in southwestern Yuba County, south of the Yuba River and Yuba Goldfields, east of State Route 70, and north of the Bear River adjacent to Beale AFB. All the lands within this unit are privately owned.

Unit 9, Cosumnes Unit, Sacramento, Amador, and San Joaquin Counties (26,754 ac (10,827 ha))

This unit is geographically important because it contains over 30 percent of the remaining vernal pool habitats in the southern Sacramento Valley area (Holland 1998; Sacramento County 1999). It is also ecologically noteworthy (criterion 2) because it includes a diversity of pool types occupied by the species, including Northern Volcanic Mudflow vernal pools on the Mehrten and Valley Springs geologic formation overlain by Pardee and Pentz soils, vernal pools occurring on low terrace landforms associated with San Joaquin soils, and high terrace landforms associated with Redding and Corning soils (USDA 2001). This area has been identified by the Sacramento Valley Open Space Conservancy, the CNPS, and TNC as an excellent example of vernal pool grasslands, supporting a rich and diverse community of vernal pool endemic plants and animals within Sacramento County. King (1996) found that vernal pool tadpole shrimp within this unit were genetically most similar to those in Stanislaus County and nearby in Sacramento County. However, vernal pool tadpole shrimp within this unit were generally different from occurrences at other sites sampled throughout the species' range and were very different from vernal pool tadpole shrimp sampled at sites found further to the west on the floor of the Central Valley for example, at Jepson Prairie or the Kesterson Unit of the San Luis National Wildlife Refuge (King 1996).

This unit contains State and federally owned land, as well as private properties. Portions of the Cosumnes River Preserve occur within this unit. These areas provide habitat for migratory waterfowl and other avian species that aid in the dispersal of vernal pool tadpole shrimp and other vernal pool crustacean cysts (criterion 3). Several large, diverse, vernal pool landscapes are protected within this unit (criterion 4), including the Howard Ranch and Valensin Ranch. The Clay Station Mitigation Bank, Laguna Creek Mitigation Bank, and the Borden Ranch Mitigation site are included in this unit, as well as a number of smaller conservation areas, including the Rancho Seco Preserve.

This unit occupies the area south of Deer Creek and the Cosumnes River to an area just south of the Sacramento and San Joaquin County. The eastern boundary is the low-elevation foothills of western Amador County. The western limit is the Sacramento River. Land ownership and protection within the unit includes TNC (9,970 ac (3,988 ha)) lands and WRP easements (11 ac (4 ha)).

Unit 10, Davis Communications Annex Unit, Yolo County (440 ac (178 ha))

This unit is ecologically important (criterion 2) because it contains claypan vernal pools, which are generally larger and stay inundated for relatively longer periods than vernal pools on alluvial terraces or volcanic mudflows and lava flows. This unit is essential to the species because it represents some of the last remaining claypan vernal pools in Yolo County and west of the Sacramento River.

This unit is located southeast of the City of Davis and south of the South Fork of Putah Creek. This unit's western boundary coincides with the Solano and Yolo County line. The unit contains land owned by Yolo County. This unit contains DoD (1,258 ac (310 ha)) owned land.

Unit 13, Stanislaus Unit, Stanislaus County (16,323 ac (6,606 ha))

This unit contains hardpan pools on soils of alluvial fans and terraces. It is important ecologically (criterion 2) for its numerous small pools and swales on mima mound topography, supported by soils that are typically older than those of the alluvial terraces in the Sacramento area. The unit is also geographically important (criterion 1) because it contains almost 25 percent of vernal pool habitats found along the eastern margin of the San Joaquin Valley. King (1996) found that vernal pool tadpole shrimp within this unit, although similar to vernal pool tadpole shrimp in eastern Sacramento County, were genetically different from other tadpole shrimp occurrences sampled throughout the species' range, particularly those on the floor of the Central Valley. The Stanislaus Unit contains very high quality, hydrologically intact vernal pool complexes likely to persist over time (criterion 4), including the well-known Hickman pools in Stanislaus County.

The Stanislaus Unit is bordered by the Stanislaus River to the north and Dry Creek to the south and southeast in western Stanislaus County. All the land within this unit is privately owned.

Unit 14, San Francisco Bay Unit, Alameda and Santa Clara Counties (802 ac (325 ha))

This unit is geographically important (criterion 1) because it represents the only location where vernal pool tadpole shrimp occur in the San Francisco Bay region, and because it represents the western extent of the species range. The unit is over 37 mi (60 km) from the nearest unit to the north, and over 56 mi (90 km) from the nearest units to the east and south. Vernal pool tadpole shrimp within this unit are found in a unique tidal marsh estuary area that represents an unusual habitat type for the species (criterion 2).

This unit is situated south of the cities of Fremont and Newark, west of Interstate 880 and north of Mud Slough. Portions of this unit are particularly likely to persist over time (criterion 4) because they occur within the boundaries of San Francisco Bay National Wildlife Refuge. This unit also includes a preserve established as a conservation measure for vernal pool tadpole shrimp as part of the Pacific Commons development project (Service 2000b).

Unit 15, Merced Unit, Merced and Mariposa Counties (61,379 ac (24,840 ha))

This unit is important for the conservation of the species because it contains more documented occurrences of the species than any other area throughout the species' range (criterion 1) (CNDDB 2001). The Merced Unit contains almost 15 percent of all remaining vernal pool habitats in the Central Valley, and 40 percent of vernal pool habitats along the eastern margin of the San Joaquin Valley (Holland 1998). The vernal pool tadpole shrimp in this unit occur in the largest block of pristine, high-density vernal pool grasslands remaining in California (Vollmar 1999). These vernal pools support multiple large vernal pool tadpole shrimp occurrences that are capable of producing large numbers of cysts in good years, which is important for this species to survive through a variety of natural and environmental changes, as well as stochastic events (criterion 4). Genetic analyses of vernal pool tadpole shrimp revealed that occurrences in this unit are genetically different from other sampled occurrences (King 1996). Of all occurrences studied, King (1996) found these to be the most highly divergent.

A majority of the vernal pool habitat in the Merced Unit is in Merced County. The eastern edge of the unit generally follows the Mariposa County line. The Chowchilla River in Madera County flows along the southern boundary of the unit. The northern boundary parallels the Merced River. The entire unit is located east of Highway 99. As part of TNC's Merced Grasslands Project, approximately 20,288 ac (8,210 ha) of vernal pool habitat in this unit have been conserved through the establishment of conservation easements.

Unit 17, Table Mountain Unit, Fresno County (1,802 ac (729 ha))

This unit contains Northern Basalt Flow vernal pools found on narrow, sinuous basalt mesas above the surrounding low-lying terrain. Basalt flow vernal pools are a very rare habitat type for vernal pool tadpole shrimp, and the habitats within this unit are important for maintaining the range of ecological conditions in which the species occurs (criterion 2). They typically contain small, irregularly clustered pools with ''flashy hydrology'' (Keeler-Wolf *et al.* 1998). The occurrences of vernal pool tadpole shrimp in this unit are genetically different from occurrences in other portions of the species' range, particularly those occurring on the floor of the Central Valley (King 1996).

Located in Fresno County, this unit contains vernal pool habitats east and south of the San Joaquin River and east of Millerton Lake. The unit is west of Marshall Station and North of Table Mountain Rancheria. Table Mountain occurs within this unit, and land ownership within the unit includes BLM (190 ac (77 ha)), CDFG lands (419 ac (170 ha)), and TNC conservation easements (639 ac (256 ha)). All other lands within this unit are privately owned.

Unit 18A, B and C, Tulare Unit, Tulare County (7,579 ac (3,067 ha))

This unit contributes to the conservation of the species because it contains pools formed on San Joaquin, Cometa, and Madera soils, among others (criterion 2). The unit is geographically essential (criterion 1) because it represents the southern extent of the vernal pool tadpole shrimp's range. The unit is essential because it maintains the genetic diversity of the species. The Sequoia Field occurrence was most closely related to occurrences at Kesterson National Wildlife Refuge, and was generally more similar to other occurrences on the valley floor than occurrences found on the eastern margin of the valley in the Sierra Nevada Foothills. However, King (1996) found that vernal pool tadpole shrimp within this unit were genetically different from other populations studied.

This unit is comprised of three subunits located in northwest Tulare County. CDFG manages vernal pool habitats at the Stone Corral and Sequoia Field Ecological Reserves found within this unit. Keeler-Wolf *et al.* (1998) identified the vernal pools in these areas as ''high-quality hardpan pools.'' Much of the area within this unit is owned by

CDFG (212 ac (86 ha)) or occurs on private land.

Limnanthes floccosa ssp. californica

Butte County meadowfoam is found in four general areas of concentration in a narrow band from south to north of Chico, California. The vernal pool types and soils associated with the four general areas of concentration of Butte County meadowfoam include those vernal pools on Tuscan formation or terraced-alluvials with mostly Anita, Riverbank, Redbluff, Modesto, and Redding soils. The habitat associated with Butte County Meadowfoam includes saturated soils and pools with a ''flashy'' (short lived) inundation period. A vernal pool's parent material greatly influences that pool's species composition and hydrologic functioning (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990).

Butte County Meadowfoam is found more often within the swale system between vernal pools than in the pools themselves (Jokerst 1989). The swale habitat forms a branch or net-like pattern between the vernal pools and around mound topography and connects the vernal pools hydrologically. These swale systems are inundated by surface flow and post-storm runoff from adjacent areas and have a greater variability in environmental conditions than do the vernal pools. The swale systems also have different species compositions, depending on parent soil and moisture regime (Holland and Jain 1981, 1988; Jokerst 1989). Butte County meadowfoam at the southern extent of its range occurs on volcanic mudflows with Corning variant soils. Occurrences near Chico are on formations of eroded mudflow formations. Butte County meadowfoam in the northern extent of the species range occur on very shallow Tuscan formation soils (Dole 1988). All four areas designated as critical habitat have a different species composition, depending on soil and hydrologic conditions. We believe that providing for a mosaic of habitat types both between and among vernal pool species is essential because it would include the full extent of the physical and environmental conditions for the species (Dole 1988; Fugate 1992; Fugate 1998; Gonzales *et al.*1996; Ikeda and Schlising 1990; Noss *et al.* 2002a; Platenkamp 1998; Zedler *et al.* 1979). The primary constituent elements of critical habitat for *Limnanthes floccosa* ssp. *californica* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Limnanthes floccosa* ssp. *californica* germination, growth and reproduction, including but not limited to vernal pool swales and the margins of vernal pools on the Tuscan, Redbluff, Riverbank, and Modesto geologic formations underlain by Tuscan-Anita and Igo-Redding complex soils, among others. These habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Limnanthes floccosa* ssp. *californica* germination, growth and reproduction, and dispersal, but not necessarily every year.

Unit 1, Rock Creek Unit, Butte, and Tehama Counties (15,086 ac (6,105 ha))

This unit contains the species identified by CNDDB (2002) within vernal pools on the Tuscan formation, which are ecologically noteworthy (criterion 2) because they typically contain water for shorter periods of time than other types of vernal pools. The unit is also geographically important (criterion 1) because it represents the northern extent of *Limnanthes floccosa* ssp. *californica's* range, and because it represents one of only four areas where *L. f.* ssp. *californica* occurs throughout its entire range. Each unit is likely important to allow the species to tolerate natural and environmental changes, as well as stochastic events. The unit includes occurrences from the northern race of *L. f.* ssp. *californica*. This race is genetically different from the southern race (Jokerst 1989; Dole and Sun 1992) and is important to maintain genetic diversity within the species. An introduced occurrence, thought to be of the southern race, also occurs within this unit.

This unit for *Limnanthes floccosa* ssp. *californica* occupies an area north of the City of Chico and includes vernal pool habitats east of Highway 99 along the Sierra foothills from near Pine Creek southeast to Rock Creek. All the lands within this unit are privately owned.

Lasthenia conjugens

Contra Costa goldfields occurrences are found in five centers of concentration in the northern and central Coast Range and western part of the Central Valley in Solano and Contra Costa County. By far the greatest concentration of this species is in the area east of Fairfield in Solano County. Contra Costa goldfields normally are found in vernal pools, swales, moist flats, and depressions within open grassy areas of woodland and valley grassland habitats. However, several historical collections were from populations growing in the saline-alkaline transition zone between vernal pools and tidal marshes on the eastern margin of the San Francisco Bay (CNDDB 2002).

Although some of the habitat characteristics of the species are known, specific pool characteristics that determine suitability for Contra Costa goldfields germination, growth, reproduction, and dispersal are not well understood. Contra Costa goldfields normally is observed in only a few of the pools within the vernal pool complexes in which it is found, and the pool characteristics that determine suitability for Contra Costa goldfields germination and growth are unknown. By overlapping known occurrences of Contra Costa goldfields with appropriate soil types, elevations, slopes, vegetation community associations, and vernal pool types, where we know Contra Costa goldfields to occur, we have designated what we believe is the likely distribution of the seed bank around Contra Costa goldfield occurrences. Due to the species' highly restricted nature and disjunct distribution, the long-term survival of Contra Costa goldfields depends upon the protection and management of all extant populations and their associated seed banks, and the maintenance of ecological functions within and between these populations. The primary constituent elements of critical habitat for *Lasthenia conjugens* are the habitat components that provide:

(i) Vernal pools, swales, moist flats, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Lasthenia conjugens* germination, growth, and reproduction, including, but not limited to, vernal pools on clay soils from a variety of soils series, rock outcrop pools on basalt flows, and vernal pools in saline alkaline transition zones with tidal marsh habitats. All of these habitats typically become

inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Lasthenia conjugens* germination, growth and reproduction, and dispersal, but not necessarily every year.

Unit 1, Manchester Unit, Mendocino County (2,637 ac (1,067 ha))

This unit for *Lasthenia conjugens* contains the habitat essential for the species and is geographically noteworthy (criterion 1) for its location at the northern and western limit of the species' range (CNDDB 2002). It represents the only occurrence of *L. conjugens* in the Mendocino coast area, and is over 87 mi (140 km) from the closest *L. conjugens* unit to the south. The unit is also ecologically important (criterion 2) because it is the only location where *L. conjugens* has been found on Crispin loam soils. Some of the vernal pool habitats on this site were last surveyed in 1987, and *L. conjugens* was not observed at that time (CNDDB 2002). However, the essential habitat requirements for the species still remain and represent an example of the varying habitat types on which the species occurs.

This unit is on private land and is located in the vicinity of the town of Manchester just north of the Garcia River and east of the Pacific Ocean. State Highway 1 bisects this unit and Brushy Creek forms the northern and northeastern boundary.

Unit 2, Berryessa Unit, Napa County (1,016 ac (411 ha))

This unit is ecologically noteworthy for its rock outcrop pools on soils derived from Rhyolite lava flows, within chaparral ecosystems (Holland 1998; USDA 2001; CNDDB 2002). This is also the only unit where *Lasthenia conjugens* occurs on Northern Basalt Flow vernal pools, making the area important to maintain the range of habitats in which the species is known to occur (criterion 2). The unit is geographically important (criterion 1) because it represents some of the last remaining vernal pool habitats in the north bay foothills, and is the only unit for *L. conjugens* in this area. This unit is over 15 mi (25 km) from the nearest *L. conjugens* unit.

This unit is located south of Lake Berryessa and lies in the Milliken Canyon area east of the City of Yountville and northeast of the City of Napa. All the lands within this unit are privately owned.

Unit 3, Napa River Unit, Napa County (678 ac (275 ha))

Vernal pools in which *Lasthenia conjugens* are found in this unit occur on Hambright rock-outcrop complex soils. This is the only location where *L. conjugens* is found on this soil type (criterion 2). This unit is located on private land and is located near the Napa River east of the intersection of State Route 121 and 29. All the land within this unit are privately owned.

Unit 6, Rodeo Creek Unit, Contra Costa County (399 ac (162 ha))

This unit is ecologically noteworthy (criterion 2) because it supports occurrences of the species within vernal pool habitats formed on Conejo clay loam soils (USDA 2001; CNDDB 2002). It is geographically important (criterion 1) in that it is the only area where the species occurs in the vicinity of the Sacramento-San Joaquin delta (criterion 1). This unit is over 16 mi (25 km) from the closest unit to the north, and almost 32 mi (50 km) from the closest unit to the south.

The unit is situated along Rodeo Creek and adjacent to State Highway 4, southeast of the City of Rodeo and northeast of the City of Hercules. It contains a 10 ac (4 ha) conservation easement area established in 1999 to protect three known locations of *Lasthenia conjugens* along Rodeo Creek from highway construction activities along State Route 4 (criterion 4). All the lands within this unit are privately owned.

Unit 7, Byron Hot Springs Unit, Contra Costa County (3,284 ac (1,329 ha))

This unit is geographically noteworthy (criterion 1) because it contains the only remaining extant occurrence of *Lasthenia conjugens* in southeastern Contra Costa County (CNDDB 2001). This occurrence is located in vernal pools formed on Linne clay loam soils, and has been characterized as alkaline meadow, a unique habitat type for the species (criterion 2) (USDA 2001; CNDDB 2002). This unit is over 22 mi (35 km) from the closest unit to the north, and almost 32 mi (50 km) from the closest unit to the south.

This unit is in the vicinity of Byron Hot Springs and Byron Airport and lies directly west of Clifton Court Forebay. This unit includes habitat in low-lying areas east of the Altamont Hills, but also includes habitat within a small portion of Altamont Hills. Approximately 99 ac (40 ha) within this unit are owned by the State and the rest is privately owned.

Unit 8, Southeastern San Francisco Bay Unit, Alameda and Santa Clara Counties (802 ac (325 ha))

This unit contains occurrences of this species within vernal pools, swales, moist flats, and other ephemeral wetlands in saline alkaline transition zones with tidal marsh habitats, an ecologically unusual habitat for the species (criterion 2) (Holland 1998; CNDDB 2002). The southern and western boundaries of the unity were delineated to exclude estuarine habitats and urban areas visible on SPOT imagery.

The unit includes a 450-ac (180-ha) preserve established specifically to contribute to the recovery of *Lasthenia conjugens* (Wetland Research Associates 1999; Service 2000b). Additionally, 425 ac (172 ha) of this unit is on the San Francisco Bay National Wildlife Refuge, and is therefore more likely to persist over time (criterion 4). The unit is relatively isolated geographically (criterion 1), being over 31 mi (50 km) from the nearest units to the north, and almost 62 mi (100 km) from the nearest *L. conjugens* unit to the south.

The unit occurs in southeastern San Francisco Bay and also represents Unit 14 for vernal pool tadpole shrimp. It lies between the northernmost and southernmost subunits and is situated south of the cities of Fremont and Newark and north of Mud Slough. Portions of this unit are found within the boundaries of San Francisco Bay National Wildlife Refuge and the rest is privately owned.

Unit 9, Fort Ord Unit, Monterey County (6,878 ac (2,784 ha))

The Fort Ord Unit encompasses the southernmost remaining occurrence of the species, located 62 mi (100 km) from its next closest neighbor to the north (criterion 1). It contains seasonally flooded pool habitat and mima mound grassland areas within the former Fort Ord army base. These lands are currently owned and managed by the Army and BLM. The Army will eventually divest itself of all of the land it manages. It is likely BLM will receive the majority of the land that is scheduled for transfer; all or a major portion of this land will be managed as

a Natural Resource Management Area, which will increase the chances of the habitat and population persisting over time (criterion 4). Population sizes of *Lasthenia conjugens* at two locations within the Fort Ord Unit are monitored and have been found to vary on an annual basis. These differences may be due to variations in annual rainfall and duration of ponded water (Harding Lawson Associates 2001). The combined population estimates for both areas where monitoring occurred in 1998, 1999, and 2000 were 500–1500; 56,000; and 162,500 individuals, respectively. The Federal government owns 6,874 ac (2,782 ha), the State owns 4 ac (2 ha), and the rest is privately owned.

Chamaesyce hooveri

Hoover's spurge is found in naturally occurring widely scattered vernal pool complexes in a narrow zone of rolling topography and remnant alluvial fans and stream terraces at the base of the Sierra Nevada foothills and two locations in alkali sink areas at the Sacramento National Wildlife Refuge and San Luis National Wildlife Refuge Complex in three general areas of concentration in Tehama, Butte, Glenn, Colusa, Stanislaus, Merced, and Tulare Counties in the Sacramento and San Joaquin Valleys (CNDDB 2002, Stone *et al.* 1988). The elevation of these areas of concentration varies from near 15 m (50 ft) to near 150 m (500 ft). Conserving a broad geographic range of Hoover's spurge across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species' range. The vernal pool types and soils associated with the six areas of concentration of Hoover's spurge differ greatly across the geographic range of the species; these differences lead to different species compositions and environmental conditions between Hoover's spurge occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species' conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992; Fugate 1998; Gonzales *et al.*1996; Ikeda and Schlising 1990; Noss *et al.* 2002a; Platenkamp 1998; Zedler *et al.* 1979).

The distribution of Hoover's spurge reflects a diversity of vernal pool habitat types that provide habitat for the species on the alluvial fans and old stream terraces of the Sierra Nevada foothills. Vernal pool complexes that provide suitable habitat for this species include three different physiographic and edaphic settings—old high and lower old stream terrace areas with soils having an iron-silica hardpan and sites with shallow soils underlain by cemented tufaceous alluvium. The Tehama County occurrences of Hoover's spurge are associated with slightly to medium acid soils of the Tuscan and Anita soil series that are underlain by an iron-silica cemented hardpan (Broyles 1987). The Glenn and Colusa County occurrences at the Sacramento National Wildlife Refuge are associated with alkaline vernal pools on Willows and Riz soil types (Holland 1998; Silveira 2000; CNDDB 2002). The Stanislaus County occurrences are associated with neutral to slightly alkaline claypan soils of the Meikle series that formed in small drainages of Pleistocene alluvium. The Merced County occurrences in the Arena Plains are within saline-alkaline vernal pools on Lewis soils (USDA 2001; CNDDB 2002). The Tulare County occurrences are associated with lime-silica cemented hardpan and low-terrace neutral to slightly alkaline soils of the Madera soil series. Not all areas of Hoover's spurge have been identified as to the specific soil series or soil mapping units on which they occur. Many of the occupied vernal pools vary in size from 1,900 m^2 (20,520 ft^2) to 250 ha (618 ac). A vernal pool's parent material greatly influences the pool's species composition and hydrologic functioning (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990). Field observations suggest that Hoover's spurge is restricted to specific microsites within the vernal pools and may behave somewhat independently, depending on environmental and edaphic conditions and are likely locally adapted (Alexander and Schlising 1997; Stone *et al.* 1988; Vollmar 2002). The primary constituent elements of critical habitat for *Chamaesyce hooveri* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Chamaesyce hooveri* germination, growth, and reproduction, including but not limited to, vernal pools formed on neutral to saline-alkaline soils over lime-silica cemented hardpan or claypan, or on acidic soils over iron-silica cemented hardpan, that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Chamaesyce hooveri* germination, growth and reproduction, and dispersal, but not necessarily every year.

Unit 1, Vina Plains Unit, Tehama and Butte Counties (25,102 ac (10,159 ha))

This unit, along with Unit 2, is ecologically unusual (criterion 2) in that it supports numerous occurrences of the species within vernal pools on acidic soils over iron-silica cemented hardpan, including Anita and Tuscan soils (Holland 1998; USDA 2001; CNDDB 2002). The Vina Plains Unit is also geographically important (criterion 1) because it contains over 50 percent of the known occurrences of *Chamaesyce hooveri*, including several large, stable occurrences (CNDDB 2002), and because it represents the northern extent of the species' range.

The unit for *Chamaesyce hooveri* occupies the area south of Toomes Creek and north of Pine Creek to near Cana Highway in southeast Tehema County and northwest Butte County. State Route 99 bisects this unit and the western boundary generally parallels the Southern Pacific Railway line. This unit contains TNC's 4,600 (1,862 ha) Vina Plains preserve, making occurrences in the unit more likely to persist over time (criterion 4). The majority of the lands included within this unit are privately owned. Property ownership and protection within this unit includes CDFG (0.4 ha (1 ac)), CDFG administration (1 ac (0.4 ha), TNC (5,738 (2,295 ha), TNC easements (11,653 ac (4,661 ha), and WRP easements and agreements (142 ac (57 ha)).

Unit 4, Waterford Unit, Stanislaus and Tuolumne Counties (39,038 ac (15,799 ha))

This unit supports *Chamaesyce hooveri* occurrences within vernal pools on Whitney sandy loam soils (USDA 2001; CNDDB 2002), which are not otherwise well represented (criterion 2). These soils are typically older than those of the alluvial terraces in the Sacramento area, which are estimated to

be of early Pleistocene origin. The Waterford Unit contains very high quality, hydrologically intact vernal pool complexes important for the conservation of *C. hooveri* (criterion 4). The unit is located primarily in southeastern Stanislaus County, extending on its eastern border into the low elevation foothills of the Sierra Nevada in Tuolumne County. It is geographically noteworthy (criterion 1) because known occurrences of *C. hooveri* are sparsely distributed in the southern Sierra Nevada foothills, and because these occurrences are highly disjunct from occurrences of the species in the northern portion of its range. This unit is over 140 mi (225 km) from the nearest units to the north. CDFG administers approximately (2 ac (0.8 ha), and the remaining land within this unit is privately owned.

Unit 5, Turlock Unit, Stanislaus and Merced Counties (35,508 ac (14,370 ha))

This unit contains occurrences of the species within large vernal pools on Meikle soils, including two of the seven known occurrences of *Chamaesyce hooveri* on the eastern margin of the San Joaquin Valley (Holland 1998; CNDDB 2002). The unit also includes an occurrence of *C. hooveri* within the well-known Hickman pools in Stanislaus County. Not only does the Hickman pool complex contain one of the largest vernal lakes in California at more than 300 ac (121 ha), but it also exhibits tremendous biodiversity (criterion 2) (Medeiros 2002).

The Turlock Unit contains large intact and contiguous vernal pool grassland areas that help maintain connectivity between *Chamaesyce hooveri* habitat to the north and south (criterion 3). There are numerous vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths in this unit to sustain *C. hooveri* germination, growth, and reproduction. *Chamaesyce hooveri* populations in Stanislaus County typically flower from mid-June into October, whereas those in central Merced and Tulare Counties typically flower from late May through July (Alexander and Schlising 1997). The *C. hooveri* habitat in this unit is important to conserve phenotypic variation within the species and to maintain the geographic distribution of *C. hooveri* throughout its range (criteria 1 and 2). Vernal pools in the Turlock Unit are located in southeastern Stanislaus and northeastern Merced Counties. They extend from the San Joaquin Valley floor to the low-elevation foothills of the Sierra Nevada.

Unit 7A, B, C, and D, Tulare Unit, Tulare County (23,537 ac (9,526 ha))

This unit is geographically important because it supports almost 20 percent of the known occurrences of *Chamaesyce hooveri* (CNDDB 2002). This unit also comprises the southern extent of the range of the species. Occurrences within this unit are more than 68 mi (110 km) distant from the nearest *C. hooveri* unit to the north. *Chamaesyce hooveri* populations in Tulare County typically flower from late May through July, whereas those in Stanislaus and Sacramento County typically flower from mid-June into October (Alexander and Schlising 1997). This phenotypic variation also suggests there may be regional differences between these and other occurrences in other portions of the species' range (criterion 2).

There are four subunits within the Tulare Unit located in northeastern Tulare County. The unit includes several protected areas (criterion 4), including the Sequoia Fields Ecological Reserve and the Stone Corral Ecological Reserve in Tulare County managed by CDFG (218 ac (88 ha)), as well as 33 ac (13 ha) of BLM land. Other areas within this unit are privately owned. This unit contains scattered vernal pool complexes in northwestern Tulare County.

Orthocarpus campestris var. *succulentus*

Fleshy owl's-clover is found usually in low plant numbers in seven naturally occurring widely scattered vernal pool complex areas in Fresno, Madera, San Joaquin, Stanislaus, and Tuolumne Counties in the San Joaquin Valley. Fleshy owl's-clover has a sporadic distribution within vernal pools, between vernal pools and between vernal pool complexes. The specific vernal pool characteristics that determine the suitability for fleshy owl's-clover germination and growth are unknown; however, it appears that the species seems to favor somewhat smaller, somewhat acidic vernal pools as compared to other vernal pool plants.

Fleshy owl's-clover occurrences are known from with an elevational variation of near 50 m (160 ft) to near 550 m (1,800 ft). Conserving a broad distribution of fleshy owl's-clover across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of its range. The vernal pool types and soils associated with the six areas of concentration of fleshy owl's-clover differ across the geographic range of the species; these differences lead to different species compositions and environmental conditions between fleshy owl's-clover occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species' conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992; Fugate 1998; Gonzales *et al.*1996; Ikeda and Schlising 1990; Noss *et al.* 2002a; Platenkamp 1998; Zedler *et al.* 1979). The distribution of fleshy owl's-clover reflects a diversity of vernal pool habitat types and sizes that provide habitat for the species. We are uncertain about specific soils that may correlate with the presence of this species, although the species is irregularly found on Redding soil series. Vernal pool complexes that provide suitable habitat for this species include pools ranging in depth from 15 cm (6.0 in) to 25 cm (10.0 in), but the species is also found less frequently in shallower and deeper pools. Soil pH values for some of the vernal pools in Merced County occupied by fleshy owl's-clover range from 4.3 to 6.2. Although no comprehensive study has been conducted, Merced County some vernal pools occupied by fleshy owl's-clover vary in size from 80 sq m (0.02 ac) to 486 sq m (0.12 ac). Merced County contains the largest aggregations of fleshy owl's-clover, and the occurrences of the species are found on mild to strongly acidic soils on Laguna, Mehrten, North Merced Gravels, and Riverbank Formations as well as Ione, Merthen, and Valley Springs geological formations. The parent material of vernal pools greatly influences species' composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Although fleshy owl's-clover appears to prefer the more weathered acidic, higher-terrace vernal pool complexes that are composed of volcanic tuff sand quartzite parent materials, soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990). The primary constituent elements of critical habitat for *Castilleja campestris* ssp. *succulenta* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Castilleja campestris* ssp. *succulenta* germination, growth, and reproduction, including but

not limited to, hardpan vernal pools on alluvial terraces and San Joaquin, Redding, Corning, Keyes, and Pentz soils series, among others, and northern basalt flow vernal pools on Hideaway soils series, which typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Castilleja campestris* ssp. *succulenta* germination, growth and reproduction, and dispersal, but not necessarily every year.

Unit 1, Southeast Sacramento Valley Unit, Sacramento and San Joaquin Counties (2,422 ac (980 ha))

This unit contains occurrences of the species in vernal pools occurring on San Joaquin soils (Holland 1998; Sacramento County 1999; CNDDB 2002). The unit is geographically important because it represents the northernmost extent of the species' range, and because it is the only unit designated for this species within the Sacramento Valley. The unit is isolated from other *Orthocarpus campestris* var. *succulentus* occurrences to the south in the San Joaquin Valley by a distance of over 50 mi (80 km). This unit occupies the area east of Galt in southeastern Sacramento and northeastern San Joaquin Counties. All of the lands included within this unit are privately owned.

Unit 2, Waterford Unit, Stanislaus and Tuolumne Counties (33,705 ac (13,640 ha))

This unit supports *Orthocarpus campestris* var. *succulentus* occurrences within hardpan vernal pools on alluvial terraces on Amador and Redding soils (CNDDB 2002). These soil types are not otherwise well represented (criterion 2). The unit represents the northernmost extent of *O. c.* var. *succulentus* range within the San Joaquin Valley, and is over 50 mi (80 km) from the isolated occurrence to the north (criterion 1). It contains a variety of pools and ephemeral habitats in which the plants are known to occur, including shallow and deep pools and pools with both long and short inundation periods (criterion 2). The Waterford Unit is important for the survival of *O. c.* var. *succulentus* because it represents large areas of contiguous habitat with relatively intact hydrology. Vernal pools in the Waterford Unit are located mainly in eastern Stanislaus County, but overlap into western Tuolumne County, extending into the low elevation foothills of the Sierra Nevada. All the lands within this unit are privately owned.

Unit 5, Fresno Unit, Fresno County (26,406 ac (10,686 ha))

This unit contains occurrences of the species growing within vernal pools formed on Fallbrook, Ramona, San Joaquin, Vista, and Pollasky soil series (CNDDB 2002). Essential habitat in this unit consists of typical ''bowl-like'' pools, whereas other areas are more similar to swales. The diversity of vernal pool types found within the Fresno Unit contributes to the range of ecological conditions in which *Orthocarpus campestris var. succulentus* occurs (criterion 2). This area is also noteworthy because it represents the southern extent of the species' range (criterion 1). The Fresno Unit is located south of Millerton Lake. Property ownership and protection within this unit includes CDFG (1 ac (0.4 ha) and CDFG-administered land (1 ac (0.4 ha)). The remainder of the property within this unit is privately owned.

Unit 6A, Table Mountain Unit, Fresno County (4,258 ac (1,723 ha))

This area supports occurrences of the species within Northern Basalt Flow vernal pools (CNDDB 2002). This is the only area where *Orthocarpus campestris* var. *succulentus* is found on this vernal pool type (criterion 2). Northern Basalt Flow pool complexes, such as Table Mountain, are extremely rare, occurring only on ancient terraces and hilltops. Basalt tables are perched on narrow, sinuous basalt mesas above the surrounding low-lying terrain. They typically contain small, irregularly clustered pools with ''flashy hydrology'' (Keeler-Wolf *et al.* 1998). They are less common than hardpan and claypan pools that are typically found in this region, and occur in complexes that are less dense than habitat in units further north.

Three occurrences of *Orthocarpus campestris* var. *succulentus* within this unit are wholly or partly in designated reserves, which are on two mountains near Millerton Lake. The Sierra Foothill Conservancy's Big Table Mountain Preserve includes one of these occurrences, and a portion of another, which is shared with BLM. The other is in CDFG's Big Table Mountain Ecological Reserve. A fourth nearby occurrence is partially under the control of BLM and partly in private ownership. BLM owns approximately 350 ac (142 ha) and CDFG owns approximately 419 ac (170 ha) of land within this unit. TNC has 650 ac (256 ha) of conservation easements within this unit. These preserved areas increase the likelihood that the species will persist in the unit over time (criterion 4).

The Table Mountain Unit is comprised of two subunits. Both subunits are located east of Millerton Lake on basalt mesas above the San Joaquin River. Subunit 6B is located on Kennedy Table in Madera County, and Subunit 6A is directly south of this unit across the San Joaquin River on Table Mountain in Fresno County.

Neostapfia colusana

Colusa grass occurrences are known from eight areas of concentration with an elevational variation of near 5 m (16 ft) to near 100 m (350 ft). Conserving a broad distribution of Colusa grass across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species range. The vernal pool types and soils associated with the eight areas of concentration of Colusa grass differ greatly across the geographic range of the species; these differences lead to different species compositions and environmental conditions between Colusa grass occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species' conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992; Fugate 1998; Gonzales *et al.* 1996; Ikeda and Schlising 1990; Noss *et al.* 2002a; Platenkamp 1998; Zedler *et al.* 1979). The distribution of Colusa grass reflects a diversity of vernal pool habitat types and sizes that provide habitat for the species. Vernal pool complexes that provide suitable habitat for this species include two different physiographic and edaphic settings: claypan soils of saline-alkali basins and remnant alluvial fans and old stream terrace areas with strongly acidic, gravelly, and cobbly soils having an iron-silica cemented hardpan, and shallow, slightly acidic residual soils of the Pentz series underlain by cemented tuffaceous alluvium. Additional settings for Colusa grass are found in vernal pool complexes where resistant beds of tuffaceous deposits are exposed along intermittent drainages and, in Stanislaus

County, neutral to slightly alkaline claypan soils on dissected alluvial fans. Not all areas of Colusa grass have been identified as to the specific soil series or soil mapping units where they occur. However, in Merced County, Colusa grass occurs on clay soils on Mehrten Formation and also on Riverbank, North Merced Gravels, and Laguna Formations. Of the Orcuttieae grasses, Colusa grass inhabits the widest range of vernal pool sizes, with the smallest being 100 sq m (1,075 sq ft) and the largest at 250 ha (618 ac). The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary by location (Holland and Dain 1990). The primary constituent elements of critical habitat for *Neostapfia colusana* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Neostapfia colusana* germination, growth, and reproduction, and that typically become inundated during winter rains, including but not limited to vernal pools formed on the rim of alkaline basins in the Sacramento and San Joaquin valleys, as well as on acidic soils of alluvial fans and stream terraces along the eastern margin of the San Joaquin Valley and into the adjacent foothills. All of these pool types are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Neostapfia colusana* germination, growth and reproduction, and dispersal, but not necessarily every year.

Unit 1, Davis Communications Annex and Grasslands Area Unit, Yolo County (440 ac (178 ha))

This unit is geographically important (criterion 1) because it contains one of only six areas where *Neostapfia colusana* is known to occur (EIP Associates 2001; Yolo County Parks 2001; CNDDB 2002). Species occurrences within the unit grow in large vernal playa pools of the Pescadero soil series (Yolo County 1995; Holland 1998; USDA 2001).

This unit is located southeast of the City of Davis and south of the South Fork of Putah Creek. This unit's western boundary coincides with the Solano and Yolo County line. The unit contains land owned by Yolo County. Approximately 322 ac (128 ha) is owned by the DoD.

Unit 3, Farmington Unit, Stanislaus County (38,408 ac (15,544 ha)

This unit supports *Neostapfia colusana* within vernal pools on ecologically noteworthy high terrace landforms and Redding-Pentz-Peters soil mapping unit complexes (criterion 2) (USDA 2001; CNDDB 2002). The impermeable layers underlying these occupied vernal pools are generally iron-silica cemented hardpan. Habitat in this unit includes deeper pools that provide the long inundation period required for germination of *N. colusana* (EIP Associates 1999). This unit is geographically isolated from the other *N. colusana* units to the north by over 50 mi (80 km) (criterion 1).

The Farmington unit is located in northeast Stanislaus County. It is hydrologically separated from other *Neostapfia colusana* units to the south by the Stanislaus River. The eastern boundary generally parallels the Calaveras County Line. Woodward Reservoir and the town of Oakdale are all located outside and to the west of the unit. The unit is generally south of State Highway 4 and north of State Highway 108. The unit boundary is drawn to include these species' occurrences and the vernal pool complexes that Holland (1998) mapped and are visible on SPOT imagery. Lands within this unit are privately owned.

Unit 4, Waterford Unit, Stanislaus and Tuolumne Counties (70,810 ac (28,657 ha))

The Waterford Unit is important for the conservation of the geographic diversity of the species (criterion 1) because it contains 20 percent of all extant *Neostapfia colusana* occurrences (CNDDB 2002). These occurrences are found within vernal pool complexes formed on alluvial terraces and associated Whitney soils, among others. This unit contains vernal pools, swales, and other ephemeral wetlands formed on acidic soils of alluvial fans and stream terraces along the eastern margin of the San Joaquin Valley and into the adjacent foothills. These varied vernal pool habitats are essential for the conservation of the species because they provide a diversity of habitat for the species (criterion 2).

The Waterford Unit is bordered by the Stanislaus River to the north and the Tuolumne River to the south. The City of La Grange is located southeast of this unit. Stanislaus County Road J9 runs west of the unit, and the City of Oakdale is located outside of the northwest corner. The eastern boundary extends into the low-elevation foothills of the Sierra Nevada. Vernal pool complexes in the Waterford Unit are mainly located in eastern Stanislaus County, but overlap into southwestern Tuolumne County. Lands within this unit are mostly privately owned. Approximately 2 ac (0.8 ha) of this unit are lands administered by the CDFG.

Unit 5, Turlock Unit, Stanislaus and Merced Counties (35,508 ac (14,370 ha))

This unit encompasses large, playa vernal pools where the species is found, including the Hickman vernal pool complex in Stanislaus County (Holland 1998; CNDDB 2002). This unusual vernal pool complex provides a unique habitat for *Neostapfia colusana* (criterion 2), as well as a number of other vernal pool species. Not only does the Hickman pool complex contain one of the largest vernal lakes in California, occupying more than 300 ac (121 ha), but it also exhibits tremendous biodiversity (Medeiros 2000).

The Turlock Unit is bordered by the Tuolumne River to the north and the Merced River to the south. The unit lies between the towns of La Grange and Snelling. Stanislaus County Road J9 runs west of the unit and the eastern edge is located in the low elevation foothills of the Sierra Nevada. Vernal pool complexes in the Turlock Unit are located in Stanislaus and Merced Counties. Approximately 41 ac (17 ha) of lands within this unit are owned by the California State Parks.

Unit 6, Merced Unit, Merced and Mariposa Counties (93,125 ac (36,688 ha))

This unit is geographically important (criterion 1) because it contains over 40 percent of all known *Neostapfia colusana* occurrences (CNDDB 2002). The unit also contains a diversity of vernal pool habitats for *N. colusana,* including the only locations where this species is known to occur on Keyes'—Pentz, Redding, and Keyes soils (criterion 2) (USDA 2001). Although many occurrences of *N. colusana* have been extirpated in the past two decades, the occurrences in the Merced Unit are among the most robust remaining

(criterion 4) (Holland 2000). The area within this unit encompasses the largest block of pristine, high-density vernal pool grasslands remaining in California (Vollmar 1999).

A majority of the vernal pool habitat in the Merced Unit is in Merced County, although the eastern edge of the unit overlaps into Mariposa County in the low-elevation foothills of the Sierra Nevada. The northern boundary parallels the Merced River, and Bear Creek serves as the southern border. The entire unit is located east of Highway 99. The majority of the land in this unit is privately owned and approximately 8 ac (3 ha) of lands within this unit are owned by the Federal government.

Tuctoria greenei

Greene's tuctoria occurrences are known from eight general areas of concentration from Shasta County to Madera County with an elevational variation of from near 30 m (100 ft) to near 1,067 m (3,500 ft). Conserving a broad distribution of Greene's tuctoria across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the its range. The vernal pool types and soils associated with the eight areas of concentration of Greene's tuctoria differ greatly across the geographic range of the species; these differences lead to different species compositions and environmental conditions between Greene's tuctoria occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992; Fugate 1998; Gonzales *et al.*1996; Ikeda and Schlising 1990; Noss *et al.* 2002a; Platenkamp 1998; Zedler *et al.* 1979). The wide-ranging distribution of Greene's tuctoria reflects a diversity of vernal pool habitat types that provide habitat for the species. Vernal pool complexes that provide suitable habitat for this species include four different physiographic and edaphic settings—old high stream terrace, lower old stream terrace areas with soils having an iron-silica hardpan, sites with shallow soils underlain by cemented tuffaceous alluvium, and vernal pool complexes on claypan soils that are slightly acid to slightly alkaline. Not all areas of Greene's tuctoria have been identified as to the specific soil series or soil mapping units where they occur. The Butte County occurrences of Greene's tuctoria are associated with soils underlain by tuffaceous alluvium, are considered to occur in Northern Basalt Flow and Northern Volcanic Mudflow type vernal pool complexes, and one occurrence is found on Tuscan soils. The Tehama County occurrences are associated with slightly to medium acid soils of the Tuscan and Anita soil series that are underlain by an iron-silica cemented hardpan occurring vernal pools and are the only area where vernal pools are associated with this type of landform. Many of these pools are a fraction of an acre and have a short inundation period and fewer number of shallower larger pool sizes well over an acre with a comparatively longer inundation period. A vernal pool's parent material greatly influences the pool's species composition and hydrologic functioning (Hanes and Stromberg 1998; Holland and Jain 1981; 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary by location (Holland and Dain 1990). The primary constituent elements of critical habitat for *Tuctoria greenei* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Tuctoria greenei* germination, growth and reproduction, including but not limited to, Northern Claypan, Northern Hardpan, and Northern Basalt flow vernal pools that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Tuctoria greenei* germination, growth and reproduction, and dispersal, but not necessarily every year.

Unit 1, Modoc Plateau Unit, Lassen and Shasta Counties (1,703 ac (689 ha))

This unit contains a *Tuctoria greenei* occurrence within Northern Basalt Flow vernal pools (CNDDB 2002). It is the only location where the species grows on this vernal pool type. The occurrence is located in an area described as a large vernal pool in an open flat in an eastside pine forest. It is at a higher elevation, with lower average temperatures, than any other occurrence. Thus the unit is ecologically unique (criterion 2). It also represents the northern extent of the species' range, and is separated from occurrences to the south by over 68 mi (110 km) (criterion 1).

This unit occurs within the volcanic plateau of northeastern California. The unit is located in the area surrounding Murken Lake east of Hat Creek near Cinder Butte. Bidwell Road crosses through the southern boundary. The USFS owns approximately 1,530 ac (619 ha) of the unit. The remaining lands within this unit are privately owned.

Unit 2, Vina Unit, Tehama and Butte Counties (25,102 ac (10,159 ha))

This unit is essential to the conservation of *Tuctoria greenei* because it includes 60 percent of the remaining extant occurrences of the species (criterion 1) (CNDDB 2002). The unit also represents one of only two areas throughout the species' range where *T. greenei* occurrences are not considered to be declining (CNDDB 2002). The species occurs in vernal pool complexes within the unit found on Anita and Tuscan series soils.

This unit for *Tuctoria greenei* occupies the area south of Toomes Creek, and north of Pine Creek and the Cana Highway. State Route 99 bisects this unit and the western boundary generally parallels the Southern Pacific Railway line. The majority of the lands included within this unit are privately owned. Property ownership within this unit includes various types of protected lands (criterion 4), including CDFG (1 ac (0.4 ha)), CDFG administered lands (1 ac (0.4 ha)), TNC (5,738 ac (2,295 ha)), TNC easements (11,653 ac (4,661 ha)), and WRP easements and agreements (142 ac (57 ha)).

Unit 6, Waterford Unit, Stanislaus and Tuolumne Counties (73,111 ac (29,588 ha))

This unit supports occurrences of the species within the only vernal pools where *Tuctoria greenei* is known to occur on slightly alkaline soils of the Meikle and Paulsell series (criterion 2) (Holland 1998; USDA 2001; CNDDB 2002). It is also important to the conservation of the geographic distribution of the species because it is one of only eight locations where the species remains extant (criterion 1). The Waterford Unit is bordered by the Stanislaus River to the north and the Tuolumne River to the south. The City of La Grange is located southeast of the unit. Stanislaus County Road J9 runs

west of the unit, and the Oakdale Airport is located outside of the northwest corner. The eastern boundary extends into the low-elevation foothills of the Sierra Nevada. Vernal pool complexes in the Waterford Unit are located mainly in eastern Stanislaus County, but overlap into southwestern Tuolumne County. Approximately (2 ac (0.8 ha)) of this unit is administered by the CDFG. The remaining lands within this unit are privately owned.

Unit 7, Merced Unit, Merced, Madera, and Mariposa Counties (133,460 ac (54,011 ha))

This unit contains numerous occurrences of the species within large, hydrologically intact vernal pool complexes areas (criterion 4) (Holland 1998; Vollmar 1999), including Northern Hardpan vernal pools on Redding, Raynor, and Bear Creek soils series (EIP 1999; USDA 2001). These soil and vernal pool type combinations are not otherwise well represented (criterion 2). Over 30 percent of the extant occurrences of *Tuctoria greenei* are in the Merced Unit (criterion 1) (CNDDB 2002).

A majority of the vernal pool habitat in the Merced Unit is in Merced County. The eastern edge of the unit overlaps into Mariposa County and in the south it extends to the Chowchilla River in Madera County. The northern boundary parallels the Merced River. The entire unit is located east of Highway 99. Approximately 8 ac (3 ha) is owned by the Federal government and the rest is privately owned. TNC has 11,283 ac (4,513 ha) of easement lands within this unit. The remaining lands within this unit are privately owned.

Orcuttia pilosa

Hairy Orcutt grass occurrences are known from southern Tehama County in the Sacramento Valley to southern Madera County in the San Joaquin Valley with a predominate elevational variation of from near 55 m (180 ft) to near 123 m (405 ft). Conserving a broad distribution of hairy Orcutt grass across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of its range. The vernal pool types and soils associated with the six areas of concentration of hairy Orcutt grass differ greatly across the geographic range of the species; these differences lead to different species compositions and environmental conditions between hairy Orcutt grass occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species' conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992; Fugate 1998; Gonzales *et al.*1996; Ikeda and Schlising 1990; Noss *et al.* 2002a; Platenkamp 1998; Zedler *et al.* 1979). The distribution of hairy Orcutt grass reflects a diversity of vernal pool habitat types that provide habitat for the species on the alluvial fans and old stream terraces of the Sierra Nevada foothills. Vernal pool complexes that provide suitable habitat for this species include mostly three different physiographic and edaphic settings—old high and lower old stream terrace areas with soils having an iron-silica hardpan and sites with shallow soils underlain by cemented tuffaceous alluvium. The Tehama County occurrences of hairy Orcutt grass are associated with slightly to medium acid soils of the Tuscan and Anita soil series that are underlain by an iron-silica cemented hardpan. Not all areas of hairy Orcutt grass have been identified as to the specific soil series or soil mapping units on which they occur. Many of the occupied vernal pools vary in size from 3,400 sq m (36,600 sq ft) to 250 ha (618 ac). A vernal pool's parent material greatly influences the pool's species composition and hydrologic functioning (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990). The primary constituent elements of critical habitat for *Orcuttia pilosa* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Orcuttia pilosa* germination, growth and reproduction, including but not limited to features occurring on both acidic and saline-alkaline soils, with an iron-silica cemented hardpan or claypan, and that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Orcuttia pilosa* germination, growth and reproduction, and dispersal, but not necessarily every year.

Unit 1, Vina Plains Unit, Tehama and Butte Counties (19,306 ac (7,813 ha))

This area supports over 25 percent of all known occurrences of the species, and represents the northern extent of the species range (criterion 1) (CNDDB 2002). It is over 25 mi (40 kmi) from the nearest occurrence to the south. Species occurrences in the unit grow in large vernal pools on Tuscan and Anita soils (USDA 2001). This area represents one of only two occupied locations that have some form of special habitat protection (criterion 4).

The unit for *Orcuttia pilosa* occupies the area south of Deer Creek and north of Pine Creek to near Cana Highway. California State Route 99 bisects the unit and the western boundary generally parallels the Southern Pacific Railway line. The majority of the lands included within this unit are privately owned. Land ownership includes 5,660 ac (2,264 ha) owned by TNC, which also has additional 9,564 ac (3,826 ha) of conservation easements within this unit, and 142 ac (57 ha) of private land protected by conservation easement or agreement under the WRP.

Unit 4, Turlock Unit, Stanislaus and Merced Counties (48,649 ac (19,688 ha))

Vernal pool complexes in the Turlock Unit are located in eastern Stanislaus and Merced Counties. The unit contains occurrences of *Orcuttia pilosa* within vernal pool complexes on Whitney and Meikle soil mapping units, which are not otherwise well represented (criterion 2) (Holland 1998; USDA 2001; CNDDB 2002). This unit also contains the Hickman pools in Stanislaus County, and a high concentration of *O. pilosa* occurrences (CNDDB 2002). The Hickman pool complex contains one of the largest vernal lakes in California at more than 300 ac (121 ha) and represents a unique habitat for *O. pilosa* (criterion 2). The unit encompasses large, intact vernal pool complexes that are more likely to allow the species to persist over time (criterion 4).

The Turlock Unit is bordered by the Tuolumne River to the north and the Merced River to the south. It lies between the towns of La Grange and Snelling. Stanislaus County Road J9 runs west of the unit and the eastern edge is located in the low elevation foothills of the Sierra Nevada. Land ownership within this unit includes BLM (17 ac (7 ha)) and California State Parks (41 ac (17 ha)). The remaining land within this unit is privately owned.

Orcuttia viscida

Sacramento Orcutt grass is found in naturally occurring scattered vernal pool complexes in Sacramento County, California, and is the most geographically restricted Orcuttieae species. The specific vernal pool characteristics that determine the suitability for Sacramento Orcutt grass germination, growth and reproduction are not well understood. Sacramento Orcutt grass occurrences are known from only in eastern Sacramento County in the Sacramento Valley with a predominant elevational variation of 45 m (150 ft) to 114 m (375 ft). Conserving a broad distribution of Sacramento Orcutt grass across its rather relatively narrow geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species range.

The vernal pool types and soils associated with the three areas of concentration of Sacramento Orcutt grass differ across the geographic range of the species and leads to different species compositions and environmental conditions between Sacramento Orcutt grass occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992, Fugate 1998, Gonzales *et al.* 1996, Ikeda and Schlising 1990, Noss *et al.* 2002a, Platenkamp 1998, Zedler *et al.* 1979). The distribution of Sacramento Orcutt grass reflects a relatively smaller diversity of vernal pool habitat types that provide habitat for the species on the old stream terraces of the Sierra Nevada foothills. Vernal pool complexes that provide suitable habitat for this species include one physiographic and edaphic settings-remnant depositional stream terraces at the base of the Sierran foothills. The Sacramento County occurrences of Sacramento Orcutt grass are associated with Redding soils that are strongly acidic underlain by an iron-silica cemented hardpan and with soils mapped in the Pentz-Pardee-Red Bluff association. Not all areas of Sacramento Orcutt grass have been identified as to the specific soil series or soil mapping units where they occur. Many of the occupied vernal pools vary in size from 1,000 sq m (0.3 ac) to 8,260 sq m (2 ac). The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998, Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990). The primary constituent elements of critical habitat for *Orcuttia viscida* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Orcuttia viscida* germination, growth and reproduction, including but not limited to vernal pools on high terrace landforms on acidic soils such as Red Bluff, Redding, and Corning soil series. These habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Orcuttia viscida* germination, growth and reproduction, and dispersal, but not necessarily every year.

Unit 3, Rancho Seco Unit, Sacramento and Amador Counties (35,078 ac (14,196 ha))

This unit marks the southern extent of the range of *Orcuttia viscida,* and is one of only three areas where the species remains extant (criterion 1). It supports occurrences of the species within relatively undisturbed high terrace vernal pool complexes on Corning and Redding soil mapping units. Corning soils are not common to the other two units (criterion 2).

This unit occupies the area south of Laguna Creek and north of the Sacramento and San Joaquin County line along Dry Creek. The eastern boundary is the low elevation foothills of western Amador County. The western limit is bounded by urban and agricultural areas near the cities of Galt and Elk Grove, and along the foothill region of the southeastern Sacramento Valley. The western boundary also marks a change from high terrace soils in the region, including Corning and Redding soil mapping units that comprise the extent of *Orcuttia viscida* habitat. The northern and southern boundaries of this unit exclude urban and agricultural areas. The majority of land within this unit is privately owned, but some includes additional protection which will help the species occurrences to persist over time (criterion 4). TNC owns 7,736 ac (3,094 ha) and an additional 11 ac (5 ha) of private land is protected by WRP easements or agreements.

Orcuttia inaequalis

San Joaquin Valley Orcutt grass is found in naturally occurring widely scattered vernal pool complexes in Fresno, Madera, Merced, Stanislaus, and Tulare counties in the northeastern San Joaquin Valleys. San Joaquin Valley is the only species found just in the San Joaquin Valley. The specific vernal pool characteristics that determine the suitability for San Joaquin Valley Orcutt grass germination, growth, and successful reproduction are unknown. However, San Joaquin Valley is a strict endemic to usually larger vernal pools that range in area from 140 sq m (1,500 sq ft) to 4.9 ha (12.1 ac) in size and 30.5 cm (12 in) to 55.9 cm (22 in) deep but can be found in both smaller and larger and shallower and deeper vernal pools (Stone *et al.* 1988, Volmar 2002). San Joaquin Valley is found in vernal pool complexes on a variety of geological surfaces including Ione, Laguna, Merthen, Modesto, North Merced Gravels, Riverbank, Turlock Lake, and Valley Springs in the northeastern San Joaquin Valley.

San Joaquin Valley Orcutt grass occurrences are known from central Merced County to northern Tulare County in the northeastern San Joaquin Valley with a predominate elevational variation of near 47 m (155 ft) to near 570 m (1,870 ft). Conserving a broad distribution San Joaquin Valley Orcutt grass across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species range.

The vernal pool types and soils associated with the six areas of concentration of San Joaquin Valley Orcutt grass differ greatly across the geographic range of the species and leads to different species compositions and environmental conditions between San Joaquin Valley Orcutt grass occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992, Fugate 1998, Gonzales *et al.*1996, Ikeda and Schlising 1990, Noss *et al.* 2002a,

Platenkamp 1998, Zedler *et al.* 1979). The distribution of San Joaquin Valley Orcutt grass reflects a diversity of vernal pool habitat types that provide habitat for the species on the alluvial fans and old stream terraces of the Sierra Nevada foothills. Vernal pool complexes that provide suitable habitat for this species include mostly three different physiographic and edaphic settings; old high old stream terrace areas with Redding and related soil series; lower old stream terraces with San Joaquin and related soil series having an iron-silica hardpan but less strongly acidic sites with shallow, residual soils of the Pentz and related soil series underlain by a well-cemented tuffaceous alluvium. One occurrence in Fresno County is found in a rather shallow stony moderately to strongly acidic vernal pool complex on residual soils of the Hideaway series at a relatively high elevation. Not all areas of San Joaquin Valley Orcutt grass have been identified as to the specific soil series or soil mapping units on which they occur. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998, Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990). The primary constituent elements of critical habitat for *Orcuttia inaequalis* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Orcuttia inaequalis* germination, growth and reproduction, including but not limited to vernal pools on alluvial fans, high and low stream terraces, and tabletop lava flows. These habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Orcuttia inaequalis* germination, growth and reproduction, and dispersal, but not necessarily every year.

Unit 1, Merced Unit, Merced and Mariposa Counties (93,125 ac (37,699 ha))

This unit is an important representative of the geographic diversity of *Orcuttia inaequalis* (criterion 1) because it supports over half of the known occurrences of the species, and represents the northernmost extent of the species' current range (CNDDB 2001). It is also ecologically important (criterion 2) because it contains the only area where *O. inaequalis* is found on vernal pools formed on Corning and Greenfield soils, and one of only two sites where it is found on San Joaquin soils (Holland 1998; EIP 1999; USDA 2001). This unit supports some of the largest, most robust occurrences of the species (Holland 2000). The area within this unit encompasses the largest block of pristine, high density vernal pool grasslands remaining in California, increasing the likelihood that it will continue to support occurrences of the species into the future (criterion 4) (Vollmar 1999).

A majority of the vernal pool habitat in the Merced Unit is in Merced County, although the eastern edge of the unit overlaps into Mariposa County in the low elevation foothills of the Sierra Nevada. The entire unit is located east of State Highway 99. A majority of the land in the Merced Unit is privately owned. Approximately 8 ac (3 ha) of this unit is owned by the Federal government. TNC has 8,559 ac (3,424 ha) of easement lands within this unit.

Unit 2, Le Grand Unit, Merced, Mariposa, and Madera Counties (32,152 ac (13,012ha))

This unit supports *Orcuttia inaequalis* occurrences within vernal pools formed on alluvial terraces on Raynor clay soils (CNDDB 2001). The lack of such soils at other occurrence sites makes the unit ecologically important (criterion 2). The Le Grand Unit is also essential for the conservation of the species because it contains large intact and contiguous vernal pool grassland areas that provide connectivity between units to the north and south (criterion 3). This unit is important to maintain the range of habitats in which the species is known to occur.

The Le Grand Unit contains an area where *Orcuttia inaequalis* was introduced into six created pools. It germinated and flowered in five of them during the 2 years following its introduction (Durgarian 1995; Stebbins *et al.* 1995) and was still present in 2000 (Faubion, *in litt.* 2000), thus demonstrating the suitability of the habitat to support this species. This site is now treated as an occurrence by the CNDDB (2001). The Madera Irrigation District manages the property, which is owned by the BOR (Stebbins *et al.* 1995).

A majority of the vernal pool habitat in the Le Grand Unit is in eastern Merced County. The eastern edge of the unit overlaps into Mariposa County and in the south it extends to the Madera County line. Bear Creek serves as the northern boundary. The entire unit is located east of State Highway 99. TNC has 1,070 ac (428 ha) of easement lands within this unit. The remaining lands are privately owned.

Unit 4, Fresno Unit, Fresno County (7,451 ac (3,016 ha))

This unit contains *Orcuttia inaequalis* occurrences within vernal pools formed on Fallbrook, Ramona, San Joaquin, Vista, and Pollasky soil series (CNDDB 2002). Possibly due to this variation of soil types, vernal pool habitat in this unit is less dense than habitat in units further north. The diversity of vernal pool types found within the Fresno Unit contributes to the range of ecological conditions in which *O. inaequalis* occurs (criterion 2). Vernal pool types within this unit include Northern Hardpan vernal pools. The unit is also likely to be important because it provides connectivity for pollen and seeds between units 3 and 5 (criterion 3).

Located in Fresno County, this unit contains vernal pool habitat south of Millerton Lake and east of the San Joaquin River. The eastern boundary parallels the low elevation foothill region of the Sierra Nevada. All the land within this unit is privately owned.

Unit 5A, Table Mountain Unit, Fresno County (4,258 ac (1,723 ha))

This area supports *Orcuttia inaequalis* occurrences within Northern Basalt Flow vernal pools (Holland 1998; Keeler-Wolf *et al.* 1998; CNDDB 2002). This is the only area in which the species is known to occur within these pool types (criterion 2) (CNDDB 2002). Northern Basalt Flow vernal pool complexes are an extremely rare vernal pool habitat occurring only on ancient terraces and hilltops above the surrounding low-lying terrain. They typically contain small, irregularly clustered pools with ''flashy hydrology'' (Keeler-Wolf *et al.* 1998). This unit is also geographically noteworthy (criterion 1) because it marks the easternmost extent of the range, and includes occurrences at the highest elevations for the species.

This unit contains protected lands at the Big Table Mountain Ecological Reserve, which may help the species persist here over time (criterion 4). The Federal government owns 350 ac (142 ha) of this unit, the State owns 419 ac (170 ha), and TNC has 650 ac (260 ha) of conservation easements within this unit. This unit also contains an occurrence of *Orcuttia inaequalis* that is partially on public land administered by the BLM. The pool supports the second-largest population of the species known to be extant (CNDDB 2001).

Unit 5 for *Orcuttia inaequalis* is comprised of two subunits. Both subunits are located east of Millerton Lake on basalt mesas above the San Joaquin River. Subunit 5B is located on Kennedy Table in Madera County, and Subunit 5A is directly south of this unit across the San Joaquin River on Table Mountain in Fresno County.

Unit 6A and B, Tulare Unit, Tulare County (15,243 ac (6,169 ha))

This unit contains *Orcuttia inaequalis* occurrences within vernal pools on Madera and Greenfield soils (CNDDB 2001; USDA 2001). It represents the southernmost extent of *O. inaequalis* range (criterion 1).

There are two subunits within the Tulare Unit. The Tulare Unit is located in northwestern Tulare County. *Orcuttia inaequalis* occurs on CDFG land at Sequoia Fields Ecological Reserve (215 ac (88 ha)); however, most of the area within this unit is privately owned.

Orcuttia tenuis

Slender Orcutt grass is found in five general areas of concentration from south Sacramento County to the Modoc Plateau and west to Lake County with an elevational variation of near 61 m (200 ft) to near 1,067 m (3,500 ft). A broad distribution of slender Orcutt grass across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species range.

The vernal pool types and soils associated with the five general areas of concentration of slender Orcutt grass differ greatly across the geographic range of the species and leads to different species compositions and environmental conditions between slender Orcutt grass occurrences. Providing for a mosaic of habitat types both between and among vernal pool species is essential because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992, Fugate 1998, Gonzales *et al.*1996, Ikeda and Schlising 1990, Noss *et al.* 2002a, Platenkamp 1998, Zedler *et al.* 1979). The wide ranging distribution of slender Orcutt grass has lead to a large diversity of vernal pool habitat types for the species. The Modoc Plateau occurrences are associated mostly with Northern Basalt Flow and Northern Volcanic Mudflow type vernal pools. These pools range in size from a fraction of an acre to well over an acre with smaller pools having a short inundation period. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998, Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions which vary upon location (Holland and Dain 1990). The Lake County occurrences are associated with Ashflow type vernal pools and are the only area where vernal pools are associated with this type of landform. The Redding area vernal pools in the Northeastern Sacramento Valley Vernal Pool Region occur on volcanic Tuscan Formation or terrace-alluvial Redding soils. The hydrology within the terrace-alluvial pools tend to be less flashy than those with a volcanic origin (Keeler-Wolf *et al.* 1998). The soils associated with the Sacramento County occurrences include those occurring on old terrace formations. The primary constituent elements of critical habitat for *Orcuttia tenuis* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Orcuttia tenuis* germination, growth and reproduction, including but not limited to, Northern Volcanic Ashflow and Northern Volcanic Mudflow vernal pools (Sawyer and Keeler-Wolf 1995) with iron-silica and bedrock hardpan impervious layers, and that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Orcuttia tenuis* germination, growth and reproduction, and dispersal, but not necessarily every year.

Unit 1A, B, C, D, E, F, G, H, and I, Modoc Plateau Unit, Plumas, Lassen, Shasta, Modoc, and Siskiyou Counties (33,146 ac (13,414 ha))

This unit is important for the conservation of the geographic diversity of the species because it represents the northernmost extent of the range, and contains almost 25 percent of all known *Orcuttia tenuis* occurrences. The species is found growing within Northern Basalt Flow vernal pools occurring on Gooval, Lasvar, Lasvar-Pitvar, and Nosoni soils (CNDDB 2002). These soils and vernal pool types are not otherwise well represented (criterion 2). Occurrences in the unit are all found on the Modoc Plateau, where they are located at higher elevations (criterion 1) and experience colder climatic conditions (criterion 2) than in any other area throughout the species range. The Federal government owns 22,994 ac (9,306 ha) of this unit. The remainder is privately owned.

This unit for *Orcuttia tenuis* consists of nine subunits largely within the volcanic plateau of northeastern California. The nine subunits are identified as the Lake Almanor, Crater Lake Mountain, Poison Lake, Badger Mountain, Lost Creek, Goose Valley, Long Valley, Cayton Creek, and Timbered Crater subunits. The Lake Almanor subunit is located in Plumas County, on the southwestern part of Lake Almanor along Humbug Humboldt Cross Road and State Route 89. The area extends from near the shoreline upslope to the watershed boundary. The Crater Lake Mountain subunit is located along Route 44 and encompasses the northwestern portion of Crater Lake Mountain as well as Grays and Harvey valleys. The watershed boundary was used to determine the extent of this subregion. The Poison Lake subunit north of State Route 44 near Pittville Road adjacent to South Cabin Reservoir and Ebey Lake. The western boundary is near Halls Flat Road. The Badger Mountain subunit is located north of Badger Mountain and east of State Route 89 and South of Potato Butte. Little Bunch Grass Meadow is included in this unit. The Lost Creek subunit is located south of Cinder Butte and west of the Hat Creek Rim. Lost Creek near Wilcox Road is within this subunit. The Goose Valley subunit is located in Shasta County northwest of the intersection of State Route 299 and Route 89 in Goose Valley north of Burney, California. The Long Valley subunit is located in Long Valley west of Black Ranch Road south of Long Valley Mountain and east of Lookout Mountain. The Cayton Creek

subunit is located in Shasta County north of Cayton Valley and Lake Britton east of Route 89. The area includes the northwestern portion of the watershed boundary for Fort Mountain along Red Mountain Road. The subunit is located in the Shasta National Forest. The Timbered Crater subunit is located on the Shasta/Modoc/Siskiyou County border near Little Hot Springs Valley. The subunit includes the area adjacent to Timbered Crater up to the Whitehorse Mountains and Day Road. The Timbered Crater subunit includes an area which has been proposed to be designated by the BLM as a Research Natural Area for vernal pools.

Unit 2A, B, and C, Stillwater Plains Unit, Shasta County (10,364 ac (4,194 ha))

This unit is comprised of old alluvial terraces above the Sacramento River associated with Igo, Tuscan, Moda, and Redding soils (CNDDB 2002), which provide an important diversity of vernal pool habitat (criterion 2) for the species. This unit represents the northernmost extent of the range of *Orcuttia tenuis* in the Sacramento Valley (criterion 1). The majority of the lands included within this unit are privately owned. The BLM owns 81 ac (33 ha) in the unit, while the NRCS holds conservation easements or agreements on an additional 130 ac (52 ha) through its WRP program.

The Stillwater Plains Unit 2 contains three subunits. These are located in the area east and south of the city of Redding near the Redding Municipal Airport encompassing Stillwater Plains to the confluence of the Sacramento River and Cow Creek.

Unit 3, Inskip Hill, Tehama and Shasta Counties (48,820 ac (19,757 ha))

This unit supports occurrences of *Orcuttia tenuis* within vernal pools on Guenon, Inskip, Inks, and Toomes soils (CNDDB 2002). It is important for maintaining a diversity of habitats for the species (criterion 2), and to maintain the geographic distribution of the species (criterion 1) because it supports over 40 percent of the known species occurrences (CNDDB 2002). This unit is also geographically important (criterion 1) because it contains large vernal pool complexes that represent some of the last remaining lower elevation vernal pool habitats in the northern Sacramento Valley.

Land ownership within this unit includes BLM (14,839 ac (6,005 ha)), and the State owns 709 ac (287 ha). TNC has conservation easements on 15,575 ac (6,230 ha) within this unit. The remaining lands included within this unit are privately owned. This unit occupies the area south of the Tehama/Shasta County line south to Sevenmile Creek near the Tuscan Buttes. The eastern boundary encompasses the vernal pool habitats along the lower elevation bordering the Sacramento River. The western boundary roughly follows the Sacramento River. Table Mountain west of the Sacramento River north of Paynes Creek and Red Bluff is included in this unit.

Unit 4, Vina Plains Unit, Tehama and Butte Counties (25,102 ac (10,159 ha))

This unit supports *Orcuttia tenuis* occurrences within vernal pools on Tuscan loam and Inks soils (CNDDB 2002). It is geographically noteworthy (criterion 1) for being the southernmost area occupied by the species in the Northeastern Sacramento Valley vernal pool region, as defined by Keeler-Wolf *et al.* (1998). The unit is over 100 mi (160 km) from the nearest area occupied by *O. tenuis* to the south.

This unit contains TNC's 4,600 ac (1,862 ha) Vina Plains preserve, which will help assure that the species persists at the location into the future (criterion 4). The majority of the lands included within this unit are privately owned. Property ownership and protection within this unit includes CDFG (1 ac (0.4 ha)), CDFG administered land (1 ac (0.4 ha)), TNC (192 ac (77 ha)), TNC easements (11,653 ac (4,661 ha)), and private land under WRP easements or agreements (142 (57 ha)).

This unit for *Orcuttia tenuis* occupies the area south of Toomes Creek, and north of Pine Creek and the Cana Highway. State Route 99 bisects this unit and the western boundary generally parallels the Southern Pacific Railway line in southeastern Tehama and northern Butte Counties.

Unit 5A and B, Bogg's Lake Unit, Clear Lake Area, Lake County (4,191 ac (1,696 ha))

This unit is ecologically important (criterion 2) because it is the only place where *Orcuttia tenuis* occurrences occupy Northern Volcanic Ashflow vernal pools (Keeler-Wolf *et al.* 1998; CNDDB 2002). This area is geographically important (criterion 1) because it represents the western extent of the range of *Orcuttia tenuis,* and some of the last remaining vernal pool habitats in Lake County. The unit is over 84 mi (135 km) from the nearest units to the north and west.

The majority of lands within this unit are privately owned. TNC has protected the area around Bogg's Lake south of Clear Lake, but most of the area is not protected. Property ownership and protection within this unit includes CDFG (13 ac (5 ha)) and TNC (192 ac (77 ha)) lands. This unit consists of two subunits that are both located south of Clear Lake. The southernmost subunit includes Little High Valley.

Tuctoria mucronata

Solano grass is found in two naturally occurring scattered vernal pool complex areas in Solano and Yolo counties in the Sacramento Valley. The specific vernal pool characteristics that determine the suitability for Solano grass germination and growth are unknown; however, it appears that the species seems to favor somewhat larger and deeper vernal pools as compared to other vernal pool plants.

Solano grass occurrences are known from with an elevational variation of near 5 m (15 ft) to near 11 m (35 ft). Conserving the distribution of Solano grass across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species range. The vernal pool types and soils associated with the two areas of concentration of Solano grass differ across the geographic range of the species and leads to different species compositions and environmental conditions between Solano grass occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992, Fugate 1998, Gonzales *et al.*1996, Ikeda and Schlising 1990, Noss *et al.* 2002a, Platenkamp 1998, Zedler *et al.* 1979). The distribution of Solano grass reflects a diversity of vernal pool habitat types and sizes that provide habitat for the species. Vernal pool complexes that provide suitable habitat for this species include similar physiographic and edaphic settings-claypan soils of saline-alkali flood basin rims basins soils. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998, Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990). The primary constituent elements of critical habitat for *Tuctoria mucronata* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the

adjacent upland margins of these depressions that sustain *Tuctoria mucronata* germination, growth and reproduction, including but not limited to, Northern Claypan vernal pools (Sawyer and Keeler-Wolf 1995) on saline-alkaline clay or silty clay in the Pescadero soil series that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Tuctoria mucronata* germination, growth and reproduction, and dispersal, but not necessarily every year.

Unit 1, Davis Communications Annex and Grasslands Area Unit, Yolo County (440 ac (178 ha))

This unit is an important representative of the geographic distribution of the species (criterion 1) because it represents the northern extent of the species' range, and because it is one of only two areas where *Tuctoria mucronata* is known to occur (CNDDB 2002). It also includes the largest remaining *T. mucronata* occurrence (CNDDB 2002). *Tuctoria mucronata* within the unit grows in Northern Claypan vernal pools on Pescadero soils (CNDDB 2002).

This unit is located southeast of the City of Davis and south of the South Fork of Putah Creek. Its western boundary lies along the border between Solano and Yolo Counties. The unit contains land owned by Yolo County and by the DOD (310 (125 ha)).

Effects of Critical Habitat Designation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define ''jeopardize the continued existence'' as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). ''Destruction or adverse modification of designated critical habitat'' is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical. However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service's Regional Director believes would avoid the destruction or adverse modification of 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 critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect vernal pool crustaceans or vernal pool plants or their critical habitat will require consultation under section 7. Activities on private, State, county, or lands under local jurisdictions requiring a permit from a Federal agency, such as Federal Highway Administration or Federal Emergency Management Act funding, or a permit from the Corps under section 404 of the Clean Water Act, will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally

funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency may directly or indirectly destroy or adversely modify critical habitat for vernal pool crustaceans or vernal pool plants include, but are not limited to:

(1) Activities regulated by the Corps, EPA, or NRCS under the Clean Water Act and other acts or regulations, including but not limited to, discharge of fill into waters of the U.S., and promulgation of water quality standards;

(2) Construction and maintenance of roads, highways, and rights-of way by Caltrans which may modify vernal pool habitat or affect their hydrologic functions;

(3) Sale or exchange of lands by a Federal agency to a non-Federal entity;

(4) Construction, relicensing, and operation of dams or other water impoundments by the BOR, Corps, or Federal Energy Regulatory Commission (FERC);

(5) Airport construction, improvement, or maintenance activities funded or authorized by the Federal Aviation Administration;

(6) Licensing of construction of communication sites by the Federal Communications Commission;

(7) Funding of construction or development activities by the U.S. Department of Housing and Urban Development;

(8) Military training and maneuvers on DoD lands;

(9) Execution of water service by the BOR;

(10) Promulgation and implementation of a land use plan by a Federal agency such as the BLM, USFS, or DoD that may alter management practices for critical habitat; and

(11) Approval of pesticide labels by EPA.

If you have questions regarding whether specific activities may constitute adverse modification of critical habitat in California, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section). If the critical habitat occurs in Oregon, contact the Field Supervisor, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Portland, OR 97266. Requests for copies of the regulations on listed plants and wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species concerned.

Economic Exclusions

On the basis of the final economic analysis and other relevant impacts, as outlined under section 4(b)(2) of the Act, and the economic effects associated with this rule, certain exclusions have been made to this final designation, as detailed below. Because of the settlement agreement that requires us to deliver this rule to the **Federal Register** by July 15, 2003, there was insufficient time to revise the rule to fully reflect these exclusions. A technical amendment to the rule to take these areas out of the maps and legal descriptions, as well to change all the appropriate references in the text of this preamble will be completed as soon as funding allows.

The following counties are excluded from this rule under Section 4(b)(2): Butte, Madera, Merced, Solano, and Sacramento. We find that the benefits of excluding these areas from critical habitat outweigh the benefits of including them.

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. Following the publication of the proposed critical habitat designation, we prepared a draft economic analysis of the proposed rulemaking to estimate the potential economic effect of the proposed designation. The draft analysis was made available for review on November 21, 2002 (67 FR 70201). We accepted public comment on the draft analysis until December 23, 2002. On March 14, 2003, we reopened the public comment period and accepted comments on the proposed rule and DEA until March 28, 2003 (68 FR 12336). On the basis of public comment, we prepared a final economic analysis of the proposed designation that was used in the development of this final rule.

(1) Benefits of Excluding

In our final analysis, we found that future section 7 consultations resulting from the listing of the 15 vernal pool species and the critical habitat designation could potentially impose total economic costs for consultation and modifications to projects of $1.3 billion over 20 years or $115 million per year.

Most of the costs arise from our assumptions about land value and consumer surplus losses. Some of the costs result from the loss in land value of land that may need to be set aside on project sites under section 7 requirements. Other costs are from the unavailability of developable land in certain areas. For most regions, the scale and significance of the additional project modifications associated with section 7 and critical habitat designations are not sufficient to affect regional real estate market dynamics. In other words, although some land may not be developed as a result of critical habitat, plenty of substitute land is available. In these geographic areas, the overall number of new housing units built over the next 20 years is not expected to change as a result of the designation. The cost burden of project modifications falls on regulated landowners. However, in more land-constrained counties the setting-aside of vernal pool habitat may result in a reduction in the number of new homes that are built.

For each of the excluded counties these costs were high. Costs in Butte County $64 million, Madera County $24 million, Merced County $91 million, Solano County $321 million, and Sacramento County $682 million. We believe that these costs are disproportionately high when compared to the costs of section 7 impacts elsewhere in this and other designations. In addition, we have considered the following factors.:

Butte County: The County's unemployment rate is 7 percent, the designation affects 6.6 percent of the county's land, and the annual costs represent 0.157 percent of the total annual taxable sales in the county.

Madera County: The County's unemployment rate is 11.8 percent, the designation affects 8.2 percent of the county's land, and the annual cost represents 0.139 percent of the annual taxable sales in the county.

Merced County: The County's unemployment rate is 14.4 percent, the designation affects 27.4 percent of the county's land, and the annual cost represents 0.263 percent of the annual taxable sales in the county.

Sacramento County: The designation affects 17.12 percent of the county's land, and the annual cost represents 0.206 percent of the annual taxable sales in the county.

Solano County: The designation affects 18.1 percent of the county's land, and the annual cost represents 0.362 percent of the annual taxable sales in the county.

The combination of monetary costs as a percent of the actual economic activity in the area, existing unemployment rate, and area of land affected in the county represents a more specific picture of the potential economic damage that would flow from this particular designation.

(2) Benefits of Including

The benefits of including this areas within critical habitat are that these areas contribute to the conservation of the species. In developing our proposal of critical habitat for the 15 vernal pool species, we identified those areas that, based on the scientific and commercial data available, we determined contain essential occurrences of each of the species and/or are defined by the physical and biological features essential to their conservation. We used a number of criteria in defining critical habitat including, but not limited to, the known species occurrence and distribution data, habitat types, degree of habitat fragmentation, soil and landform relationships, connectivity and dispersal factors, and conservation biology principles.

Solano County contains essential habitat for six of the listed vernal pool species: Contra Costa goldfields, Solano grass, Colusa grass, Conservancy fairy shrimp, vernal pool tadpole shrimp, and vernal pool fairy shrimp. We believe that critical habitat provides conservation value for all of these species because it emphasizes the importance of the interrelationship of uplands and pools within vernal pool complexes. The uplands support physical and biological features that are essential to the conservation of all of these species. Exclusion of critical habitat in Solano County may be perceived as diminishing the added value of highlighting the essential functions of uplands that is provided by critical habitat designation.

However, since the protections of Sections 7, with respect to the jeopardy standard and section 9 will still be in effect, and will result in actions that will protect the species, the loss in protection of the species will be minimal.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and in accordance with section 4(b)(2) of the Act, we have determined that the benefits of exclusion outweigh the benefits of inclusion. The economic analysis found unusually high economic costs. Given the fact that much of the existing protections for the species will continue, the benefits of exclusion outweigh the benefits of inclusion. We find that since the protections of Sections 7, with respect to the jeopardy standard and section 9 will still be in effect, and will result in actions that will protect the species, the loss in protection of the species will be minimal. Therefore we do not believe that these exclusions will result in the extinction of the species.

Relationship of Critical Habitat to Approved Habitat Conservation Plans

As described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although take of listed plants is not generally prohibited by the Act on private land, listed plant species may also be covered in an HCP for wildlife species.

Three proposed critical habitat units (Skunk Hollow Unit 35, a portion of San Joaquin Unit 18 for vernal pool fairy shrimp) warrant exclusion from the final designation of critical habitat under section 4(b)(2) of the Act based on the special management considerations and protections afforded the vernal pool habitat through several approved and legally operative HCPs or NCCP/HCPs. We believe that in most instances, the benefits of excluding legally operative HCPs from the critical habitat designations will outweigh the benefits of including them. The following represents our rationale for excluding the Skunk Hollow critical habitat unit (Unit 35), a portion of the San Joaquin critical habitat unit (Unit 18 for vernal pool fairy shrimp, and Unit 14 for vernal pool tadpole shrimp) from the final designated critical habitat.

The Skunk Hollow vernal pool basin (Unit 35) consists of a single, large vernal pool and its essential associated watershed in western Riverside County. Several federally listed species have been documented from the Skunk Hollow vernal pool basin. These include the vernal pool fairy shrimp (Simovich, in litt. 2001), the Riverside fairy shrimp (Service 2001), *Navarretia fossalis*, and *Orcuttia californica* (Service 1998). The vernal pool complex and watershed is currently protected as part of a reserve established within an approved wetland mitigation bank in the Rancho Bella Vista HCP area, and as part of the conservation measures contained in the Assessment District 161 Subregional HCP (AD161 HCP).

The San Joaquin County Multi-Species Conservation Plan (SJMSCP) identifies the vernal pool fairy shrimp and the vernal pool tadpole shrimp as covered species. The SJMSCP has identified areas where growth and development are expected to occur (build-out areas). A portion of one of these build-out areas overlaps with the San Joaquin Unit 18 for vernal pool fairy shrimp.

(1) Benefits of Inclusion

The benefits of including HCPs or NCCP/HCPs in critical habitat are normally small. The principal benefit of any designated critical habitat is that federally funded or authorized activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs and NCCP/HCPs are already designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCPs or NCCP/HCPs, lands that we ordinarily would define as critical habitat for covered species will normally be protected in reserves and other conservation lands by the terms of the HCPs or NCCP/HCPs and their Implementing Agreements (IAs). These HCPs or NCCP/HCPs and IAs include management measures and protections for conservation lands designed to protect, restore, and enhance their value as habitat for covered species.

Another possible benefit to including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation value of an area. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Any information about the vernal pool species for which critical habitat was proposed in units 35 and 14, and a portion of unit 18 that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable.

(2) Benefits of Exclusion

The benefits of excluding HCPs or NCCP/HCPs include relieving landowners, communities and counties of any additional regulatory burden that might be imposed by critical habitat. This benefit is particularly compelling because we have made the determination that once a HCP of NCCP/HCP is negotiated and approved by us after public comment, activities consistent with the plan will satisfy the requirements of the Act. Many HCPs or NCCP/HCPs, particularly large regional HCPs or NCCP/HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the conservation of covered species. Imposing an additional regulatory review after HCP or NCCP/HCP completion may jeopardize conservation efforts and partnerships in many areas, and could be viewed as a disincentive to those developing HCPs or NCCP/HCPs. Excluding HCPs or NCCP/HCPs provides us an opportunity to streamline regulatory compliance, and provides regulatory certainty for HCP and NCCP/HCP participants.

Another crucial benefit of excluding HCPs or NCCP/HCPs is that it would encourage the continued development of partnerships with HCP or NCCP/HCPs participants, including states, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish. By excluding areas covered by HCPs or NCCP/HCPs from critical habitat designation, we clearly maintain our commitments, preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

In addition, an HCP or NCCP/HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification of critical habitat, unless critical habitat has already been designated within the proposed plan area, it will look at the very similar concept of jeopardy to the listed species in the plan area. Because HCPs or NCCP/HCPs, particularly large regional HCPs or NCCP/HCPs, address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP or NCCP/HCP and consulted upon. Federal actions in areas occupied by listed species would still require consultation under section 7 of the Act.

Further, HCPs and NCCP/HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs and NCCP/HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits a HCP or NCCP/HCP provides. The development and implementation of HCPs or NCCP/HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while allowing for development.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated HCPs and NCCP/HCPs currently approved and have been implemented within the areas being designated as critical habitat for the vernal pool crustaceans and plants. Based on this evaluation, we find that the benefits of exclusion outweigh the benefits of designating the Skunk Hollow area (Unit 35 for vernal pool fairy shrimp), and a portion of the San Joaquin area (Unit 18 for vernal pool fairy shrimp and Unit 14 for vernal pool tadpole shrimp as critical habitat.

While neither HCP or NCCP/HCP includes vernal pool fairy shrimp as a covered species, both HCPs provide protection for the vernal pool complex and its associated watershed in perpetuity. Further, the Rancho Bell Vista HCP addresses the endangered Riverside fairy shrimp as a covered species. The management and protections afforded the vernal pool and Riverside fairy shrimp provide for the long-term conservation of this pool and vernal pool fairy shrimp. It also preserves the partnerships that we have developed with the local jurisdiction and project proponents in the development of the HCP and NCCP/HCP. We also believe that the management and protections afforded the vernal pool fairy shrimp and vernal pool tadpole shrimp in the build-out areas through the SJMSCP are adequate for the long-term conservation of these species.

The education benefits of critical habitat, including informing the public of areas that are important for long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish a HCP or NCCP/HCP, as well as the public participation that occurs in the development of many regional HCPs or NCCP/HCPs. For these reasons, then, we believe, that designation of critical habitat has little benefit in areas covered by HCPs, provided that the HCP or NCCP/HCP and its associated IA are legally operative, and that the HCP or NCCP/HCP specifically and adequately covers the species for which critical habitat is being designated. We do not believe that this exclusion would result in the extinction of these vernal pool species.

Relationship of Critical Habitat to the Draft Western Riverside Multiple Species Habitat Conservation Plan (MSHCP)

The Draft Western Riverside MSHCP has been in development for several years. Participants in this HCP include 14 cities, the County of Riverside, including the County Flood Control and Water Conservation District, County Waste Department; the California Department of Transportation, and the California Department of Parks and Recreation. The Western Riverside MSHCP is also proposed as a subregional plan under the State's NCCP and is being developed in cooperation with CDFG. Within the 1.26 million-acre (510,000 ha) planning area of the MSHCP, approximately 153,000 ac (62,000 ha) of diverse habitats are proposed for conservation. The proposed conservation of 153,000 ac (62,000 ha) will compliment other, existing natural and open space areas that are already conserved through other means (*e.g.*, State Parks, USFS, and County Park lands).

The County of Riverside and the participating jurisdictions have signaled their sustained support for the Western Riverside MSHCP as evidenced by the November 5, 2002, passage of a local

bond measure to fund the acquisition of land in support of the MSHCP. On November 14, 2002, a Notice of Availability of a Draft Environmental Impact Report (EIS/EIR) and Receipt of an Application for an Incidental Take Permit was published in the **Federal Register**. Public comment on these documents was accepted until January 14, 2003. Additionally, on June 17, 2003, the County of Riverside Board of Supervisors voted unanimously to support the completion of the Western Riverside MSHCP.

Unit 33 (Hemet-San Jacinto Area) contains the PCEs essential to the conservation of the vernal pool fairy shrimp. This Unit also lies within the boundaries of the planning area for the proposed Western Riverside MSHCP. The proposed MSHCP indicates that conservation actions within this area will be implemented such that the long-term conservation of the vernal pool fairy shrimp will be addressed. Although the MSHCP is not yet completed and implemented, significant progress has been achieved in the development of this HCP, including the preparation of an EIS/EIR, the solicitation of public review and comment, and the initiation of a consultation with us on the issuance of incidental take permits for those species identified for coverage within the draft plan.

In light of the progress made to date on the development of the proposed Western Riverside MSHCP and the anticipated future implementation of this HCP, we have excluded Unit 33 from designated critical habitat pursuant to section 4(b)(2) of the Act. Our rationale for excluding these lands from designated critical habitat is outline below.

(1) Benefits of Inclusion

As stated previously, the benefits of designating critical habitat on lands within the boundaries of approved HCPs are normally small. Where HCPs are in place that include coverage for the vernal pool fairy shrimp or co-occurring vernal pool species, our experience has shown that the HCPs and their IAs include management measures and protections designed to protect, restore, monitor, manage, and enhance the habitat to benefit the conservation of the species. The principal benefit of designating critical habitat is that federally authorized or funded activities that may affect a species' critical habitat would require consultation with us under section 7 of the Act. In the case of the proposed Western Riverside MSHCP, we must evaluate the impact of the plan on the species for which the participants are seeking incidental take permits, pursuant to section 7 of the Act.

(2) Benefits of Exclusion

Excluding lands defined by Unit 33 from designated critical habitat will provide several benefits, as follows: (1) Exclusion of the lands from the final designation will enhance our ability to continue working with the participants in a spirit of cooperation and partnership; (2) other jurisdictions, private landowners, and other entities will likely continue to see the benefit of working cooperatively with us to develop HCPs which can provide the basis for future opportunities to conserve species and their habitats. A more detailed discussion concerning our rationale for the benefits of excluding HCPs from critical habitat is outlined under in the previous discussion concerning the exclusion of approved HCPs. Further, we believe that the analysis conducted evaluating the benefits of excluding HCPs from critical habitat versus the benefits of including these lands, as previously discussed for the exclusion of approved HCPs, is applicable and appropriate for the exclusion of the Western Riverside MSHCP from designated critical habitat.

Relationship of Critical Habitat to Santa Rosa Plateau Ecological Reserve: A State, Federal, and Local Cooperatively Managed Reserve

The Santa Rosa Plateau Ecological Reserve (SRPER) (Unit 34 for vernal pool fairy shrimp) covers approximately 8,300 ac (3360 ha) near the town of Murrieta, California. The SRPER is situated on a large mesa composed of basaltic and granitic substrates and contains one of the largest vernal pool complexes remaining in southern Riverside County. Several endemic vernal species are known to occur within the complex including the vernal pool fairy shrimp, Riverside fairy shrimp, Santa Rosa fairy shrimp (*Linderiella santarosae*), *Orcuttia californica*, *Brodiaea filifolia* (Thread-leaved brodiaea), and *Eryngium aristulatum* var. *parishii* (San Diego button-celery). Established in 1984, the SRPER is owned by The Nature Conservancy (TNC), and is cooperatively managed by TNC, the Riverside County Regional Park and Open Space District, CDFG, and the Service.

The draft Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) identifies the SRPER as an existing natural area that will compliment the MSHCP's future establishment of 153,000 ac (62,000 ha) of additional conservation lands.

(1) Benefits of Inclusion

There is minimal benefit from designating critical habitat for the vernal pool fairy shrimp within the SRPER because these lands are already jointly managed for the conservation of wildlife. One possible benefit of including these lands as critical habitat would be to educate the public regarding the conservation value of SRPER and the vernal pool complex. Additionally, the designation of critical habitat for the vernal pool fairy shrimp on SRPER would require consultation with us for any action undertaken, authorized, or funded by a Federal agency that may affect the species or its designated critical habitat.

(2) Benefits of Exclusion

Currently, the SRPER provides for regular public education programs highlighting the unique ecological features of the area, including the vernal pool complex and the species found therein. Designation of critical habitat will not have any appreciable effect on the development or implementation of public education programs within the SRPER. Human activities that would negatively affect the vernal pool fairy shrimp and the PCEs that support it are prohibited on SRPER.

The Recovery Plan for Vernal Pools of Southern California (Recovery Plan) (Service 1998) identifies the vernal pool complex on the SRPER in the Riverside Management Area. The Recovery Plan was developed with assistance from numerous entities and individuals, including the CDFG and Metropolitan Water District. Because the SRPER is cooperatively managed by local, state, and Federal agencies, including the Service, CDFG, TNC, the Riverside County Regional Park and Open Space District, and the Metropolitan Water District, proposed activities that could affect the vernal pool fairy shrimp would be reviewed by all the cooperating management entities.

The Service, as one of the cooperating management agencies for the SRPER, ensures that actions it would authorize on the SRPER will not jeopardize the continued existence of the vernal pool fairy shrimp. It is highly unlikely that a proposed activity that would jeopardize the existence of the species would not also adversely modify the habitat essential for the conservation of the vernal pool fairy shrimp.

TNC is anticipating transferring ownership of SRPER to CDFG. The CDFG has already indicated its intent to oversee the SRPER in a manner

consistent with the present conservation management scheme agreed to by the cooperating agencies. Designation of critical habitat on the SRPER could be interpreted by CDFG as an unfair burden. Although designation of critical habitat would not have any effect of the present management of the vernal pool complex on the SRPER, the CDFG would likely view such designation as unnecessary.

Excluding critical habitat designation from the SRPER will preserve the cooperative spirit already established among the managing agencies, including the CDFG. Such exclusion will not jeopardize the existence of the vernal pool fairy shrimp on SRPER, nor will such exclusion provide increase the likelihood that activities would be proposed which would appreciably diminish the value of the habitat for the conservation of the species.

Relationship of Critical Habitat to National Wildlife Refuge and National Fish Hatchery Lands

We have determined that proposed critical habitat units on the Sacramento, San Francisco Bay, San Luis, and Kern National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery Complex, warrant exclusion pursuant to section 4(b)(2) of the Act because the benefits of excluding these lands from final critical habitat outweigh the benefits of their inclusion.

(1) Benefits of Inclusion

There is minimal benefit from designating critical habitat for the vernal pool species within National Wildlife Refuge and National Fish Hatchery lands because these lands are already managed for the conservation of wildlife. One possible benefit of including these lands as critical habitat would be to educate the public regarding the conservation value of these areas and the vernal pool complex they support. However, critical habitat designation provides little gain in the way of increased recognition for special habitat values on lands that are expressly managed to protect and enhance those values. Additionally, the designation of critical habitat will not have any appreciable effect on the development or implementation of public education programs on these areas.

Critical habitat designation provides little gain in the way of increased recognition for special habitat values on lands that are expressly managed to protect and enhance those values. All of these refuges are developing comprehensive resource management plans that will provide for protection and management of all trust resources, including federally listed species and sensitive natural habitats. These plans, and many of the management actions undertaken to implement them, will have to undergo consultation under section 7 of the Act and be evaluated for their consistency with the conservation needs of listed species.

(2) Benefits of Exclusion

While the consultation requirement associated with critical habitat on the National Wildlife Refuge and Fish Hatchery lands add little benefit, it would require the use of resources to ensure regulatory compliance that could otherwise be used for on-the ground management of the targeted listed or sensitive species. Therefore, the benefits of exclusion include relieving additional regulatory burden that might be imposed by the critical habitat, which could divert resources from substantive resource protection to procedural regulatory efforts.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

We believe that the potential disincentives to actively manage trust resources that is provided by designation of critical habitat are appreciably greater than the benefits to be derived from such designation. This is a result of the fact that these lands already are publically-owned and managed to protect and enhance unique and important natural resource values. We therefore conclude that the benefits of excluding National Wildlife Refuge and National Fish Hatchery lands from the final critical habitat designation outweigh the benefits of including them. Exclusion of these lands will not increase the likelihood that management activities would be proposed which would appreciably diminish the value of the habitat for conservation of the species. Further, such exclusion will not result in the extinction of the vernal pool species. We therefore conclude that the benefits of excluding refuge and Fish Hatchery lands from the final critical habitat designation outweigh the benefits of including them.

In accordance with section 4(b)(2) of the Act, we have excluded lands within the Sacramento, San Francisco Bay, San Luis, and Kern National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery Complex from final critical habitat. The total amount of refuge and fishery land excluded from the final designation is approximately 33,097 ac (13,238 ha).

Relationship of Critical Habitat to State Managed Ecological Reserves and Wildlife Areas

The State of California establishes ecological reserves ''to protect threatened or endangered native plants, wildlife, or aquatic organisms or specialized habitat types, both terrestrial and nonmarine aquatic, or large heterogeneous natural gene pools'' (Fish and Game Code section 1580). They are to ''be preserved in a natural condition, or which are to be provided some level of protection as determined by the commission, for the benefit of the general public to observe native flora and fauna and for scientific study or research.'' (Fish and Game Code section 1584). Wildlife areas are for the purposes of propagating, feeding and protecting birds, mammals, and fish (Fish and Game Code section 1525); However, they too provide habitat for and are also managed for the benefit of listed and sensitive species (CDFG in litt. 2003).

Take of species except as authorized by State Fish and Game Code is prohibited on both State ecological reserves and wildlife areas (section 1530 and section 1583). While public uses are permitted on most wildlife areas and ecological reserves, such uses are only allowed at times and in areas where listed and sensitive species are not adversely affected (CDFG in litt. 2003). The management objectives for these State lands include: ''to specifically manage for targeted listed and sensitive species to provide protection that is equivalent to that provided by designation of critical habitat; to provide a net benefit to the species through protection and management of the land; to ensure adequate information, resources, and funds are available to properly manage the habitat; and to establish conservation objectives, adaptive management, monitoring and reporting processes to assure an effective management program, monitoring and reporting processes to assure an effective management program'' (CDFG in litt. 2003).

We proposed as critical habitat, but have now considered for exclusion from the final designation, the CDFG owned lands within the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas and State-owned lands within Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves.

(1) Benefits of Inclusion

There is minimal benefit from designating critical habitat for the vernal pool species within the ecological reserves and wildlife management areas because these lands are already managed for the conservation of wildlife. One possible benefit of including these lands as critical habitat would be to educate the public regarding the conservation value of these areas and the vernal pool complex they support. However, critical habitat designation provides little gain in the way of increased recognition for special habitat values on lands that are expressly managed to protect and enhance those values. Additionally, the designation of critical habitat will not have any appreciable effect on the development or implementation of public education programs on these areas.

The designation of critical habitat would require consultation with us for any action undertaken, authorized, or funded by a Federal agency that may affect the species or its designated critical habitat. However, the management objects for State ecological reserves and wildlife management area already include specifically managing for targeted listed and sensitive species (CDFG in litt. 2003); therefore, the benefit from additional consultation is likely also to be minimal.

(2) Benefits of Exclusion

While the consultation requirement associated with critical habitat on the Ecological Reserves and Wildlife Management Areas add little benefit, it would require the use of resources to ensure regulatory compliance that could otherwise be used for on-the ground management of the targeted listed or sensitive species (CDFG in litt. 2003). Additionally, the State has expressed a concern that the designation of these lands and associated regulatory requirements may cause delays that could be expected to reduce the CDFG's ability to respond to vernal pool management issues that arise on the ecological reserves and wildlife areas. Therefore, the benefits of exclusion include relieving additional regulatory burden that might be imposed by the critical habitat, which could divert resources from substantive resource protection to procedural regulatory efforts.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

We believe that the potential disincentives to actively manage State trust resources that is provided by designation of critical habitat are appreciably greater than the benefits to be derived from such designation. This is a result of the fact that these lands already are publically-owned and managed to protect and enhance unique and important natural resource values. We therefore conclude that the benefits of excluding CDFG ecological reserves and wildlife areas from the final critical habitat designation outweigh the benefits of including them. Such exclusion will not result in the extinction of the vernal pool species. Further, we do believe that such exclusion will increase the likelihood that activities would be proposed that would appreciably diminish the value of the habitat for the conservation of these species.

In accordance with section 4(b)(2) of the Act, we have excluded California Department of Fish and Game owned lands within the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas and State-owned lands within Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves. The total amount of land excluded for State-owned lands excluded within wildlife areas or ecological reserves is approximately 20,933 ac (8,373 ha).

Relationship of Critical Habitat to Military Lands

Section 4(b)(2) of the Act requires us to base critical habitat designations on the best scientific and commercial data available, after taking into consideration the economic and any other relevant impact of specifying any particular area as critical habitat. It also requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including the Unites States Air Force and the United States Army. The following discussions are provided on Travis AFB, Beale AFB, Camp Roberts, and Fort Hunter Liggett.

Travis Air Force Base

Travis AFB has several vernal pool complexes that support the vernal pool fairy shrimp and *Lasthenia conjugens* and also contain PCEs for Neostapfia colusana, Conservancy fairy shrimp, *Tuctoria mucronata,* and vernal pool tadpole shrimp. As a result of wetland surveys, Travis AFB had identified 235 vernal pools on approximately 40 ha (100 ac) of the 445 ha (1,100 ac) that are not developed on the base. To date, only *Lasthenia conjugens* and the vernal fairy shrimp have been discovered on Travis AFB within these 40 ha (100 ac).

(1) Benefits of Inclusion

The benefits of designating critical habitat on Travis AFB are small because the vernal pool complexes on the base are already the focus of vernal pool conservation activities on the base; existing controls on base development already preserve habitat for listed species located there. Travis AFB has completed development of an INRMP to outline protection and management strategies for natural resources on the base, including vernal pool species and habitats. In addition, Travis AFB has provided private researchers and the general public opportunities for scientific and educational benefits, and controls access to the vernal pool complexes to avoid causing inadvertent harm to the species.

(2) Benefits of Exclusion

Designating critical habitat on Travis AFB would significantly impact their ability to: (1) Fulfill present and future mission systems and taskings supporting national defense; (2) adversely impact routine operations and maintenance activities; (3) hinder improvements with the base water supply; (4) hinder the time line for construction and increase the costs associated with the proposed 350-room visitor's quarters; (5) conflict with the management of the air space to support airfield safety; (6) impair the ability to protect military aircrew, aircraft, and public safety; (7) impede essential training; and (8) limit their ability to prevent or reduce aircraft bird strikes (Travis AFB, *in litt.* 2002). Additionally, designation of critical habitat would adversely impact civilian contracting in Solano County. Travis AFB is Solano County's largest employer and local contracting totaled $75 million dollars in fiscal year 2002. Also, the designation of critical habitat will increase costs associated with environmental documentation of proposed projects, may restrict future critical training missions to jeopardize the bases's viability and operational capabilities, impact future associated economic benefits to the surrounding communities, and may affect future base closing decisions (Travis AFB *in litt.* 2002).

The main benefits of exclusion are ensuring that the mission execution and military training activities can continue without interruption at Travis AFB while the Habitat Conservation Management Plan (HCMP) for the base is being implemented. Additionally, future mission assignments to Travis

AFB will not be precluded based upon vernal pool critical habitat designation (Travis AFB, *in litt.* 2002).

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding Travis AFB as critical habitat outweigh the benefits of including it as critical habitat for vernal pool species. Further, we have determined that excluding the Travis AFB will not result in the extinction of the Conservancy fairy shrimp, the vernal pool fairy shrimp, the vernal pool tadpole shrimp, *N. colusana, T. mucronata,* and *L. conjugens.* If significant additional information become available that changes our analysis of the benefits of excluding compared to the benefits of including Travis AFB in the critical habitat designation, we may revise this final designation accordingly.

Beale Air Force Base

Beale AFB completed their INRMP in 1999. Within their INRMP, Beale AFB established a Vernal Pool Conservation and Management Area to protect vernal pool complexes on the western side of the base. In cooperation with Beale AFB, we agreed not to sign the INRMP and are awaiting the draft Habitat Conservation and Management Plan (HCMP) so that we can consult on both documents. Beale AFB has several substantial vernal pool complexes that support the vernal pool fairy shrimp and vernal pool tadpole shrimp, especially on the western side of the base.

The Beale AFB HCMP may be completed in 2004 depending on funding. We will consult with Beale AFB under section 7 of the Act on the development and implementation of the INRMP, HCMP and base comprehensive plan.

(1) Benefits of Inclusion

The benefits of designating critical habitat on Beale AFB are small because the vernal pool complexes on the western side of the base are already the focus of vernal pool conservation activities on the base. Beale AFB is completing the development of their HCMP to outline protection and management strategies for natural resources on the base, including vernal pool species and habitats. In addition, Beale AFB has provided private researchers and the general public opportunities for scientific and educational benefits, and controls access to the vernal pool complexes to avoid causing inadvertent harm to the species.

(2) Benefits of Exclusion

Designating critical habitat on Beale AFB would significantly impact their ability to: (1) Fulfill present and future mission systems and taskings supporting national defense; (2) adversely impact routine operations and maintenance activities; (3) hinder improvements with the base water supply; (4) hinder the time line for construction and increase the costs associated with the proposed 350-room visitor's quarters; (5) conflict with the management of the air space to support airfield safety; (6) impair the ability to protect military aircrew, aircraft, and public safety; (7) impede essential training; and (8) limit their ability to prevent or reduce aircraft bird strikes (Beale AFB, *in litt.* 2002). Additionally, the economic costs to Beale AFB and the economy of Yuba County could be considerable as the designation of critical habitat may restrict enough future critical training missions to jeopardize the bases's viability and operational capabilities, impacting future associated economic benefits to the surrounding communities, and may affect future base closing decisions (Beale AFB, *in litt.* 2002).

The main benefit of exclusion would be ensuring that the military training activities can continue without interruption at Beale AFB while the HCMP is being completed. Additionally, future mission assignments to Beale AFB will not be precluded from the decision making process based upon vernal pool critical habitat designation (Beale AFB, *in litt.* 2002).

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding Beale AFB as critical habitat outweigh the benefits of including it as critical habitat for vernal pool species. Further, we have determined that excluding the Beale AFB will not result in the extinction of the Conservancy fairy shrimp, the vernal pool fairy shrimp, the vernal pool tadpole shrimp, *N. colusana, T. mucronata,* and *L. conjugens.* If significant additional information become available that changes our analysis of the benefits of excluding compared to the benefits of including Beale AFB in the critical habitat designation, we may revise this final designation accordingly.

Fort Hunter Liggett and Camp Roberts

Fort Hunter Liggett (6,519 ha (16,298 ac)) and Camp Roberts (13,247 ha (33,117 ac)) occur in San Luis Obispo and Monterey Counties. We are reviewing but have not approved INRMPs for Camp Roberts and Fort Hunter Liggett. Both bases have several substantial vernal pool complexes that support the vernal pool fairy shrimp.

(1) Benefits of Inclusion

Analysis of remote sensing data collected since 1994 suggests the loss of vernal pools in the coastal county area of California is occurring at a steady, and possibly increasing, rate. These trends are based on a recent vernal pool mapping report for Monterey, San Benito, San Luis Obispo, Santa Barbara, and Ventura Counties (Holland 2003). It is also likely that the species that depend on these habitats are also being adversely affected to an increasing degree.

We do not believe, at the present time, that the management plans on either base demonstrate how they will help recover vernal pool fairy shrimp. Additionally, the current plans do not provide an assurance of implementation, or demonstrate that proposed conservation efforts will be effective in promoting conservation.

(2) Benefits of Exclusion

At Camp Roberts, activities potentially affected include the use of field artillery pieces, range training, drop zone use, and use of tank trails or roads. Military operations in training areas with listed fairy shrimp at Fort Hunter Liggett would also be modified. One of these training areas contains a multi-purpose range complex that only occurs at four military bases in the country (FHL 2002b). Consistent access to the facility is critical because comparable facilities at other locations are scheduled for use several months to years in advance. Initiating and completing section 7 consultations that would arise from a critical habitat designation would likely result in alterations to, and delays in, training schedules at the multi-purpose range complex. If critical habitat is designated on these bases, the military would need to consider and possibly implement alternatives that modify the timing, location, and intensity of training activities. The main benefit of these 4(b)(2) exclusions is to ensure that mission-critical military training activities can continue without interruption while we continue to work with military staff to jointly refine and

complete the INRMPs for the two military bases.

Also, the maintenance of positive working relationships between our agency and the military is essential to completing the INRMPs for Camp Roberts and Fort Hunter Liggett. The number of listed species and the diversity of training operations on these military bases will ultimately result in two inherently complicated documents. Crafting conservation strategies for multiple species that require different habitats, while ensuring the lands on the military bases are still available for training purposes, requires that working relationships between the different agencies are optimized. We expect that when the INRMPs are completed and adopted in the upcoming months, they will provide equal or greater protection to vernal pool fairy shrimp habitat than a critical habitat designation.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding Fort Hunter Liggett and Camp Roberts as critical habitat for vernal pool fairy shrimp (unit 29) outweigh the benefits of including it as critical habitat for vernal pool species. We base this determination on the need for maintaining mission-critical military training activities (ARNG 2002a; Fort Hunter Liggett 2002a), the need to maintain positive working relationships that are necessary to complete plans designed to conserve vernal pool fairy shrimp and its habitat, and economic considerations relating to section 7 consultation costs and other indirect effects (EPS 2002).

Further, we have determined that excluding these two bases will not result in the extinction of the vernal pool fairy shrimp. If significant additional information become available that changes our analysis of the benefits of excluding compared to the benefits of including either of these two bases in the critical habitat designation, we may revise this final designation accordingly.

Relationship of Critical Habitat to Tribal Lands

Section 4(b)(2) of the Act requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including Indian Pueblos and Tribes. In accordance with 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,'' and Executive Order 13175, we recognize the need to consult with federally recognized Indian Tribes on a Government-to-Government basis. In the Secretarial Order 3206, it is stated that, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (1997) provides that critical habitat should not be designated in an area that may impact Tribal trust resources unless it is determined to be essential to conserve a listed species.

During the public comment period, the Mechoopda Indian Tribe of Chico Rancheria, California sent us a letter requesting to have 260 ha (645 ac) of their trust lands excluded from critical habitat designation for the vernal pool tadpole shrimp (unit 4). The Mechoopda Tribe want to work on a government-to-government basis. They believe that the designation of critical habitat on their land will impede their ability to beneficially manage it, and will interfere with their sovereign governmental interests. The letter also stated that they intend to independently manage the environmental resources on their lands in a manner that protects these resources while preserving their cultural values and heritage.

Along with their letter, the Tribe sent us a copy of the Mechoopda Indian Tribe Environmental Management Plan. We reviewed the plan, and although it afforded some protection to listed species, we found that it did not meet our conservation goals. In response to the Tribe's request to be excluded from critical habitat, we solicited additional information from the Tribe and requested a meeting. During this meeting, we communicated our desired conservation goals and objectives, and provided technical advice for the modification of the management plan to enhance its benefits for the conservation of listed species. We established an effective working relationship and the technical assistance that we provided enabled them to develop voluntary measures to better conserve vernal pool species and their habitat on Tribal lands. These voluntary measures are contained within a letter and revised Mechoopda Indian Tribe Environmental Management Plan dated March 2003, which the Tribal chairman submitted during the second open comment period.

Their revised management plan demonstrates the Tribe's willingness to work cooperatively with us toward landscape-scale conservation efforts that will benefit vernal pool species. The Tribe's revised management plan includes early consultation for activities with us to determine the potential for effects to listed species, coordination with us to follow methods and protocols to survey for listed vernal pool species, and appropriate actions to conserve listed species based on the results of the surveys. The revised management plan also specifically provides periodic updates as appropriate. We have determined that the plan provides sufficient conservation benefit to the species and assurances that the conservation management strategies will be implemented and effective. In short, their revised management plan allows the Tribe to exercise their sovereign status and provide for special management protections and conservation of the vernal pool habitat.

(1) Benefits of Inclusion

Few additional benefits are provided by including the Mechoopda Indian Tribe lands in this critical habitat designation beyond what will be achieved through the implementation of their revised management plan. Although surveys for listed vernal pool species have not been conducted on their property, occurrences of listed vernal pool species are known on adjacent lands. This increases the likelihood that listed species also occupy the Mechoopda's land because the habitat is similar, and in some parts, contiguous with the Tribal lands.

Another possible benefit to including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation value of an area. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Any information about the vernal pool species for which critical habitat was proposed on Mechoopda Tribeland that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable.

(2) Benefits of Exclusion

We believe that exclusion of Mechoopda Tribal lands from critical habitat would have substantial benefits including: (1) The furtherance of our Federal Trust obligations and our deference to the Mechoopda Tribe to develop and implement Tribal conservation and natural resource management plans for their land; (2) the establishment and maintenance of effective working relationships to promote the conservation of vernal pool species while streamlining the

consultation process; (3) the allowance for meaningful collaboration and cooperation in scientific studies to learn more about the life history and habitat requirements of species that may occur on their land; and (4) providing conservation benefits to the vernal pool ecosystem and vernal pool species that depend on it, that might not otherwise occur.

The Mechoopda Tribe has committed to greater conservation measures on their lands than would be available through the designation of critical habitat. As described in the Mechoopda's revised management plan, our working relationship with the Mechoopda Tribe will result in the implementation of beneficial natural resource programs, including species preservation. The Mechoopda Tribe has demonstrated their commitment to ensuring the long-term viability of federally listed species on Tribal lands by implementing conservation measures that will contribute to their recovery. Exclusion from critical habitat will contribute to an improved partnership with the Mechoopda Tribe, the incentive of avoiding the perceived additional regulatory requirements, and opportunities to streamline regulatory compliance.

If listed vernal pool species are found on the Tribe's land, the Mechoopda consult with us for any project that may adversely affect listed species under section 7(a)(2), regardless of whether critical habitat is designated or not. Thus, we find little additional benefit through section 7 consultation for critical habitat. Furthermore, the Mechoopda Tribe has been under the Environmental Protection Agency's (EPA's) General Assistance Program. The Mechoopda Tribe has adopted an Environmental Policy Act that is intended to establish and maintain the highest attainable standards of environmental quality within any and all land held in trust for the benefit of the Tribe. In addition to the Mechoopda Tribe's environmental protection ordinances, activities on Tribal lands are subject to the provisions the Clean Water Act. Projects proposed on Tribal lands subject to Federal funding or approval will also be subject to compliance with NEPA.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding Mechoopda Tribal land as critical habitat outweigh the benefits of including it as critical habitat for the vernal pool tadpole shrimp (unit 4).

In summary, the benefits of including the Tribe's land are limited to minor educational benefits. The benefits of excluding these areas from being designated as critical habitat are more significant, and include encouraging the continued development and implementation of special management measures. The Mechoopda Tribal lands has their own environmental organization, the Mechoopda EPA, which is responsible for the management of the Tribe's natural resources, and which recognizes the importance of implementing conservation measures that will contribute to the conservation of federally-listed species on their lands. The Mechoopda Tribe have already demonstrated their willingness to work with us to address the habitat needs of listed species that may occur on their lands. The exclusion of critical habitat for the Mechoopda trust lands is consistent with our published policies on Native American natural resource management by allowing the Mechoopda Tribe to manage their own natural resources.

Further, we have determined that excluding these lands will not result in the extinction of the vernal pool tadpole shrimp. If significant additional information become available that changes our analysis of the benefits of excluding compared to the benefits of including Mechoopda Tribal land in the critical habitat designation, we may revise this final designation accordingly.

Exclusion Summary

We have reviewed the overall effect of the exclusion of the above mentioned approved and draft HCPs, the Santa Rosa Plateau Ecological Reserve, State managed lands, National Wildlife Refuge lands, National Fish hatchery lands, Tribal trust lands, military installations, and Butte, Madera, Merced, Solano, and Sacramento Counties, California on the vernal pool species and their designated critical habitat and have determined that the benefits of excluding these areas outweighs the benefits of including them in this critical habitat designation. The lands removed from critical habitat as a result of these exclusions will not jeopardize the long-term survival and conservation of the species or lead to their extinction.

Economic Analysis

Our draft and final analyses evaluated the potential future effects associated with the section 7 consultation requirements for the 15 vernal pool species that may occur coextensively with this designation, as well as the subset of effects associated solely with the critical habitat designation. To quantify the economic impacts that are coextensive with the critical habitat designation, the analysis evaluated a ''without section 7'' scenario and compared it to a ''with section 7'' scenario. The ''without section 7'' baseline represented the level of protection currently afforded the species under the Act if section 7 protective measures were absent, and includes protections afforded by other Federal, State, and local laws such as the CEQA. The ''with section 7'' scenario identifies land-use activities likely to involve a Federal nexus that may affect the species or its designated critical habitat, and that therefore have the potential to be subject to future consultations under section 7 of the Act.

Upon identifying section 7 impacts, the analysis considers the subset of impacts that can be attributed exclusively to the critical habitat designation. The subset of section 7 impacts likely to be affected solely by the designation of critical habitat represents a lower-bound estimate of potential impact. The categories of potential costs and benefits considered in the analysis includes costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat; (2) modifications to project, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; (4) surplus effects associated with changes in the housing market, and (5) potential offsetting benefits associated with critical habitat including educational benefits. There may also be indirect economic effects associated with the designation of critical habitat. Indirect effects are impacts associated with actions that do not have a Federal nexus or otherwise are not subject to the provisions of section 7 under the Act. Examples of indirect effects that are considered in the economic analysis include impacts associated with creation of Habitat Conservation Plans, impacts under other State and local laws, and impacts associated with timing delays and regulatory uncertainty.

In our final analysis, we found that total costs that may be attributable to future section 7 consultations resulting from the listing of the 15 vernal pool species and the critical habitat designation could be about $1.3 billion over the next 20 years, or about $115 million annually. The costs attributable

solely to the designation of critical habitat are a result of expected project modifications and a reduction in the net number of new housing associated with real estate development. Several counties have been excluded from this rule because of the high economic impacts found by our economic analysis.

The following counties are excluded from this rule under Section 4(b)(2): Butte, Madera, Merced, Solano, and Sacramento. The exclusion of these counties substantially reduces the economic effect of this rule.

A copy of the final economic analysis and supporting documents are included in our supporting record for this rulemaking and may be obtained by contacting the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section). Copies of the final economic analysis also are available on the Internet at *http://pacific.fws.gov/news/.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). Our detailed assessment of the economic effects of the proposed designation are described in the Final Economic Analysis of Critical Habitat Designation for Vernal Pool Species. This analysis indicates that the total costs that may be attributable to future section 7 consultations resulting from the listing of the 15 vernal pool species and the critical habitat designation could be about $1.3 billion over the next 20 years, or about $115 million annually. It is important to note the estimated economic includes impacts to areas ultimately excluded from the final designation and therefore likely over estimates the potential economic impact of the final designation. Several counties have been excluded from this rule because of the high economic impacts found by our economic analysis. The following counties are excluded from this rule under section 4(b)(2): Butte, Madera, Merced, Solano, and Sacramento. The exclusion of these counties substantially reduces the economic effect of this rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities, *i.e.,* small businesses, small organizations, and small governmental jurisdictions. However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Based on the information in our economic analysis (DEA and Addendum), we are certifying that the critical habitat designation for the 15 vernal pools species will not have a significant effect on a substantial number of small entities because a substantial number of small entities are not affected by the designation. Several counties have been excluded from this rule because of the high economic impacts found by our economic analysis. The following counties are excluded from this rule under Section 4(b)(2): Butte, Madera, Merced, Solano, and Sacramento. The exclusion of these counties substantially reduces the economic effect of this rule.

Small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The RFA/SBREFA requires that agencies use the Small Business Administration's definition of ''small business'' that has been codified at 13 CFR 121.201. 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. The RFA/SBREFA defines ''small governmental jurisdiction'' as the government of a city, county, town, school district, or special district with a population of less than 50,000. Our analysis showed that only two percent of the small land developers affected by section 7 are expected to experience effects that on average would constitute three percent of its gross annual revenue. The effects to small businesses associated solely with the designation, which would occur only in the San Francisco Bay Area, would be less given the findings in the analysis that showed these effects constituted about one-half of the estimated coextensive costs. Although certain State agencies may be affected by this critical habitat designation, State governments are not considered small governments, for the purposes of the RFA. SBREFA further defines ''small organization'' as any not for profit enterprise that is independently owned and operated and is not dominant in its field.

The RFA/SBREFA does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation. This analysis considers the relative number of small entities likely to be impacted in an area. In addition, Federal courts and Congress have indicated that an RFA/SBREFA is properly limited to impacts to entities directly subject to the requirements of the regulation (Service 2002). Therefore, entities not directly regulated by the listing or critical habitat designation are not considered in this section of the analysis.

Even where the requirements of section 7 might apply due to critical habitat, based on our experience with section 7 consultations for all listed species, virtually all projects, including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7, can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures by definition must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

For these reasons, we are certifying that the designation of critical habitat for the 15 vernal pool species will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our detailed assessment of the economic effects of this designation are described in the DEA and final economic analysis.

Several counties have been excluded from this rule because of the high economic impacts among small entities estimated from our economic analysis. Based on the economic analysis, the

following counties are excluded from this rule under section 4(b)(2) of the Act: Butte, Madera, Merced, Solano, and Sacramento. The exclusion of these counties substantially reduces the economic effect of this rule. Based on the effects identified in the economic analysis and the exclusions we have made, we believe that this critical habitat designation will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the potential effects of the proposed designation.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy production supply and distribution facilities because no energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe the designation of critical habitat for the 15 vernal pool species in California and Oregon will affect future energy production. 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.)

The Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires each agency, unless otherwise prohibited by law, to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of UMRA, we must prepare a written statement, including a cost-benefit analysis, for significant regulatory actions that include a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Even though the economic analysis that was prepared in support of this rulemaking fully assesses the effects of this designation on Federal, State, local, and tribal governments, and to the private sector, the designation of critical habitat will not result in a Federal mandate imposing an enforceable duty upon those entities and a written statement is not required.

Takings

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 these 15 vernal pool species in a takings implications assessment. The takings implications assessment concludes that this final designation of critical habitat for the 15 vernal pool species does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have significant Federalism effects or impose substantial direct compliance costs on State and local governments. This designation requires Federal agencies to ensure that their actions do not adversely modify critical habitat; it does not impose direct obligations on State or local governments. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in California and Oregon. The economic analysis does address possible impacts to State programs that may receive Federal funding. However, it does not conclude that there will be substantial costs to those programs due to the designation of critical habitat.

The designations may have some benefit to these governments, in that the areas essential to the conservation of the 15 vernal pool species are more clearly defined, and the primary constituent elements of the habitat necessary to their survival are specifically identified. While this definition and identification do not alter where and what federally sponsored activities may occur, they may assist these local governments in long-range planning, rather than causing them to wait for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the vernal pool crustaceans and vernal pool plants.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. 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.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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 (November 9, 2000; 65 FR 67249) 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. We have excluded Tribal trust lands of the Mechoopda Indian Tribe of Chico Rancheria, California, from this final critical habitat designation pursuant to section 4(b)(2) of the Act. Please refer to Relationship of Critical Habitat to Tribal Lands for further discussion of our exclusion of these Tribal trust lands.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

Authors

The primary authors of this notice are the staff of the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Fairy shrimp, Conservancy,'' ''Fairy shrimp, longhorn,'' ''Fairy shrimp, vernal pool,'' and ''Tadpole shrimp, vernal pool'' under ''CRUSTACEANS'' 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						
*	*	*	*	*	*	*	
CRUSTACEANS							
*	*	*	*	*	*	*	
Fairy shrimp, Conservancy.	*Branchinecta conservatio*.	U.S.A. (CA)	Entire	E	552	17.95(h)	NA
Fairy shrimp, longhorn.	*Branchinecta longiantenna*.	U.S.A. (CA)	Entire	E	552	17.95(h)	NA
*	*	*	*	*	*	*	
Fairy shrimp, vernal pool.	*Branchinecta lynchi*	U.S.A. (CA, OR)	Entire	E	552	17.95(h)	NA
*	*	*	*	*	*	*	
Tadpole shrimp, vernal pool.	*Lepidurus packardi*	U.S.A. (CA)	Entire	E	552	17.95(h)	NA

■ 3. Amend § 17.12(h) by revising the entry for *Castilleja campestris* ssp. *succulenta* (fleshy owl's-clover), *Chamaesyce hooveri* (Hoover's spurge), *Lasthenia conjugens* (Contra Costa goldfields), *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam), *Neostapfia colusana* (Colusa grass), *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), Orcuttia pilosa (hairy Orcutt grass), *Orcuttia tenuis* (slender Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), *Tuctoria greenei* (Greene's tuctoria), and *Tuctoria mucronata* (Solano grass) under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Castilleja campestris ssp. *succulenta*.	Fleshy owl's-clover	U.S.A. (CA)	Scrophulariaceae	T	611	17.96(a)	NA
Chamaesyce hooveri	Hoover's spurge	U.S.A. (CA)	Euphorbiaceae	T	611	17.96(a)	NA
*	*	*	*	*	*	*	
Lasthenia conjugens	Contra Costa goldfields.	U.S.A. (CA)	Asteraceae	E	619	17.96(a)	NA
*	*	*	*	*	*	*	
Limnanthes floccosa ssp. *californica*.	Butte County meadow foam.	U.S.A. (CA)	Limnanthaceae	E	471	17.96(a)	NA
*	*	*	*	*	*	*	
Neostapfia colusana	Colusa grass	U.S.A. (CA)	Poaceae	T	611	17.96(a)	NA
*	*	*	*	*	*	*	
Orcuttia inaequalis	San Joaquin Valley Orcutt grass.	U.S.A. (CA)	Poaceae	T	611	17.96(a)	NA
Orcuttia pilosa	Hairy Orcutt grass	U.S.A. (CA)	Poaceae	T	611	17.96(a)	NA
Orcuttia tenuis	Slender Orcutt grass.	U.S.A. (CA)	Poaceae	T	611	17.96(a)	NA
Orcuttia viscida	Sacramento Orcutt grass.	U.S.A. (CA)	Poaceae	T	611	17.96(a)	NA
*	*	*	*	*	*	*	
Tuctoria greenei	Greene's tuctoria	U.S.A. (CA)	Poaceae	T	611	17.96(a)	NA
Tuctoria mucronata	Solano grass	U.S.A. (CA)	Poaceae	T	44	17.96(a)	NA
*	*	*	*	*	*	* *	

■ 4. In § 17.95 add critical habitat for Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), and vernal pool tadpole shrimp (*Lepidurus packardi*) under paragraph (h) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(h) Crustaceans.

* * * * *

Conservancy fairy shrimp (*Branchinecta conservatio*)

(1) Critical habitat units are depicted for Tehama, Glenn, Colusa, Stanislaus, Mariposa and Ventura Counties, California, on the map below.

(2) The primary constituent elements of critical habitat for Conservancy fairy shrimp are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for Conservancy fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, including but not limited to large, playa vernal pools often on basin rim landforms and alkaline soils, but which are dry during the summer and do not necessarily fill with water every year; and

(ii) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

(3) Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Unit 1: Butte and Tehama Counties, California. From USGS 1:24,000 quadrangle maps Acorn Hollow, Campbell Mound, Foster Island, Nord, Richardson Springs, Richardson Springs NW, and Vina, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 592400, 4416700; 592500, 4416600; 592500, 4416000; 592000, 4416000; 592000, 4415800; 592500, 4415800; 593800, 4416300; 594100, 4416300; 594400, 4416300; 594400, 4415800; 594900, 4415800; 594900, 4416300; 595500, 4416300; 595500, 4416400; 595900, 4416500; 596000, 4416500; 596100, 4416400; 596200, 4416500; 596300, 4416600; 596400, 4416700; 596500, 4416700; 596500, 4416800; 596600, 4416800; 597100, 4416400; 597100, 4415600; 596800, 4415200; 597100, 4415000; 597800, 4415500; 598100, 4415200; 597600, 4414600; 597600, 4414400; 597300, 4413800; 597300, 4413300; 598200, 4413900; 598400, 4413900; 598400, 4413600; 597400, 4411900; 597600, 4411900; 598300, 4412700; 598500, 4413300; 598900, 4413300; 598900, 4411800; 599400, 4411700; 599800, 4411700; 599800, 4411000; 599300, 4410700; 599100, 4410800; 599000, 4410800; 598800, 4410600; 598500, 4410400; 598300, 4410100; 598100, 4410000; 598000, 4409900; 597700, 4409800; 597600, 4409600; 597500, 4409500; 597300, 4409500; 597100, 4409400; 596900, 4409200; 596800, 4409200; 596700, 4409100; 596200, 4409100; 596000, 4408900; 595900, 4408800; 595700, 4408800; 595500, 4408200; 594300, 4408200; 594100, 4408300; 594000, 4408400; 593600, 4408500; 593400, 4408200; 593300, 4408200; 593300, 4408500; 592900, 4408500; 592900, 4408600; 593000, 4408600; 593100, 4409200; 593200, 4409200; 593200, 4409300; 592900, 4409300; 592900, 4409500; 593100, 4409600; 593100, 4409500; 593200, 4409500; 593200, 4409800; 593300, 4409900; 593300, 4410400; 593100, 4410400; 592900, 4410200; 592600, 4410200; 592600, 4410000; 592500, 4409900; 592500, 4409700; 591700, 4409400; 591500, 4409400; 591700, 4409100; 591700, 4409000; 591500, 4409000; 591500, 4408600; 590900, 4408600; 590900, 4408900; 590700, 4409000; 590800, 4409400; 591000, 4409500; 591200, 4409500; 591100, 4409800; 590500, 4409800; 590300, 4409600; 590300, 4409500; 590100, 4409500; 590000, 4409400; 590300, 4409400; 590400, 4409000; 590500, 4408600; 590100, 4408600; 590100, 4408800; 589900, 4409000; 589500, 4408900; 589300, 4408900; 589300, 4409200; 589400, 4409200; 589400, 4409400; 589300, 4409400; 589300, 4409800; 589700, 4409800; 589700, 4410600; 588400, 4410600; 588300, 4411300; 588100, 4411400; 588100, 4412000; 588100, 4413300; 588200, 4413500; 588300, 4413900; 588500, 4414000; 588500, 4414600; 589200, 4414700; 589200, 4415000; 589200, 4415300; 589400, 4415500; 589700, 4415600; 589700, 4415800; 589900, 4415800; 590000, 4415900; 590000, 4416000; 589900, 4416000; 589400, 4415900; 589100, 4415800; 589000, 4415700; 588800, 4415500; 588700, 4415400; 588600, 4415100; 588200, 4415100; 588200, 4416000; 588300, 4416200; 588300, 4416600; 588800, 4417000; 589100, 4417400; 589200, 4417600; 589200, 4417700; 589300, 4417900; 589300, 4418100; 589400, 4418200; 589300, 4418300; 590700, 4419800; 588000, 4417000; 587500, 4416400; 587200, 4415500; 587200, 4415100; 587300, 4415000; 587300, 4414500; 587200, 4414400; 587100, 4414300; 586900, 4414000; 586400, 4413900; 586200, 4413700; 586000, 4413600; 585800, 4413600; 585800, 4414700; 585300, 4414700; 585300, 4413800; 585200, 4413700; 584800, 4413700; 584600, 4413600; 584400, 4413600; 584200, 4413500; 584000, 4413700; 583200, 4413400; 583000, 4414200; 583700, 4414600; 583500, 4415000; 583000, 4415900; 583000, 4416400; 582900, 4416700; 582800, 4416900; 582700, 4417000; 582700, 4417200; 582900, 4417300; 582800, 4417400; 582700, 4417500; 582700, 4417600; 582600, 4417700; 582600, 4418000; 582600, 4418100; 582600, 4418200; 582700, 4418300; 582500, 4418400; 582400, 4418300; 582200, 4418300; 582100, 4418400; 582100,

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(6) Unit 2: Colusa and Glen Counties, California. [Reserved]

(7) Unit 3: Solano County, California. [Reserved]

(8) Unit 4: Solano County, California. [Reserved]

(9) Unit 5: Stanislaus County, California. [Reserved]

(10) Unit 6: Mariposa and Merced Counties, California. From USGS 1:24,000 quadrangle maps Haystack Mtn., Illinois Hill, Indian Gulch, Le Grand, Merced, Merced Falls, Owens Reservoir, Plainsburg, Planada, Raynor Creek, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 745500, 4140300; 746100, 4139500; 746800, 4138500; 747700, 4137700; 748500, 4135800; 748700, 4135100; 749500, 4134000; 750700, 4131700; 751600, 4130500; 752000, 4130200; 752100, 4130200; 752200, 4130200; 752800, 4130100; 753300, 4130400; 753500, 4130400; 753900, 4130200; 754000, 4129300; 753400, 4128400; 753900, 4127700; 754400, 4127700; 754600, 4127400; 755300, 4128400; 755400, 4128400; 755600, 4127700; 756900, 4126400; 757800, 4125800; 758400, 4126300; 758500, 4126300; 758600, 4126000; 757900, 4125100; 757400, 4125100; 757200, 4124700; 756500, 4123700; 753500, 4122400; 750200, 4122400; 750200, 4121400; 748600, 4121400; 748600, 4121900; 747800, 4121900; 747800, 4123300; 748300, 4123300; 748300, 4123500; 748500, 4123500; 748600, 4123500; 748600, 4123900; 747800, 4123900; 747800, 4124600; 747400, 4125100; 747400, 4125500; 746900, 4125500; 746900, 4125800; 747000, 4125900; 746900, 4125900; 746600, 4125800; 746300, 4125700; 746200, 4125600; 746200, 4125500; 745700, 4125500; 745700, 4125100; 744500, 4125100; 744500, 4125300; 744400, 4125300; 744400, 4125200; 743700, 4125200; 743700, 4125800; 744500, 4125800; 744500, 4126200; 743700, 4126200; 743700, 4127000; 742400, 4127000; 742000, 4127200; 742000, 4128600; 742800, 4128600; 742800, 4129100; 742900, 4129100; 743000, 4129100; 743000, 4129200; 743400, 4129300; 743600, 4129500; 743600, 4130700; 743500, 4130700; 743500, 4130900; 743100, 4130900; 743000, 4130800; 743000, 4130600; 742400, 4130600; 742400, 4130800; 742000, 4130800; 742000, 4131100; 741200, 4131100; 741300, 4131000; 741500, 4131000; 741600, 4130900; 741600, 4130700; 741400, 4130400; 741300, 4130200; 740400, 4130200; 740400, 4130300; 740300, 4130300; 740300, 4131100; 740500, 4131100; 740500, 4131200; 740700, 4131200; 740700, 4131300; 740800, 4131400; 741000, 4131400; 741000, 4131500; 741100, 4131500; 741100, 4131600; 741000, 4131900; 741000, 4132100; 740800, 4132200; 740700, 4132200; 740500, 4132100; 740400, 4132100; 740400, 4132200; 740300, 4132200; 740200, 4132200; 740200, 4132300; 739900, 4132600; 740000, 4132600; 740300, 4132800; 740300, 4133500; 738800, 4133500; 738300, 4133600; 738100, 4133600; 737100, 4133400; 737100, 4134200; 736600, 4134200; 733900, 4134200; 733900, 4134800; 733800, 4134900; 733800, 4135000; 733000, 4135000; 733000, 4135800; 732500, 4135800; 730300, 4135700; 730200, 4135600; 730100, 4135600; 729900, 4135700; 729900, 4136500; 729900, 4136700; 730000, 4136700; 730100, 4136600; 730200, 4136600; 730300, 4136600; 730400, 4136700; 730500, 4136800; 730600, 4136900; 730600, 4137000; 730600, 4137200; 730600, 4137300; 730500, 4137400; 730400, 4137500; 730300, 4137500; 729900, 4137700; 729800, 4137700; 729700, 4137600; 729400, 4137600; 729300, 4137800; 729300, 4138400; 729200, 4138500; 729000, 4138400; 728800, 4138700; 728400, 4138800; 728200, 4138800; 727900, 4138600; 727700, 4138500; 727600, 4138400; 727400, 4138300; 727400, 4137800; 727300, 4137800; 727300, 4137600; 727400, 4137600; 727400, 4137500; 727300, 4137500; 727300, 4137400; 727400, 4137400; 727400, 4137200; 726500, 4137200; 726500, 4136500; 726400, 4136400; 725800, 4136400; 725800, 4137200; 725000, 4137200; 724900, 4138800; 725500, 4138800; 725500, 4138700; 725800, 4138700; 725800, 4138800; 725900, 4138800; 725900, 4139500; 726500, 4139500; 726500, 4139600; 725900, 4139600; 725800, 4139600; 725800, 4140200; 725900, 4140200; 725900, 4140900; 725400, 4140900; 725400, 4140800; 725100, 4140800; 725100, 4141000; 724900, 4141000; 724900, 4141200; 724100, 4141200; 724100, 4141600; 723400, 4141600; 723400, 4141100; 723200, 4141100; 723200, 4140600; 723400, 4140500; 723400, 4139500; 724000, 4139500; 724000, 4139400; 723900, 4138900; 723900, 4138700; 723500, 4138200; 723400, 4138200; 723400, 4138300; 723000, 4138300; 723000, 4138700; 723000, 4138900; 723100, 4139100; 723200, 4139400; 723300, 4139500; 722100, 4139500; 722000, 4140500; 721900, 4141100; 721900, 4141900; 721900, 4143400; 720800, 4143400; 720900, 4141800; 721000, 4141500; 721000, 4141200; 721100, 4141100; 721000, 4141000; 717800, 4140900; 717700, 4142500; 714500, 4142400; 714500, 4144900; 715500, 4144900; 715500, 4145000; 715800, 4145000; 715900, 4145000; 716000, 4145000; 716100, 4145100; 716100, 4145200; 716000, 4145200; 715900, 4145300; 715900, 4145400; 716000, 4145500; 716000, 4145600; 716100, 4145700; 717000, 4145700; 717700, 4145300; 717800, 4145300; 717800, 4145200; 717800, 4145100; 717600, 4144900; 717600, 4144800; 717600, 4144700; 717800, 4144500; 717900, 4144600; 718200, 4144600; 718400, 4144500; 718700, 4144500; 718700, 4144800; 718600, 4145000; 718700, 4145100; 718700, 4145600; 718600, 4145600; 718600, 4145700; 718700,

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(11) Subunit 7A: Merced County, California. [Reserved]

(12) Subunit 7B: Merced County, California. [Reserved]

(13) Subunit 7C: Merced County, California. [Reserved]

(14) Subunit 7D: Merced County, California. [Reserved]

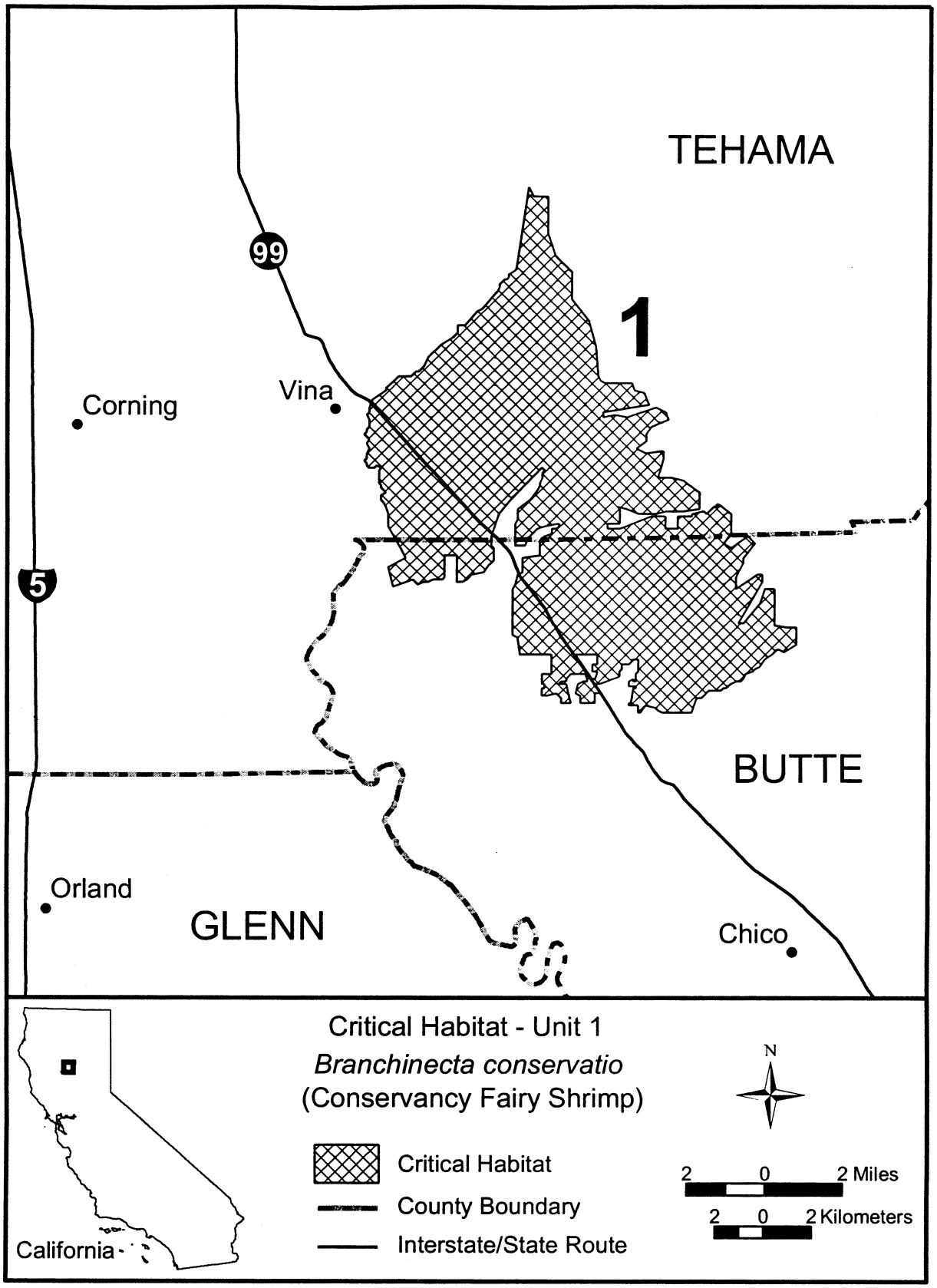
(15) Subunit 7E: Merced County, California. [Reserved]

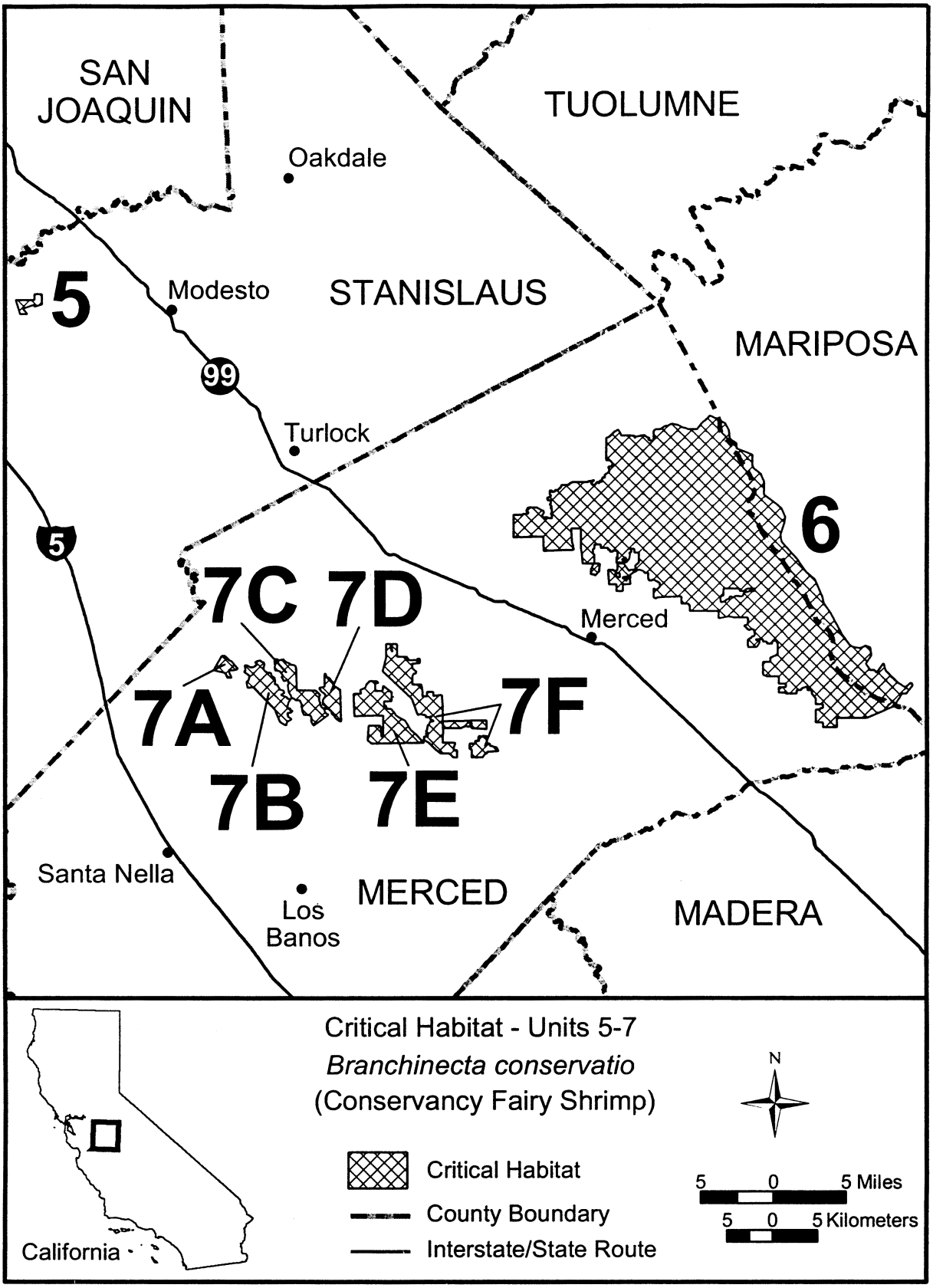
(16) Subunit 7F: Merced County, California. [Reserved]

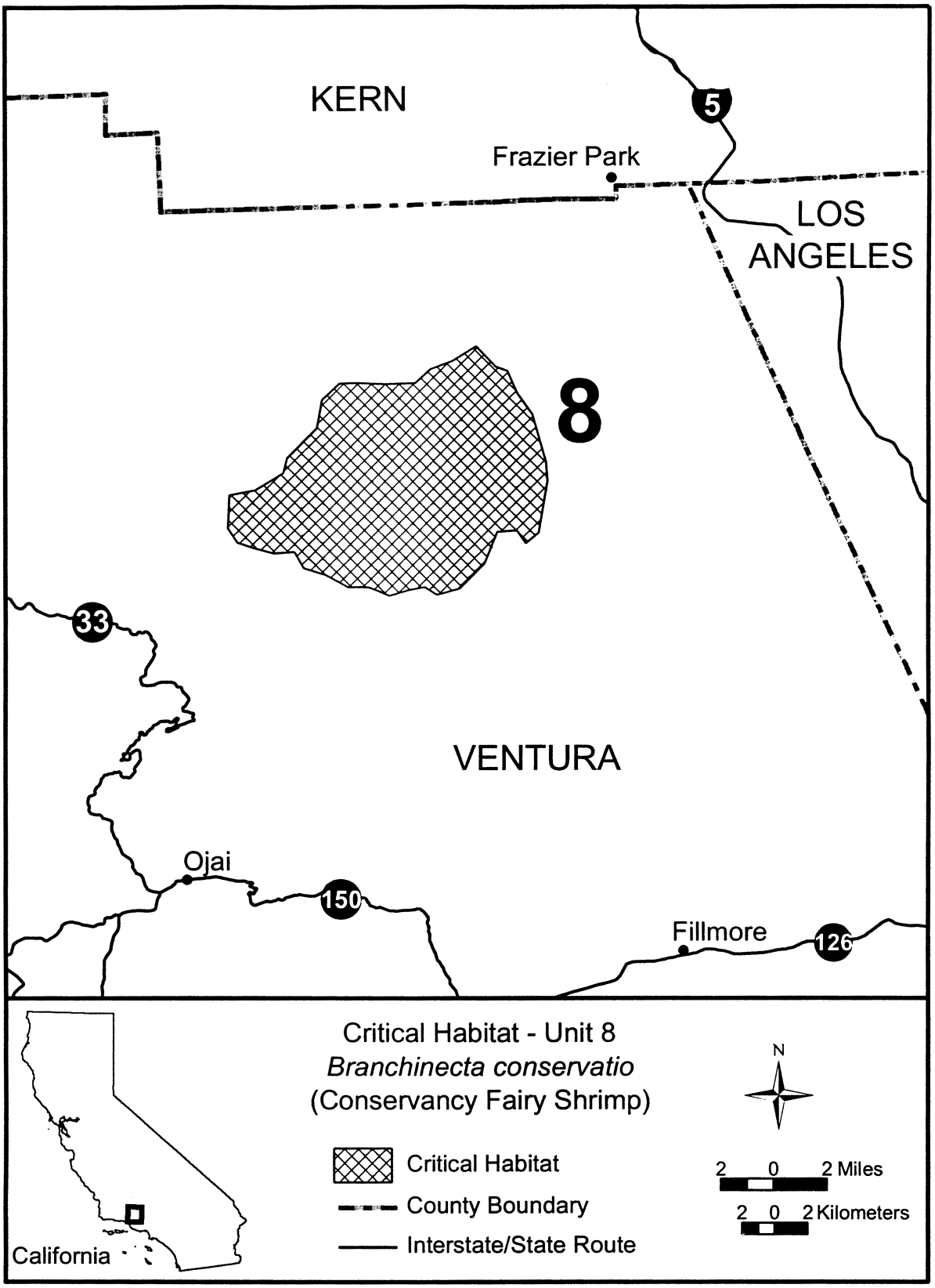
(17) Unit 8: Ventura County, California. From USGS 1:24,000 quadrangle maps Alamo Mountain, Lion Canyon, Lockwood Valley, San Guillermo, Topatopa Mountain, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 310100, 3830500; 309400, 3831000; 308400, 3830900; 307200, 3830600; 306000, 3831200; 304700, 3831300; 303400, 3832100; 302100, 3832600; 301600, 3833600; 300400, 3833600; 299200, 3834000; 298200, 3834400; 297700, 3835300; 297900, 3837300; 299500, 3837500; 301200, 3838400; 301500, 3839300; 303400, 3841000; 303800, 3842700; 304900, 3843600; 305800, 3843600; 307700, 3843400; 309500, 3843400; 310500, 3844200; 311900, 3844600; 313400, 3845400; 314500, 3844100; 315200, 3843800; 315700, 3842400; 316500, 3841100; 317200, 3838100; 317200, 3837000; 316500, 3833900; 315700, 3833300; 315200, 3834100; 314000, 3834100; 313100, 3832200; 311500, 3830800; returning to 310100, 3830500.

(18) Maps follow of critical habitat units 1, 5 through 7, and 8 (respectively) for Conservancy fairy shrimp.

BILLING CODE 4310–55–P


TEHAMA
99
1
Vina
Corning
5
BUTTE
Orland
GLENN
Chico
Critical Habitat - Unit 1
Branchinecta conservatio
(Conservancy Fairy Shrimp)
N
Critical Habitat
County Boundary
Interstate/State Route
2 0 2 Miles
2 0 2 Kilometers
California


SAN JOAQUIN
TUOLUMNE
Oakdale
5
Modesto
STANISLAUS
MARIPOSA
99
Turlock
6
5
7C
7D
Merced
7A
7F
7B
7E
Santa Nella
Los Banos
MERCED
MADERA
Critical Habitat - Units 5-7
Branchinecta conservatio
(Conservancy Fairy Shrimp)
N
Critical Habitat
County Boundary
Interstate/State Route
5 0 5 Miles
5 0 5 Kilometers
California



BILLING CODE 4310–55–C

Longhorn Fairy Shrimp (*Branchinecta longiantenna*)

(1) Critical habitat units are depicted for Alameda, Contra Costa, and San Luis Obispo Counties, California, on the map below.

(2) The primary constituent elements of critical habitat for longhorn fairy

shrimp are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for longhorn fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, including but not limited to, large, playa vernal pools often on basin rim landforms and alkaline soils, but which are dry during the summer and do not necessarily fill with water every year; and

(ii) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

(3) Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Subunit 1A: Contra Costa County, California. From USGS 1:24,000 quadrangle map Byron Hot Springs, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 614700, 4184000; 614600, 4184000; 614600, 4184500; 614900, 4185000; 614600, 4185300; 614600, 4185900; 614700, 4185900; 614800, 4185400; 615100, 4185200; 615100, 4185500; 615300, 4185500; 615400, 4185200; 615600, 4184900; 615800, 4184900; 616000, 4184800; 616000, 4184700; 615800, 4184500; 615700, 4184500; 615500, 4184200; 615100, 4184200; 614800, 4184200; returning to 614700, 4184000.

(6) Subunit 1B: Alameda County, California. From USGS 1:24,000 quadrangle map Byron Hot Springs, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 616200, 4179000; 616100, 4179000; 615900, 4179200; 615900, 4179400; 615700, 4179600; 615500, 4180100; 615100, 4180500; 614800, 4180800; 614400, 4180900; 614100, 4181100; 614600, 4181500; 614700, 4181500; 614700, 4181700; 614900, 4181700; 615200, 4181400; 615400, 4181300; 615500, 4181200; 615500, 4181100; 615600, 4181100; 615700, 4181300; 615800, 4181200; 616000, 4180600; 616000, 4180500; 616200, 4180200; 616200, 4179900; 615900, 4179900; 615900, 4179700; 616200, 4179500; returning to 616200, 4179000.

(7) Subunit 2A: Merced, California. [Reserved]

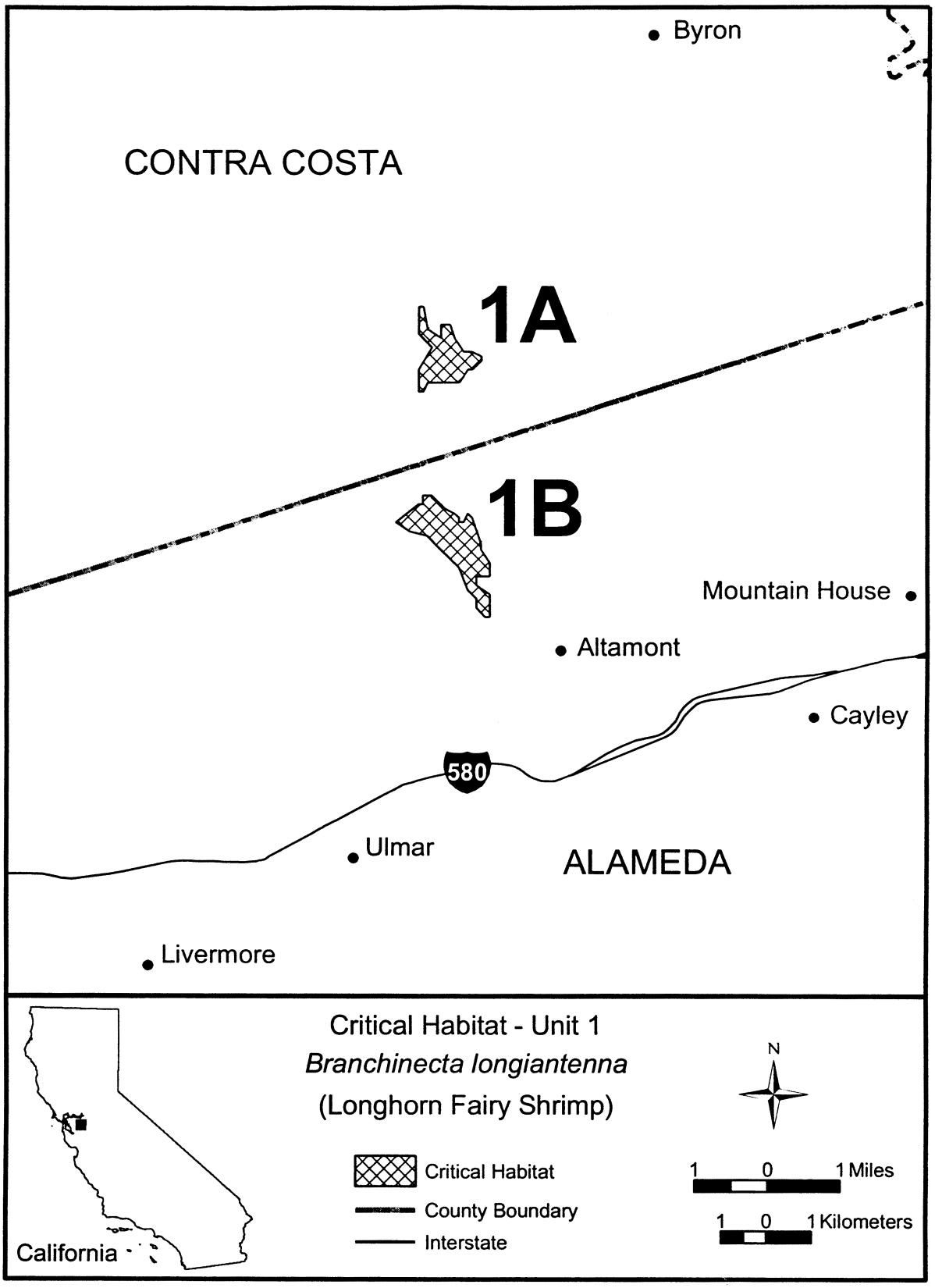
(8) Subunit 2B: Merced, California. [Reserved]

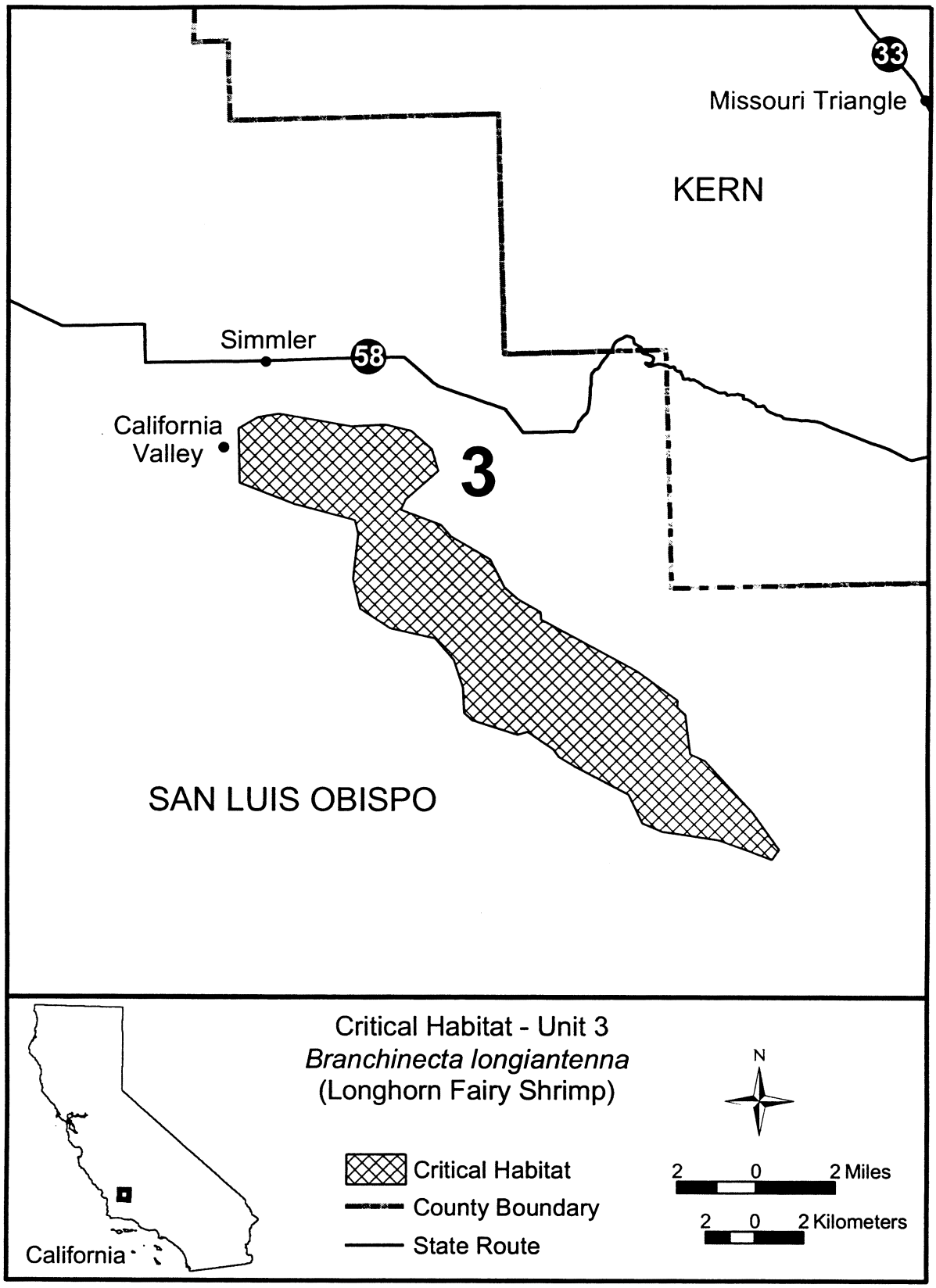
(9) Subunit 2C: Merced, California. [Reserved]

(10) Unit 3: San Luis Obispo County, California. From USGS 1:24,000 quadrangle maps Chimineas Ranch, McKittrick Summit, Painted Rock, and Simmler, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 247900, 3894600; 245800, 3895500; 243500, 3896000; 242700, 3896400; 242200, 3897600; 240100, 3898900; 239500, 3899300; 239300, 3899600; 238300, 3900400; 237900, 3900300; 236100, 3901000; 235800, 3901300; 235800, 3902300; 235500, 3903500; 234800, 3904400; 233000, 3904900; 231800, 3905800; 231600, 3907000; 231900, 3908800; 231800, 3909400; 229400, 3910200; 227200, 3911200; 227300, 3913400; 228100, 3913800; 229000, 3913900; 231900, 3913200; 233300, 3913200; 234300, 3912900; 235100, 3912100; 235300, 3911200; 233900, 3910100; 233700, 3909700; 235300, 3909000; 235700, 3908500; 237200, 3907500; 237700, 3906300; 238200, 3905800; 239100, 3905200; 239100, 3904900; 242800, 3902600; 244400, 3901300; 244400, 3901000; 244700, 3900700; 244800, 3899100; 245400, 3898800; 247200, 3896600; 248200, 3895000; returning to 247900, 3894600.

(11) Maps follow of critical habitat units 1 and 3 (respectively) for longhorn fairy shrimp.

BILLING CODE 4310–55–P


Byron
CONTRA COSTA
1A
1B
Mountain House
Altamont
Cayley
580
Ulmar
ALAMEDA
Livermore
Critical Habitat - Unit 1
Branchinecta longiantenna
(Longhorn Fairy Shrimp)
N
Critical Habitat
County Boundary
Interstate
1 0 1 Miles
1 0 1 Kilometers
California


33
Missouri Triangle
KERN
Simmler
58
California
Valley
3
SAN LUIS OBISPO
Critical Habitat - Unit 3
Branchinecta longiantenna
(Longhorn Fairy Shrimp)
N
Critical Habitat
County Boundary
State Route
2 0 2 Miles
2 0 2 Kilometers
California

BILLING CODE 4310–55–C

Vernal Pool Fairy Shrimp (*Branchinecta lynchi*)

(1) Critical habitat units are depicted for Jackson County, Oregon; Shasta, Tehama, Glenn, Colusa, Placer, Napa, Contra Costa, Alameda, Amador, San Joaquin, Stanislaus, Mariposa, Fresno, Tulare, Kings, San Benito, Monterey, San Luis Obispo, Santa Barbara, and Ventura Counties, California on the map below:

(2) The primary constituent elements of critical habitat for vernal pool fairy shrimp are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for vernal pool fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, including but not limited to, Northern Hardpan, Northern Claypan, Northern Volcanic Mud Flow, and Northern Basalt Flow vernal pools formed on a variety of geologic formations and soil types, but which are dry during the summer and do not necessarily fill with water every year; and

(ii) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

(3) Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Subunit 1A: Jackson County, Oregon. From USGS 1:24,000 quadrangle map Shady Cove, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 513900, 4709700; 513600, 4709700; 513600, 4709800; 513500, 4709800; 513500, 4710000; 513700, 4710000; 513700, 4710300; 513200, 4710300; 513200, 4710600; 513100, 4710600; 513100, 4710800; 514300, 4710800; 514300, 4710300; 514100, 4710300; 514100, 4709900; 513900, 4709900; returning to 513900, 4709700.

(6) Subunit 1B: Jackson County, Oregon. From USGS 1:24,000 quadrangle map Shady Cove, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 513900, 4707000; 513600, 4707000; 513600, 4707300; 513700, 4707300; 513700, 4707400; 513800, 4707400; 513800, 4707500; 513400, 4707500; 513400, 4708000; 514700, 4708000; 514700, 4707700; 514600, 4707700; 514600, 4707600; 514200, 4707600; 514200, 4707500; 514100, 4707500; 514100, 4707300; 514000, 4707300; 514000, 4707200; 513900, 4707200; returning to 513900, 4707000.

(7) Subunit 1C: Jackson County, Oregon. From USGS 1:24,000 quadrangle map Shady Cove, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 512000, 4706600; 511800, 4706600; 511800, 4706700; 511300, 4706700; 511300, 4706800; 511200, 4706800; 511200, 4706900; 511100, 4706900; 511100, 4707000; 511000, 4707000; 511000, 4707200; 511100, 4707200; 511100, 4707300; 511200, 4707300; 511200, 4707400; 511100, 4707400; 511100, 4707500; 511200, 4707500; 511200, 4707600; 511400, 4707600; 511400, 4707700; 511600, 4707700; 511600, 4707800; 511800, 4707800; 511800, 4707300; 511900, 4707300; 511900, 4706800; 512000, 4706800; returning to 512000, 4706600.

(8) Subunit 1D: Jackson County, Oregon. From USGS 1:24,000 quadrangle maps Eagle Point and Shady Cove, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 515900, 4706700; 515900, 4707000; 516200, 4707000; 516200, 4706900; 516300, 4706900; 516300, 4706700; 516400, 4706700; 516400, 4706800; 516500, 4706800; 516500, 4707000; 516700, 4707000; 516700, 4706900; 516900, 4706900; 516900, 4707000; 517000, 4707000; 517000, 4707100; 517100, 4707100; 517100, 4706900; 517400, 4706900; 517400, 4706700; 517300, 4706700; 517300, 4706500; 517200, 4706500; 517200, 4706400; 517100, 4706400; 517100, 4706300; 516700, 4706300; 516700, 4705600; 516500, 4705600; 516500, 4705500; 516600, 4705500; 516600, 4705400; 516700, 4705400; 516700, 4704800; 516600, 4704800; 516600, 4704600; 516300, 4704600; 516300, 4704500; 516400, 4704500; 516400, 4704400; 516500, 4704400; 516500, 4704300; 515800, 4704300; 515800, 4704600; 516000, 4704600; 516000, 4704700; 515500, 4704700; 515500, 4704800; 515400, 4704800; 515400, 4705100; 515500, 4705100; 515500, 4705200; 515700, 4705200; 515700, 4705300; 515800, 4705300; 515800, 4705900; 515700, 4705900; 515700, 4706200; 515600, 4706200; 515600, 4706400; 515500, 4706400; 515500, 4706500; 515100, 4706500; 515100, 4706700; 515000, 4706700; 515000, 4706900; 514700, 4706900; 514700, 4707000; 514600, 4707000; 514600, 4707200; 514700, 4707200; 514700, 4707300; 515000, 4707300; 515000, 4707200; 515100, 4707200; 515100, 4707100; 515200, 4707100; 515200, 4707000; 515300, 4707000; 515300, 4706800; 515400, 4706800; 515400, 4706700; 515500, 4706700; 515500, 4706600; 515600, 4706600; 515600, 4706700; returning to 515900, 4706700; excluding land bound by 515900, 4706700; 515900, 4706500; 516000, 4706500; 516000, 4706400; 516100, 4706400; 516100, 4706600; 516000, 4706600; 516000, 4706700; returning to 515900, 4706700.

(9) Subunit 1E: Jackson County, Oregon. From USGS 1:24,000 quadrangle maps Boswell Mountain and Shady Cove, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 510500, 4706000; 510400, 4706000; 510400, 4706100; 510300, 4706100; 510300, 4706300; 510100, 4706300; 510100, 4706400; 510000, 4706400; 510000, 4706500; 509800, 4706500; 509800, 4706700; 510000, 4706700; 510000, 4706900; 510100, 4706900; 510100, 4707000;

510200, 4707000; 510200, 4706900; 510500, 4706900; 510500, 4707000; 510600, 4707000; 510600, 4707100; 510800, 4707100; 510800, 4706900; 511000, 4706900; 511000, 4706500; 510700, 4706500; 510700, 4706300; 510500, 4706300; returning to 510500, 4706000.

(10) Subunit 1F: Jackson County, Oregon. From USGS 1:24,000 quadrangle maps Eagle Point and Shady Cove, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 511400, 4704800; 511200, 4704800; 511200, 4705000; 511000, 4705000; 511000, 4705200; 510900, 4705200; 510900, 4705300; 510800, 4705300; 510800, 4705900; 511000, 4705900; 511000, 4706000; 511300, 4706000; 511300, 4705900; 511500, 4705900; 511500, 4705100; 511400, 4705100; returning to 511400, 4704800; excluding land bound by 511300, 4705300; 511300, 4705500; 511200, 4705500; 511200, 4705300; returning to 511300, 4705300.

(11) Subunit 1G: Jackson County, Oregon. From USGS 1:24,000 quadrangle map Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 517700, 4704000; 517200, 4704000; 517200, 4704100; 517100, 4704100; 517100, 4704300; 517000, 4704300; 517000, 4704700; 516900, 4704700; 516900, 4704900; 517000, 4704900; 517000, 4705000; 517100, 4705000; 517100, 4705100; 517600, 4705100; 517600, 4705000; 517800, 4705000; 517800, 4704900; 517900, 4704900; 517900, 4704800; 519100, 4704800; 519100, 4704700; 519300, 4704700; 519300, 4704600; 519400, 4704600; 519400, 4704300; 519100, 4704300; 519100, 4704200; 518600, 4704200; 518600, 4704100; 517900, 4704100; 517900, 4704200; 517700, 4704200; returning to 517700, 4704000.

(12) Subunit 2A: Jackson County, Oregon. From USGS 1:24,000 quadrangle map Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 514300, 4698400; 513400, 4698400; 513400, 4698500; 513300, 4698500; 513300, 4698600; 513400, 4698600; 513400, 4698700; 513500, 4698700; 513500, 4698800; 513700, 4698800; 513700, 4699000; 513800, 4699000; 513800, 4699100; 513900, 4699100; 513900, 4699200; 514200, 4699200; 514200, 4698800; 514300, 4698800; 514300, 4698900; 514400, 4698900; 514400, 4699000; 514900, 4699000; 514900, 4698900; 515100, 4698900; 515100, 4699100; 515200, 4699100; 515200, 4699000; 515500, 4699000; 515500, 4698800; 515600, 4698800; 515600, 4699000; 515700, 4699000; 515700, 4698900; 515800, 4698900; 515800, 4698500; 515500, 4698500; 515500, 4698700; 515400, 4698700; 515400, 4698600; 515300, 4698600; 515300, 4698500; 515100, 4698500; 515100, 4698600; 514900, 4698600; 514900, 4698500; 514400, 4698500; 514400, 4698600; 514300, 4698600; returning to 514300, 4698400.

(13) Subunit 2B: Jackson County, Oregon. From USGS 1:24,000 quadrangle maps Brownsboro and Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 520800, 4694400; 520700, 4694400; 520700, 4694500; 520500, 4694500; 520500, 4694600; 520400, 4694600; 520400, 4694700; 520300, 4694700; 520300, 4694800; 519900, 4694800; 519900, 4694900; 519500, 4694900; 519500, 4695200; 519400, 4695200; 519400, 4695600; 519300, 4695600; 519300, 4695800; 519200, 4695800; 519200, 4695900; 519100, 4695900; 519100, 4696000; 519000, 4696000; 519000, 4696200; 519300, 4696200; 519300, 4696300; 519100, 4696300; 519100, 4696400; 518900, 4696400; 518900, 4696500; 518800, 4696500; 518800, 4696400; 518600, 4696400; 518600, 4696700; 518500, 4696700; 518500, 4696800; 518400, 4696800; 518400, 4696900; 518300, 4696900; 518300, 4697000; 518200, 4697000; 518200, 4697100; 518100, 4697100; 518100, 4697200; 517600, 4697200; 517600, 4697300; 517300, 4697300; 517300, 4697400; 517100, 4697400; 517100, 4697600; 517000, 4697600; 517000, 4697800; 516900, 4697800; 516900, 4698400; 517300, 4698400; 517300, 4698300; 517500, 4698300; 517500, 4698200; 517600, 4698200; 517600, 4698300; 517900, 4698300; 517900, 4697800; 518500, 4697800; 518500, 4697700; 518600, 4697700; 518600, 4697600; 518800, 4697600; 518800, 4697700; 519100, 4697700; 519100, 4697600; 519300, 4697600; 519300, 4697500; 519400, 4697500; 519400, 4697400; 519500, 4697400; 519500, 4697300; 519700, 4697300; 519700, 4697200; 519800, 4697200; 519800, 4697100; 520000, 4697100; 520000, 4696800; 519900, 4696800; 519900, 4696700; 520400, 4696700; 520400, 4696600; 520500, 4696600; 520500, 4696300; 520400, 4696300; 520400, 4696100; 520500, 4696100; 520500, 4696200; 520600, 4696200; 520600, 4696100; 520700, 4696100; 520700, 4695900; 520600, 4695900; 520600, 4695800; 520500, 4695800; 520500, 4695500; 520700, 4695500; 520700, 4695400; 520800, 4695400; returning to 520800, 4694400.

(14) Subunit 2C: Jackson County, Oregon. From USGS 1:24,000 quadrangle map Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 516100, 4697400; 515000, 4697400; 515000, 4697800; 515200, 4697800; 515200, 4697700; 515300, 4697700; 515300, 4697800; 516100, 4697800; returning to 516100, 4697400.

(15) Subunit 2D: Jackson County, Oregon. From USGS 1:24,000 quadrangle map Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 516200, 4696200; 515900, 4696200; 515900, 4696900; 516100, 4696900; 516100, 4697000; 516500, 4697000; 516500, 4697100; 516800, 4697100; 516800, 4697200; 517000, 4697200; 517000, 4697100; 517200, 4697100; 517200, 4697000; 517300, 4697000; 517300, 4696900; 517400, 4696900; 517400, 4696600; 517200, 4696600; 517200, 4696700; 516800, 4696700; 516800, 4696600; 516300, 4696600; 516300, 4696500; 516200, 4696500; returning to 516200, 4696200.

(16) Subunit 2E: Jackson County, Oregon. From USGS 1:24,000 quadrangle map Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 515200, 4695800; 515000, 4695800; 515000, 4695900; 514500, 4695900; 514500, 4695800; 514300, 4695800; 514300, 4695900; 514200, 4695900; 514200, 4696000; 514100, 4696000; 514100, 4695900; 514000, 4695900; 514000, 4695800; 513900, 4695800; 513900, 4695900; 513800, 4695900; 513800, 4696600; 513500, 4696600; 513500, 4696800; 515600, 4696800; 515600, 4696600; 515500, 4696600; 515500, 4696400; 515100, 4696400; 515100, 4696300; 515200, 4696300; 515200, 4695800; excluding land bound by 514700, 4696300; 514700, 4696500; 514500, 4696500; 514500, 4696400; 514300, 4696400; 514300, 4696500; 514200, 4696500; 514200, 4696400; 514100, 4696400; 514100, 4696300; returning to 514700, 4696300.

(17) Subunit 3A: Jackson County, Oregon. From USGS 1:24,000 quadrangle map Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 511600, 4698900; 511600, 4699000; 511400, 4699000; 511400, 4699100; 511100, 4699100; 511100, 4699200; 510700, 4699200; 510700, 4699300; 510600, 4699300; 510600, 4699500; 510900, 4699500; 510900, 4699600; 511200, 4699600; 511200, 4699700; 511300, 4699700; 511300, 4699900; 511400, 4699900; 511400, 4700000; 511500, 4700000; 511500, 4699900; 511600, 4699900; 511600, 4699800; 511700, 4699800; 511700, 4699900; 511900, 4699900; 511900, 4698900; returning to 511600, 4698900.

(18) Subunit 3B: Jackson County, Oregon. From USGS 1:24,000 quadrangle maps Eagle Point and Sams Valley, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 511600, 4698900; 511600, 4698600; 511300, 4698600; 511300, 4698700; 511200, 4698700; 511200, 4698600; 511000, 4698600; 511000, 4698500; 510700, 4698500; 510700, 4698600; 510500, 4698600; 510500, 4698500; 509600, 4698500; 509600, 4698100; 509400, 4698100; 509400, 4698000; 509200, 4698000; 509200, 4697800; 509300, 4697800; 509300, 4697600; 509400, 4697600; 509400, 4697200; 509500, 4697200; 509500, 4697000; 510100, 4697000; 510100, 4697100; 511700, 4697100; 511700, 4697000; 511900, 4697000; 511900, 4696400; 510800, 4696400; 510800, 4696300; 510600, 4696300; 510600, 4696400; 510300, 4696400; 510300, 4696500; 509700, 4696500; 509700, 4696600; 509600, 4696600; 509600, 4696500; 508900, 4696500; 508900, 4696600; 508600, 4696600; 508600, 4696700; 508400, 4696700; 508400, 4696800; 508300, 4696800; 508300, 4696900; 508200, 4696900; 508200, 4697000; 508100, 4697000; 508100, 4697100; 508000, 4697100; 508000, 4697300; 508100, 4697300; 508100, 4697600; 508400, 4697600; 508400, 4697700; 508600, 4697700; 508600, 4697800; 508500, 4697800; 508500, 4698000; 508400, 4698000; 508400, 4698400; 508500, 4698400; 508500, 4698500; 508800, 4698500; 508800, 4698600; 508900, 4698600; 508900, 4698300; 509000, 4698300; 509000, 4698400; 509100, 4698400; 509100, 4698600; 509200, 4698600; 509200, 4698700; 509500, 4698700; 509500, 4698900; 509800, 4698900; 509800, 4699000; 510100, 4699000; 510100, 4699100; 511000, 4699100; 511000, 4699000; 511300, 4699000; 511300, 4698900; 511600, 4698900; excluding land bound by 508600, 4697100; 508600, 4697300, 508500, 4697300; 508500, 4697100; returning to 508600, 4697100; and excluding land bound by 509100, 469700; 509100, 4697800; 508800, 4697800; 508800, 4697700; returning to 509100, 469700.

(19) Subunit 3C: Jackson County, Oregon. From USGS 1:24,000 quadrangle map Sams Valley, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 508300, 4695000; 507800, 4695000; 507800, 4695200; 507400, 4695200; 507400, 4695400; 506900, 4695400; 506900, 4695800; 506800, 4695800; 506800, 4695900; 506400, 4695900; 506400, 4695800; 505600, 4695800; 505600, 4696000; 505800, 4696000; 505800, 4696700; 506200, 4696700; 506200, 4696800; 506100, 4696800; 506100, 4697300; 506200, 4697300; 506200, 4697600; 506800, 4697600; 506800, 4697500; 506900, 4697500; 506900, 4697300; 506800, 4697300; 506800, 4697200; 506700, 4697200; 506700, 4696700; 507000, 4696700; 507000, 4697000; 506900, 4697000; 506900, 4697200; 507000, 4697200; 507000, 4697400; 507100, 4697400; 507100, 4697500; 507200, 4697500; 507200, 4697400; 507300, 4697400; 507300, 4697300; 507400, 4697300; 507400, 4697100; 507500, 4697100; 507500, 4697000; 507600, 4697000; 507600, 4696900; 507700, 4696900; 507700, 4696700; 507900, 4696700; 507900, 4696000; 508300, 4696000; returning to 508300, 4695000.

(20) Subunit 4A: Jackson County, Oregon. From USGS 1:24,000 quadrangle map Sams Valley, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 508600, 4701300; 508400, 4701300; 508400, 4701500; 508300, 4701500; 508300, 4701900; 508200, 4701900; 508200, 4702000; 508100, 4702000; 508100, 4702100; 508000, 4702100; 508000, 4702200; 507900, 4702200; 507900, 4702300; 507800, 4702300; 507800, 4702400; 507700, 4702400; 507700, 4702500; 507600, 4702500; 507600, 4702400; 507500, 4702400; 507500, 4702300; 507300, 4702300; 507300, 4702200; 507400, 4702200; 507400, 4702100; 507600, 4702100; 507600, 4702000; 507700, 4702000; 507700, 4701800; 507800, 4701800; 507800, 4701700; 507900, 4701700; 507900, 4701400; 507700, 4701400; 507700, 4701500; 507600, 4701500; 507600, 4701600; 507300, 4701600; 507300, 4701700; 507100, 4701700; 507100, 4701800; 507000, 4701800; 507000, 4701900; 506900, 4701900; 506900, 4702000; 506800, 4702000; 506800, 4702200; 506700, 4702200; 506700, 4702400; 506600, 4702400; 506600, 4702500; 506500, 4702500; 506500, 4702700; 506600, 4702700; 506600, 4702900; 506700, 4702900; 506700, 4703100; 506800, 4703100; 506800, 4703400; 507000, 4703400; 507000, 4703500; 507200, 4703500; 507200, 4703400; 507300, 4703400; 507300, 4703300; 507800, 4703300; 507800, 4703200; 507900, 4703200; 507900, 4703100; 508000, 4703100; 508000, 4703000; 508100, 4703000; 508100, 4702900; 508200, 4702900; 508200, 4702800; 508300, 4702800; 508300, 4702700; 508400, 4702700; 508400, 4702500; 508500, 4702500; 508500, 4702300; 508600, 4702300; 508600, 4701900; 508800, 4701900; 508800, 4701500; 508700, 4701500; 508700, 4701400; 508600, 4701400; returning to 508600, 4701300.

(21) Subunit 4B: Jackson County, Oregon. From USGS 1:24,000 quadrangle map Sams Valley, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 504000, 4698900; 503800, 4698900; 503800, 4699000; 503700, 4699000; 503700, 4699400; 503800, 4699400; 503800, 4699800; 503700, 4699800; 503700, 4700900; 503800, 4700900; 503800, 4700800; 503900, 4700800; 503900, 4700700; 504000, 4700700; 504000, 4700600; 504300, 4700600; 504300, 4700500; 504400, 4700500; 504400, 4699500; 504200, 4699500; 504200, 4699200; 504100, 4699200; 504100, 4699100; 504000, 4699100; returning to 504000, 4698900.

(22) Unit 5: Shasta County, California. From USGS 1:24,000 quadrangle maps Balls Ferry, Cottonwood, Enterprise, and Palo Cedro, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 564200, 4480900; 563600, 4480900; 563300, 4481000; 563100, 4480900; 562900, 4480900; 562500, 4481200; 562400, 4481500; 562400, 4481700; 562300, 4482400; 562000, 4482500; 561900, 4482800; 561800, 4483300; 561500, 4483700; 561000, 4484000; 560700, 4485400; 560700, 4486500; 560800, 4486700; 561000, 4486900; 561200, 4487000; 561300, 4487600; 561600, 4487900; 562000, 4487900; 562500, 4487400; 562700, 4487100; 562900, 4487200; 563200, 4487200; 563300, 4487000; 563300, 4486700; 563800, 4486400; 564300, 4484700; 564300, 4484400; 564500, 4484100; 564500, 4483800; 564600, 4483700; 564600, 4483400; 564400, 4483100; 564100, 4482800; 564100, 4482600; 564300, 4482600; 564300, 4482400; 564300, 4482300; 564200, 4482200; 564100, 4482100; 564000, 4482100; 564200, 4481800; 564200, 4480900; excluding land bound by 562900, 4482600; 562900, 4485000; 562100, 4485000; 562100, 4485372; 562100, 4485400; 561700, 4485400; 561700, 4485400; 561700, 4485779; 561700, 4485800; 561300, 4485800; 561300, 4484100; 562100, 4484100; 562300, 4484010; 562300, 4484000; 562300, 4483803; 562300, 4483800; 562304, 4483794; 562500, 4483500; 562500, 4483500; 562400, 4483500; 562400, 4483500; 562400, 4482600; returning to 562900, 4482600.

(23) Unit 6: Tehama County, California. From USGS 1:24,000 quadrangle maps Corning, Gerber, Henleyville, Red Bluff East, Red Bluff West, West of Gerber, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 555200, 4423600; 555100, 4423600; 555000, 4423600;

554600, 4424900; 555100, 4425600; 557200, 4426300; 557800, 4426800; 558300, 4426500; 559500, 4428300; 558200, 4428200; 557800, 4428500; 557400, 4429300; 558000, 4429900; 558600, 4430000; 558600, 4431100; 560000, 4431600; 559200, 4431900; 558300, 4432000; 557400, 4432200; 557400, 4432600; 558400, 4433100; 558400, 4433600; 557800, 4433600; 557500, 4433800; 557300, 4434400; 555100, 4434800; 555100, 4435400; 557000, 4436200; 557900, 4439000; 557000, 4439000; 554600, 4437400; 553200, 4437000; 553200, 4437600; 554500, 4438100; 555400, 4439700; 556500, 4439800; 556500, 4441800; 558500, 4442600; 558500, 4443000; 557400, 4442900; 557000, 4443000; 556800, 4443400; 557500, 4444300; 558000, 4443700; 558400, 4443700; 559800, 4443900; 559800, 4443700; 559700, 4443500; 559700, 4443200; 559900, 4443400; 560000, 4443500; 560500, 4443500; 560700, 4443600; 561000, 4443700; 561700, 4443900; 562400, 4444000; 562500, 4444100; 562600, 4444100; 562600, 4444500; 562900, 4444500; 563400, 4444500; 563400, 4444400; 563500, 4444400; 563700, 4444400; 563800, 4443800; 564200, 4443800; 564300, 4443600; 564200, 4443400; 564100, 4443200; 564000, 4443200; 564000, 4443000; 564100, 4443000; 564100, 4442800; 564100, 4442700; 564100, 4442600; 564200, 4442600; 564300, 4442900; 564400, 4443100; 564400, 4443400; 564700, 4443400; 565200, 4443400; 565500, 4443300; 565800, 4442900; 566100, 4442900; 566200, 4442500; 566100, 4442400; 566100, 4442100; 565800, 4441900; 566000, 4441600; 566000, 4441500; 565400, 4441200; 565500, 4441000; 565400, 4440800; 565400, 4440200; 565400, 4439000; 566100, 4439000; 566100, 4439300; 566500, 4439900; 566400, 4440400; 566000, 4440600; 567500, 4441200; 567900, 4441200; 568700, 4440600; 568400, 4440400; 568300, 4439900; 568700, 4439100; 569500, 4439400; 570200, 4438100; 569400, 4438200; 569000, 4438300; 568600, 4438400; 567800, 4438400; 567600, 4438400; 567400, 4438200; 567000, 4438100; 567000, 4438000; 566800, 4437700; 566800, 4437400; 566200, 4437400; 566200, 4438200; 565900, 4438400; 565400, 4438000; 564200, 4438000; 564200, 4437800; 563900, 4437800; 563600, 4437600; 563400, 4437400; 563400, 4436900; 563400, 4436600; 563200, 4436600; 563200, 4436200; 563200, 4435800; 563500, 4435800; 563700, 4436100; 564200, 4436400; 564500, 4436500; 564700, 4436500; 564900, 4436400; 564900, 4436200; 564800, 4435800; 565100, 4435800; 564800, 4435500; 564500, 4435500; 564400, 4435400; 564200, 4435200; 564100, 4435000; 563800, 4434900; 563600, 4434700; 563500, 4434500; 563400, 4434500; 563200, 4434200; 563600, 4434200; 563600, 4432600; 563700, 4432600; 563500, 4432100; 564500, 4432000; 564500, 4431500; 565400, 4431500; 565400, 4431400; 567000, 4431300; 567000, 4430700; 566800, 4430500; 567400, 4430500; 567500, 4429600; 566800, 4429600; 566300, 4429600; 566100, 4429700; 566100, 4429100; 566000, 4429200; 565800, 4429300; 565500, 4429200; 565300, 4429200; 565100, 4429000; 564600, 4429000; 564300, 4428700; 564000, 4428700; 563700, 4428500; 563700, 4428200; 564100, 4428200; 564600, 4428200; 565500, 4428300; 566600, 4428100; 566600, 4428000; 567000, 4428000; 567100, 4427900; 567300, 4427200; 566900, 4427200; 566100, 4426900; 566000, 4426700; 565500, 4426700; 565400, 4426600; 564800, 4426600; 564800, 4426200; 564800, 4425900; 563700, 4425800; 562600, 4425100; 562300, 4425000; 562100, 4425000; 562000, 4425000; 561800, 4424900; 561700, 4424800; 561600, 4424800; 561500, 4424800; 561300, 4424800; 561200, 4424800; 560900, 4424900; 560700, 4424900; 560400, 4425000; 560100, 4424900; 559800, 4424800; 559800, 4424500; 559700, 4424400; 559400, 4424300; 559300, 4424400; 559200, 4424500; 559100, 4424500; 558900, 4424700; 558700, 4424800; 558300, 4424800; 558100, 4424800; 557900, 4424600; 557700, 4424500; 557300, 4424300; 557000, 4424200; 556800, 4424100; 556600, 4424100; 556100, 4424000; 555900, 4424000; 555800, 4423900; 555900, 4423800; 555800, 4423800; 555500, 4423800; 555400, 4423800; 555300, 4423700; returning to 555200, 4423600.

(24) Unit 7: Butte and Tehama Counties, California. From USGS 1:24,000 quadrangle maps Acorn Hollow, Campbell Mound, Foster Island, Nord, Richardson Springs, Richardson Springs NW, and Vina, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 592400, 4416700; 592500, 4416600; 592500, 4416000; 592000, 4416000; 592000, 4415800; 592500, 4415800; 593800, 4416300; 594100, 4416300; 594400, 4416300; 594400, 4415800; 594900, 4415800; 594900, 4416300; 595500, 4416300; 595500, 4416400; 595900, 4416500; 596000, 4416500; 596100, 4416400; 596200, 4416500; 596300, 4416600; 596400, 4416700; 596500, 4416700; 596500, 4416800; 596600, 4416800; 597100, 4416400; 597100, 4415600; 596800, 4415200; 597100, 4415000; 597800, 4415500; 598100, 4415200; 597600, 4414600; 597600, 4414400; 597300, 4413800; 597300, 4413300; 598200, 4413900; 598400, 4413900; 598400, 4413600; 597400, 4411900; 597600, 4411900; 598300, 4412700; 598500, 4413300; 598900, 4413300; 598900, 4411800; 599400, 4411700; 599800, 4411700; 599800, 4411000; 599300, 4410700; 599100, 4410800; 599000, 4410800; 598800, 4410600; 598500, 4410400; 598300, 4410100; 598100, 4410000; 598000, 4409900; 597700, 4409800; 597600, 4409600; 597500, 4409500; 597300, 4409500; 597100, 4409400; 596900, 4409200; 596800, 4409200; 596700, 4409100; 596200, 4409100; 596000, 4408900; 595900, 4408800; 595700, 4408800; 595500, 4408200; 594300, 4408200; 594100, 4408300; 594000, 4408400; 593600, 4408500; 593400, 4408200; 593300, 4408200; 593300, 4408500; 592900, 4408500; 592900, 4408600; 593000, 4408600; 593100, 4409200; 593200, 4409200; 593200, 4409300; 592900, 4409300; 592900, 4409500; 593100, 4409600; 593100, 4409500; 593200, 4409500; 593200, 4409800; 593300, 4409900; 593300, 4410400; 593100, 4410400; 592900, 4410200; 592600, 4410200; 592600, 4410000; 592500, 4409900; 592500, 4409700; 591700, 4409400; 591500, 4409400; 591700, 4409100; 591700, 4409000; 591500, 4409000; 591500, 4408600; 590900, 4408600; 590900, 4408900; 590700, 4409000; 590800, 4409400; 591000, 4409500; 591200, 4409500; 591100, 4409800; 590500, 4409800; 590300, 4409600; 590300, 4409500; 590100, 4409500; 590000, 4409400; 590300, 4409400; 590400, 4409000; 590500, 4408600; 590100, 4408600; 590100, 4408800; 589900, 4409000; 589500, 4408900; 589300, 4408900; 589300, 4409200; 589400, 4409200; 589400, 4409400; 589300, 4409400; 589300, 4409800; 589700, 4409800; 589700, 4410600; 588400, 4410600; 588300, 4411300; 588100, 4411400; 588100, 4412000; 588100, 4413300; 588200, 4413500; 588300, 4413900; 588500, 4414000; 588500, 4414600; 589200, 4414700; 589200, 4415000; 589200, 4415300; 589400, 4415500; 589700, 4415600; 589700, 4415800; 589900, 4415800; 590000, 4415900; 590000, 4416000; 589900, 4416000; 589400, 4415900; 589100, 4415800; 589000, 4415700; 588800, 4415500; 588700, 4415400; 588600, 4415100; 588200, 4415100; 588200, 4416000; 588300, 4416200; 588300, 4416600; 588800, 4417000; 589100, 4417400; 589200,

4417600; 589200, 4417700; 589300, 4417900; 589300, 4418100; 589400, 4418200; 589300, 4418300; 590700, 4419800; 588000, 4417000; 587500, 4416400; 587200, 4415500; 587200, 4415100; 587300, 4415000; 587300, 4414500; 587200, 4414400; 587100, 4414300; 586900, 4414000; 586400, 4413900; 586200, 4413700; 586000, 4413600; 585800, 4413600; 585800, 4414700; 585300, 4414700; 585300, 4413800; 585200, 4413700; 584800, 4413700; 584600, 4413600; 584400, 4413600; 584200, 4413500; 584000, 4413700; 583200, 4413400; 583000, 4414200; 583700, 4414600; 583500, 4415000; 583000, 4415900; 583000, 4416400; 582900, 4416700; 582800, 4416900; 582700, 4417000; 582700, 4417200; 582900, 4417300; 582800, 4417400; 582700, 4417500; 582700, 4417600; 582600, 4417700; 582600, 4418000; 582600, 4418100; 582600, 4418200; 582700, 4418300; 582500, 4418400; 582400, 4418300; 582200, 4418300; 582100, 4418400; 582100, 4418500; 582000, 4418600; 582100, 4418700; 582100, 4418900; 582200, 4419100; 582100, 4419300; 582200, 4419500; 582100, 4419600; 582000, 4419700; 582100, 4419800; 582100, 4419900; 582200, 4420000; 582200, 4420300; 582100, 4420500; 582200, 4420600; 582200, 4420800; 582300, 4421100; 582900, 4421500; 582900, 4421600; 583300, 4422000; 583400, 4422100; 583900, 4422100; 584100, 4422300; 584200, 4422300; 584300, 4422400; 584400, 4422500; 584600, 4422900; 585100, 4423400; 585600, 4423700; 585800, 4423900; 585800, 4424200; 586100, 4424200; 586600, 4424800; 586800, 4424900; 587300, 4425500; 587400, 4425600; 587500, 4425800; 587500, 4425900; 587600, 4426000; 587700, 4426100; 587800, 4426100; 587900, 4426200; 587900, 4426300; 588200, 4426500; 588700, 4429900; 588900, 4429500; 589500, 4429500; 589500, 4428600; 589500, 4428000; 589800, 4427100; 590500, 4426400; 590500, 4425300; 591200, 4424400; 591500, 4423300; 591600, 4422100; 591700, 4421900; 591900, 4421800; 593000, 4421800; 593100, 4421500; 593500, 4421400; 593700, 4420900; 591800, 4420600; 591800, 4420400; 592300, 4420500; 592800, 4420400; 593100, 4420500; 594000, 4420800; 594400, 4420600; 594500, 4420300; 593800, 4420000; 593600, 4419700; 593600, 4419400; 593200, 4419100; 593600, 4418900; 594300, 4419000; 594300, 4418800; 594300, 4418700; 594200, 4418300; 594100, 4418000; 594100, 4417900; 594700, 4417900; 595100, 4417800; 595800, 4417300; 595800, 4416600; 595100, 4416500; 594400, 4416500; 594000, 4416400; 593300, 4416400; 592800, 4416600; returning to 592400, 4416700; excluding land bound by 591500, 4409600; 591600, 4409900; 591400, 4409900; 591400, 4410200; 591600, 4410200; 591600, 4410600; 590700, 4410600; 591400, 4409600; returning to 591500, 4409600.

(ii) Start at 602900, 4402100; 602700, 4402100; 602300, 4402600; 602300, 4402700; 601800, 4403300; 601200, 4403300; 601000, 4403400; 601000, 4403200; 601100, 4403100; 601100, 4402700; 600300, 4402700; 600300, 4403000; 600200, 4403200; 600200, 4403600; 599700, 4403600; 599600, 4403700; 599400, 4403700; 599200, 4403600; 598100, 4403600; 597900, 4403800; 597800, 4403800; 597000, 4404000; 596600, 4404400; 596600, 4404700; 596900, 4404700; 596900, 4404800; 596600, 4404800; 596600, 4405100; 596700, 4405200; 596500, 4405200; 596200, 4405000; 596100, 4405000; 596100, 4405400; 596500, 4405400; 596500, 4405900; 595600, 4405900; 595400, 4405900; 595400, 4406600; 595800, 4406600; 595800, 4407400; 596100, 4407400; 596300, 4407700; 596400, 4407800; 596800, 4407800; 596800, 4407500; 597300, 4407500; 597300, 4407700; 597600, 4407700; 597900, 4407500; 598100, 4407500; 598100, 4407100; 597700, 4406800; 597800, 4406700; 597500, 4406500; 597300, 4406700; 597100, 4406600; 597500, 4406100; 597100, 4405900; 597600, 4405100; 598000, 4405300; 598400, 4404700; 598500, 4404800; 598200, 4405300; 598400, 4405300; 598500, 4405400; 598600, 4405500; 598700, 4405400; 598800, 4405600; 598900, 4405600; 598900, 4404800; 598900, 4404400; 599000, 4404400; 599200, 4404000; 599300, 4404000; 599500, 4404200; 599700, 4404100; 600100, 4404200; 600400, 4404200; 600400, 4404400; 599800, 4404400; 599800, 4405200; 599600, 4405200; 599500, 4405100; 599600, 4405000; 599600, 4404800; 599100, 4404800; 599100, 4405700; 599000, 4405800; 598900, 4406100; 598700, 4406000; 598500, 4406300; 598500, 4407200; 598300, 4407200; 598300, 4407500; 598300, 4407700; 598800, 4407900; 598900, 4408100; 599200, 4408400; 600200, 4408900; 600300, 4408800; 600300, 4408400; 600000, 4408100; 600400, 4407600; 599500, 4406700; 599500, 4406200; 600300, 4406000; 601200, 4405600; 601800, 4405600; 602000, 4405500; 602200, 4405200; 602500, 4405200; 602700, 4404900; 603300, 4404700; 604500, 4404200; 605200, 4404200; 605600, 4404000; 605600, 4403600; 605100, 4403300; 604700, 4403400; 604500, 4403300; 604475, 4403175; 604400, 4403100; 604300, 4403100; 604200, 4403000; 604100, 4402900; 604000, 4402900; 603800, 4402800; 603800, 4402600; 603600, 4402400; 603400, 4402400; 603200, 4402500; 603100, 4402400; 602900, 4402400; returning to 602900, 4402100.

(25) Unit 8: Glenn and Tehama Counties, California. From USGS 1:24,000 quadrangle maps Black Butte Dam and Kirkwood, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 563400, 4405400; 563200, 4405700; 562800, 4405800; 561400, 4406200; 560900, 4406200; 560600, 4406300; 560500, 4406400; 560400, 4406600; 560400, 4406900; 560800, 4406900; 560800, 4407300; 561200, 4407300; 561200, 4411300; 565500, 4411300; 565500, 4410500; 568400, 4410500; 568400, 4411400; 570500, 4411400; 570800, 4411700; 571400, 4411500; 571500, 4411000; 572100, 4410900; 572100, 4410100; 571800, 4409600; 570500, 4409000; 570200, 4409000; 570200, 4409300; 569700, 4409300; 569700, 4409000; 569800, 4407700; 569900, 4407000; 569800, 4406100; 569800, 4405500; 569400, 4405500; 568600, 4405900; 568300, 4405900; 567500, 4405500; 567200, 4405500; 565000, 4405500; 564600, 4405800; 564100, 4405800; 563700, 4405600; returning to 563400, 4405400.

(26) Unit 9: Butte County, California. [Reserved]

(27) Unit 10: Colusa and Glenn Counties, California. [Reserved]

(28) Unit 11: Yuba County, California. From USGS 1:24,000 quadrangle maps Browns Valley and Wheatland, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 632400, 4329000; 631300, 4329000; 631300, 4329200; 631600, 4329200; 631600, 4329800; 631900, 4329800; 631900, 4330600; 632800, 4330600; 633000, 4330900; 633000, 4331300; 633100, 4331500; 633500, 4331700; 633800, 4331500; 633800, 4332200; 635000, 4332200; 635000, 4329900; 633800, 4329900; 633600, 4330100; 633300, 4330100; 633300, 4330300; 632700, 4330100; 632400, 4329900; returning to 632400, 4329000.

(29) Unit 12: Placer and Sacramento Counties, California. From USGS 1:24,000 quadrangle maps Citrus Heights, Lincoln, Pleasant Grove, Rio Linda, Roseville, and Sheridan, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 4309600; 640200, 4306200; 640100, 4306200; 640200, 4306700; 640000, 4306800; 639900, 4306700;

639600, 4306700; 639500, 4306900; 639200, 4306900; 639200, 4306800; 639000, 4306800; 638700, 4306600; 638300, 4306600; 638300, 4307400; 637500, 4307400; 637500, 4308200; 639000, 4308300; 639000, 4309600; 639400, 4309600; 639400, 4309300; 639800, 4309300; 639800, 4309800; 639400, 4309800; 639400, 4310400; 639700, 4310300; 639900, 4310300; 640500, 4310700; 640500, 4311000; 640900, 4311000; 641000, 4311200; 641200, 4311200; 641200, 4311500; 641900, 4311500; 642100, 4311000; 642000, 4310900; 642000, 4310800; 642100, 4310800; 642100, 4310300; 642900, 4310500; 642900, 4310600; 643300, 4310700; 643700, 4310500; 644000, 4310900; 644300, 4310400; 645400, 4310400; 645800, 4310200; 646100, 4310200; 646300, 4310000; 647500, 4310000; 647500, 4310200; 646800, 4310200; 646500, 4310300; 646500, 4310600; 646600, 4310700; 646100, 4310700; 645900, 4310800; 645900, 4311200; 646100, 4311100; 646500, 4311100; 646500, 4311200; 646300, 4311200; 646300, 4311400; 646400, 4311700; 646800, 4311700; 646800, 4312000; 646900, 4312100; 646800, 4312500; 647000, 4312600; 647100, 4312800; 647300, 4312800; 647400, 4312700; 647400, 4312800; 647300, 4312900; 647100, 4312900; 646800, 4312698; 646800, 4313000; 646900, 4313400; 647100, 4313800; 647300, 4314200; 648300, 4314200; 648300, 4313900; 647900, 4313400; 647900, 4312700; 648000, 4312500; 647900, 4311500; 647700, 4311500; 647600, 4311300; 647300, 4311400; 646900, 4311400; 646900, 4311300; 647200, 4311300; 647500, 4311200; 647800, 4311200; 647900, 4311100; 647800, 4311000; 646900, 4311000; 646800, 4310900; 646800, 4310800; 647400, 4310800; 647500, 4310900; 647600, 4310800; 647800, 4310700; 648000, 4310700; 648000, 4309700; 647200, 4309700; 647200, 4309200; 646700, 4309100; 646700, 4308800; 646600, 4308800; 646100, 4309100; 646100, 4308200; 646400, 4307900; 646400, 4307100; 646400, 4306700; 645600, 4306700; 645600, 4307100; 645600, 4308400; 644400, 4308400; 644400, 4308300; 643900, 4308300; 643900, 4307400; 643700, 4307400; 643300, 4308900; 643100, 4308500; 643000, 4308900; 642700, 4308900; 642900, 4308200; 642800, 4308100; 642600, 4307500; 642300, 4307400; 642100, 4307200; 641500, 4307200; 641500, 4307500; 642000, 4307500; 642000, 4307600; 642300, 4307600; 642300, 4308900; 642200, 4308900; 642200, 4308300; 641500, 4308300; 641400, 4310500; 640900, 4310500; 640700, 4310400; 640500, 4310400; 640500, 4309800; 640300, 4309800; 640300, 4309700; 640500, 4309700; 640600, 4306700; 640500, 4306300; returning to 640200, 4306200.

(ii) Start at 644400, 4306700; 644400, 4307000; 644500, 4307000; 644600, 4306900; 644600, 4306700; returning to 644400, 4306700.

(iii) Start at 647700, 4301800; 647700, 4301300; 648100, 4301200; 648300, 4301300; 648400, 4301300; 648500, 4301200; 648300, 4301100; 648200, 4301000; 648200, 4300300; 648400, 4300300; 648400, 4299000; 648600, 4299000; 648900, 4298800; 649200, 4298100; 649600, 4298100; 649700, 4297900; 649200, 4297400; 649100, 4297600; 648900, 4297500; 649000, 4297200; 649000, 4297100; 647900, 4297100; 647900, 4297300; 648500, 4297700; 648500, 4297900; 648300, 4297900; 648300, 4298100; 648400, 4298200; 648400, 4298300; 648300, 4298400; 648200, 4298400; 648100, 4298300; 648000, 4298200; 648200, 4298100; 648200, 4297900; 647600, 4297900; 647600, 4299300; 646800, 4299300; 646800, 4299700; 646900, 4299700; 646900, 4300300; 646800, 4300500; 645800, 4300500; 645800, 4300200; 646600, 4300300; 646500, 4300200; 646500, 4299700; 646300, 4299700; 646300, 4299400; 646400, 4299400; 646400, 4299300; 646400, 4297200; 645800, 4297200; 645800, 4296435; 645800, 4296300; 645800, 4296100; 645700, 4296100; 645600, 4296000; 645500, 4296100; 645300, 4296000; 645200, 4296000; 645200, 4296100; 645100, 4296100; 645000, 4296200; 645200, 4296200; 645400, 4296300; 645600, 4296400; 645700, 4296700; 645700, 4297000; 643300, 4297000; 643300, 4295300; 643800, 4295400; 643200, 4295000; 642500, 4295000; 642600, 4290000; 642400, 4289800; 641600, 4289500; 640500, 4289500; 640500, 4289400; 640200, 4289400; 640200, 4289900; 639700, 4289900; 639700, 4289400; 639500, 4289400; 639400, 4289500; 637300, 4289500; 637300, 4288400; 636700, 4288400; 636700, 4288000; 636600, 4288000; 636500, 4287700; 635700, 4287700; 635600, 4288900; 634900, 4289000; 634500, 4288700; 634500, 4288300; 634100, 4288500; 634000, 4288700; 634500, 4289100; 633400, 4289100; 633300, 4288700; 632800, 4288700; 632800, 4289200; 633100, 4289200; 633500, 4289500; 633800, 4289500; 633800, 4289700; 634100, 4289900; 634100, 4290398; 634200, 4290400; 634200, 4290500; 634400, 4290600; 634100, 4290800; 633800, 4290800; 633700, 4290900; 633700, 4291300; 633800, 4291200; 634900, 4291200; 634900, 4290500; 635000, 4290400; 635700, 4290400; 636100, 4290400; 636300, 4290100; 637000, 4290100; 637200, 4290200; 637200, 4290400; 638100, 4290700; 637900, 4292300; 638300, 4292500; 638200, 4292800; 638300, 4292800; 638300, 4293000; 638800, 4293000; 638800, 4293100; 639000, 4293100; 638900, 4294300; 638600, 4294300; 638300, 4294500; 637300, 4294400; 637300, 4295500; 638100, 4295500; 638200, 4295700; 638700, 4295700; 638700, 4295300; 638300, 4295300; 638300, 4294900; 638900, 4294900; 638900, 4295300; 639500, 4295300; 639500, 4295400; 640000, 4295400; 640000, 4295800; 639500, 4296100; 639500, 4296900; 639300, 4296900; 639300, 4298500; 640000, 4298500; 640000, 4300100; 639500, 4300100; 639500, 4299800; 639300, 4299800; 639300, 4298700; 639100, 4298700; 639000, 4298500; 638800, 4298500; 638700, 4298300; 638700, 4298100; 638500, 4298000; 638500, 4297800; 638200, 4297800; 638100, 4297700; 638000, 4297800; 637800, 4297800; 637600, 4297600; 637200, 4297600; 637200, 4297300; 636900, 4297100; 636300, 4296900; 635600, 4297200; 635100, 4297200; 634300, 4297100; 634400, 4297200; 633600, 4297200; 633600, 4297800; 634200, 4297800; 634200, 4297600; 635200, 4297700; 635200, 4298400; 635500, 4298500; 635500, 4298300; 635600, 4298300; 635600, 4298500; 635800, 4298500; 635800, 4300000; 636000, 4300100; 636000, 4300900; 637700, 4300900; 637700, 4300100; 639200, 4300100; 639200, 4301000; 640000, 4301000; 640000, 4301700; 637700, 4301700; 638100, 4302100; 638600, 4302100; 639100, 4302300; 639900, 4302200; 640000, 4301800; 640800, 4301800; 640800, 4302500; 641200, 4302700; 641500, 4302700; 641600, 4302200; 641900, 4301900; 642200, 4302200; 642800, 4301900; 643400, 4301400; 643700, 4302100; 644300, 4302300; 644400, 4302400; 644400, 4302600; 644400, 4302800; 643600, 4302800; 643600, 4303000; 643200, 4303000; 643200, 4303400; 642700, 4303400; 642600, 4303500; 642800, 4304000; 643600, 4304400; 644000, 4304400; 644300, 4304600; 644300, 4304900; 644100, 4304900; 644100, 4305000; 644000, 4305000; 644000, 4306700; 642400, 4306700; 642800, 4306900; 643600, 4307100; 644100, 4307100; 644100, 4306800; 644200, 4306800; 644200, 4306700; 644400, 4306700; 644400, 4305900; 644700, 4305900; 644700, 4305400; 644800, 4305400; 644800, 4305200; 645100, 4305200; 645100, 4305100; 645200, 4305000; 645400, 4305100; 645600, 4305100; 646100,

4304500; 646100, 4305100; 646200, 4305100; 646400, 4304700; 647000, 4304700; 647200, 4304400; 647700, 4304500; 647500, 4303700; 647400, 4303500; 645400, 4303500; 645300, 4303700; 645100, 4303700; 644800, 4303600; 644900, 4303100; 644700, 4303000; 644700, 4302500; 644500, 4302300; 644500, 4301900; 644700, 4301900; 644800, 4302000; 644900, 4302100; 645100, 4302100; 645300, 4302300; 645600, 4302300; 646000, 4302600; 646200, 4302600; 646500, 4302900; 646600, 4303100; 646800, 4303100; 646800, 4303200; 647000, 4303200; 647100, 4303300; 647200, 4303300; 647300, 4303400; 647400, 4303400; 647400, 4303200; 647500, 4303200; 647500, 4303500; 648200, 4303500; 648400, 4303400; 648300, 4303300; 648500, 4303200; 648600, 4303200; 648700, 4303100; 648600, 4303000; 648200, 4303000; 648100, 4302900; 647700, 4302900; returning to 647700, 4301800; excluding land bound by 640300, 4294900; 640300, 4294200; 641000, 4294200; 641000, 4294900; returning to 640300, 4294900.

(30) Unit 13: Sacramento County, California. [Reserved]

(31) Unit 14: Amador and Sacramento Counties, California. From USGS 1:24,000 quadrangle maps Carbondale, Clay, Goose Creek, and Sloughhouse, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 668900, 4255600; 669300, 4255400; 670600, 4255800; 671500, 4256400; 671700, 4256000; 671900, 4256000; 672200, 4255600; 672400, 4255600; 672700, 4256400; 673200, 4256400; 672800, 4255100; 672800, 4254800; 673100, 4254900; 673800, 4254900; 674000, 4254600; 674000, 4254400; 674500, 4254000; 674500, 4253700; 674100, 4253500; 674100, 4252900; 674300, 4252300; 674500, 4251900; 674500, 4251600; 673400, 4251500; 673300, 4251400; 673300, 4251200; 673900, 4251000; 674000, 4250500; 674300, 4250000; 674300, 4249800; 674200, 4249700; 673900, 4249700; 673600, 4249900; 672500, 4249900; 671900, 4250200; 671300, 4250200; 671100, 4250500; 671000, 4250500; 671000, 4249800; 670700, 4249800; 670700, 4249500; 670800, 4249300; 670800, 4249000; 670900, 4248900; 670900, 4248500; 670500, 4248300; 670500, 4248125; 670400, 4248100; 670400, 4248000; 670100, 4248000; 670100, 4247800; 670500, 4247500; 671100, 4247500; 671600, 4247700; 671800, 4247600; 671900, 4247300; 671900, 4247100; 671500, 4246800; 671600, 4246600; 671800, 4246000; 671300, 4245300; 670800, 4245000; 670000, 4244200; 670000, 4244100; 670500, 4243800; 670200, 4243400; 670200, 4243300; 670300, 4243200; 670400, 4243100; 670600, 4242600; 671200, 4242900; 671600, 4243000; 671600, 4242700; 670700, 4242100; 669800, 4242100; 669300, 4241900; 668900, 4241900; 668700, 4241800; 668500, 4241600; 668400, 4241600; 668200, 4241700; 668000, 4242000; 667900, 4242000; 667400, 4241600; 667400, 4241800; 666400, 4241700; 665400, 4241700; 665400, 4242700; 665000, 4242700; 665000, 4242300; 664800, 4242300; 664800, 4242200; 664700, 4242200; 664600, 4242100; 664500, 4242100; 664500, 4241300; 664000, 4241300; 664000, 4241000; 663500, 4241000; 663500, 4240900; 663400, 4240800; 663300, 4240800; 663300, 4240600; 663100, 4240600; 663100, 4240900; 662800, 4240900; 662800, 4240500; 662700, 4240400; 662700, 4240000; 662500, 4240000; 662500, 4239600; 662100, 4239600; 662100, 4239400; 662000, 4239300; 661700, 4239300; 661700, 4239200; 661400, 4239000; 661400, 4239900; 661500, 4239900; 661500, 4241600; 661500, 4241900; 661700, 4242000; 662200, 4242000; 662200, 4241600; 662900, 4241600; 662800, 4242300; 662500, 4242300; 662600, 4243000; 662900, 4243100; 663400, 4243100; 663400, 4243800; 663000, 4243800; 663000, 4243900; 662500, 4243900; 662700, 4244700; 662850, 4244800; 663000, 4244900; 663100, 4245300; 663800, 4245300; 663900, 4245500; 664400, 4245600; 664500, 4245200; 664600, 4245200; 664900, 4245275; 665000, 4245300; 664900, 4245700; 664900, 4246500; 664400, 4246500; 663900, 4246700; 662500, 4246300; 662200, 4246300; 662100, 4246400; 661700, 4246400; 662000, 4247300; 661800, 4247500; 660900, 4247500; 660850, 4247100; 659700, 4247100; 659500, 4247300; 659500, 4248300; 660000, 4248300; 659900, 4249600; 660000, 4249900; 659900, 4250200; 659400, 4249700; 659400, 4249500; 659300, 4249200; 659100, 4249000; 659100, 4248900; 659200, 4248800; 659100, 4248700; 658900, 4248700; 658800, 4248600; 658600, 4248600; 658500, 4248800; 658400, 4248900; 658200, 4249000; 658200, 4248900; 658300, 4248700; 658500, 4248500; 658500, 4248400; 658400, 4248300; 658400, 4247900; 658100, 4247900; 658000, 4248500; 656700, 4248500; 656300, 4248900; 655900, 4248200; 656100, 4248100; 656100, 4248000; 656000, 4247800; 655200, 4247800; 655200, 4247200; 654700, 4247200; 654700, 4248750; 654700, 4249000; 655100, 4249000; 655800, 4249000; 656300, 4249700; 656600, 4249500; 657200, 4250200; 656700, 4251100; 657700, 4251100; 657700, 4251500; 656700, 4251400; 656700, 4252100; 656500, 4252300; 656500, 4252600; 657000, 4253700; 657400, 4254600; 657800, 4254300; 657800, 4254200; 658900, 4253500; 659000, 4253500; 659300, 4253300; 660000, 4254500; 660100, 4254800; 660200, 4254900; 660300, 4255200; 660600, 4255300; 660700, 4255400; 660800, 4256000; 660600, 4256200; 660300, 4256100; 660000, 4256200; 659800, 4256300; 659850, 4256450; 659900, 4256600; 660200, 4256500; 660300, 4256800; 660600, 4256700; 660800, 4256800; 660600, 4257000; 660700, 4257500; 660600, 4257600; 660600, 4258000; 659900, 4258000; 659900, 4258100; 659700, 4258300; 659700, 4258500; 659600, 4258800; 659700, 4259100; 660100, 4259300; 660300, 4259100; 660500, 4259100; 660600, 4259300; 660800, 4259300; 661300, 4259800; 661600, 4259700; 661600, 4259300; 661800, 4259300; 661800, 4259100; 662200, 4259100; 662200, 4259600; 662400, 4259600; 662700, 4259100; 662900, 4258900; 662800, 4258700; 662700, 4258500; 662000, 4258100; 661500, 4257700; 661200, 4257100; 661600, 4256700; 662000, 4256700; 661900, 4256400; 661800, 4256100; 661800, 4255800; 661600, 4255600; 662100, 4255400; 662300, 4255800; 663100, 4255800; 664100, 4256600; 664500, 4257000; 664800, 4257500; 664800, 4257800; 665100, 4258100; 665100, 4258500; 665400, 4258700; 665900, 4258800; 666500, 4258800; 666700, 4258600; 666600, 4258200; 666300, 4258000; 666100, 4257400; 666000, 4257300; 666000, 4257000; 666400, 4257000; 666500, 4257600; 666800, 4257600; 666900, 4257400; 666900, 4257100; 666700, 4256900; 666800, 4256700; 666700, 4256300; 666600, 4256100; 667200, 4256100; 667400, 4256300; 667600, 4256300; 667800, 4256100; 667900, 4256300; 668100, 4256300; 668400, 4255900; returning to 668900, 4255600.

(32) Unit 15: Solano County, California. [Reserved]

(33) Unit 16: Solano County, California. [Reserved]

(34) Unit 17: Napa County, California. From USGS 1:24,000 quadrangle map Cuttings Wharf, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 562800, 4228500; 562500, 4228500; 561500, 4228900; 561300, 4229000; 560800, 4229200; 560600, 4229600; 560400, 4230200; 560500, 4230600; 560500, 4230900; 560800, 4231200; 561400, 4231200; 561400, 4230700; 561600, 4230600; 561900, 4230600; 562100, 4230800; 562500, 4230800; 563200, 4230900; 563200, 4230600; 563800, 4229500;

564100, 4229600; 564300, 4229200; 563200, 4228900; 563000, 4228900; returning to 562800, 4228500.

(35) Unit 18: San Joaquin and Stanislaus Counties, California. From USGS 1:24,000 quadrangle maps Farmington, Linden, Peters, and Valley Springs SW, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 677400, 4201600; 675800, 4201600; 675700, 4203000; 675900, 4203000; 675900, 4203200; 675700, 4203200; 675700, 4204800; 672500, 4204700; 672500, 4205600; 672800, 4205800; 672800, 4206300; 672100, 4206300; 672100, 4206500; 671800, 4206500; 671600, 4206700; 671600, 4207100; 673200, 4207100; 673200, 4207396; 674000, 4207400; 674000, 4207700; 674700, 4207500; 674700, 4207200; 675100, 4207200; 675600, 4207400; 675600, 4208100; 675300, 4208100; 675300, 4208000; 674500, 4208000; 674400, 4208100; 674200, 4208200; 673900, 4208400; 673900, 4208700; 674800, 4208800; 674700, 4209300; 674600, 4209300; 674600, 4209600; 673900, 4209600; 673900, 4209800; 673500, 4209700; 673200, 4209600; 673200, 4209500; 673100, 4209500; 673100, 4211900; 673500, 4211800; 673900, 4211700; 673900, 4211400; 674100, 4211400; 674100, 4211500; 674300, 4211500; 674300, 4211600; 674900, 4211400; 675200, 4211500; 675200, 4211700; 675300, 4211800; 675300, 4211900; 675500, 4211900; 675500, 4212400; 676000, 4212400; 676600, 4211200; 676300, 4211200; 676400, 4211000; 676300, 4210600; 676200, 4210500; 676100, 4210500; 675800, 4210300; 675600, 4210200; 675700, 4210000; 675900, 4209700; 675900, 4209600; 676500, 4209600; 676700, 4210100; 676700, 4210800; 677200, 4211300; 678700, 4211300; 678800, 4210500; 680200, 4210400; 680200, 4209700; 681100, 4209700; 681800, 4210300; 682900, 4210100; 682900, 4209600; 681500, 4209100; 681300, 4208500; 680800, 4208400; 680800, 4206100; 680500, 4205700; 680400, 4205100; 679700, 4204600; 679700, 4203305; 679200, 4203300; 679200, 4203400; 679000, 4203400; 679000, 4203300; 678500, 4203300; 678400, 4203100; 678300, 4203100; 678300, 4203000; 678400, 4202900; 678400, 4202700; 677700, 4202200; 677700, 4202200; 677600, 4201700; 677500, 4201700; returning to 677400, 4201600.

(36) Subunit 19A: Contra Costa County, California. From USGS 1:24,000 quadrangle maps Antioch South and Brentwood, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 611400, 4193400; 610900, 4193500; 610200, 4193700; 609900, 4193900; 609700, 4194000; 609100, 4194000; 608100, 4194300; 608500, 4194900; 608400, 4195100; 608600, 4195300; 608600, 4195900; 609600, 4195900; 609500, 4195600; 609200, 4195100; 609200, 4195000; 609300, 4194900; 609900, 4194800; 610200, 4194800; 610500, 4195100; 611200, 4195900; 612100, 4196300; 612500, 4195900; 611700, 4194500; 611700, 4194300; returning to 611400, 4193400.

(37) Subunit 19B: Contra Costa County, California. From USGS 1:24,000 quadrangle maps Byron Hot Springs and Clifton Court Forebay, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 622300, 4190400; 622400, 4189900; 623000, 4189300; 622900, 4188700; 622200, 4188700; 622100, 4188800; 621900, 4189000; 621700, 4189300; 621400, 4189700; 621200, 4190000; 621200, 4190400; 621100, 4190400; 621100, 4188700; 620900, 4188700; 620600, 4188400; 620400, 4188600; 620400, 4188100; 620500, 4187900; 620600, 4187800; 620700, 4187700; 620900, 4187700; 621100, 4187500; 620500, 4187100; 620500, 4186900; 621300, 4187281; 621600, 4187400; 622000, 4187000; 622400, 4186400; 622600, 4186100; 622500, 4186000; 622500, 4185800; 622000, 4185300; 621200, 4185300; 621000, 4185500; 620800, 4185500; 620500, 4185200; 620200, 4185300; 619900, 4185600; 619600, 4185500; 618200, 4186600; 618100, 4187100; 617700, 4187400; 617800, 4187900; 618200, 4188100; 618500, 4188300; 618400, 4188600; 617700, 4188800; 617400, 4189000; 617400, 4189200; 618200, 4189500; 618100, 4189800; 618200, 4190100; 618700, 4190300; 618700, 4190700; 619000, 4191000; 619300, 4191100; 619600, 4191100; 619800, 4190700; 619900, 4190700; 620100, 4190900; 620400, 4190900; 620500, 4191200; 621800, 4191200; 622200, 4190700; returning to 622300, 4190400.

(38) Subunit 19C: Alameda County, California. From USGS 1:24,000 quadrangle maps Altamont and Livermore, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 612400, 4176300; 612100, 4176300; 612100, 4176400; 612000, 4176500; 611800, 4176500; 611600, 4176500; 611600, 4175300; 611400, 4175300; 611200, 4175400; 610900, 4175400; 610800, 4175900; 610400, 4175900; 610300, 4175200; 610200, 4175100; 610000, 4175000; 610000, 4174800; 609100, 4175400; 608600, 4175600; 608400, 4175900; 610000, 4175900; 610000, 4176500; 610400, 4176500; 610400, 4178500; 610800, 4178300; 610800, 4177500; 610800, 4177200; 611200, 4177200; 611900, 4176700; 612400, 4176700; 612400, 4177200; 613300, 4177200; 613400, 4177000; 613300, 4176900; 613300, 4176800; 613300, 4176700; 613200, 4176700; 613200, 4176300; 613400, 4176300; 613400, 4176200; 613500, 4176200; 613500, 4176300; 613600, 4176400; 613700, 4176400; 613700, 4176600; 614400, 4175500; 614300, 4175400; 614200, 4175400; 614100, 4175300; 614000, 4175300; 613900, 4175200; 613800, 4175100; 613700, 4175100; 613700, 4175200; 613600, 4175200; 613600, 4176100; 613300, 4176100; 613200, 4175900; 613100, 4175900; 612800, 4176100; 612700, 4176100; 612500, 4175900; 612400, 4175900; returning to 612400, 4176300; and excluding land bound by 612400, 4176300; 612500, 4176300; 612700, 4176300; 612700, 4176400; 612400, 4176400; returning to 612400, 4176300.

(39) Unit 20: Stanislaus County, California. [Reserved]

(40) Unit 21: Mariposa, Merced, and Stanislaus Counties, California. From USGS 1:24,000 quadrangle maps Cooperstown, La Grange, Merced Falls, Montpelier, Paulsell, Snelling, and Turlock Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 732200, 4162500; 732700, 4162700; 733000, 4162600; 733600, 4162100; 733700, 4161500; 733600, 4161000; 734600, 4160400; 734800, 4160200; 734800, 4159500; 734400, 4158700; 734300, 4158100; 734500, 4157900; 734700, 4158000; 734900, 4158300; 735000, 4158800; 735500, 4158800; 735700, 4158600; 735600, 4158100; 736200, 4157500; 736800, 4157300; 736900, 4157100; 736900, 4156500; 736300, 4156500; 736000, 4156300; 735500, 4156300; 734100, 4156900; 733400, 4157100; 731700, 4156900; 730900, 4156500; 728900, 4156600; 728700, 4156700; 728700, 4156800; 728600, 4156900; 728300, 4156900; 728100, 4156800; 727900, 4156800; 727100, 4156800; 726900, 4156600; 726700, 4156500; 726300, 4156500; 726100, 4156600; 725800, 4156500; 725600, 4156400; 725500, 4156300; 725400, 4156200; 725100, 4156100; 725000, 4156000; 724900, 4156000; 724800, 4156100; 724300, 4156100; 724300, 4155700; 723800, 4155700; 723900, 4155300; 723300, 4155400; 722700, 4155100; 722700, 4155400; 722300, 4155400; 722300, 4156800; 722900, 4156800; 722900, 4157400; 723500, 4157400; 723500, 4157000; 723700, 4157000; 723700, 4156900; 724300, 4156900; 724300, 4157400; 724200, 4157400; 724100, 4158200; 723800, 4158200; 723700,

4159000; 722500, 4159000; 722500, 4159200; 722400, 4159200; 722300, 4159300; 722200, 4159300; 721600, 4159300; 721600, 4159500; 721500, 4159600; 721500, 4159800; 721600, 4159800; 721600, 4159900; 721700, 4159900; 721700, 4160500; 721100, 4160500; 721100, 4160100; 720800, 4160100; 720800, 4160500; 719500, 4160500; 719500, 4160300; 720000, 4159600; 719600, 4159600; 719600, 4159500; 719500, 4159500; 719400, 4159500; 719300, 4159400; 719100, 4159400; 719000, 4159400; 718900, 4159300; 718700, 4159100; 718600, 4159000; 718600, 4158900; 718400, 4158900; 718200, 4158800; 718200, 4158700; 718300, 4158600; 718400, 4158500; 718500, 4158500; 718600, 4158400; 718700, 4158400; 718900, 4158300; 719000, 4158100; 719000, 4157900; 718700, 4157600; 718000, 4157700; 717800, 4157400; 717900, 4157200; 718000, 4157000; 718400, 4157300; 718700, 4156700; 718700, 4156300; 717500, 4156300; 717500, 4156700; 717100, 4156700; 717100, 4156300; 716600, 4156300; 716600, 4155800; 716300, 4155700; 716200, 4155000; 715900, 4154900; 715900, 4155100; 715800, 4155200; 715800, 4155300; 715700, 4155400; 715600, 4155700; 715500, 4155800; 715400, 4155800; 715300, 4156600; 715400, 4156600; 715400, 4157200; 715400, 4157400; 715500, 4157400; 715500, 4157600; 717600, 4157600; 717600, 4159700; 718100, 4160200; 718200, 4160500; 718400, 4160800; 718700, 4161100; 716800, 4161100; 716800, 4160400; 714900, 4160400; 714900, 4160900; 715000, 4160900; 715000, 4161000; 715200, 4161000; 715200, 4161100; 714400, 4161100; 714400, 4161200; 713700, 4161200; 713700, 4161100; 713300, 4161100; 713200, 4161200; 713100, 4161100; 713100, 4161000; 713400, 4160700; 713400, 4160600; 713600, 4160500; 713800, 4160800; 713900, 4160800; 714000, 4160700; 714000, 4160400; 711100, 4160300; 711100, 4161900; 709500, 4161900; 709500, 4163500; 707900, 4163500; 707900, 4163100; 707000, 4163100; 707000, 4165600; 707400, 4165600; 707400, 4165800; 706700, 4166100; 706500, 4165800; 706200, 4166000; 706300, 4166300; 706200, 4166400; 706200, 4166500; 706300, 4166500; 706300, 4166700; 706200, 4166700; 706200, 4167100; 706500, 4167100; 706700, 4166700; 706800, 4166700; 706800, 4166300; 707000, 4166300; 707000, 4166100; 707200, 4166100; 707200, 4166700; 707400, 4166700; 707800, 4166000; 707800, 4165600; 708000, 4165800; 708200, 4165800; 708400, 4165700; 708400, 4165500; 708200, 4165400; 708200, 4165300; 708300, 4165200; 708400, 4165200; 708500, 4165300; 708600, 4165400; 708800, 4165400; 709100, 4165100; 710200, 4165100; 710200, 4166400; 710100, 4166400; 710100, 4166500; 710000, 4166500; 709900, 4166500; 709900, 4166700; 709800, 4166700; 709800, 4167100; 710200, 4166800; 711000, 4167600; 711600, 4167800; 712400, 4167800; 712400, 4167300; 712900, 4167300; 712900, 4167200; 712600, 4166900; 711800, 4167000; 711600, 4166800; 711600, 4166600; 711800, 4166500; 711800, 4166600; 711900, 4166600; 712000, 4166300; 712100, 4166500; 712200, 4166500; 712300, 4166400; 712500, 4166400; 712500, 4166200; 712700, 4166200; 712700, 4166300; 712800, 4166300; 713000, 4166100; 712800, 4166000; 712700, 4165800; 712500, 4165800; 712500, 4165600; 712700, 4165600; 712600, 4165400; 712400, 4165500; 712300, 4165400; 712500, 4165300; 712500, 4165200; 712400, 4165100; 712600, 4165100; 712600, 4165000; 712600, 4164900; 712700, 4164800; 712600, 4164700; 712500, 4164800; 712400, 4164800; 712400, 4164300; 712800, 4164500; 713100, 4164300; 713200, 4164100; 712900, 4163800; 712900, 4163700; 713100, 4163800; 713500, 4164000; 713600, 4164000; 713600, 4164100; 713700, 4164300; 714200, 4164300; 714400, 4164500; 714500, 4164800; 714600, 4164800; 714800, 4164700; 714800, 4164200; 714400, 4164000; 714400, 4163600; 714500, 4163500; 715200, 4164000; 715300, 4164200; 715400, 4164200; 715300, 4163900; 715100, 4163700; 715000, 4163500; 714800, 4163300; 714900, 4163200; 715000, 4163200; 715700, 4163200; 715900, 4163100; 716000, 4162900; 716100, 4162800; 716200, 4162800; 716300, 4162900; 716400, 4163000; 716500, 4163100; 716600, 4163200; 716600, 4163500; 716500, 4163600; 716500, 4163800; 716600, 4164100; 716800, 4164500; 716700, 4164900; 716800, 4165300; 717200, 4165800; 717200, 4166100; 717000, 4166400; 716600, 4166400; 716400, 4166300; 716400, 4166900; 716600, 4166900; 716800, 4167100; 716800, 4167350; 717000, 4167400; 717500, 4167400; 718100, 4167300; 718500, 4167100; 718600, 4166600; 718700, 4166400; 719100, 4166700; 719300, 4166800; 719500, 4166800; 719500, 4166500; 719600, 4166400; 719600, 4166100; 719800, 4166100; 719900, 4166300; 719900, 4166200; 720700, 4166200; 720700, 4163700; 721700, 4163700; 722400, 4164100; 722400, 4165300; 722200, 4165300; 722200, 4165400; 721500, 4165400; 721500, 4166100; 721000, 4166300; 720700, 4166500; 720900, 4166600; 721000, 4166700; 721100, 4166900; 721000, 4167000; 720300, 4167000; 720100, 4166900; 720200, 4166700; 720200, 4166600; 720100, 4166500; 720000, 4166500; 719800, 4166800; 719500, 4167400; 719500, 4167600; 719700, 4167800; 720500, 4167800; 720700, 4167700; 720900, 4167500; 721100, 4167400; 721300, 4167700; 721700, 4167700; 722000, 4167600; 722500, 4167600; 722900, 4167500; 723300, 4167400; 723000, 4168400; 723000, 4169200; 723300, 4169700; 723800, 4169800; 724100, 4169800; 724600, 4169200; 724700, 4168300; 725100, 4167900; 725300, 4167200; 726200, 4167100; 726500, 4166800; 726500, 4166600; 727300, 4166000; 727700, 4165800; 729000, 4165800; 730100, 4165400; 730400, 4165100; 730500, 4164900; 730700, 4164100; 731300, 4164100; 731700, 4163800; 731800, 4163400; 732200, 4162800; returning to 732200, 4162500.

(ii) Start at 704200, 4166200; 704000, 4166200; 703800, 4166400; 703400, 4166600; 703400, 4166800; 703500, 4166800; 703600, 4166900; 703700, 4167000; 703700, 4167200; 704600, 4167600; 704700, 4167600; 704800, 4167500; 705000, 4167400; 705300, 4167400; 705300, 4166400; 705000, 4166300; 704400, 4166300; returning to 704200, 4166200.

(iii) Start at 712600, 4155200; 712600, 4156800; 712900, 4156800; 712900, 4157100; 714800, 4157200; 714800, 4156800; 714300, 4156300; 714200, 4156200; 714000, 4155500; 714000, 4155400; 713800, 4155400; returning to 712600, 4155200.

(42) Unit 22: Mariposa and Merced Counties, California. From USGS 1:24,000 quadrangle maps Haystack Mtn., Indian Gulch, Le Grand, Merced, Merced Falls, Owens Reservoir, Plainsburg, Planada, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 745300, 4139300; 745500, 4139300; 745500, 4137700; 746600, 4137100; 747300, 4137300; 747200, 4135800; 747600, 4135300; 747600, 4134800; 748100, 4134400; 747800, 4133700; 748400, 4133300; 748600, 4133900; 749500, 4133400; 749600, 4132100; 750400, 4131600; 750100, 4129800; 751700, 4129800; 751400, 4129700; 751300, 4129700; 751100, 4129500; 751000, 4129400; 750900, 4129200; 750800, 4129000; 750600, 4128900; 750500, 4128800; 750300, 4128700; 750000, 4128700; 749900, 4128700; 749600, 4128800; 749400, 4128600; 749100, 4128500; 748900, 4128400; 748900, 4128100;

748800, 4128000; 748700, 4127800; 748500, 4127600; 748300, 4127500; 748300, 4127300; 748300, 4127100; 748200, 4127000; 748100, 4126800; 748000, 4126700; 747900, 4126700; 747800, 4126700; 747700, 4126400; 747500, 4126200; 747400, 4126000; 747200, 4126000; 747000, 4125900; 746900, 4125900; 746600, 4125800; 746300, 4125700; 746200, 4125600; 746200, 4125500; 745700, 4125500; 745700, 4125100; 744500, 4125100; 744500, 4125300; 744400, 4125300; 744400, 4125200; 743700, 4125200; 743700, 4125800; 744500, 4125800; 744500, 4126200; 743700, 4126200; 743700, 4127000; 742400, 4127000; 742000, 4127200; 742000, 4128600; 742800, 4128600; 742800, 4129100; 742900, 4129100; 743000, 4129100; 743000, 4129200; 743400, 4129300; 743600, 4129500; 743600, 4130700; 743500, 4130700; 743500, 4132200; 744000, 4133400; 742700, 4133400; 742600, 4133500; 741500, 4132900; 740900, 4132200; 740800, 4132600; 740300, 4132600; 740300, 4133500; 741000, 4133500; 741000, 4133900; 741900, 4133900; 741800, 4135800; 741000, 4135800; 741000, 4136400; 741100, 4136400; 741100, 4136700; 740200, 4136700; 739900, 4136400; 739400, 4136400; 739400, 4136700; 737600, 4136700; 737600, 4135900; 737300, 4135900; 737300, 4135300; 737400, 4135200; 737200, 4135000; 736800, 4134800; 736800, 4134600; 736800, 4134400; 736600, 4134200; 733900, 4134200; 733900, 4134800; 733800, 4134900; 733800, 4135000; 733000, 4135000; 733000, 4135800; 732500, 4135800; 730300, 4135700; 730200, 4135600; 730100, 4135600; 729900, 4135700; 729900, 4136500; 729900, 4136700; 730000, 4136700; 730100, 4136600; 730200, 4136600; 730300, 4136600; 730400, 4136700; 730500, 4136800; 730600, 4136900; 730600, 4137000; 730600, 4137200; 730600, 4137300; 730500, 4137400; 730400, 4137500; 730300, 4137500; 729900, 4137700; 729800, 4137700; 729700, 4137600; 729400, 4137600; 729300, 4137800; 729300, 4138400; 729200, 4138500; 729000, 4138400; 728800, 4138700; 728400, 4138800; 728200, 4138800; 727900, 4138600; 727700, 4138500; 727600, 4138400; 727400, 4138300; 727400, 4137800; 727300, 4137800; 727300, 4137600; 727400, 4137600; 727400, 4137500; 727300, 4137500; 727300, 4137400; 727400, 4137400; 727400, 4137200; 726500, 4137200; 726500, 4136500; 726400, 4136400; 725800, 4136400; 725800, 4137200; 725000, 4137200; 724900, 4138800; 725500, 4138800; 725500, 4138700; 725800, 4138700; 725800, 4138800; 725900, 4138800; 725900, 4139500; 726500, 4139500; 726500, 4139600; 725900, 4139600; 725800, 4139600; 725800, 4140200; 725900, 4140200; 725900, 4140900; 725400, 4140900; 725400, 4140800; 725100, 4140800; 725100, 4141000; 724900, 4141000; 724900, 4141200; 724100, 4141200; 724100, 4141600; 723400, 4141600; 723400, 4141100; 723200, 4141100; 723200, 4140600; 723400, 4140500; 723400, 4139500; 724000, 4139500; 724000, 4139400; 723900, 4138900; 723900, 4138700; 723500, 4138200; 723400, 4138200; 723400, 4138300; 723000, 4138300; 723000, 4138700; 723000, 4138900; 723100, 4139100; 723200, 4139400; 723300, 4139500; 722100, 4139500; 722000, 4140500; 721900, 4141100; 721900, 4141900; 721900, 4143400; 720800, 4143400; 720900, 4141800; 721000, 4141500; 721000, 4141200; 721100, 4141100; 721000, 4141000; 717800, 4140900; 717700, 4142500; 714500, 4142400; 714500, 4144900; 715500, 4144900; 715500, 4145000; 715800, 4145000; 715900, 4145000; 716000, 4145000; 716100, 4145100; 716100, 4145200; 716000, 4145200; 715900, 4145300; 715900, 4145400; 716000, 4145500; 716000, 4145600; 716100, 4145700; 717000, 4145700; 717700, 4145300; 717800, 4145300; 717800, 4145200; 717800, 4145100; 717600, 4144900; 717600, 4144800; 717600, 4144700; 717800, 4144500; 717900, 4144600; 718200, 4144600; 718400, 4144500; 718700, 4144500; 718700, 4144800; 718600, 4145000; 718700, 4145100; 718700, 4145600; 718600, 4145600; 718600, 4145700; 718700, 4145800; 718600, 4145900; 718500, 4146000; 718500, 4146100; 718600, 4146200; 718600, 4146500; 718300, 4146500; 718200, 4146600; 718200, 4146800; 718300, 4146800; 718500, 4146900; 718600, 4147000; 718600, 4147100; 718400, 4147200; 718500, 4147300; 718500, 4147600; 718700, 4147600; 718700, 4147400; 719000, 4147500; 719100, 4147700; 719300, 4147600; 719600, 4147900; 719700, 4148000; 719700, 4148100; 719800, 4148200; 720000, 4148200; 720600, 4148200; 720600, 4148300; 720700, 4148400; 720800, 4148400; 720900, 4148500; 722700, 4148500; 722700, 4148600; 722900, 4148600; 723200, 4148700; 723400, 4148700; 723200, 4148600; 723100, 4148500; 723000, 4148400; 723200, 4148200; 723400, 4148200; 723500, 4148300; 723600, 4148400; 723600, 4148500; 723800, 4148500; 723800, 4148400; 723900, 4148400; 723900, 4148500; 724000, 4148700; 724200, 4148500; 724200, 4148900; 724300, 4149000; 724300, 4149100; 724500, 4149000; 724500, 4149300; 724700, 4149400; 724900, 4149600; 725000, 4149700; 725000, 4150000; 724900, 4150100; 725000, 4150200; 725200, 4150200; 725300, 4150400; 725400, 4150500; 725400, 4150600; 725100, 4150900; 724700, 4150900; 724700, 4153400; 725000, 4153500; 725400, 4153900; 725600, 4154100; 725800, 4154200; 726000, 4154300; 726200, 4154000; 726300, 4153800; 726300, 4153700; 727800, 4153700; 727800, 4153400; 727900, 4153400; 727900, 4153500; 728400, 4153600; 728700, 4153700; 729000, 4153700; 729000, 4153600; 729100, 4153500; 729300, 4153400; 729400, 4153400; 729400, 4153300; 729300, 4153200; 729500, 4153100; 729800, 4153100; 729900, 4153200; 729900, 4154200; 730000, 4154200; 730100, 4154300; 730600, 4154300; 730700, 4154400; 731000, 4154600; 731200, 4154700; 731500, 4154700; 731800, 4154900; 732200, 4154900; 732600, 4154800; 733200, 4154500; 733400, 4154500; 733700, 4154300; 734700, 4154300; 734900, 4154600; 735100, 4154800; 735100, 4154900; 735500, 4155300; 735600, 4155300; 735800, 4155500; 736100, 4155900; 737100, 4155400; 737800, 4155000; 738200, 4154200; 738300, 4153300; 739000, 4152800; 739100, 4152200; 740200, 4151800; 740800, 4151500; 740800, 4150300; 741100, 4149900; 741700, 4149400; 742100, 4148500; 742100, 4147100; 743400, 4146100; 744000, 4145600; 744400, 4144600; 744300, 4143900; 743900, 4142700; 744000, 4142000; 744200, 4141700; 745500, 4140300; 745500, 4139600; 745500, 4139500; 745400, 4139400; returning to 745300, 4139300; excluding land bound by 727200, 4138700; 727400, 4138800; 727800, 4138800; 727900, 4139000; 727900, 4139300; 728300, 4139600; 728300, 4140700; 727800, 4140700; 727800, 4141100; 727400, 4141100; 727500, 4140800; 727400, 4140700; 727200, 4140700; 727300, 4140500; 727200, 4140000; 727000, 4139700; 726800, 4139600; 726600, 4139600; 726600, 4139500; returning to 727200, 4138700; and excluding land bound by 726200, 4138000; 726200, 4138400; 725800, 4138400; 725800, 4138500; 725700, 4138500; 725700, 4138200; 725800, 4138200; 725800, 4138000; returning to 726200, 4138000; and excluding land bound by 727000, 4137600; 727000, 4137800; 727200, 4137900; 727300, 4138000; 727300, 4138100; 726500, 4138000; 726500, 4137800; 726800, 4137800; 726800, 4137600; returning to 727000, 4137600; and excluding land bound by 726700, 4139700; 726800,

4139800; 726900, 4140000; 726900, 4140100; 726800, 4140200; 726600, 4140000; 726400, 4140000; returning to 726700, 4139700.

(43) Subunit 23A: Merced County, California. [Reserved]

(44) Subunit 23B: Merced County, California. [Reserved]

(45) Subunit 23C: Merced County, California. [Reserved]

(46) Subunit 23D: Merced County, California. [Reserved]

(47) Subunit 23E: Merced County, California. [Reserved]

(48) Subunit 23F: Merced County, California. [Reserved]

(49) Subunit 23G: Merced County, California. [Reserved]

(50) Subunit 24A: Madera County, California. [Reserved]

(51) Subunit 24B: Fresno County, California. From USGS 1:24,000 quadrangle map Friant, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 263200, 4089800; 263100, 4089400; 261700, 4088800; 261700, 4089200; 261700, 4089400; 261600, 4089400; 261500, 4089400; 261300, 4089400; 261300, 4088200; 261100, 4088200; 261100, 4087400; 260400, 4087400; 260400, 4087500; 260100, 4087500; 260100, 4086900; 259800, 4086900; 259800, 4086700; 259300, 4086700; 259300, 4087600; 259600, 4087500; 260000, 4087500; 260100, 4087900; 260000, 4088100; 259700, 4088300; 258500, 4088300; 258000, 4088300; 258000, 4089100; 258200, 4089200; 258200, 4089100; 258500, 4089100; 258700, 4089200; 258700, 4089600; 258800, 4089600; 258900, 4089700; 258900, 4089800; 258600, 4089800; 258600, 4089900; 258200, 4089900; 258200, 4089700; 258100, 4089600; 257700, 4089600; 257700, 4089200; 257400, 4089200; 257400, 4089900; 257200, 4089900; 257200, 4089200; 256600, 4089200; 256600, 4089700; 256800, 4089700; 256800, 4090000; 256600, 4090000; 256600, 4090200; 256800, 4090800; 257000, 4091500; 257100, 4092700; 257100, 4092900; 257200, 4093100; 257300, 4094300; 257300, 4095400; 257400, 4095500; 258200, 4096300; 258900, 4096300; 258900, 4096700; 259100, 4097500; 259500, 4097700; 259600, 4097700; 259800, 4097600; 259800, 4097400; 260000, 4097200; 260200, 4097200; 260300, 4097000; 260600, 4096800; 260800, 4096600; 261500, 4096600; 261800, 4096500; 262200, 4096600; 262400, 4097000; 263100, 4097200; 263300, 4097200; 263600, 4097200; 264900, 4096500; 264700, 4096300; 264200, 4096300; 263800, 4096500; 263800, 4096000; 263600, 4095900; 263500, 4095800; 263500, 4095700; 263500, 4095600; 263900, 4095600; 263900, 4095300; 263600, 4095300; 263600, 4095100; 263800, 4095100; 263800, 4095000; 263300, 4094700; 262300, 4094200; 261800, 4093600; 260700, 4093400; 259900, 4092300; 259900, 4092100; 260200, 4092100; 261200, 4092400; 262200, 4091500; 262900, 4091800; 263400, 4091300; 263400, 4089900; returning to 263200, 4089800.

(52) Unit 25: Madera County, California. [Reserved]

(53) Subunit 26A: Kings and Tulare Counties, California. From USGS 1:24,000 quadrangle maps Burris Park, Monson, Remnoy, and Traver, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 287000, 4034600; 287000, 4034300; 285000, 4034400; 285000, 4033800; 283100, 4033800; 283100, 4033100; 282600, 4033100; 282600, 4032600; 282200, 4032600; 282100, 4031800; 282100, 4031100; 280100, 4031100; 280100, 4030800; 279000, 4030600; 278700, 4030500; 278500, 4030100; 278100, 4030000; 276400, 4030100; 275700, 4029600; 275500, 4029200; 275300, 4028600; 275000, 4028300; 274700, 4028100; 274700, 4029800; 275600, 4029800; 276100, 4030400; 276400, 4030600; 276800, 4031400; 277500, 4031500; 278200, 4031900; 279500, 4031800; 279000, 4032900; 280500, 4032900; 281400, 4033300; 281800, 4033200; 283000, 4034300; 283800, 4034400; 284700, 4035200; 286800, 4035100; 287000, 4035100; 288500, 4035100; 288500, 4035600; 287700, 4035700; 287700, 4036700; 289300, 4036700; 289400, 4037400; 291100, 4037400; 291100, 4037200; 291800, 4037200; 291900, 4036800; 291900, 4035600; 292700, 4035800; 292700, 4036500; 293500, 4036400; 293500, 4036000; 294300, 4036000; 294300, 4035600; 293500, 4035600; 293400, 4034000; 292600, 4034000; 292600, 4035400; 291900, 4035400; 291700, 4035600; 290500, 4035700; 290500, 4036100; 289800, 4036100; 289800, 4035700; 289400, 4035700; 289400, 4034500; 288500, 4034500; 288500, 4034200; 287700, 4034200; 287700, 4034500; returning to 287000, 4034600.

(54) Subunit 26B: Tulare County, California. From USGS 1:24,000 quadrangle map Monson, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 297500, 4035500; 296700, 4035500; 296700, 4036300; 297500, 4036300; returning to 297500, 4035500.

(55) Subunit 27A: Tulare County, California. From USGS 1:24,000 quadrangle maps Alpaugh, Corcoran, and Taylor Weir, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 279200, 3986500; 278900, 3986500; 278900, 3986700; 278600, 3987200; 278500, 3987400; 278300, 3987500; 277100, 3987600; 276900, 3988500; 276900, 3989000; 276500, 3989000; 276000, 3989900; 275900, 3990800; 276100, 3991000; 276100, 3991500; 276400, 3991500; 276400, 3992300; 276400, 3992500; 274400, 3992500; 274400, 3994100; 274800, 3994100; 274800, 3994700; 274900, 3994900; 275700, 3994900; 273700, 3997300; 276500, 3997300; 276700, 3997200; 278100, 3997200; 278100, 3995600; 279600, 3995600; 279600, 3994000; 278000, 3994000; 278000, 3992400; 278800, 3992400; 278800, 3991600; 279600, 3991600; 279600, 3990800; 279600, 3990000; 279600, 3989200; 278700, 3989200; 278700, 3987600; 279200, 3987600; returning to 279200, 3986500.

(56) Subunit 27B: Tulare County, California. From USGS 1:24,000 quadrangle maps Alpaugh, , Delano West, and Kern, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N):

(i) Start at 288000, 3974500; 288000, 3974900; 288400, 3974900; 288400, 3975200; 288800, 3975200; 288800, 3976100; 285400, 3976100; 285100, 3976300; 285000, 3976800; 284900, 3977300; 284600, 3977500; 284600, 3977700; 283200, 3977700; 282900, 3977400; 284000, 3976400; 284000, 3976200; 283900, 3976200; 282000, 3976200; 281000, 3977900; 282200, 3977900; 282600, 3977600; 282800, 3977700; 282800, 3977900; 283100, 3978100; 283100, 3978200; 283200, 3978200; 283200, 3979400; 286500, 3979400; 286500, 3980200; 287300, 3980200; 287300, 3979300; 287700, 3979300; 287700, 3977800; 289000, 3977800; 288900, 3976200; 290500, 3976100; 290400, 3976000; 290400, 3975200; 291400, 3975200; 291400, 3975300; 291500, 3975300; 291400, 3974400; 291300, 3974400; 291200, 3973600; 292200, 3973600; 292200, 3973200; 292000, 3973200; 292000, 3972800; 292800, 3972800; 292800, 3972000; 292000, 3972000; 292000, 3971200; 289500, 3971200; 289500, 3972500; 290400, 3972500; 290400, 3974500; 288400, 3974500; returning to 288000, 3974500.

(ii) Start at 288000, 3974500; 288000, 3973700; 287200, 3973700; 287200, 3973000; 285800, 3973000; 285800, 3973600; 285500, 3973600; 285500, 3973700; 285000, 3973700; 285000, 3972800; 283900, 3972800; 283000, 3974500; returning to 288000, 3974500.

(57) Unit 28: Monerey and San Benito Counties, California. From USGS 1:24,000 quadrangle maps Hepsedam Peak, Hernandez Reservoir, Llanda,

Lonoak Monarch Peak, Pinalito Canyon, Rock Spring Peak, San Benito, and Topo Valley, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 691600, 4008600; 690800, 4008600; 689500, 4009400; 689000, 4010100; 688900, 4010700; 687800, 4011000; 687100, 4011000; 685400, 4012100; 684900, 4013300; 683600, 4014100; 683400, 4014900; 682700, 4015200; 682500, 4016200; 683100, 4016600; 683100, 4017700; 684200, 4019500; 684200, 4020500; 683400, 4022200; 681700, 4023500; 681100, 4023600; 680700, 4024400; 680600, 4025500; 679800, 4025700; 679300, 4026900; 678700, 4027300; 678100, 4026600; 677400, 4026400; 676000, 4025600; 676000, 4025000; 676600, 4024500; 676800, 4023700; 675800, 4022500; 675600, 4021200; 675000, 4020200; 674200, 4019900; 672200, 4016700; 670800, 4015700; 670000, 4015700; 669500, 4016000; 669100, 4016700; 669600, 4017400; 669500, 4018600; 670100, 4019300; 670300, 4022200; 671000, 4023000; 672700, 4024100; 673500, 4024300; 674800, 4026200; 674500, 4026500; 674600, 4027000; 674100, 4027300; 673000, 4026800; 672400, 4027000; 671600, 4028700; 670700, 4028700; 669700, 4028900; 669700, 4030100; 669800, 4030700; 670300, 4032100; 670700, 4035100; 671300, 4037100; 669100, 4037700; 669200, 4038600; 668700, 4040300; 669800, 4042700; 671900, 4043300; 674100, 4043500; 676000, 4045600; 677300, 4046700; 683000, 4043300; 683800, 4042200; 683700, 4040600; 682300, 4039700; 681300, 4038600; 681600, 4037000; 681700, 4035800; 680800, 4034500; 678800, 4035200; 678000, 4036000; 677600, 4037100; 677200, 4037800; 676800, 4037900; 676100, 4038500; 675800, 4039000; 675000, 4038500; 675100, 4038000; 674700, 4037600; 673100, 4037000; 673800, 4036500; 674000, 4035500; 674700, 4035000; 675500, 4034700; 676000, 4033600; 676800, 4033300; 677600, 4032700; 678100, 4032100; 679000, 4031400; 679600, 4031200; 679900, 4031700; 679900, 4032700; 680500, 4033000; 681000, 4032500; 681500, 4031500; 682600, 4031200; 684400, 4028700; 685200, 4028700; 685500, 4028200; 687400, 4029500; 688000, 4030700; 688800, 4031100; 689700, 4031200; 691200, 4032600; 692000, 4032300; 692500, 4031600; 693200, 4031300; 693700, 4031300; 694300, 4030900; 693800, 4029500; 692600, 4028500; 693500, 4028500; 694300, 4027800; 694300, 4027200; 695100, 4026100; 696600, 4024900; 696600, 4023700; 697200, 4022600; 697900, 4022600; 698300, 4021500; 699200, 4020500; 699100, 4019400; 698500, 4019300; 698000, 4018700; 697100, 4018800; 695700, 4017900; 695400, 4016900; 695100, 4016500; 694900, 4015900; 694900, 4015000; 694400, 4013700; 693800, 4013100; 693600, 4012100; 692400, 4010900; 692000, 4009100; returning to 691600, 4008600.

(58) Subunit 29A: Monterey County, California. From USGS 1:24,000 quadrangle maps Jolon and Williams Hill, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 674900, 3975500; 674700, 3975500; 674600, 3976300; 673400, 3976300; 673400, 3976700; 673000, 3976700; 673000, 3977900; 670600, 3977800; 670600, 3977600; 668400, 3979200; 668300, 3979300; 667100, 3980200; 667700, 3980200; 667700, 3981800; 667300, 3981800; 667300, 3982100; 668000, 3982100; 668500, 3981900; 668700, 3981600; 668500, 3981100; 668700, 3980600; 669400, 3980100; 669800, 3980500; 670600, 3980700; 671400, 3980600; 671400, 3979500; 671900, 3979500; 672700, 3978600; 674700, 3978600; 675400, 3978200; 674600, 3976900; 674800, 3975700; 674900, 3975600; returning to 674900, 3975500.

(59) Subunit 29B: Monterey and San Luis Obispo Counties, California. From USGS 1:24,000 quadrangle maps Adelaida, Bradley Paso Robles, San Miguel, Valleton, and Wunpost, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 705500, 3965500; 705400, 3965500; 705200, 3974500; 704000, 3974500; 703700, 3973800; 703700, 3973400; 703200, 3972500; 702900, 3972300; 702600, 3972000; 702500, 3971900; 701900, 3971200; 701600, 3971200; 701300, 3971000; 700800, 3971000; 700000, 3971000; 700000, 3970400; 699000, 3970400; 699000, 3970500; 699200, 3970700; 699800, 3972200; 700200, 3972800; 700400, 3973600; 700800, 3974300; 701300, 3974700; 701700, 3975500; 702900, 3976300; 703200, 3976900; 704200, 3977800; 704800, 3977900; 705400, 3977900; 706100, 3978300; 706700, 3978700; 706700, 3978300; 706200, 3976700; 706100, 3975500; 706300, 3975100; 706500, 3974400; 706400, 3971900; 706600, 3970800; 707000, 3970100; 707000, 3969400; 706800, 3969200; 706800, 3968200; 706600, 3967400; returning to 705500, 3965500.

(ii) Start at 707500, 3961300; 706900, 3961300; 706900, 3961400; 706500, 3961700; 705700, 3962200; 704900, 3963400; 705500, 3964000; 705400, 3964400; 705500, 3964400; 705800, 3963600; 705700, 3963000; 706000, 3962800; 706800, 3963500; 707600, 3963500; 707500, 3962800; 707900, 3962500; 708100, 3962000; returning to 707500, 3961300.

(iii) Start at 694300, 3961200; 694200, 3961400; 694800, 3961800; 694900, 3962400; 694700, 3962800; 694800, 3963500; 695400, 3963500; 695700, 3963400; 695800, 3963100; 695500, 3963100; 695500, 3961400; 694300, 3961400; returning to 694300, 3961200. 705700, 3957100; 705300, 3957100; 705300, 3961100; 706200, 3961200; 706200, 3961100; 706000, 3961000; 705600, 3959800; 705900, 3959400; 706000, 3958800; 706600, 3958600; 706900, 3958000; 706900, 3957600; 706400, 3957200; returning to 705700, 3957100.

(iv) Start at 703200, 3952200; 703000, 3952200; 703000, 3953500; 702200, 3953500; 702100, 3954300; 702900, 3955100; 705400, 3955100; 705300, 3956700; 705400, 3956700; 705800, 3956500; 706300, 3956000; 707900, 3956100; 707900, 3955400; 708100, 3955100; 707600, 3954000; 707300, 3953600; 705700, 3952600; 705000, 3952800; returning to 703200, 3952200.

(60) Subunit 29C: Monterey and San Luis Obispo Counties, California. From USGS 1:24,000 quadrangle maps Cholame Hills, Creston, Estrella, Pasa Robles, and Ranchito Canyon, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 717700, 3941700; 717400, 3941700; 717000, 3941900; 717200, 3942500; 715100, 3944900; 715300, 3945200; 714500, 3945900; 714800, 3946200; 714600, 3946400; 714000, 3946400; 713200, 3947000; 713200, 3947200; 713600, 3947800; 713500, 3948400; 713200, 3948700; 712800, 3947900; 712600, 3947900; 712500, 3948000; 712500, 3948800; 711600, 3949100; 711300, 3949300; 711200, 3949800; 710600, 3949900; 710500, 3950000; 710500, 3950200; 710900, 3950400; 710900, 3950600; 710600, 3950700; 709400, 3950500; 709300, 3952100; 709800, 3952800; 709800, 3954800; 709500, 3955200; 709500, 3955600; 710200, 3955600; 710400, 3955500; 711000, 3955300; 711500, 3954600; 711600, 3953600; 713900, 3953600; 714200, 3954000; 714500, 3953800; 715000, 3953700; 715300, 3953500; 715500, 3953400; 715700, 3953400; 716000, 3953700; 716500, 3953700; 716800, 3953600; 717600, 3953700; 717900, 3954200; 718500, 3954600; 718900, 3954800; 719300, 3954900; 720400, 3955600; 721400, 3956700; 722200, 3958400; 722500, 3960400; 723300, 3962100; 724200, 3962500; 724400, 3963300; 725100, 3964000; 725100, 3963300; 725000, 3962100; 725600, 3961700; 726100,

3961700; 726100, 3961300; 725200, 3960400; 725100, 3959200; 724700, 3958300; 724300, 3956700; 724700, 3956500; 725200, 3955000; 724100, 3953600; 723800, 3952700; 723400, 3952000; 723100, 3950600; 723500, 3949700; 723500, 3949000; 724100, 3948500; 723500, 3948400; 722300, 3948900; 719200, 3948900; 719200, 3949700; 718300, 3949700; 718300, 3948900; 718900, 3948900; 719000, 3948700; 719200, 3948700; 719200, 3948100; 720000, 3948100; 720000, 3946500; 720200, 3946400; 720800, 3945700; 721000, 3945200; 721100, 3944900; 721100, 3943400; 720100, 3943400; 718700, 3942200; returning to 717700, 3941700.

(61) Unit 30: San Luis Obispo County, California. From USGS 1:24,000 quadrangle maps Chimneas Ranch, McKittrick Summit, Painted Rock, and Simmler, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 247900, 3894600; 245800, 3895500; 243500, 3896000; 242700, 3896400; 242200, 3897600; 240100, 3898900; 239500, 3899300; 239300, 3899600; 238300, 3900400; 237900, 3900300; 236100, 3901000; 235800, 3901300; 235800, 3902300; 235500, 3903500; 234800, 3904400; 233000, 3904900; 231800, 3905800; 231600, 3907000; 231900, 3908800; 231800, 3909400; 229400, 3910200; 227200, 3911200; 227300, 3913400; 228100, 3913800; 229000, 3913900; 231900, 3913200; 233300, 3913200; 234300, 3912900; 235100, 3912100; 235300, 3911200; 233900, 3910100; 233700, 3909700; 235300, 3909000; 235700, 3908500; 237200, 3907500; 237700, 3906300; 238200, 3905800; 239100, 3905200; 239100, 3904900; 242800, 3902600; 244400, 3901300; 244400, 3901000; 244700, 3900700; 244800, 3899100; 245400, 3898800; 247200, 3896600; 248200, 3895000; returning to 247900, 3894600.

(62) Unit 31: Santa Barbara County, California. From USGS 1:24,000 quadrangle maps Figueroa Mtn., Lake Cachuma, Los Olivos, and Santa Ynez, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 775000, 3831900; 774200, 3831800; 773600, 3831900; 772500, 3831800; 772100, 3831400; 771400, 3831500; 770400, 3831000; 769800, 3830900; 769300, 3831100; 769100, 3831300; 768500, 3832600; 768500, 3833300; 768700, 3833700; 769900, 3834700; 770200, 3834700; 771900, 3835200; 772300, 3835300; 772800, 3835000; 773100, 3835000; 773100, 3835300; 773700, 3835300; 773700, 3835700; 773600, 3836100; 773200, 3836900; 773800, 3837100; 774300, 3836500; 774900, 3836300; thence east to UTM zone 11, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 224900, 3836300; 225100, 3836200; 225300, 3836400; 225600, 3837000; 226600, 3838500; 228200, 3839300; 229800, 3839000; 232200, 3840500; 232400, 3841700; 232300, 3842700; 231600, 3843100; 230300, 3844900; 230000, 3846200; 230800, 3846400; 231200, 3846200; 231700, 3846200; 232000, 3846500; 232800, 3847000; 233800, 3847000; 234500, 3846400; 234700, 3845600; 235200, 3845600; 235900, 3844500; 236400, 3844200; 236400, 3843800; 235900, 3843600; 235700, 3843300; 235500, 3843000; 235200, 3842900; 235100, 3842800; 235100, 3842000; 235300, 3841300; 235200, 3840700; 234700, 3840000; 234900, 3839700; 234600, 3839500; 234600, 3839300; 234300, 3839300; 233800, 3839300; 233100, 3838200; 232900, 3838000; 232300, 3837900; 232100, 3838200; 231800, 3838400; 231400, 3838500; 230700, 3837700; 230800, 3837200; 230300, 3836600; 230100, 3836100; 230000, 3835700; 229100, 3835300; 228900, 3834900; 228800, 3833800; 228000, 3833300; 227400, 3833200; 227000, 3832800; 226700, 3832400; 226100, 3832400; 225800, 3832500; 225200, 3832000; 225000, 3831900; 224800, 3831900 thence west to UTM zone 10 to the point of beginning at UTM 10 NAD 83 coordinates 775000, 3831900.

(63) Unit 32: Ventura County, California. From USGS 1:24,000 quadrangle maps Alamo Mountain, Lion Canyon, Lockwood Valley, San Guillermo, and Topatopa Mountains, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 310100, 3830500; 309400, 3831000; 308400, 3830900; 307200, 3830600; 306000, 3831200; 304700, 3831300; 303400, 3832100; 302100, 3832600; 301600, 3833600; 300400, 3833600; 299200, 3834000; 298200, 3834400; 297700, 3835300; 297900, 3837300; 299500, 3837500; 301200, 3838400; 301500, 3839300; 303400, 3841000; 303800, 3842700; 304900, 3843600; 305800, 3843600; 307700, 3843400; 309500, 3843400; 310500, 3844200; 311900, 3844600; 313400, 3845400; 314500, 3844100; 315200, 3843800; 315700, 3842400; 316500, 3841100; 317200, 3838100; 317200, 3837000; 316500, 3833900; 315700, 3833300; 315200, 3834100; 314000, 3834100; 313100, 3832200; 311500, 3830800; returning to 310100, 3830500.

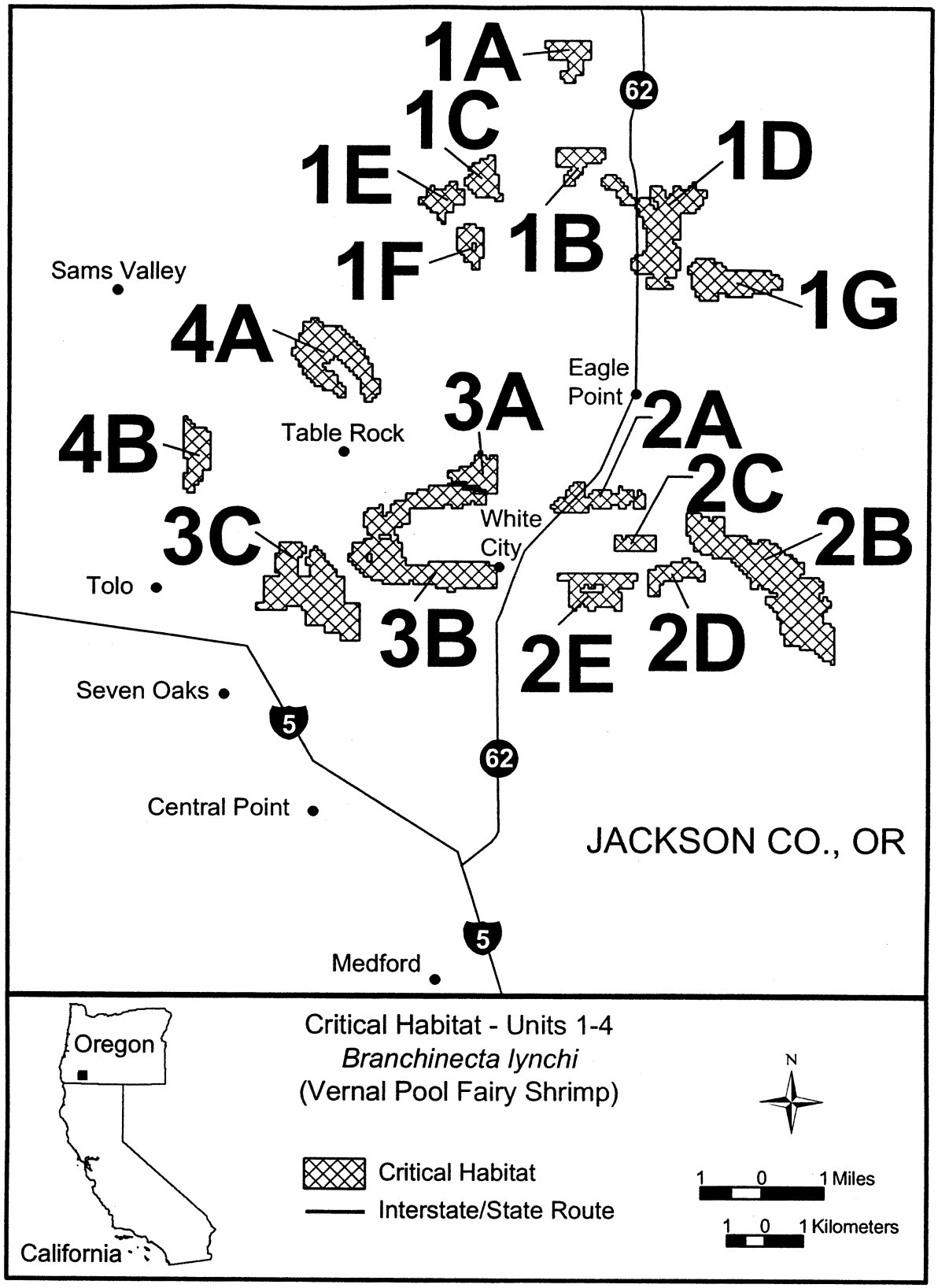
(64) Subunit 33A: Riverside County, California. [Reserved]

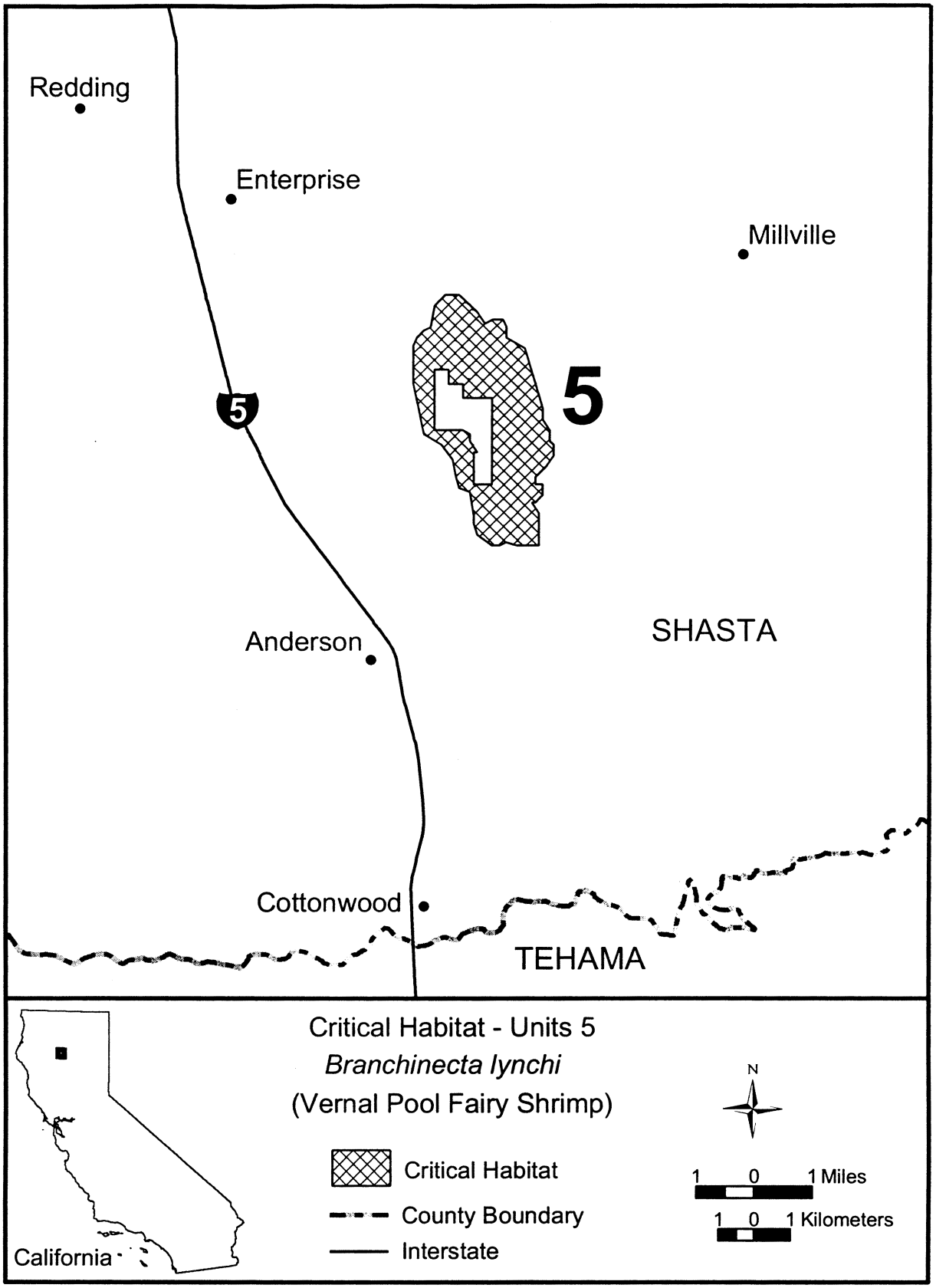
(65) Subunit 33B: Riverside County, California. [Reserved]

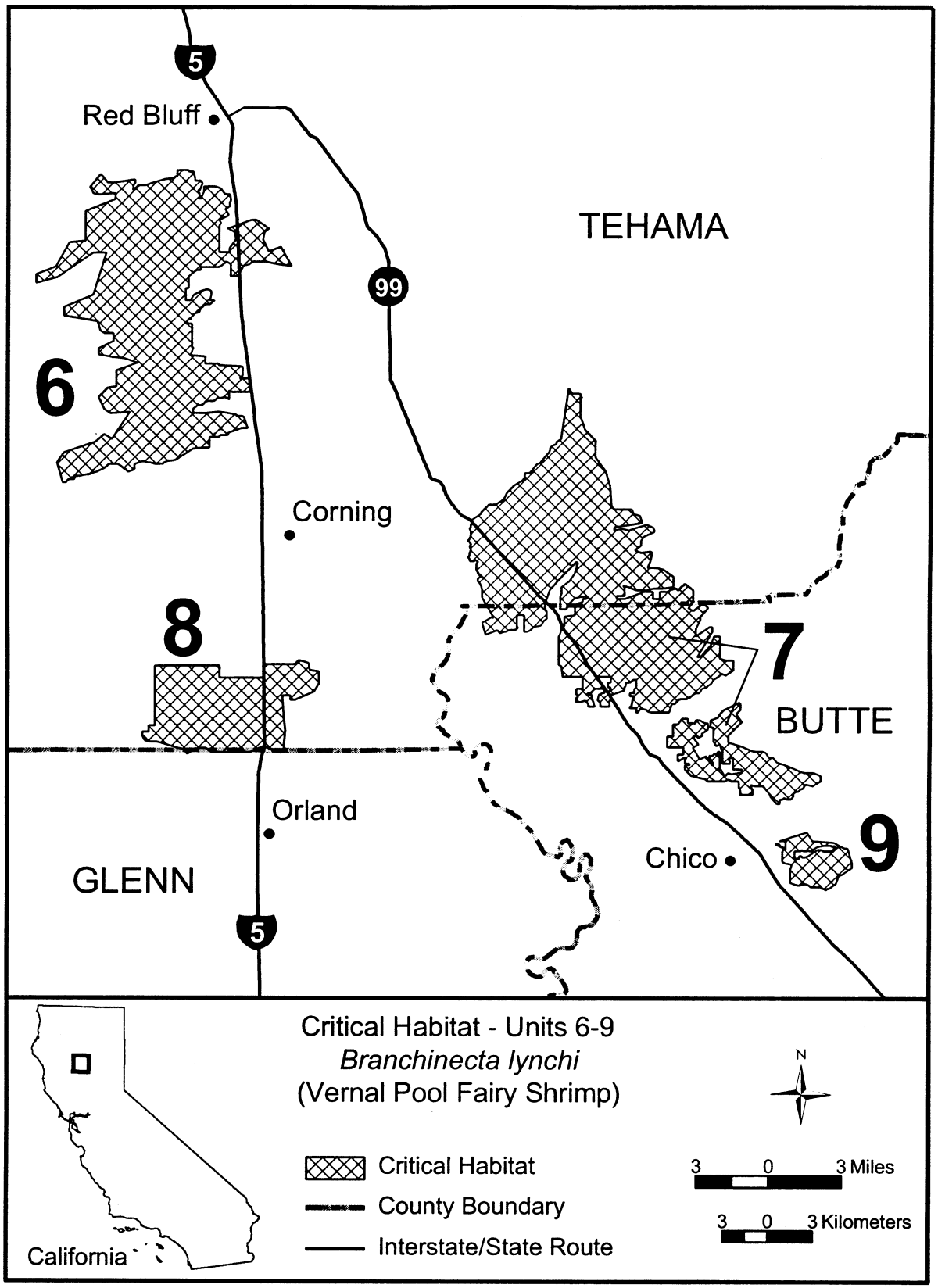
(66) Subunit 33C: Riverside County, California. [Reserved]

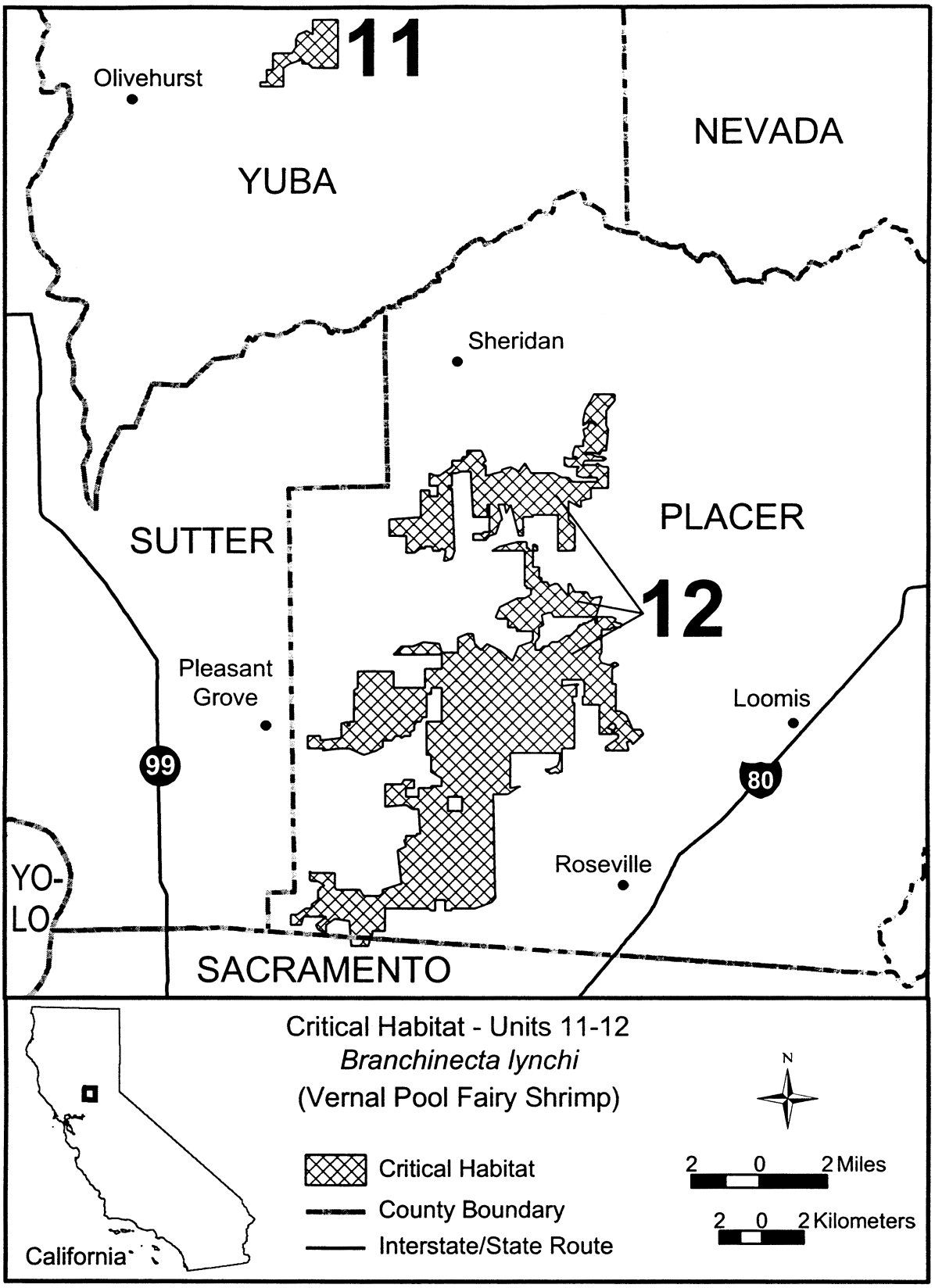
(67) Maps follow of critical habitat units 1 through 4, 5, 6 through 9, 11 and 12, 13 and 14, 15 through 17, 18, 19, 20, 21 through 23, 24 and 25, 26, 27, 28, 29, 30, 31, and 32 (respectively) for vernal pool fairy shrimp.

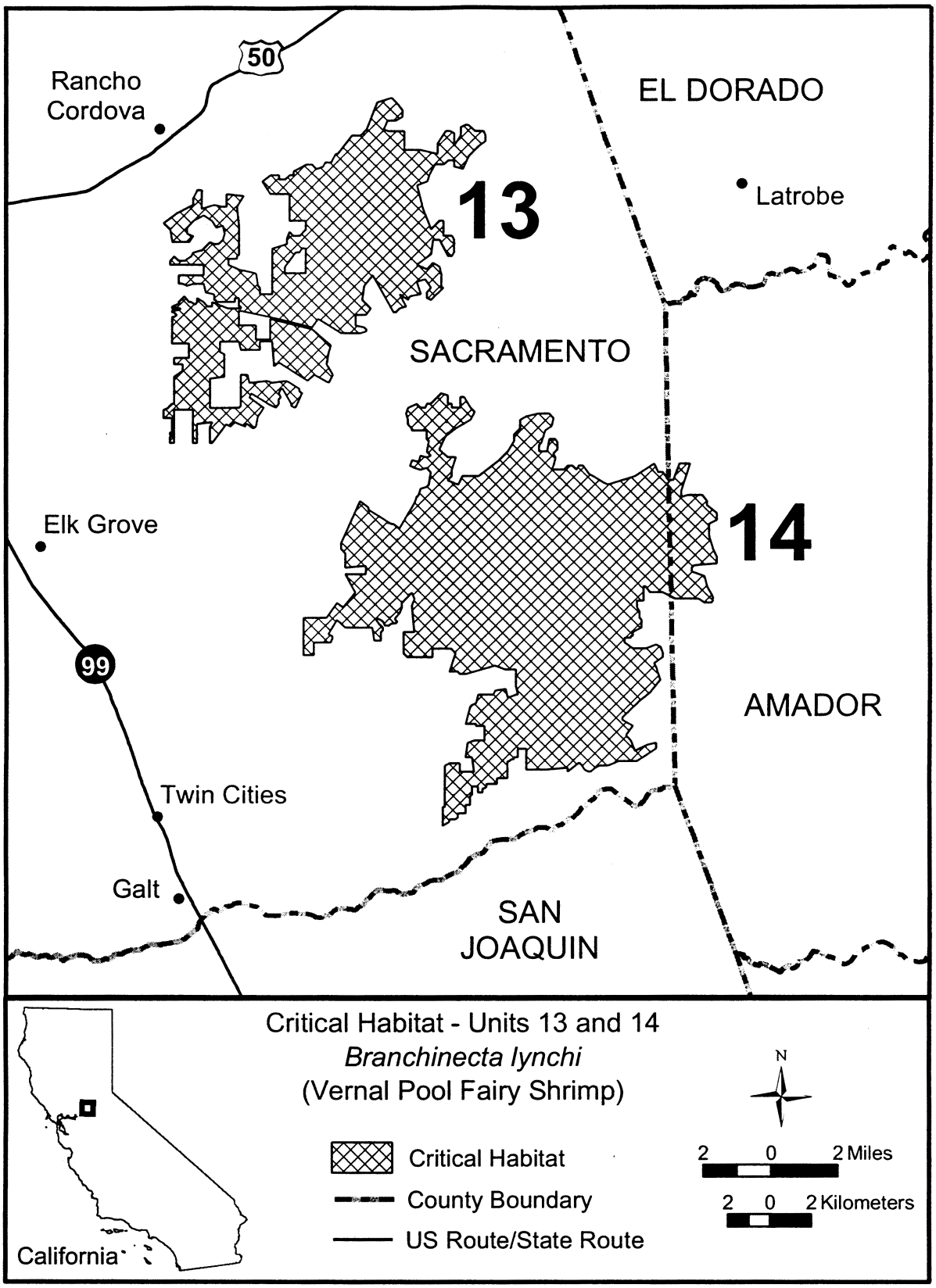
BILLING CODE 4310–55–P

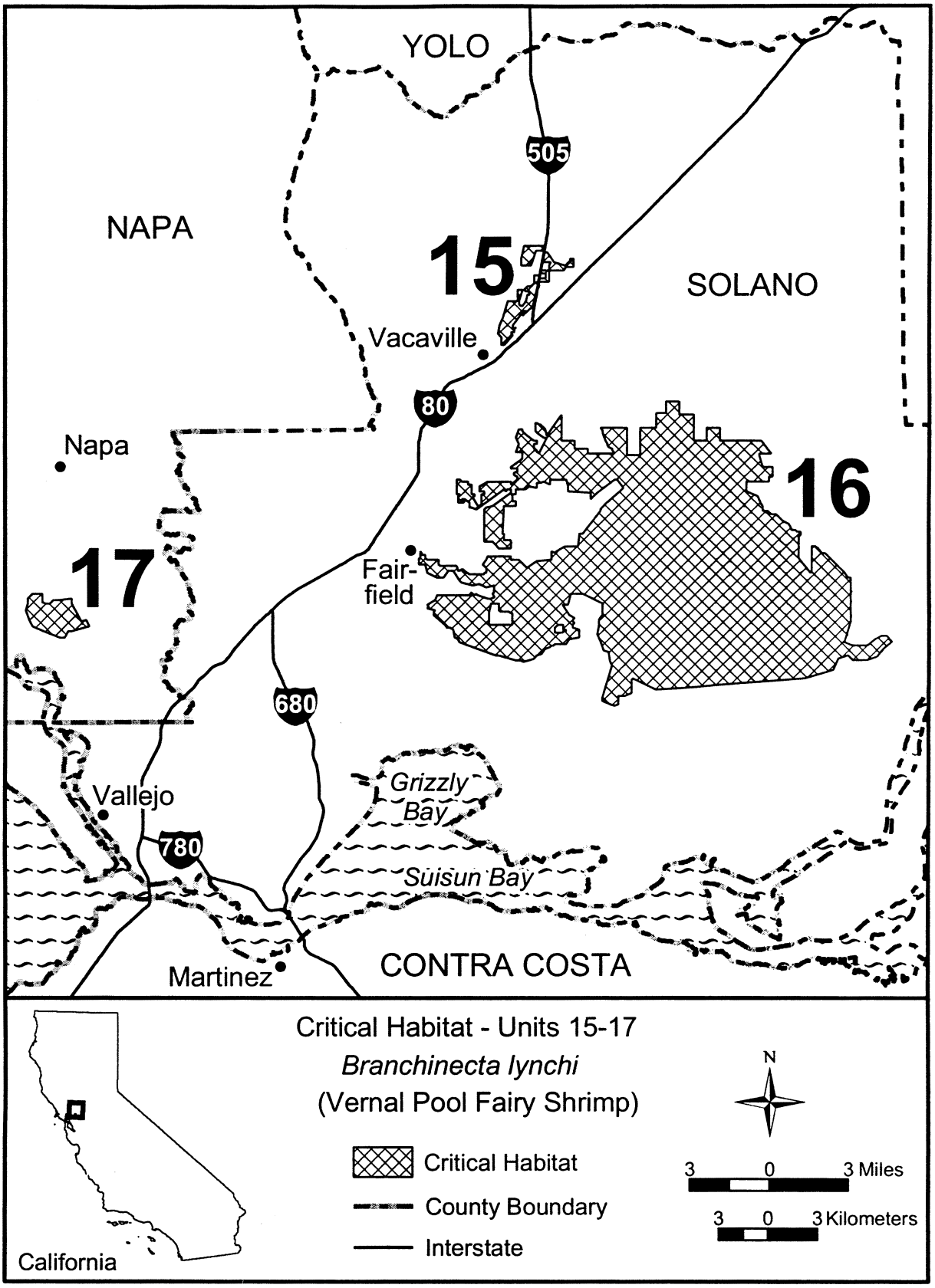

1A
1C
1E
1D
1B
1F
1G
4A
4B
3A
2A
2C
2B
3C
3B
2E
2D
62
Sams Valley
Eagle Point
Table Rock
White City
Tolo
Seven Oaks
5
Central Point
JACKSON CO., OR
Medford
Oregon
California
Critical Habitat - Units 1-4
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
Critical Habitat
Interstate/State Route
N
1 0 1 Miles
1 0 1 Kilometers

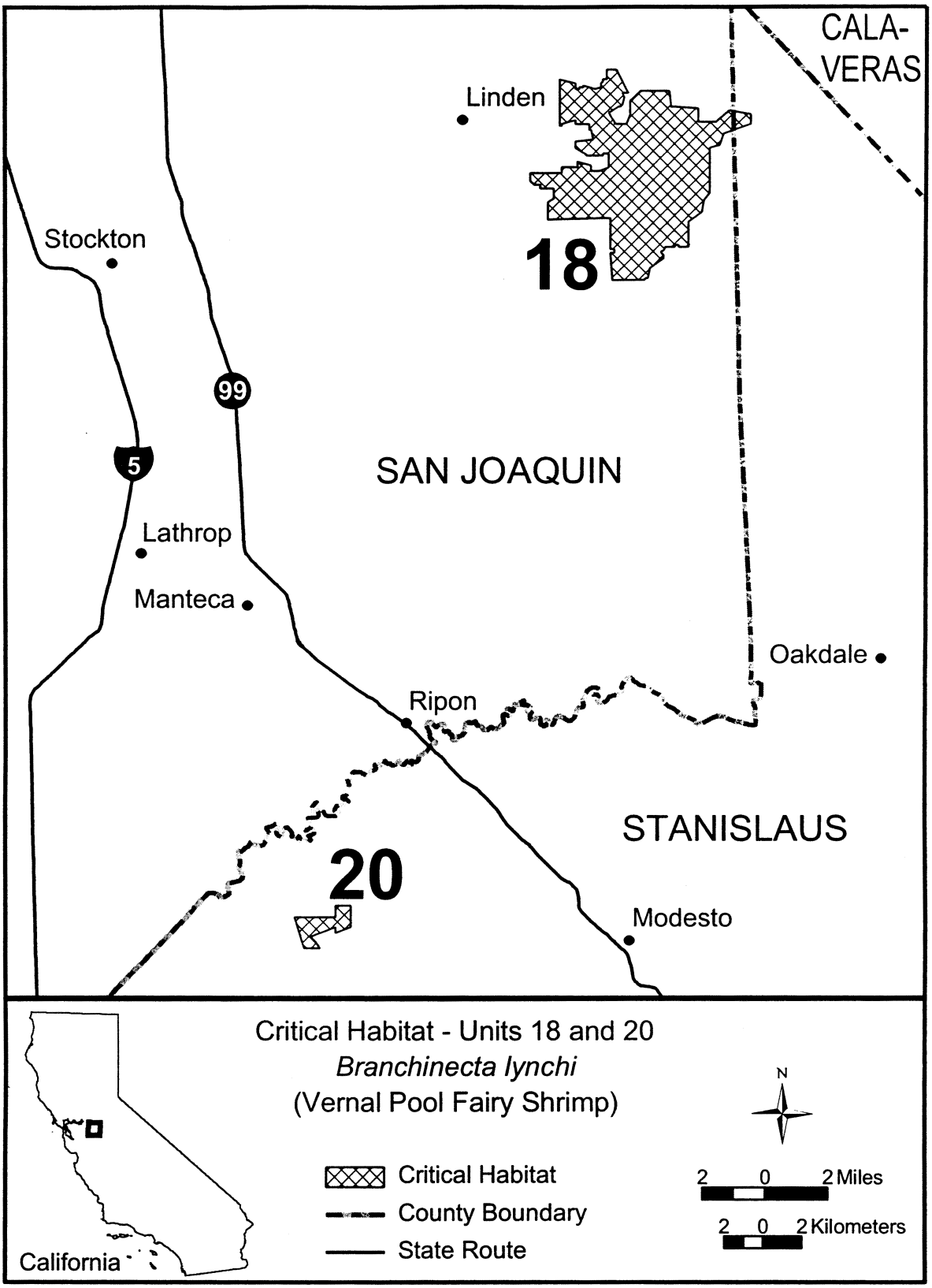

Redding
Enterprise
Millville
5
5
Anderson
SHASTA
Cottonwood
TEHAMA
Critical Habitat - Units 5
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
Critical Habitat
County Boundary
Interstate
California
N
1 0 1 Miles
1 0 1 Kilometers

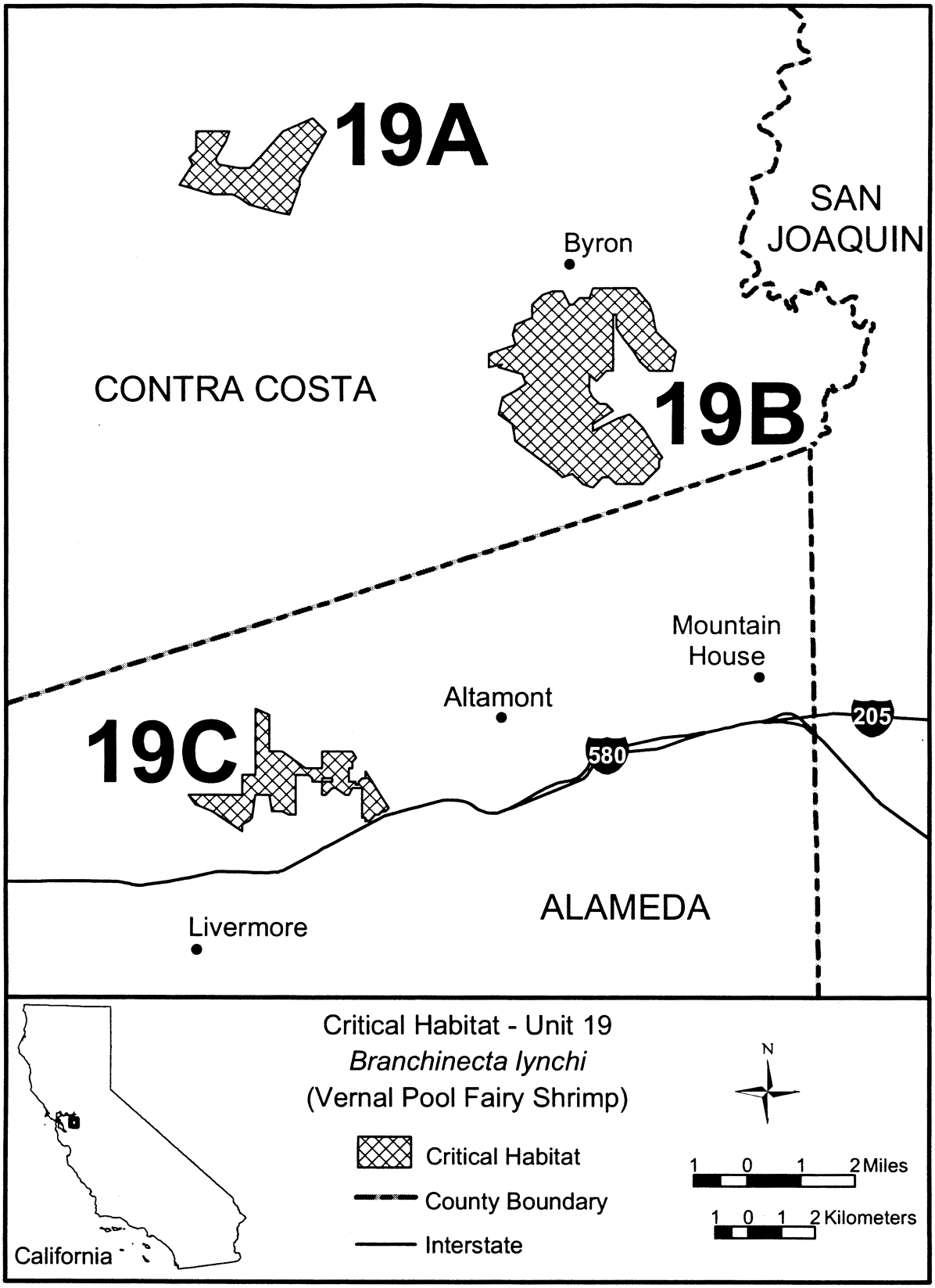

5
Red Bluff
TEHAMA
99
6
Corning
8
7
BUTTE
Orland
9
Chico
GLENN
5
Critical Habitat - Units 6-9
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
N
Critical Habitat
County Boundary
Interstate/State Route
3 0 3 Miles
3 0 3 Kilometers
California

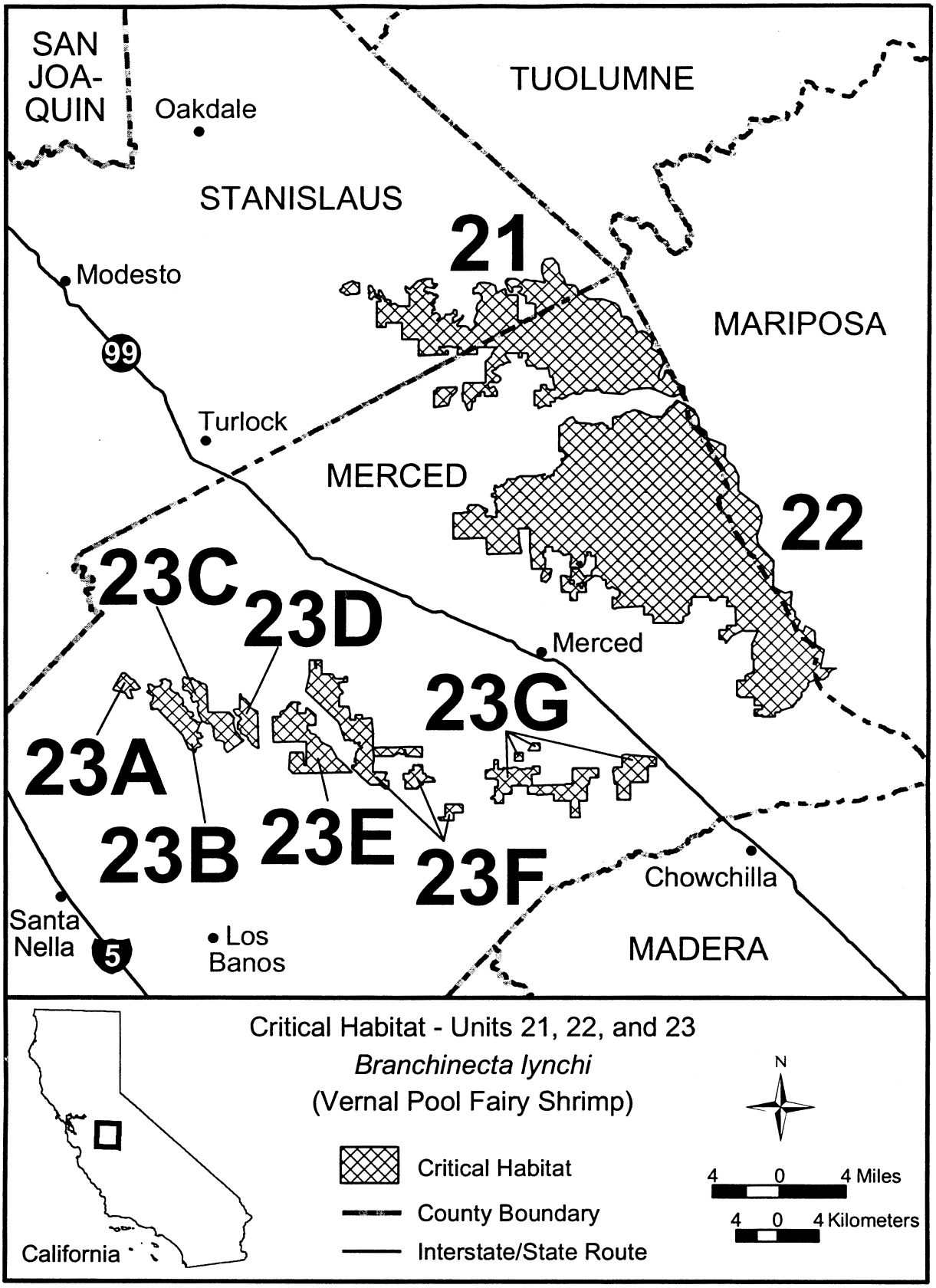

11
Olivehurst
NEVADA
YUBA
Sheridan
PLACER
SUTTER
12
Pleasant
Grove
Loomis
99
80
Roseville
YO-
LO
SACRAMENTO
Critical Habitat - Units 11-12
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
N
Critical Habitat
County Boundary
Interstate/State Route
2 0 2 Miles
2 0 2 Kilometers
California

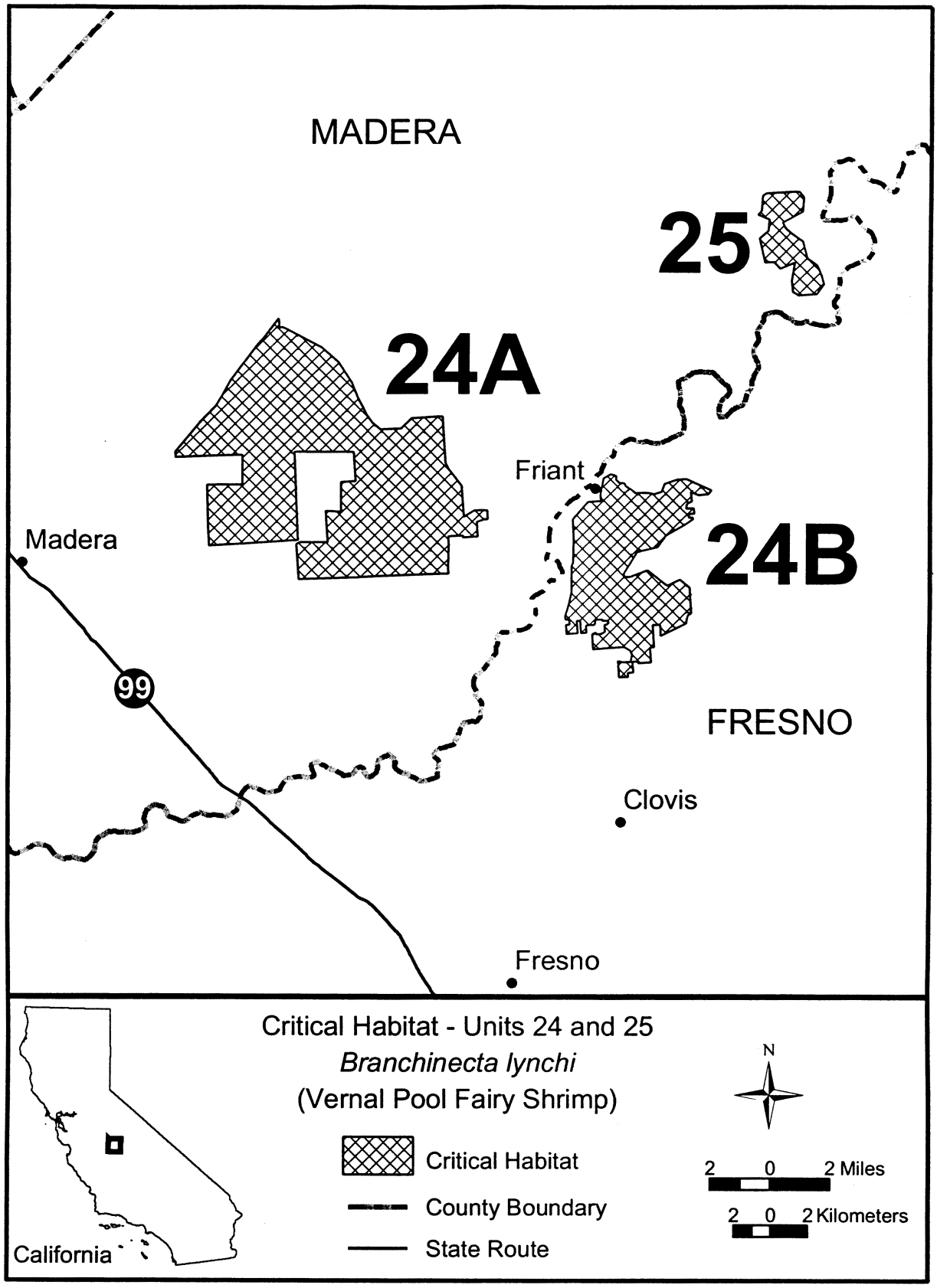

50
Rancho Cordova
EL DORADO
Latrobe
13
SACRAMENTO
14
Elk Grove
99
AMADOR
Twin Cities
Galt
SAN JOAQUIN
Critical Habitat - Units 13 and 14
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
Critical Habitat
County Boundary
US Route/State Route
N
2 0 2 Miles
2 0 2 Kilometers
California

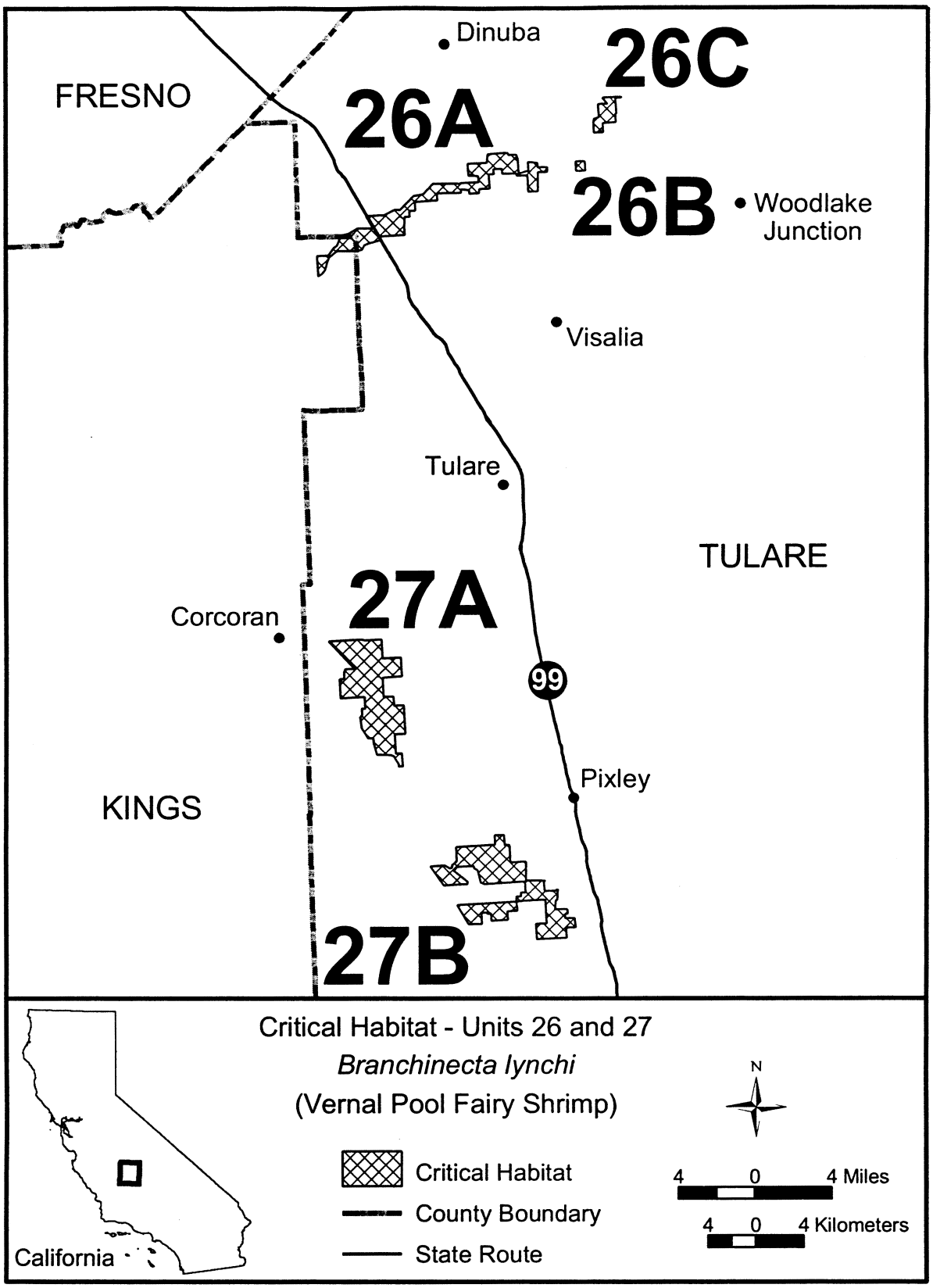

YOLO
505
NAPA
15
SOLANO
Vacaville
80
Napa
16
17
Fair-
field
680
Grizzly
Bay
Vallejo
780
Suisun Bay
Martinez
CONTRA COSTA
Critical Habitat - Units 15-17
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
Critical Habitat
County Boundary
Interstate
N
3 0 3 Miles
3 0 3 Kilometers
California

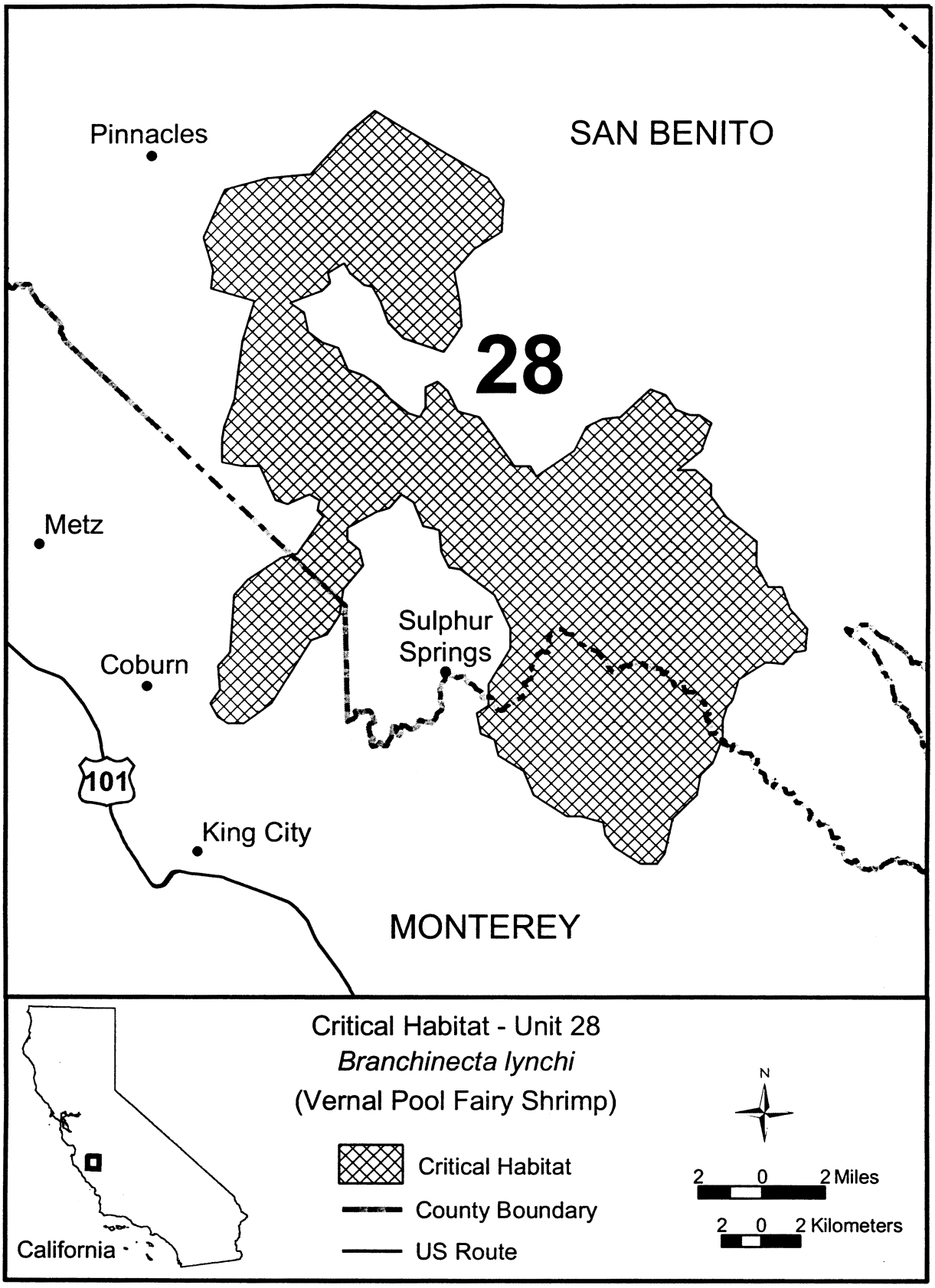

CALA-
VERAS
Linden
18
Stockton
99
5
SAN JOAQUIN
Lathrop
Manteca
Oakdale
Ripon
STANISLAUS
20
Modesto
Critical Habitat - Units 18 and 20
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
N
Critical Habitat
County Boundary
State Route
2 0 2 Miles
2 0 2 Kilometers
California

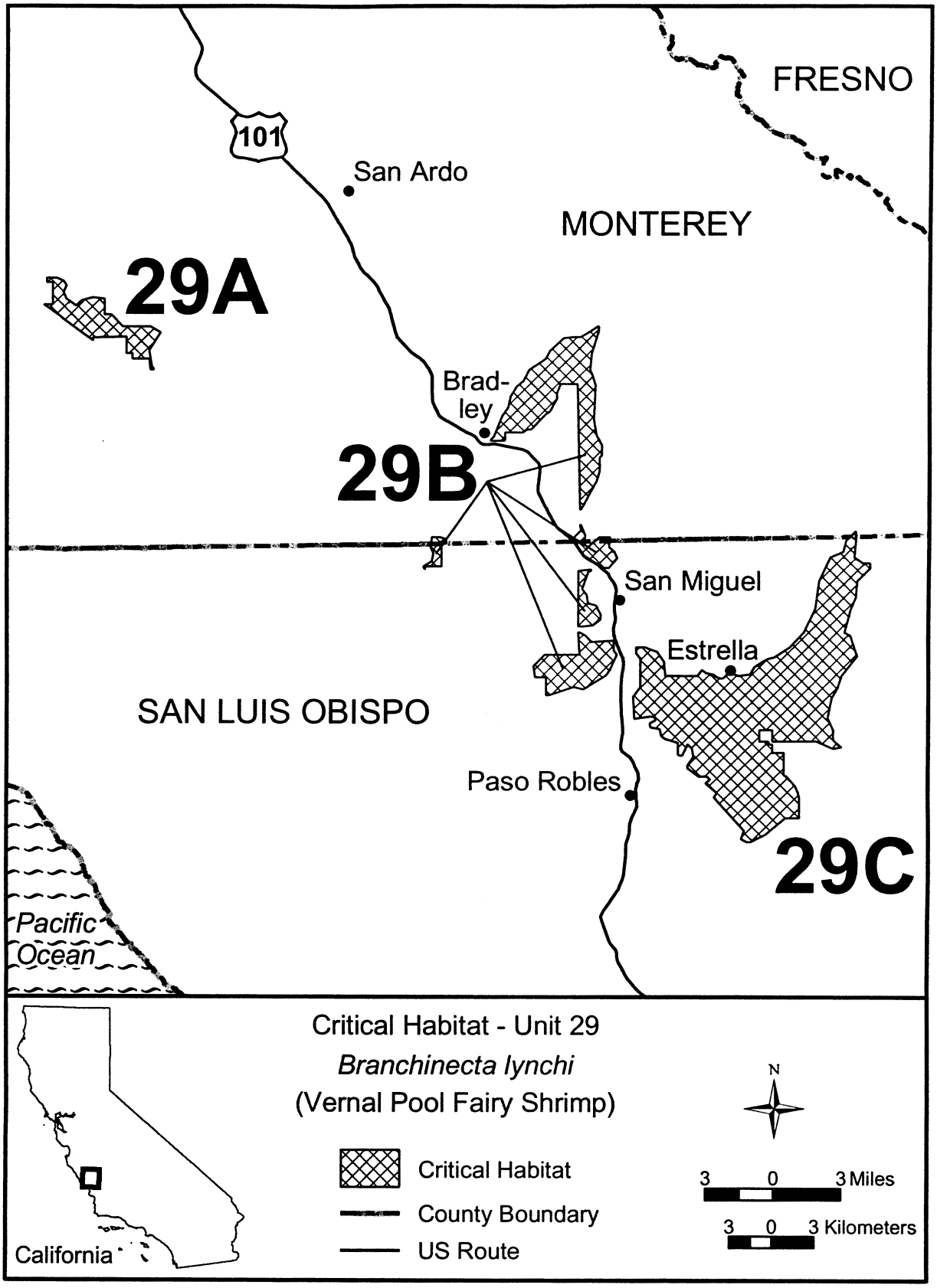

19A
SAN JOAQUIN
Byron
CONTRA COSTA
19B
Mountain House
Altamont
205
19C
580
ALAMEDA
Livermore
Critical Habitat - Unit 19
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
N
Critical Habitat
County Boundary
Interstate
1 0 1 2 Miles
1 0 1 2 Kilometers
California

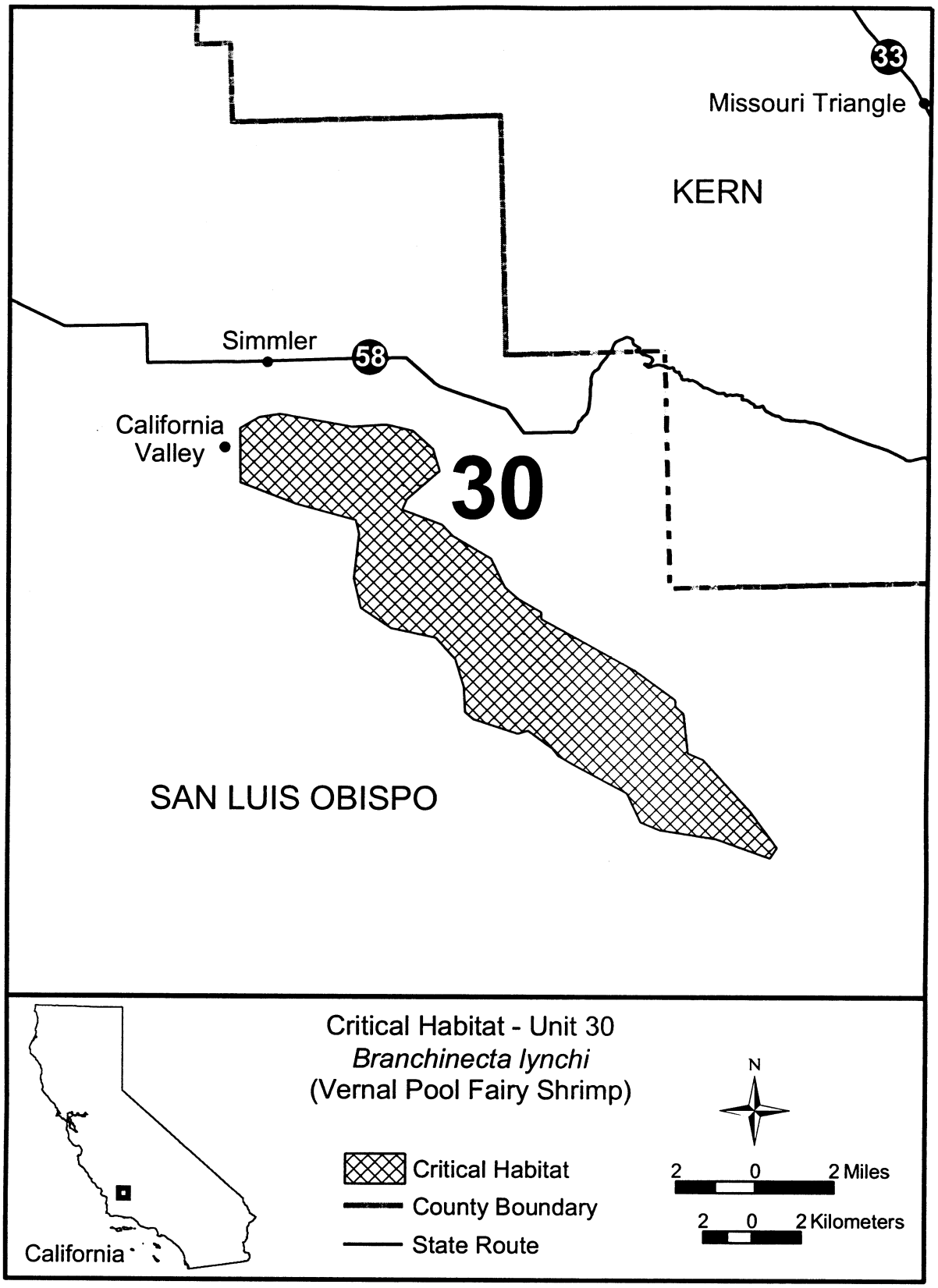

SAN JOA-QUIN
Oakdale
TUOLUMNE
STANISLAUS
21
Modesto
99
MARIPOSA
Turlock
MERCED
22
23C
23D
Merced
23G
23A
23B
23E
23F
Chowchilla
Santa Nella
5
Los Banos
MADERA
Critical Habitat - Units 21, 22, and 23
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
N
Critical Habitat
County Boundary
Interstate/State Route
4 0 4 Miles
4 0 4 Kilometers
California

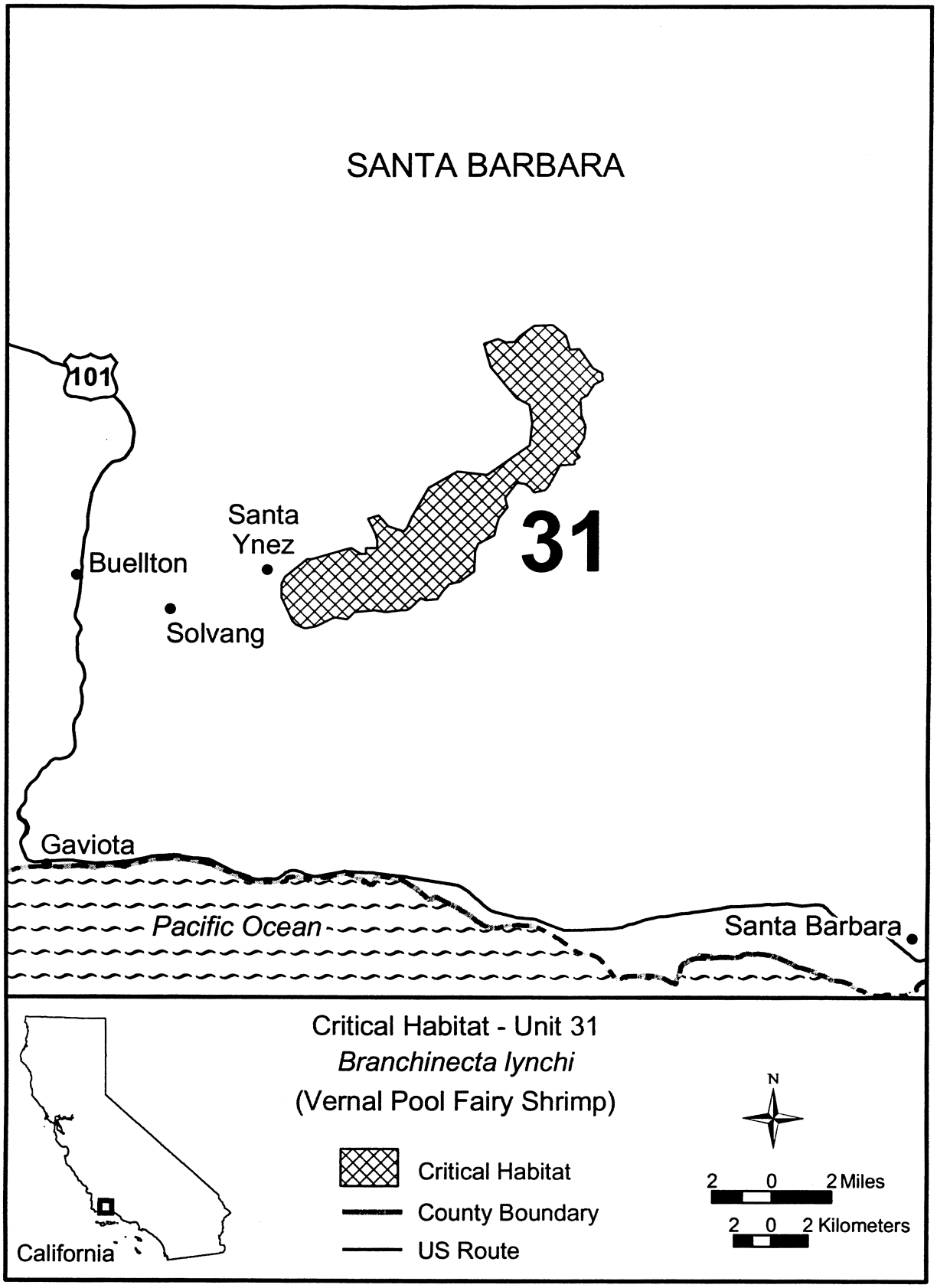

MADERA
25
24A
Friant
24B
Madera
99
FRESNO
Clovis
Fresno
Critical Habitat - Units 24 and 25
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
Critical Habitat
County Boundary
State Route
N
2 0 2 Miles
2 0 2 Kilometers
California

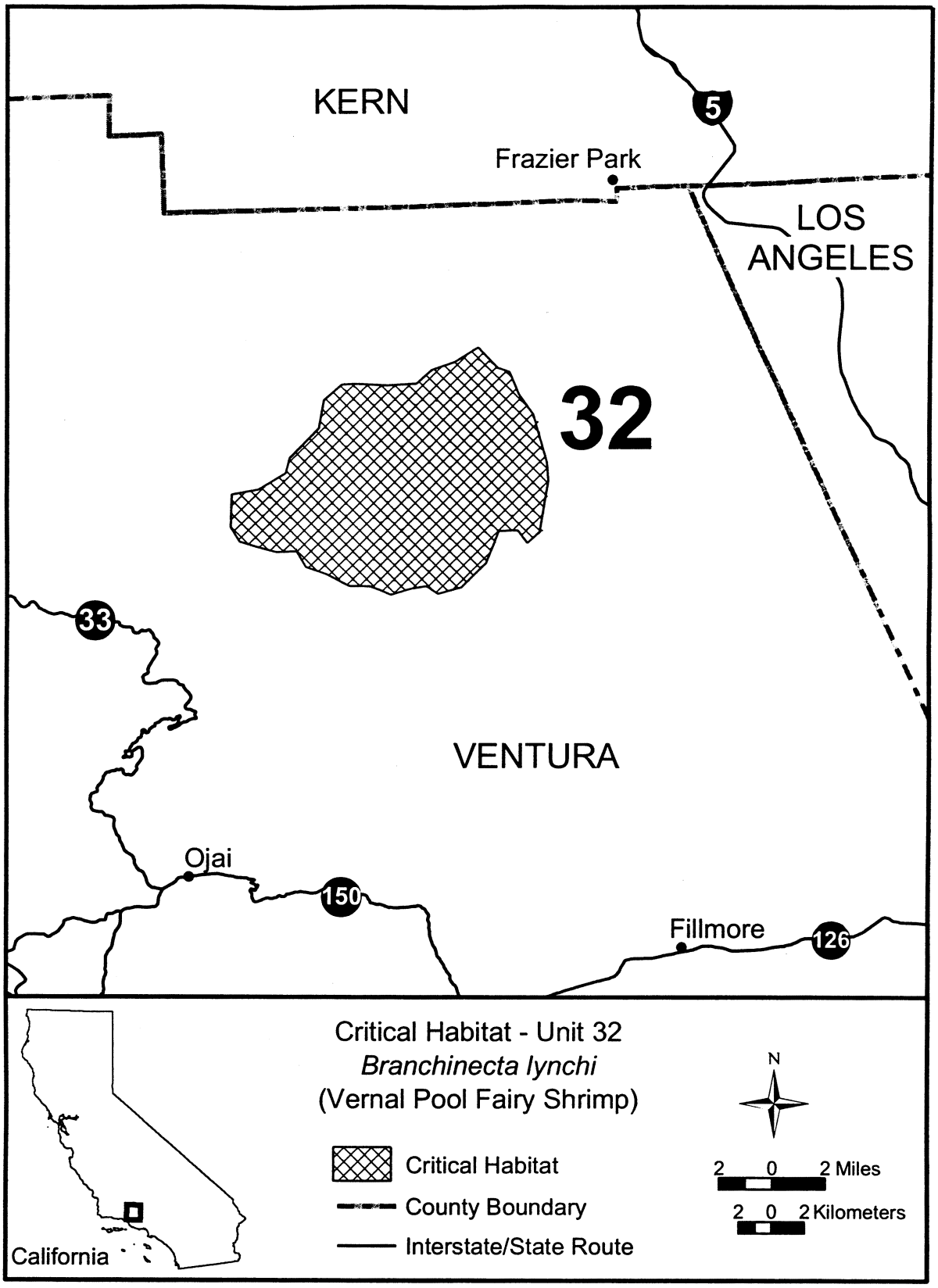

Dinuba
26C
FRESNO
26A
26B
Woodlake Junction
Visalia
Tulare
TULARE
27A
Corcoran
99
Pixley
KINGS
27B
Critical Habitat - Units 26 and 27
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
N
Critical Habitat
County Boundary
State Route
4 0 4 Miles
4 0 4 Kilometers
California


Pinnacles
SAN BENITO
28
Metz
Sulphur
Springs
Coburn
101
King City
MONTEREY
Critical Habitat - Unit 28
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
Critical Habitat
County Boundary
US Route
N
2 0 2 Miles
2 0 2 Kilometers
California


FRESNO
101
San Ardo
MONTEREY
29A
Brad-
ley
29B
San Miguel
Estrella
SAN LUIS OBISPO
Paso Robles
29C
Pacific
Ocean
Critical Habitat - Unit 29
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
Critical Habitat
County Boundary
US Route
California
N
3 0 3 Miles
3 0 3 Kilometers


33
Missouri Triangle
KERN
Simmler
58
California
Valley
30
SAN LUIS OBISPO
Critical Habitat - Unit 30
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
N
Critical Habitat
County Boundary
State Route
2 0 2 Miles
2 0 2 Kilometers
California


SANTA BARBARA
101
Santa
Ynez
31
Buellton
Solvang
Gaviota
Pacific Ocean
Santa Barbara
Critical Habitat - Unit 31
Branchinecta lynchi
(Vernal Pool Fairy Shrimp)
Critical Habitat
County Boundary
US Route
N
2 0 2 Miles
2 0 2 Kilometers
California



BILLING CODE 4310–55–C

Vernal Pool Tadpole Shrimp *(Lepidurus packardi)*

(1) Critical habitat units are depicted for Shasta, Tehama, Glenn, Colusa, Alameda, Amador, Stanislaus, Mariposa, Fresno, Tulare and Kings Counties, California on the map below.

(2) The primary constituent elements of critical habitat for vernal pool tadpole shrimp are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for vernal pool tadpole shrimp incubation, reproduction, dispersal, feeding, and sheltering, but which are dry during the summer and do not necessarily fill with water every year, including but not limited to, vernal pools on Redding and Corning soils on high terrace landforms, and

(ii) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

(3) Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Unit 1: Shasta County, California. From USGS 1:24,000 quadrangle maps Cottonwood, Enterprise and Palo Cedro, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 564200, 4480900; 563600, 4480900; 563300, 4481000; 563100, 4480900; 562900, 4480900; 562500, 4481200; 562400, 4481500; 562400, 4481700; 562300, 4482400; 562000, 4482500; 561900, 4482800; 561800, 4483300; 561500, 4483700; 561000, 4484000; 560700, 4485400; 560700, 4486500; 560800, 4486700; 561000, 4486900; 561200, 4487000; 561300, 4487600; 561600, 4487900; 562000, 4487900; 562500, 4487400; 562700, 4487100; 562900, 4487200; 563200, 4487200; 563300, 4487000; 563300, 4486700; 563800, 4486400; 564300, 4484700; 564300, 4484400; 564500, 4484100; 564500, 4483800; 564600, 4483700; 564600, 4483400; 564400, 4483100; 564100, 4482800; 564100, 4482600; 564300, 4482600; 564300, 4482400; 564300, 4482300; 564200, 4482200; 564100, 4482100; 564000, 4482100; 564200, 4481800; returning to 564200, 4480900; and excluding land bounded by 562900, 4482600; 562400, 4482600; 562400, 4483500; 562400, 4483500; 562500, 4483500; 562500, 4483500; 562304, 4483794; 562300, 4483800; 562300, 4483803; 562300, 4484000; 562300, 4484010; 562100, 4484100; 561300, 4484100; 561300, 4485800; 561700, 4485800; 561700, 4485779; 561700, 4485400; 561700, 4485400; 562100, 4485400; 562100, 4485372; 562100, 4485000; 562900, 4485000; returning to 562900, 4482600.

(6) Unit 2: Shasta and Tehama Counties, California. From USGS 1:24,000 quadrangle maps Balls Ferry, Bend, Dales, Red Bluff East, Shingletown and Tuscan Buttes NE, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 570200, 4454800; 570200, 4455000; 570600, 4455900; 570000, 4456100; 569500, 4456300; 569300, 4456500; 568900, 4456500; 568600, 4456500; 568000, 4456800; 567900, 4457100; 567900, 4458000; 568400, 4458800; 569100, 4459800; 569600, 4460500; 569500, 4460800; 569000, 4460600; 568300, 4460700; 567500, 4460700; 566800, 4460000; 566400, 4460000; 565900, 4461100; 565800, 4461400; 565800, 4461700; 566000, 4462000; 565800, 4462300; 565900, 4462400; 565800, 4462500; 565900, 4462600; 565800, 4462800; 565900, 4462900; 565900, 4463000; 566000, 4463100; 566300, 4463100; 566500, 4463300; 566500, 4463600; 566700, 4463700; 566800, 4463700; 566900, 4463600; 567100, 4463500; 567200, 4463600; 567600, 4463400; 568300, 4463200; 569800, 4463200; 570600, 4463900; 570800, 4464300; 572000, 4465200; 572000, 4466300; 572100, 4466600; 572800, 4467300; 573500, 4468600; 573400, 4469000; 573100, 4469400; 572900, 4469600; 572600, 4469600; 571800, 4468800; 571400, 4468100; 571000, 4467900; 571000, 4468700; 571200, 4468700; 571100, 4469200; 571200, 4469500; 571200, 4470500; 570500, 4470900; 570300, 4471000; 570100, 4471000; 569800, 4470900; 569600, 4471000; 569400, 4471400; 569400, 4471800; 569700, 4471900; 569600, 4472000; 569900, 4472200; 570200, 4472100; 570500, 4472000; 570800, 4472200; 570900, 4472100; 571000, 4472100; 571300, 4472200; 571700, 4472200; 571900, 4472200; 572200, 4472300; 572500, 4472100; 573900, 4472100; 574300, 4473200; 575100, 4473200; 575600, 4473500; 576000, 4473900; 576600, 4473900; 577300, 4473900; 577700, 4474200; 578600, 4474200; 579300, 4474400; 580000, 4474400; 580600, 4474700; 581900, 4474700; 582400, 4475300; 583000, 4475400; 583200, 4475400; 583700, 4475000; 584200, 4475200; 584600, 4475200; 585400, 4474500; 586000, 4473600; 586100, 4473400; 585800, 4472600; 585500, 4472100; 584800, 4471900; 584500, 4471600; 584500, 4471400; 584700, 4471100; 584700, 4470800; 584500, 4470500; 583400, 4469700; 583100, 4469400; 582600, 4468500; 582600, 4467600; 582700, 4466900; 582700, 4466700; 581900, 4465800; 581000, 4465500; 580600, 4465200; 580400, 4464000; 580200, 4463300; 578900, 4462700; 578500, 4462300; 578100, 4462000; 577800, 4460900; 577700, 4460000; 576700, 4459300; 576600, 4458800; 576800, 4458300; 576800, 4457100; 576400, 4456700; 575500, 4456800; 574900, 4456800; 574100, 4455900; 573500, 4455600; 572300, 4455300; 572000, 4455300; 571600, 4455600; 571400, 4455400; 571100, 4454900; 570600, 4454900; returning to 570200, 4454800.

(7) Unit 3: Butte and Tehama Counties, California. From USGS 1:24,000 quadrangle maps Acorn Hollow, Campbell Mound, Foster Island, Nord, Richardson Springs, Richardson Springs NW and Vina, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 592400, 4416700; 592500, 4416600; 592500, 4416000; 592000, 4416000; 592000, 4415800; 592500, 4415800; 593800, 4416300; 594100, 4416300; 594400, 4416300; 594400, 4415800; 594900, 4415800; 594900,

4416300; 595500, 4416300; 595500, 4416400; 595900, 4416500; 596000, 4416500; 596100, 4416400; 596200, 4416500; 596300, 4416600; 596400, 4416700; 596500, 4416700; 596500, 4416800; 596600, 4416800; 597100, 4416400; 597100, 4415600; 596800, 4415200; 597100, 4415000; 597800, 4415500; 598100, 4415200; 597600, 4414600; 597600, 4414400; 597300, 4413800; 597300, 4413300; 598200, 4413900; 598400, 4413900; 598400, 4413600; 597400, 4411900; 597600, 4411900; 598300, 4412700; 598500, 4413300; 598900, 4413300; 598900, 4411800; 599400, 4411700; 599800, 4411700; 599800, 4411000; 599300, 4410700; 599100, 4410800; 599000, 4410800; 598800, 4410600; 598500, 4410400; 598300, 4410100; 598100, 4410000; 598000, 4409900; 597700, 4409800; 597600, 4409600; 597500, 4409500; 597300, 4409500; 597100, 4409400; 596900, 4409200; 596800, 4409200; 596700, 4409100; 596200, 4409100; 596000, 4408900; 595900, 4408800; 595700, 4408800; 595500, 4408200; 594300, 4408200; 594100, 4408300; 594000, 4408400; 593600, 4408500; 593400, 4408200; 593300, 4408200; 593300, 4408500; 592900, 4408500; 592900, 4408600; 593000, 4408600; 593100, 4409200; 593200, 4409200; 593200, 4409300; 592900, 4409300; 592900, 4409500; 593100, 4409600; 593100, 4409500; 593200, 4409500; 593200, 4409800; 593300, 4409900; 593300, 4410400; 593100, 4410400; 592900, 4410200; 592600, 4410200; 592600, 4410000; 592500, 4409900; 592500, 4409700; 591700, 4409400; 591500, 4409400; 591700, 4409100; 591700, 4409000; 591500, 4409000; 591500, 4408600; 590900, 4408600; 590900, 4408900; 590700, 4409000; 590800, 4409400; 591000, 4409500; 591200, 4409500; 591100, 4409800; 590500, 4409800; 590300, 4409600; 590300, 4409500; 590100, 4409500; 590000, 4409400; 590300, 4409400; 590400, 4409000; 590500, 4408600; 590100, 4408600; 590100, 4408800; 589900, 4409000; 589500, 4408900; 589300, 4408900; 589300, 4409200; 589400, 4409200; 589400, 4409400; 589300, 4409400; 589300, 4409800; 589700, 4409800; 589700, 4410600; 588400, 4410600; 588300, 4411300; 588100, 4411400; 588100, 4412000; 588100, 4413300; 588200, 4413500; 588300, 4413900; 588500, 4414000; 588500, 4414600; 589200, 4414700; 589200, 4415000; 589200, 4415300; 589400, 4415500; 589700, 4415600; 589700, 4415800; 589900, 4415800; 590000, 4415900; 590000, 4416000; 589900, 4416000; 589400, 4415900; 589100, 4415800; 589000, 4415700; 588800, 4415500; 588700, 4415400; 588600, 4415100; 588200, 4415100; 588200, 4416000; 588300, 4416200; 588300, 4416600; 588800, 4417000; 589100, 4417400; 589200, 4417600; 589200, 4417700; 589300, 4417900; 589300, 4418100; 589400, 4418200; 589300, 4418300; 590700, 4419800; 588000, 4417000; 587500, 4416400; 587200, 4415500; 587200, 4415100; 587300, 4415000; 587300, 4414500; 587200, 4414400; 587100, 4414300; 586900, 4414000; 586400, 4413900; 586200, 4413700; 586000, 4413600; 585800, 4413600; 585800, 4414700; 585300, 4414700; 585300, 4413800; 585200, 4413700; 584800, 4413700; 584600, 4413600; 584400, 4413600; 584200, 4413500; 584000, 4413700; 583200, 4413400; 583000, 4414200; 583700, 4414600; 583500, 4415000; 583000, 4415900; 583000, 4416400; 582900, 4416700; 582800, 4416900; 582700, 4417000; 582700, 4417200; 582900, 4417300; 582800, 4417400; 582700, 4417500; 582700, 4417600; 582600, 4417700; 582600, 4418000; 582600, 4418100; 582600, 4418200; 582700, 4418300; 582500, 4418400; 582400, 4418300; 582200, 4418300; 582100, 4418400; 582100, 4418500; 582000, 4418600; 582100, 4418700; 582100, 4418900; 582200, 4419100; 582100, 4419300; 582200, 4419500; 582100, 4419600; 582000, 4419700; 582100, 4419800; 582100, 4419900; 582200, 4420000; 582200, 4420300; 582100, 4420500; 582200, 4420600; 582200, 4420800; 582300, 4421100; 582900, 4421500; 582900, 4421600; 583300, 4422000; 583400, 4422100; 583900, 4422100; 584100, 4422300; 584200, 4422300; 584300, 4422400; 584400, 4422500; 584600, 4422900; 585100, 4423400; 585600, 4423700; 585800, 4423900; 585800, 4424200; 586100, 4424200; 586600, 4424800; 586800, 4424900; 587300, 4425500; 587400, 4425600; 587500, 4425800; 587500, 4425900; 587600, 4426000; 587700, 4426100; 587800, 4426100; 587900, 4426200; 587900, 4426300; 588200, 4426500; 588700, 4429900; 588900, 4429500; 589500, 4429500; 589500, 4428600; 589500, 4428000; 589800, 4427100; 590500, 4426400; 590500, 4425300; 591200, 4424400; 591500, 4423300; 591600, 4422100; 591700, 4421900; 591900, 4421800; 593000, 4421800; 593100, 4421500; 593500, 4421400; 593700, 4420900; 591800, 4420600; 591800, 4420400; 592300, 4420500; 592800, 4420400; 593100, 4420500; 594000, 4420800; 594400, 4420600; 594500, 4420300; 593800, 4420000; 593600, 4419700; 593600, 4419400; 593200, 4419100; 593600, 4418900; 594300, 4419000; 594300, 4418800; 594300, 4418700; 594200, 4418300; 594100, 4418000; 594100, 4417900; 594700, 4417900; 595100, 4417800; 595800, 4417300; 595800, 4416600; 595100, 4416500; 594400, 4416500; 594000, 4416400; 593300, 4416400; 592800, 4416600; returning to 592400, 4416700; and excluding land bounded by 591500, 4409600; 591400, 4409600; 590700, 4410600; 591600, 4410600; 591600, 4410200; 591400, 4410200; 591400, 4409900; 591600, 4409900; returning to 591500, 4409600.

(ii) Start at 602900, 4402100; 602700, 4402100; 602300, 4402600; 602300, 4402700; 601800, 4403300; 601200, 4403300; 601000, 4403400; 601000, 4403200; 601100, 4403100; 601100, 4402700; 600300, 4402700; 600300, 4403000; 600200, 4403200; 600200, 4403600; 599700, 4403600; 599600, 4403700; 599400, 4403700; 599200, 4403600; 598100, 4403600; 597900, 4403800; 597800, 4403800; 597000, 4404000; 596600, 4404400; 596600, 4404700; 596900, 4404700; 596900, 4404800; 596600, 4404800; 596600, 4405100; 596700, 4405200; 596500, 4405200; 596200, 4405000; 596100, 4405000; 596100, 4405400; 596500, 4405400; 596500, 4405900; 595600, 4405900; 595400, 4405900; 595400, 4406600; 595800, 4406600; 595800, 4407400; 596100, 4407400; 596300, 4407700; 596400, 4407800; 596800, 4407800; 596800, 4407500; 597300, 4407500; 597300, 4407700; 597600, 4407700; 597900, 4407500; 598100, 4407500; 598100, 4407100; 597700, 4406800; 597800, 4406700; 597500, 4406500; 597300, 4406700; 597100, 4406600; 597500, 4406100; 597100, 4405900; 597600, 4405100; 598000, 4405300; 598400, 4404700; 598500, 4404800; 598200, 4405300; 598400, 4405300; 598500, 4405400; 598600, 4405500; 598700, 4405400; 598800, 4405600; 598900, 4405600; 598900, 4404800; 598900, 4404400; 599000, 4404400; 599200, 4404000; 599300, 4404000; 599500, 4404200; 599700, 4404100; 600100, 4404200; 600400, 4404200; 600400, 4404400; 599800, 4404400; 599800, 4405200; 599600, 4405200; 599500, 4405100; 599600, 4405000; 599600, 4404800; 599100, 4404800; 599100, 4405700; 599000, 4405800; 598900, 4406100; 598700, 4406000; 598500, 4406300; 598500, 4407200; 598300, 4407200; 598300, 4407500; 598300, 4407700; 598800, 4407900; 598900, 4408100; 599200, 4408400; 600200, 4408900; 600300, 4408800; 600300, 4408400; 600000, 4408100; 600400, 4407600; 599500, 4406700; 599500, 4406200; 600300, 4406000; 601200, 4405600; 601800,

4405600; 602000, 4405500; 602200, 4405200; 602500, 4405200; 602700, 4404900; 603300, 4404700; 604500, 4404200; 605200, 4404200; 605600, 4404000; 605600, 4403600; 605100, 4403300; 604700, 4403400; 604500, 4403300; 604475, 4403175; 604400, 4403100; 604300, 4403100; 604200, 4403000; 604100, 4402900; 604000, 4402900; 603800, 4402800; 603800, 4402600; 603600, 4402400; 603400, 4402400; 603200, 4402500; 603100, 4402400; 602900, 4402400; returning to 602900, 4402100.

(8) Unit 4: Butte County, California. [Reserved]

(9) Unit 5: Colusa and Glen Counties, California. [Reserved]

(10) Unit 6: Colusa County, California. From USGS 1:24,000 quadrangle maps Colusa and Meridian, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 589200, 4335900; 587900, 4335900; 587900, 4336000; 587400, 4336600; 587300, 4336800; 586900, 4337800; 586700, 4337800; 586700, 4337700; 586400, 4337700; 586400, 4336800; 586300, 4336600; 586000, 4336600; 585800, 4336900; 585800, 4337200; 585900, 4337200; 585900, 4338200; 586100, 4338200; 586100, 4338400; 586800, 4338900; 587000, 4338500; 587000, 4338400; 586800, 4338200; 587000, 4338100; 587500, 4337600; 587700, 4337800; 588800, 4336700; 588900, 4336700; 589100, 4336500; 589100, 4336900; 589200, 4336900; returning to 589200, 4335900

(11) Unit 7: Yuba County, California. From USGS 1:24,000 quadrangle maps Browns Valley and Wheatland, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 632400, 4329000; 631300, 4329000; 631300, 4329200; 631600, 4329200; 631600, 4329800; 631900, 4329800; 631900, 4330600; 632800, 4330600; 633000, 4330900; 633000, 4331300; 633100, 4331500; 633500, 4331700; 633800, 4331500; 633800, 4332200; 635000, 4332200; 635000, 4329900; 633800, 4329900; 633600, 4330100; 633300, 4330100; 633300, 4330300; 632700, 4330100; 632400, 4329900; returning to 632400, 4329000.

(12) Unit 8: Sacramento, California. [Reserved]

(13) Unit 9: Amador and Sacramento Counties, California. From USGS 1:24,000 quadrangle maps Carbondale, Clay, Goose Creek and Sloughhouse, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 668900, 4255600; 669300, 4255400; 670600, 4255800; 671500, 4256400; 671700, 4256000; 671900, 4256000; 672200, 4255600; 672400, 4255600; 672700, 4256400; 673200, 4256400; 672800, 4255100; 672800, 4254800; 673100, 4254900; 673800, 4254900; 674000, 4254600; 674000, 4254400; 674500, 4254000; 674500, 4253700; 674100, 4253500; 674100, 4252900; 674300, 4252300; 674500, 4251900; 674500, 4251600; 673400, 4251500; 673300, 4251400; 673300, 4251200; 673900, 4251000; 674000, 4250500; 674300, 4250000; 674300, 4249800; 674200, 4249700; 673900, 4249700; 673600, 4249900; 672500, 4249900; 671900, 4250200; 671300, 4250200; 671100, 4250500; 671000, 4250500; 671000, 4249800; 670700, 4249800; 670700, 4249500; 670800, 4249300; 670800, 4249000; 670900, 4248930; 670900, 4248500; 670500, 4248300; 670500, 4248125; 670400, 4248100; 670400, 4248000; 670100, 4248000; 670100, 4247800; 670500, 4247500; 671100, 4247500; 671600, 4247700; 671800, 4247600; 671900, 4247300; 671900, 4247100; 671500, 4246800; 671600, 4246600; 671800, 4246000; 671250, 4245360; 670800, 4245000; 670000, 4244200; 670000, 4244100; 670500, 4243800; 670200, 4243400; 670200, 4243300; 670300, 4243200; 670400, 4243100; 670600, 4242600; 671200, 4242900; 671600, 4243000; 671600, 4242700; 670700, 4242100; 669800, 4242100; 669300, 4241900; 668900, 4241900; 668700, 4241800; 668500, 4241600; 668400, 4241600; 668200, 4241700; 668000, 4242000; 667900, 4242000; 667400, 4241600; 667400, 4241800; 666400, 4241700; 665400, 4241700; 665400, 4242700; 665000, 4242700; 665000, 4242300; 664800, 4242300; 664800, 4242200; 664700, 4242200; 664600, 4242100; 664500, 4242100; 664500, 4241300; 664000, 4241300; 664000, 4241000; 663500, 4241000; 663500, 4240900; 663400, 4240800; 663300, 4240800; 663300, 4240600; 663100, 4240600; 663100, 4240900; 662800, 4240900; 662800, 4240500; 662700, 4240400; 662700, 4240000; 662500, 4240000; 662500, 4239600; 662100, 4239600; 662100, 4239400; 662000, 4239300; 661700, 4239300; 661700, 4239200; 661400, 4239000; 661400, 4239900; 661500, 4239900; 661500, 4241600; 661500, 4241900; 661700, 4242000; 662200, 4242000; 662200, 4241600; 662900, 4241600; 662800, 4242300; 662500, 4242300; 662600, 4243000; 662900, 4243100; 663400, 4243100; 663400, 4243800; 663000, 4243800; 663000, 4243900; 662500, 4243900; 662700, 4244700; 662850, 4244800; 663000, 4244900; 663100, 4245300; 663800, 4245300; 663900, 4245500; 664400, 4245600; 664500, 4245200; 664600, 4245200; 664900, 4245275; 665000, 4245300; 664900, 4245700; 664900, 4246500; 664400, 4246500; 663900, 4246700; 662500, 4246300; 662230, 4246300; 662100, 4246400; 661700, 4246400; 662000, 4247300; 661800, 4247500; 660900, 4247500; 660850, 4247100; 659700, 4247100; 659500, 4247300; 659500, 4248300; 660000, 4248300; 659900, 4249600; 660000, 4249900; 659900, 4250200; 659400, 4249700; 659400, 4249500; 659300, 4249200; 659100, 4249000; 659100, 4248900; 659200, 4248800; 659100, 4248700; 658900, 4248700; 658800, 4248600; 658600, 4248600; 658500, 4248800; 658400, 4248900; 658200, 4249000; 658200, 4248900; 658300, 4248700; 658500, 4248500; 658500, 4248400; 658400, 4248300; 658400, 4247900; 658100, 4247900; 658000, 4248500; 656700, 4248500; 656300, 4248900; 655900, 4248200; 656100, 4248100; 656100, 4248000; 656000, 4247800; 655200, 4247800; 655200, 4247200; 654700, 4247200; 654700, 4248750; 654700, 4249000; 655100, 4249000; 655800, 4249000; 656300, 4249700; 656600, 4249500; 657200, 4250200; 656700, 4251100; 657700, 4251100; 657700, 4251500; 656700, 4251400; 656700, 4252100; 656500, 4252300; 656500, 4252600; 657000, 4253700; 657400, 4254600; 657800, 4254300; 657800, 4254200; 658900, 4253500; 659000, 4253500; 659300, 4253300; 660000, 4254500; 660100, 4254800; 660200, 4254900; 660300, 4255200; 660600, 4255300; 660700, 4255400; 660800, 4256000; 660600, 4256200; 660300, 4256100; 660000, 4256200; 659800, 4256300; 659850, 4256450; 659900, 4256600; 660200, 4256500; 660300, 4256800; 660600, 4256700; 660800, 4256800; 660600, 4257000; 660700, 4257500; 660600, 4257600; 660600, 4258000; 659900, 4258000; 659900, 4258100; 659700, 4258300; 659700, 4258500; 659600, 4258800; 659700, 4259100; 660100, 4259300; 660300, 4259100; 660500, 4259100; 660600, 4259300; 660800, 4259300; 661300, 4259800; 661600, 4259700; 661600, 4259300; 661800, 4259300; 661800, 4259100; 662200, 4259100; 662200, 4259600; 662400, 4259600; 662700, 4259100; 662900, 4258900; 662800, 4258700; 662700, 4258500; 662000, 4258100; 661500, 4257700; 661200, 4257100; 661600, 4256700; 662000, 4256700; 661900, 4256400; 661800, 4256100; 661800, 4255800; 661600, 4255600; 662100, 4255400; 662300, 4255800; 663100, 4255800; 664100, 4256600; 664500, 4257000; 664800, 4257500; 664800, 4257800; 665100, 4258100; 665100, 4258500; 665400, 4258700; 665900, 4258800; 666500, 4258800; 666700, 4258600; 666600,

4258200; 666300, 4258000; 666100, 4257400; 666000, 4257300; 666000, 4257000; 666400, 4257000; 666500, 4257600; 666800, 4257600; 666900, 4257400; 666900, 4257100; 666700, 4256900; 666800, 4256700; 666700, 4256300; 666600, 4256100; 667200, 4256100; 667400, 4256300; 667600, 4256300; 667800, 4256100; 667900, 4256300; 668100, 4256300; 668400, 4255900; returning to 668900, 4255600.

(14) Unit 10: Yolo County, California. From USGS 1:24,000 quadrangle maps Davis and Saxon, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 615400, 4260700; 614500, 4260700; 614500, 4261500; 614200, 4261500; 614200, 4261800; 614000, 4261800; 614000, 4262300; 615400, 4262300; returning to 615400, 4260700.

(15) Unit 11: Solano County, California. [Reserved]

(16) Unit 12: Solano County, California. [Reserved]

(17) Unit 13: Stanislaus County, California. From USGS 1:24,000 quadrangle maps Knights Ferry, Oakdale, Paulsell and Waterford California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 698400, 4172400; 698100, 4172800; 698200, 4173000; 697400, 4174300; 697300, 4174300; 697300, 4174500; 697800, 4174500; 697800, 4176300; 697700, 4176300; 697700, 4179300; 696800, 4179300; 696600, 4180000; 696600, 4180200; 697100, 4179900; 697700, 4180200; 697700, 4180400; 697600, 4180400; 697600, 4182200; 698700, 4182200; 699000, 4182600; 700300, 4182600; 700300, 4183400; 699400, 4183400; 699400, 4184100; 700800, 4185100; 704100, 4186300; 705300, 4187700; 705700, 4187700; 706500, 4187700; 706200, 4186800; 705600, 4185900; 706800, 4184600; 705500, 4183800; 705000, 4183100; 704800, 4181800; 701800, 4181800; 701800, 4181500; 701500, 4181100; 702000, 4179500; 703200, 4179500; 703000, 4178800; 702900, 4178800; 702600, 4178900; 702400, 4178900; 702400, 4178500; 702800, 4178300; 702900, 4178300; 703100, 4177800; 703100, 4177500; 703000, 4177300; 702700, 4177500; 702600, 4177500; 702500, 4177400; 702700, 4177200; 702700, 4177000; 702600, 4177100; 702400, 4177100; 702400, 4177000; 702400, 4176800; 702300, 4176800; 702300, 4177100; 702200, 4177200; 702000, 4177100; 702100, 4176900; 702000, 4176800; 701800, 4176800; 701600, 4176700; 701600, 4176500; 701600, 4176200; 701700, 4175900; 701800, 4175800; 702000, 4175800; 702000, 4175100; 701600, 4175100; 701600, 4174200; 701900, 4173700; 701800, 4173600; 701700, 4173500; 701700, 4173300; 701700, 4173200; 701600, 4173200; 701500, 4173100; 701500, 4173000; 701600, 4173000; 701600, 4172800; 701500, 4172600; 701300, 4172500; 701100, 4172600; 700700, 4172600; 700600, 4172600; 700500, 4172700; 700500, 4172900; 700400, 4172900; 700400, 4172800; 700100, 4172700; 699600, 4172700; 699500, 4172800; 699300, 4172800; 699100, 4172500; 698800, 4172500; 698700, 4172600; returning to 698400, 4172400; and excluding land bound by 700700, 4176200; 699400, 4176200; 699300, 4176200; 699300, 4177800; 701000, 4177800; 701000, 4177000; 700500, 4177000; 700500, 4176600; 700700, 4176400; returning to 700700, 4176200; and excluding land bound by 699400, 4179400; 698100, 4179400; 698400, 4179500; 698400, 4180200; 699800, 4180200; 699800, 4180000; 699600, 4179800; returning to 699400, 4179400.

(ii) Start at 702000, 4169700; 701000, 4169700; 700700, 4169700; 700700, 4170500; 700500, 4170500; 700500, 4170900; 700300, 4170900; 700300, 4171100; 700300, 4171800; 701200, 4171800; 702000, 4171800; 702000, 4169800; returning to 702000, 4169700.

(18) Unit 14: Alameda County, California. From USGS 1:24,000 quadrangle maps Milpitas and Niles, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 591200, 4148600; 590700, 4148600; 590700, 4148700; 590300, 4149200; 589400, 4150300; 589500, 4150200; 589900, 4150100; 590100, 4150400; 590900, 4150000; 591500, 4150800; 591600, 4150700; 591800, 4150700; 592000, 4150900; 592300, 4150600; 592300, 4150400; 592200, 4150000; 592100, 4149600; 592000, 4149500; 591600, 4149500; 591600, 4148800; returning to 591200, 4148600.

(19) Unit 15: Madera, Mariposa and Merced, California. From USGS 1:24,000 quadrangle maps Haystack Mtn., Illinois Hill, Indian Gulch, Le Grand, Merced, Merced Falls, Owens Reservoir, Plainsburg, Planada, Raynor Creek, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 736600, 4134200; 733900, 4134200; 733900, 4134800; 733800, 4134900; 733800, 4135000; 733000, 4135000; 733000, 4135800; 732500, 4135800; 730300, 4135700; 730200, 4135600; 730100, 4135600; 729900, 4135700; 729900, 4136500; 729900, 4136700; 730000, 4136700; 730100, 4136600; 730200, 4136600; 730300, 4136600; 730400, 4136700; 730500, 4136800; 730600, 4136900; 730600, 4137000; 730600, 4137200; 730600, 4137300; 730500, 4137400; 730400, 4137500; 730300, 4137500; 729900, 4137700; 729800, 4137700; 729700, 4137600; 729400, 4137600; 729300, 4137800; 729300, 4138400; 729200, 4138500; 729000, 4138400; 728800, 4138700; 728400, 4138800; 728200, 4138800; 727900, 4138600; 727700, 4138500; 727600, 4138400; 727400, 4138300; 727400, 4137800; 727300, 4137800; 727300, 4137600; 727400, 4137600; 727400, 4137500; 727300, 4137500; 727300, 4137400; 727400, 4137400; 727400, 4137200; 726500, 4137200; 726500, 4136500; 726400, 4136400; 725800, 4136400; 725800, 4137200; 725000, 4137200; 724900, 4138800; 725500, 4138800; 725500, 4138700; 725800, 4138700; 725800, 4138800; 725900, 4138800; 725900, 4139500; 726500, 4139500; 726500, 4139600; 725900, 4139600; 725800, 4139600; 725800, 4140200; 725900, 4140200; 725900, 4140900; 725400, 4140900; 725400, 4140800; 725100, 4140800; 725100, 4141000; 724900, 4141000; 724900, 4141200; 724100, 4141200; 724100, 4141600; 723400, 4141600; 723400, 4141100; 723200, 4141100; 723200, 4140600; 723400, 4140500; 723400, 4139500; 724000, 4139500; 724000, 4139400; 723900, 4138900; 723900, 4138700; 723500, 4138200; 723400, 4138200; 723400, 4138300; 723000, 4138300; 723000, 4138700; 723000, 4138900; 723100, 4139100; 723200, 4139400; 723300, 4139500; 722100, 4139500; 722000, 4140500; 721900, 4141100; 721900, 4141900; 721900, 4143400; 720800, 4143400; 720900, 4141800; 721000, 4141500; 721000, 4141200; 721100, 4141100; 721000, 4141000; 717800, 4140900; 717700, 4142500; 714500, 4142400; 714500, 4144900; 715500, 4144900; 715500, 4145000; 715800, 4145000; 715900, 4145000; 716000, 4145000; 716100, 4145100; 716100, 4145200; 716000, 4145200; 715900, 4145300; 715900, 4145400; 716000, 4145500; 716000, 4145600; 716100, 4145700; 717000, 4145700; 717700, 4145300; 717800, 4145300; 717800, 4145200; 717800, 4145100; 717600, 4144900; 717600, 4144800; 717600, 4144700; 717800, 4144500; 717900, 4144600; 718200, 4144600; 718400, 4144500; 718700, 4144500; 718700, 4144800; 718600, 4145000; 718700, 4145100; 718700, 4145600; 718600, 4145600; 718600, 4145700; 718700, 4145800; 718600, 4145900; 718500, 4146000; 718500, 4146100; 718600, 4146200; 718600, 4146500; 718300, 4146500; 718200, 4146600; 718200, 4146800; 718300, 4146800; 718500,

4146900; 718600, 4147000; 718600, 4147100; 718400, 4147200; 718500, 4147300; 718500, 4147600; 718700, 4147600; 718700, 4147400; 719000, 4147500; 719100, 4147700; 719300, 4147600; 719600, 4147900; 719700, 4148000; 719700, 4148100; 719800, 4148200; 720000, 4148200; 720600, 4148200; 720600, 4148300; 720700, 4148400; 720800, 4148400; 720900, 4148500; 722700, 4148500; 722700, 4148600; 722900, 4148600; 723200, 4148700; 723400, 4148700; 723200, 4148600; 723100, 4148500; 723000, 4148400; 723200, 4148200; 723400, 4148200; 723500, 4148300; 723600, 4148400; 723600, 4148500; 723800, 4148500; 723800, 4148400; 723900, 4148400; 723900, 4148500; 724000, 4148700; 724200, 4148500; 724200, 4148900; 724300, 4149000; 724300, 4149100; 724500, 4149000; 724500, 4149300; 724700, 4149400; 724900, 4149600; 725000, 4149700; 725000, 4150000; 724900, 4150100; 725000, 4150200; 725200, 4150200; 725300, 4150400; 725400, 4150500; 725400, 4150600; 725100, 4150900; 724700, 4150900; 724700, 4153400; 725000, 4153500; 725400, 4153900; 725600, 4154100; 725800, 4154200; 726000, 4154300; 726200, 4154000; 726300, 4153800; 726300, 4153700; 727800, 4153700; 727800, 4153400; 727900, 4153400; 727900, 4153500; 728400, 4153600; 728700, 4153700; 729000, 4153700; 729000, 4153600; 729100, 4153500; 729300, 4153400; 729400, 4153400; 729400, 4153300; 729300, 4153200; 729500, 4153100; 729800, 4153100; 729900, 4153200; 729900, 4154200; 730000, 4154200; 730100, 4154300; 730600, 4154300; 730700, 4154400; 731000, 4154600; 731200, 4154700; 731500, 4154700; 731800, 4154900; 732200, 4154900; 732600, 4154800; 733200, 4154500; 733400, 4154500; 733700, 4154300; 734700, 4154300; 734900, 4154600; 735100, 4154800; 735100, 4154900; 735500, 4155300; 735600, 4155300; 735800, 4155500; 736100, 4155900; 737100, 4155400; 737800, 4155000; 738200, 4154200; 738300, 4153300; 739000, 4152800; 739100, 4152200; 740200, 4151800; 740800, 4151500; 740800, 4150300; 741100, 4149900; 741700, 4149400; 742100, 4148500; 742100, 4147100; 743400, 4146100; 744000, 4145600; 744400, 4144600; 744300, 4143900; 743900, 4142700; 744000, 4142000; 744200, 4141700; 745500, 4140300; 745500, 4139600; 745500, 4139500; 745400, 4139400; 745300, 4139300; 745200, 4139200; 744900, 4139000; 744800, 4138800; 744900, 4138500; 744700, 4137700; 744400, 4137500; 744200, 4137600; 744000, 4137500; 743800, 4137500; 743400, 4137400; 743100, 4137300; 743100, 4137200; 742900, 4137000; 742700, 4137000; 742600, 4136900; 742600, 4136600; 742400, 4136500; 742000, 4136400; 741800, 4136500; 741400, 4136400; 741100, 4136400; 741100, 4136700; 740200, 4136700; 739900, 4136400; 739400, 4136400; 739400, 4136700; 737600, 4136700; 737600, 4135900; 737300, 4135900; 737300, 4135300; 737400, 4135200; 737200, 4135000; 736800, 4134800; 736800, 4134600; 736800, 4134400; returning to 736600, 4134200; excluding land bound by 727200, 4138700; 726600, 4139500; 726600, 4139600; 726800, 4139600; 727000, 4139700; 727200, 4140000; 727300, 4140500; 727200, 4140700; 727400, 4140700; 727500, 4140800; 727400, 4141100; 727800, 4141100; 727800, 4140700; 728300, 4140700; 728300, 4139600; 727900, 4139300; 727900, 4139000; 727800, 4138800; 727400, 4138800; returning to 727200, 4138700; and excluding land bound by 726700, 4139700; 726400, 4140000; 726600, 4140000; 726800, 4140200; 726900, 4140100; 726900, 4140000; 726800, 4139800; returning to 726700, 4139700; and excluding land bound by 726200, 4138000; 725800, 4138000; 725800, 4138200; 725700, 4138200; 725700, 4138500; 725800, 4138500; 725800, 4138400; 726200, 4138400; returning to 726200, 4138000; and excluding land bound by 727000, 4137600; 726800, 4137600; 726800, 4137800; 726500, 4137800; 726500, 4138000; 727300, 4138100; 727300, 4138000; 727200, 4137900; 727000, 4137800; returning to 727000, 4137600.

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(20) Subunit 16A: Merced County, California. [Reserved]

(21) Subunit 16B: Merced County, California. [Reserved]

(22) Subunit 16C: Gustine, San Luis Ranch, Stevinson, California. [Reserved]

(23) Subunit 16D: Merced County, California. [Reserved]

(24) Subunit 16E: Merced County, California. [Reserved]

(25) Subunit 16F: Merced County, California. [Reserved]

(26) Subunit 16G: Merced County, California. [Reserved]

(27) Unit 17: Fresno County, California. From USGS 1:24,000 quadrangle maps Academy and Millerton Lake East, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 267300, 4097300; 266900, 4097300; 267000, 4097600; 267800, 4098300; 268100, 4098700; 268100, 4098900; 268000, 4099100; 267400, 4099800; 267400, 4100300; 267700, 4100800; 268100, 4101400; 268600, 4101400; 269100, 4101100; 269600, 4101100; 269800, 4101300; 269900, 4101500; 269600, 4102200; 269200, 4102400; 268600, 4102800; 268700, 4103800; 269100, 4103800; 269600, 4103100; 270200, 4103500; 270300, 4103500; 270700, 4102500; 270500, 4102400; 270300, 4102200; 270300, 4101900; 270500, 4101500; 270600, 4101100; 270500, 4101000; 270200, 4100700; 269400, 4100500; 268300, 4100500; 268100, 4100300; 268100, 4100100; 268400, 4099800; 268600, 4099500; 268700, 4099200; 268700, 4098900; 268600, 4098300; 268500, 4098100; 268400, 4097800; 268100, 4097600; 267800, 4097400; returning to 267300, 4097300.

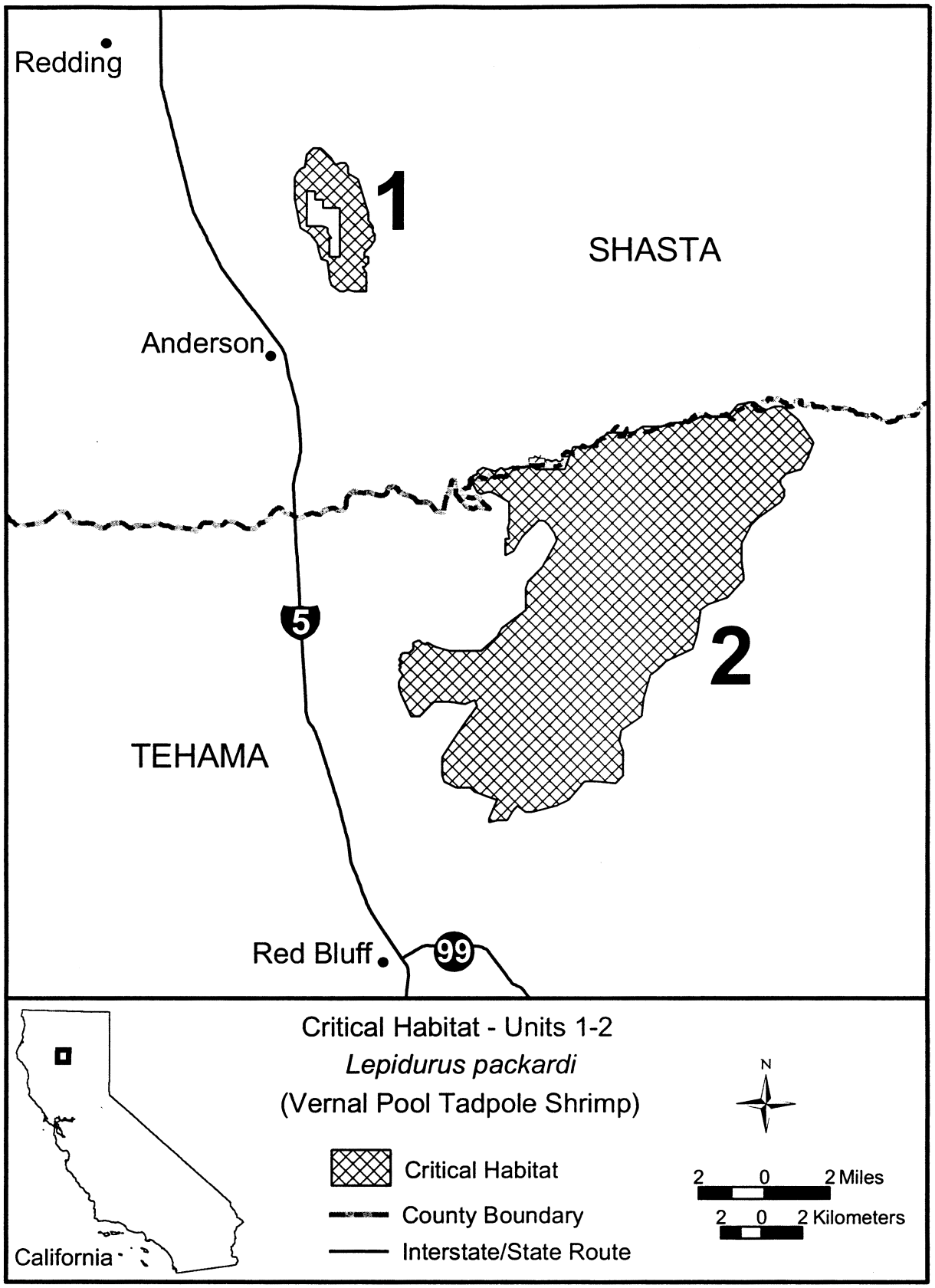
(28) Subunit 18A: Kings and Tulare County, California. From USGS 1:24,000 quadrangle maps Burris Park, Monson, Remnoy and Traver, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 287000, 4034600; 287000, 4035100; 288500, 4035100; 288500, 4035600; 287700, 4035700; 287700, 4036700; 289300, 4036700; 289400, 4037400; 291100, 4037400; 291100, 4037200; 291800, 4037200; 291900, 4036800; 291900, 4035600; 292700, 4035800; 292700, 4036500; 293500, 4036400; 293500, 4036000; 294300, 4036000; 294300, 4035600; 293500, 4035600; 293400, 4034000; 292600, 4034000; 292600, 4035400; 291900, 4035400; 291700, 4035400; 291700, 4035600; 290500, 4035700; 290500, 4036100; 289800, 4036100; 289800, 4035700; 289400, 4035700; 289400, 4034500; 288500, 4034500; 288500, 4034200; 287700, 4034200; 287700, 4034500; returning to 287000, 4034600.

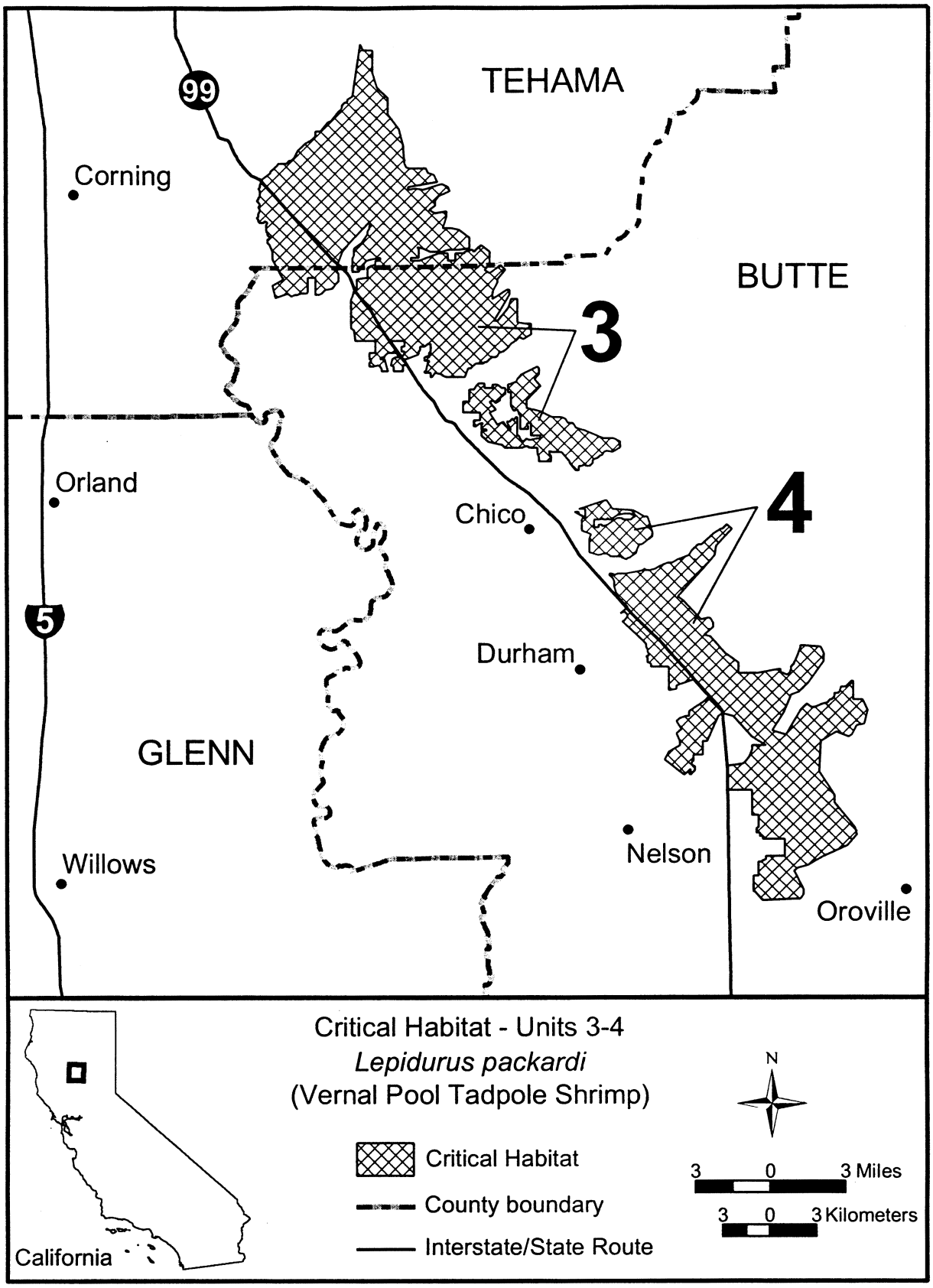
(29) Subunit 18B: Tulare County, California. From USGS 1:24,000 quadrangle map Monson, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 297500, 4035500; 296700, 4035500; 296700, 4036300; 297500, 4036300; returning to 297500, 4035500.

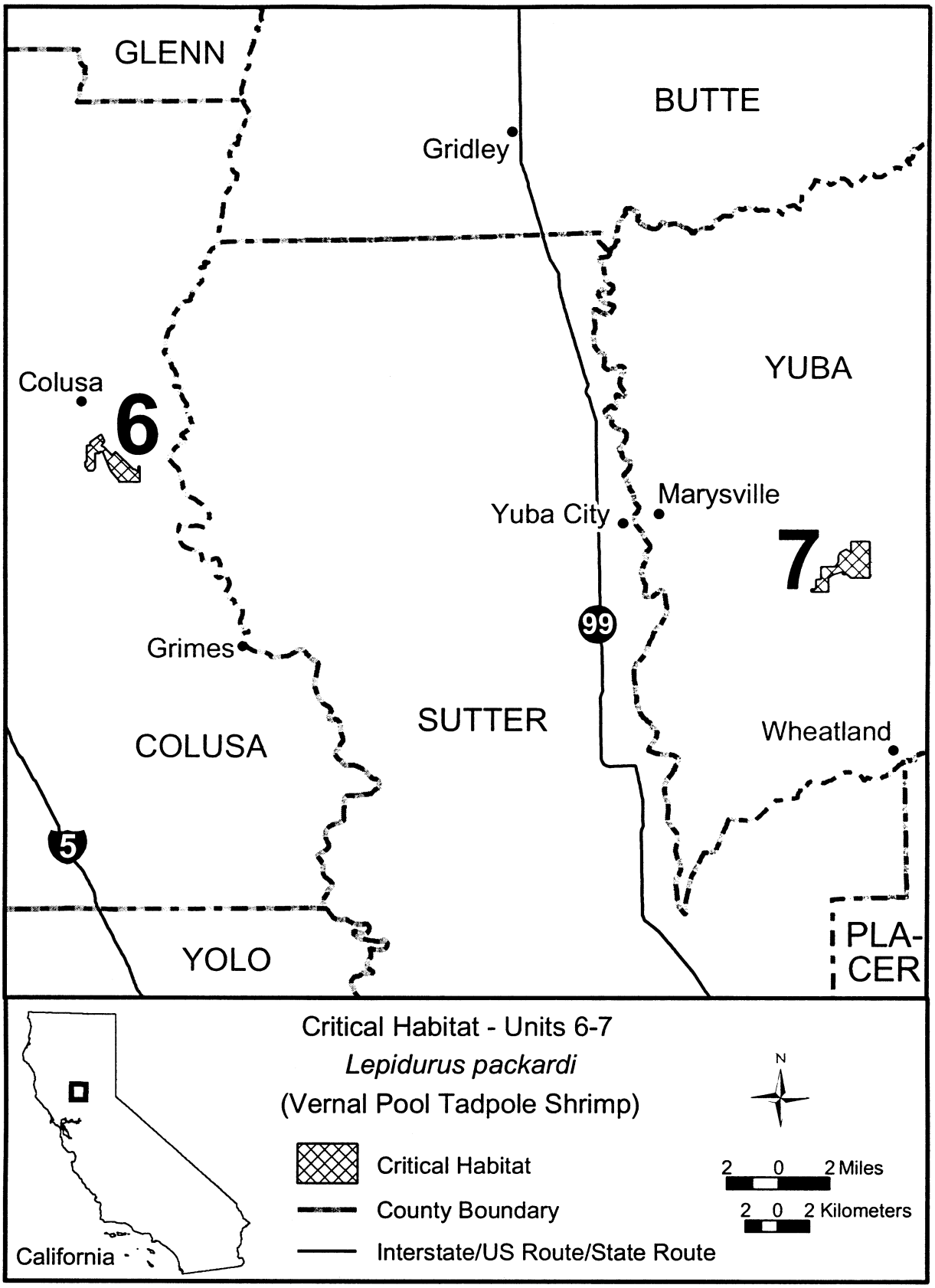
(30) Subunit 18C: Tulare County, California. From USGS 1:24,000 quadrangle map Ivanhoe , California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 299200, 4038600; 298400, 4038600; 298400, 4039500; 298500, 4039800; 298900, 4039900; 298900, 4041000; 299700, 4041000; 299300, 4041500; 300900, 4041500; 300900, 4041400; 300400, 4041400; 300400, 4040100; 300300, 4040100; 300300, 4039400; 299200, 4039400; returning to 299200, 4038600.

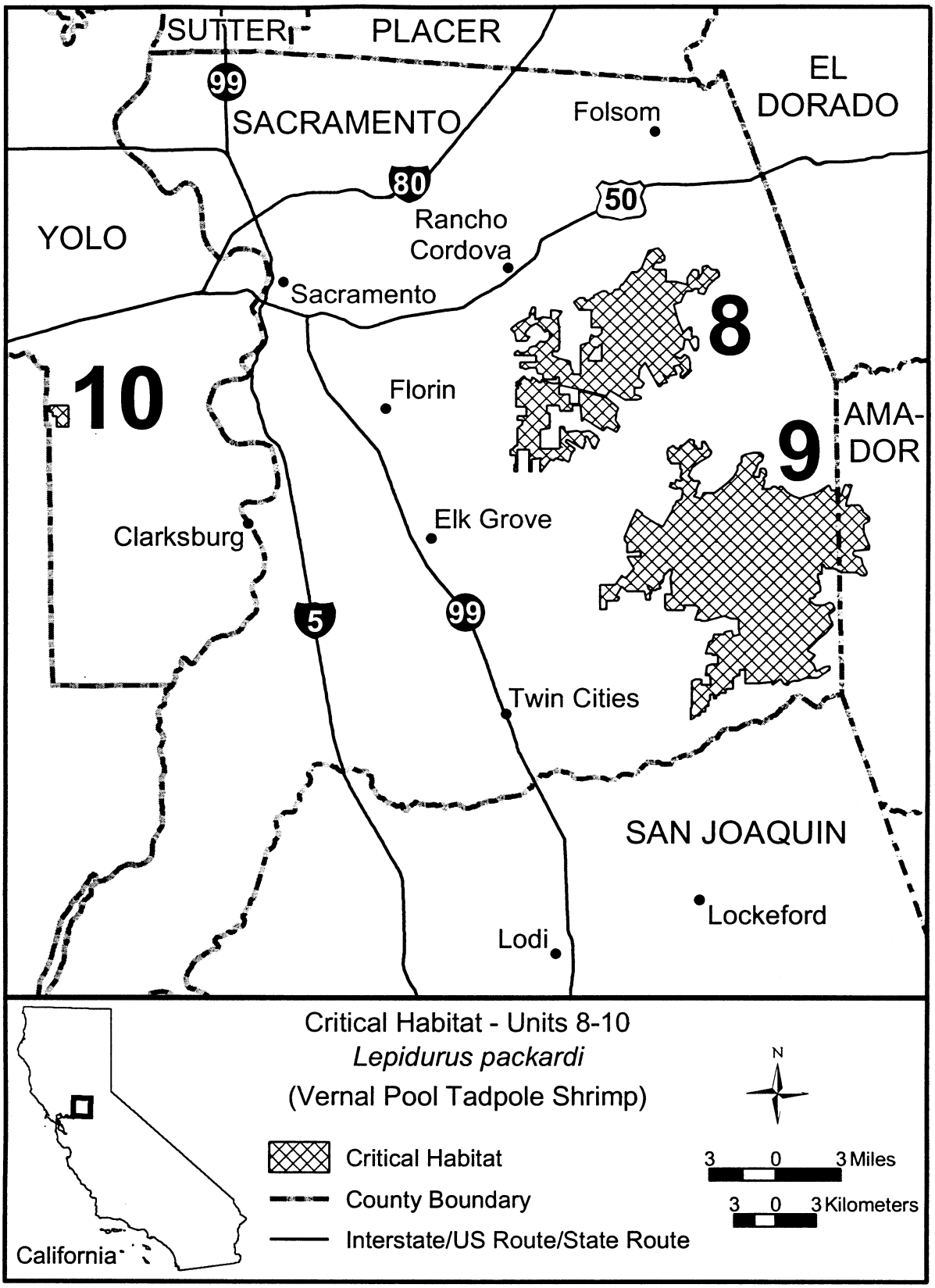
(31) Maps follow of critical habitat units 1 and 2, 3 and 4, 6 and 7, 8 through 10, 13, 14, 15, 16, 17, and 18 (respectively) for vernal pool tadpole shrimp.

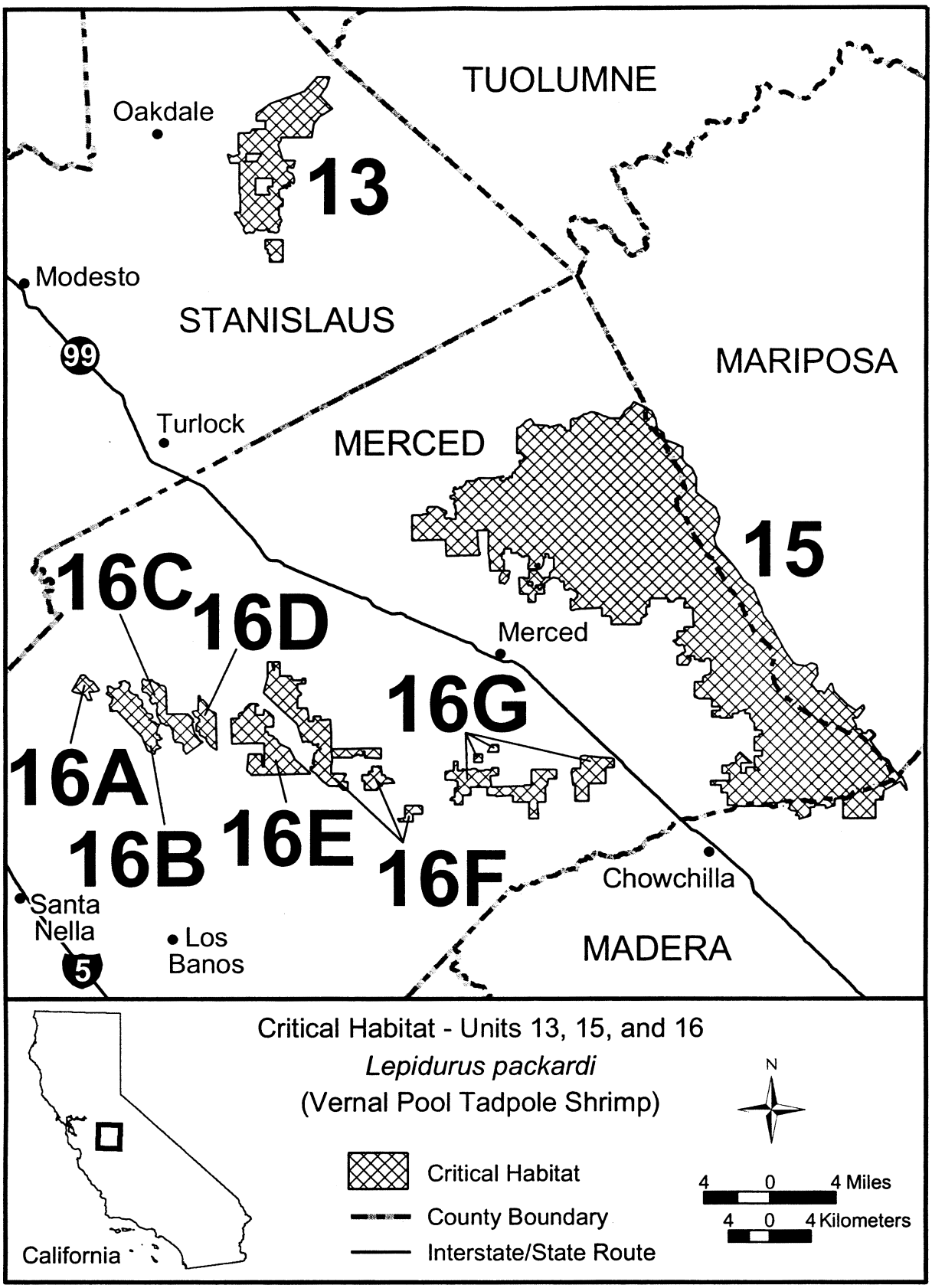
BILLING CODE 4310–55–P

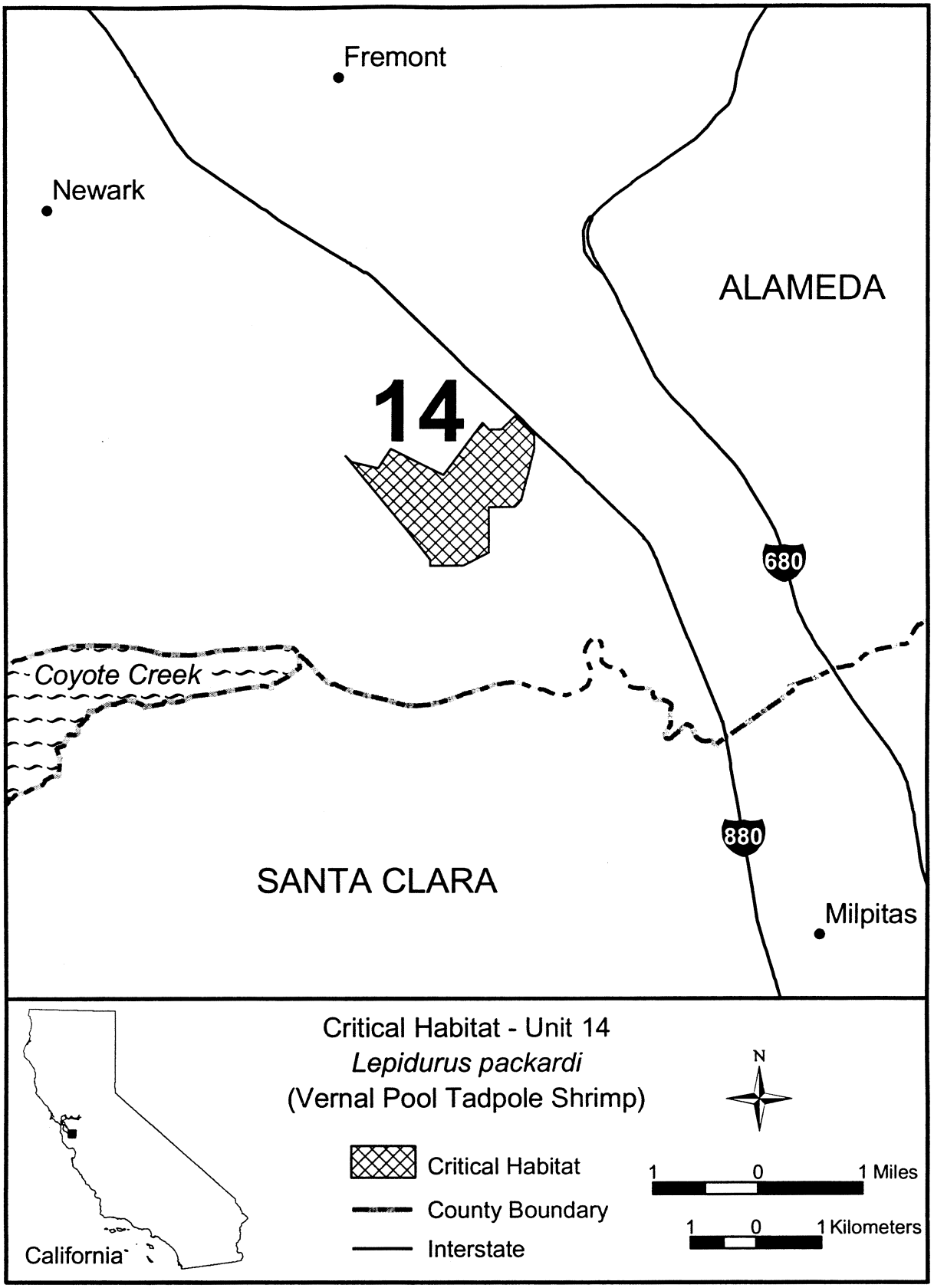

Redding
1
SHASTA
Anderson
5
2
TEHAMA
Red Bluff
99
Critical Habitat - Units 1-2
Lepidurus packardi
(Vernal Pool Tadpole Shrimp)
N
Critical Habitat
County Boundary
Interstate/State Route
2 0 2 Miles
2 0 2 Kilometers
California

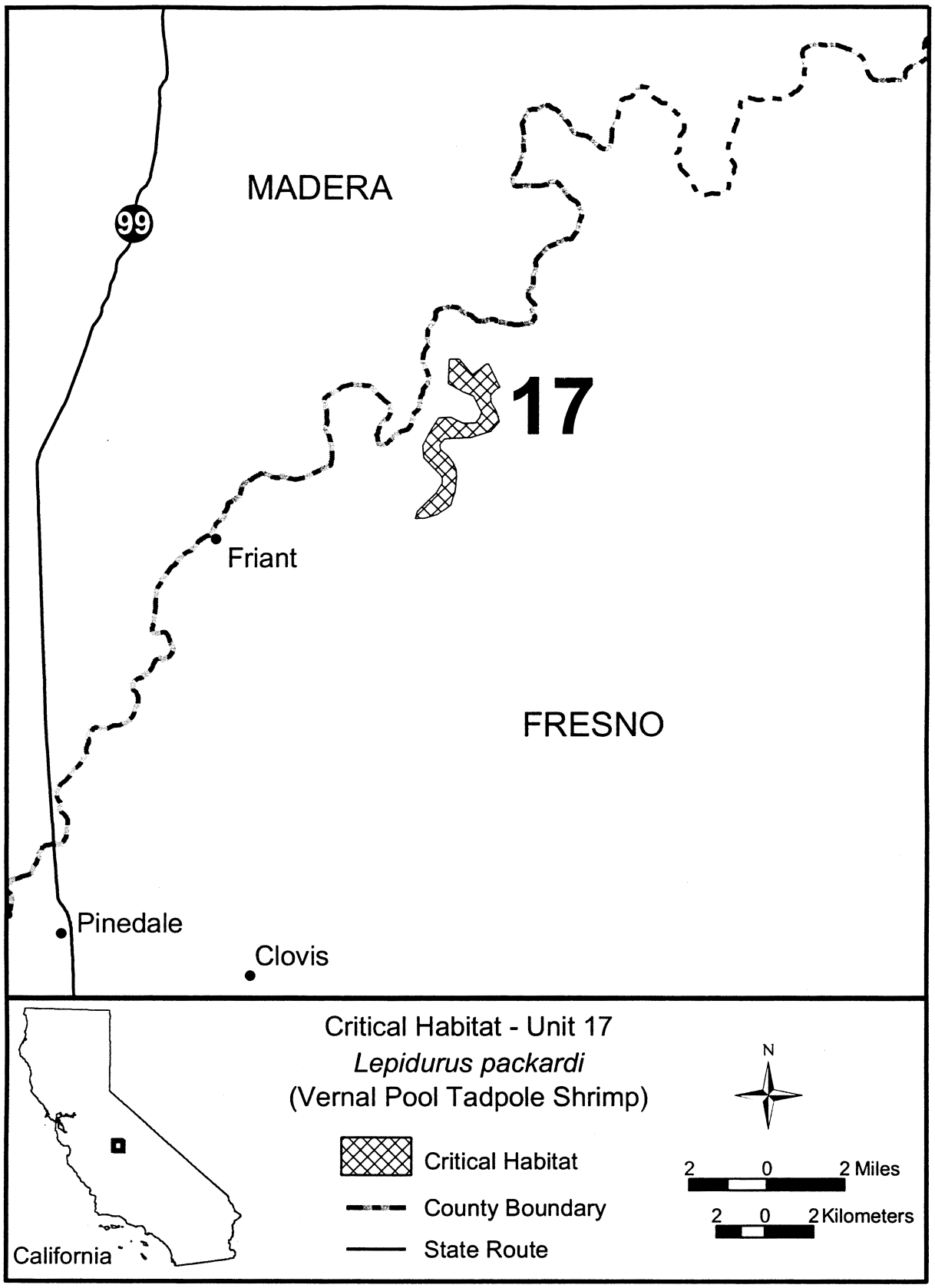

TEHAMA
BUTTE
GLENN
Corning
Orland
Chico
Durham
Nelson
Willows
Oroville
99
5
3
4
Critical Habitat - Units 3-4
Lepidurus packardi
(Vernal Pool Tadpole Shrimp)
Critical Habitat
County boundary
Interstate/State Route
N
3 0 3 Miles
3 0 3 Kilometers
California

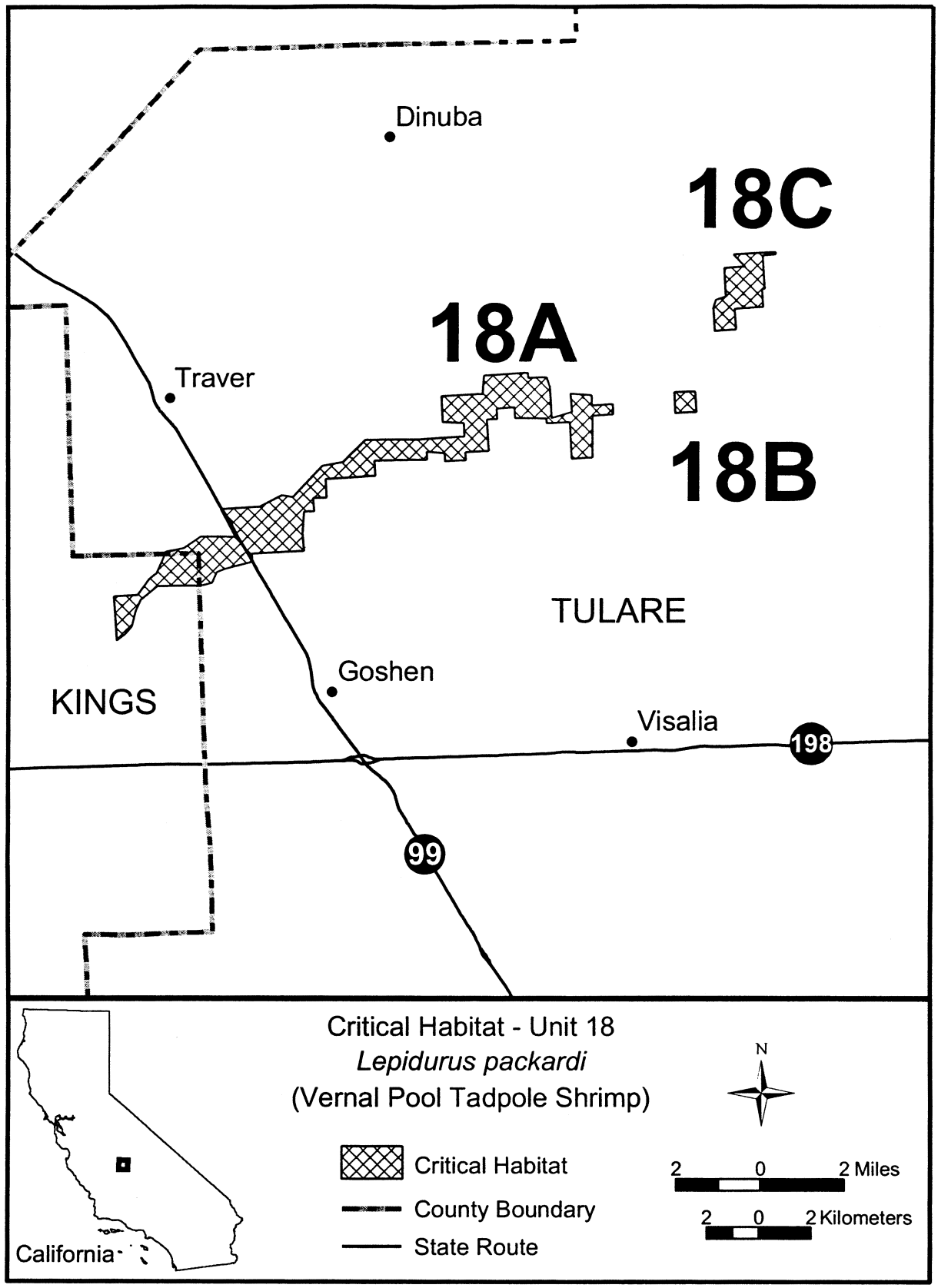

GLENN
BUTTE
Gridley
YUBA
Colusa
6
Marysville
Yuba City
7
99
Grimes
SUTTER
COLUSA
Wheatland
5
YOLO
PLA-
CER
Critical Habitat - Units 6-7
Lepidurus packardi
(Vernal Pool Tadpole Shrimp)
N
Critical Habitat
County Boundary
Interstate/US Route/State Route
2 0 2 Miles
2 0 2 Kilometers
California


SUTTER
PLACER
EL DORADO
SACRAMENTO
Folsom
YOLO
Rancho Cordova
Sacramento
8
10
Florin
9
AMA-DOR
Elk Grove
Clarksburg
Twin Cities
SAN JOAQUIN
Lockeford
Lodi
Critical Habitat - Units 8-10
Lepidurus packardi
(Vernal Pool Tadpole Shrimp)
Critical Habitat
County Boundary
Interstate/US Route/State Route
California
N
3 0 3 Miles
3 0 3 Kilometers


TUOLUMNE
Oakdale
13
Modesto
STANISLAUS
99
MARIPOSA
Turlock
MERCED
15
16C
16D
Merced
16G
16A
16B
16E
16F
Chowchilla
Santa Nella
Los Banos
5
MADERA
Critical Habitat - Units 13, 15, and 16
Lepidurus packardi
(Vernal Pool Tadpole Shrimp)
N
Critical Habitat
County Boundary
Interstate/State Route
4 0 4 Miles
4 0 4 Kilometers
California


Fremont
Newark
ALAMEDA
14
680
Coyote Creek
880
SANTA CLARA
Milpitas
Critical Habitat - Unit 14
Lepidurus packardi
(Vernal Pool Tadpole Shrimp)
N
Critical Habitat
County Boundary
Interstate
1 0 1 Miles
1 0 1 Kilometers
California


MADERA
99
17
Friant
FRESNO
Pinedale
Clovis
Critical Habitat - Unit 17
Lepidurus packardi
(Vernal Pool Tadpole Shrimp)
Critical Habitat
County Boundary
State Route
California
N
2 0 2 Miles
2 0 2 Kilometers



BILLING CODE 4310–55–C

■ 5. In § 17.96 add critical habitat for *Lasthenia conjugens* (Contra Costa goldfields), *Chamaesyce hooveri* (Hoover's spurge), *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam), *Neostapfia colusana* (Colusa grass), *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), *Orcuttia*

pilosa (hairy Orcutt grass), *Orcuttia tenuis* (slender Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), *Tuctoria greenei* (Greene's tuctoria), *Tuctoria mucronata* (Solano grass) and *Castilleja campestris* ssp. *succulenta* (fleshy owl's-clover) under paragraph (a) by adding entries for these species in alphabetical order by family under Asteraceae, Euphorbiaceae, Limnanthaceae, Poaceae, and Scrophulariaceae, (respectively) to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Asteraceae: *Lasthenia conjugens* (Contra Costa Goldfields).

(1) Critical habitat units are depicted for Mendocino, Napa, Contra Costa, Alameda, Santa Clara and Monterey Counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Lasthenia conjugens* are the habitat components that provide:

(i) Vernal pools, swales, moist flats, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Lasthenia conjugens* germination, growth and reproduction, including, but not limited to, vernal pools on clay soils from a variety of soils series, rock outcrop pools on basalt flows, and vernal pools in saline alkaline transition zones with tidal marsh habitats. All of these habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Lasthenia conjugens* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing manmade features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Unit 1: Mendocino County, California. From USGS 1:24,000 quadrangle map Point Arena, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 441000, 4310900; 440700, 4310900; 440500, 4311100; 440200, 4311100; 440000, 4311300; 439500, 4311000; 438900, 4311000; 438500, 4311400; 438500, 4311800; 438500, 4312500; 438500, 4312700; 438700, 4313000; 439000, 4313100; 439100, 4313500; 439300, 4313900; 439500, 4314000; 439800, 4313900; 440100, 4314000; 441000, 4314000; 441200, 4314200; 441300, 4314200; 441600, 4313700; 441700, 4313500; 442200, 4313400; 442500, 4313300; 442900, 4312800; 443200, 4312300; 443300, 4312000; 443300, 4311800; 442500, 4311800; 442400, 4312000; 442200, 4312000; 441300, 4311000; returning to 441000, 4310900.

(6) Unit 2: Napa County, California. From USGS 1:24,000 quadrangle maps Capell Valley, and Yountville, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 567300, 4248100; 567200, 4248300; 567000, 4249800; 566700, 4250000; 566400, 4250300; 566100, 4250400; 566000, 4250500; 565500, 4250500; 565100, 4250500; 565100, 4250800; 565400, 4251200; 566000, 4251800; 566600, 4251600; 566800, 4250900; 567300, 4250500; 568100, 4250500; 568300, 4250100; 568100, 4250000; 568400, 4249400; 568500, 4249300; 568300, 4249100; 567800, 4249000; 567500, 4248900; 567400, 4248600; returning to 567300, 4248100.

(7) Unit 3: Napa County, California. From USGS 1:24,000 quadrangle maps Cuttings Wharf, and Napa, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 564100, 4232800; 563800, 4233000; 563500, 4233200; 563500, 4233400; 563700, 4233500; 563800, 4233600; 563800, 4235100; 563800, 4235200; 563900, 4235300; 564200, 4235400; 564400, 4235300; 564500, 4235100; 564700, 4235000; 564700, 4234900; 564800, 4234700; 564700, 4234400; 564800, 4234200; 564700, 4234100; 564700, 4234000; 564800, 4233800; 565100, 4233600; 565100, 4233500; 565000, 4233300; 564800, 4233100; 564600, 4233200; returning to 564100, 423800.

(8) Unit 4: Solano County, California. [Reserved]

(9) Subunit 5A: Solano County, California. [Reserved]

(10) Subunit 5B: Solano County, California. [Reserved]

(11) Unit 6: Contra Costa County, California. From USGS 1:24,000 quadrangle maps Benicia, and Mare Island, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 568300, 4207000; 568200, 4207000; 568200, 4207100; 568100, 4207100; 568100, 4207000; 567900, 4207100; 567700, 4207200; 567600, 4207200; 567600, 4207100; 567500, 4207100; 567200, 4207100; 566600, 4207700; 566400, 4207500; 565900, 4207400; 565700, 4207700; 566400, 4208500; 566800, 4208500; 566800, 4208000; 566900, 4208000; 566900, 4207900; 566900, 4207800; 567100, 4207800; 567100, 4207900; 567000, 4207900; 567000, 4208000; 567100, 4208100; 567200, 4208200; 567500, 4207800; 567900, 4207400; 568200, 4207200; 568500, 4207100; 568400, 4207100; returning to 568300, 4207000.

(12) Unit 7: Contra Costa County, California. From USGS 1:24,000 quadrangle maps Byron Hot Springs, and Clifton Court Forebay, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 620500, 4185200; 620200, 4185300; 620200, 4185500; 620000, 4185900; 620000, 4186100; 620500, 4186100; 620700, 4186200; 620700, 4186600; 620200, 4186800; 620100, 4186900; 620000, 4186800; 619900, 4186600; 619900, 4186400; 619800, 4186300; 619600, 4186400; 619500, 4186300; 619600, 4186100; 619600, 4185700; 619400, 4185700; 618200, 4186600; 618100, 4187100; 617700, 4187400; 617800, 4187900; 618400, 4187900; 618400, 4187500; 619000, 4186900; 619400, 4186700; 619500, 4186900; 619500, 4189200; 619300, 4189400; 619400, 4189600; 619000, 4189700; 618700, 4189400; 618500, 4189000; 617800, 4188900; 617700, 4188800; 617400, 4189000; 617400, 4189200; 618200, 4189500; 618100, 4189800; 618200, 4190100; 618700, 4190300; 618700, 4190700; 619000, 4191000; 619300,

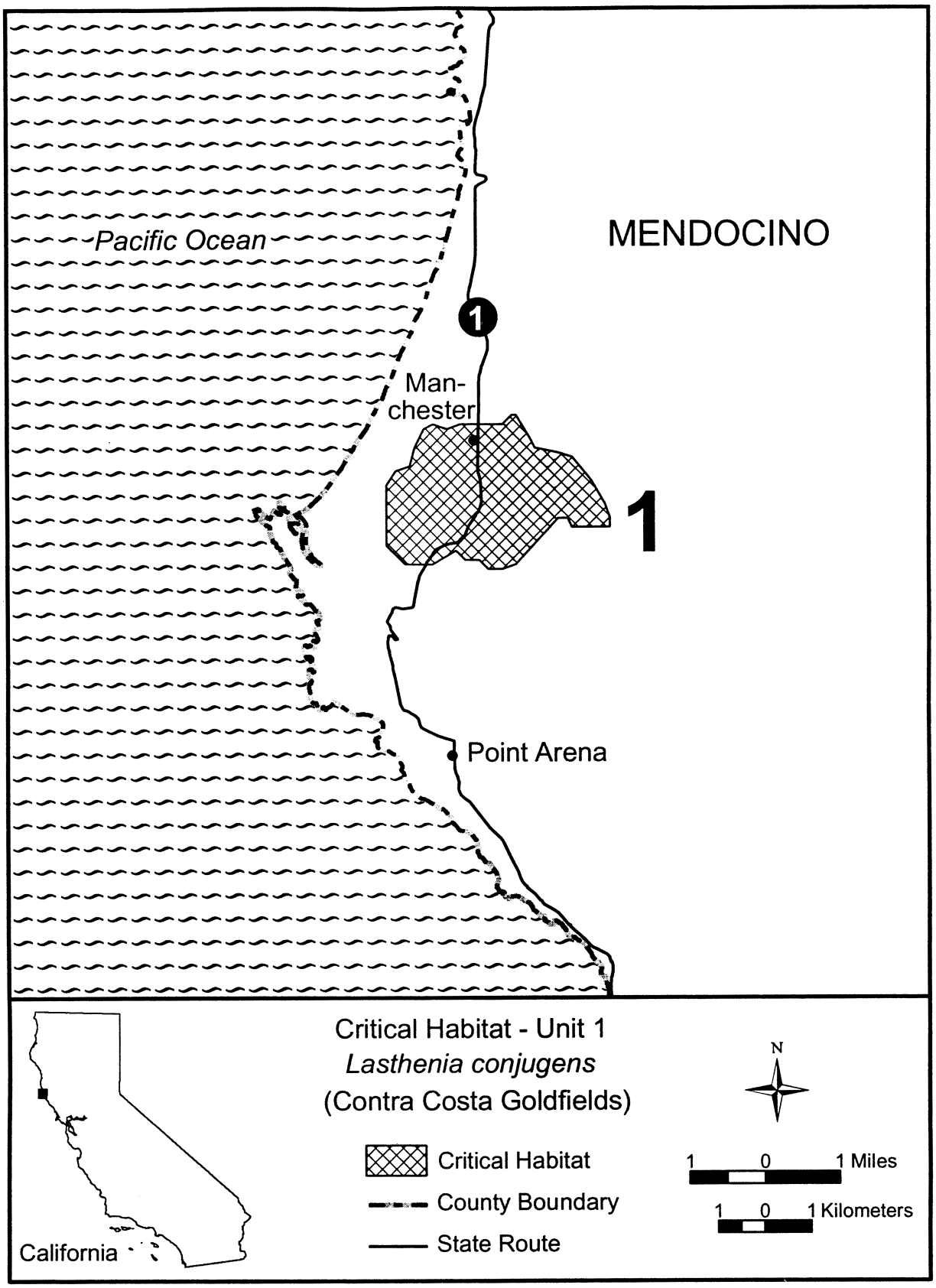
4191100; 619600, 4191100; 619800, 4190700; 619900, 4190700; 620100, 4190900; 620400, 4190900; 620500, 4191200; 621800, 4191200; 622200, 4190700; 622300, 4190400; 621200, 4190400; 621100, 4190400; 621100, 4188700; 620900, 4188700; 620600, 4188400; 620400, 4188600; 620400, 4188100; 620500, 4187900; 620600, 4187800; 620700, 4187700; 620900, 4187700; 621100, 4187500; 620500, 4187100; 620500, 4186900; 621300, 4187281; 621700, 4187100; 621800, 4186900; 621600, 4186200; 621600, 4186000; 621800, 4185900; 621900, 4186100; 621800, 4186500; 621900, 4186600; 622100, 4186600; 622200, 4186400; 622300, 4186200; 622500, 4186000; 622500, 4185800; 622000, 4185300; 621200, 4185300; 621200, 4185700; 621300, 4186000; 621100, 4186100; 620500, 4185900; 620600, 4185400; returning to 620500, 4185200.

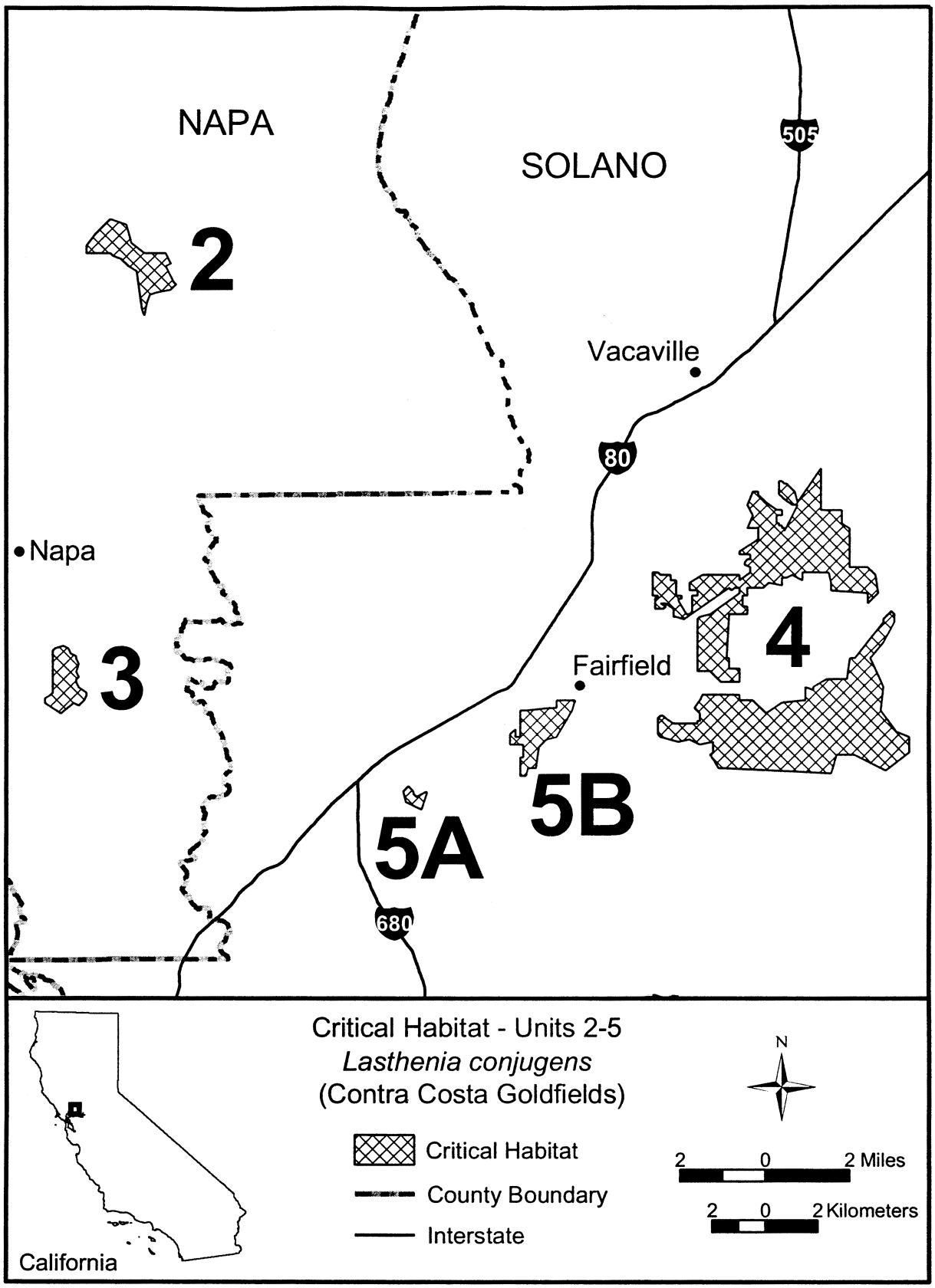
(13) Unit 8: Alameda County, California. From USGS 1:24,000 quadrangle maps Milipitas, and Niles, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 591200, 4148600; 590700, 4148600; 590700, 4148700; 590300, 4149200; 589400, 4150300; 589500, 4150200; 589900, 4150100; 590100, 4150400; 590900, 4150000; 591500, 4150800; 591600, 4150700; 591800, 4150700; 592000, 4150900; 592300, 4150600; 592300, 4150400; 592200, 4150000; 592100, 4149600; 592000, 4149500; 591600, 4149500; 591600, 4148800; returning to 591200, 4148600.

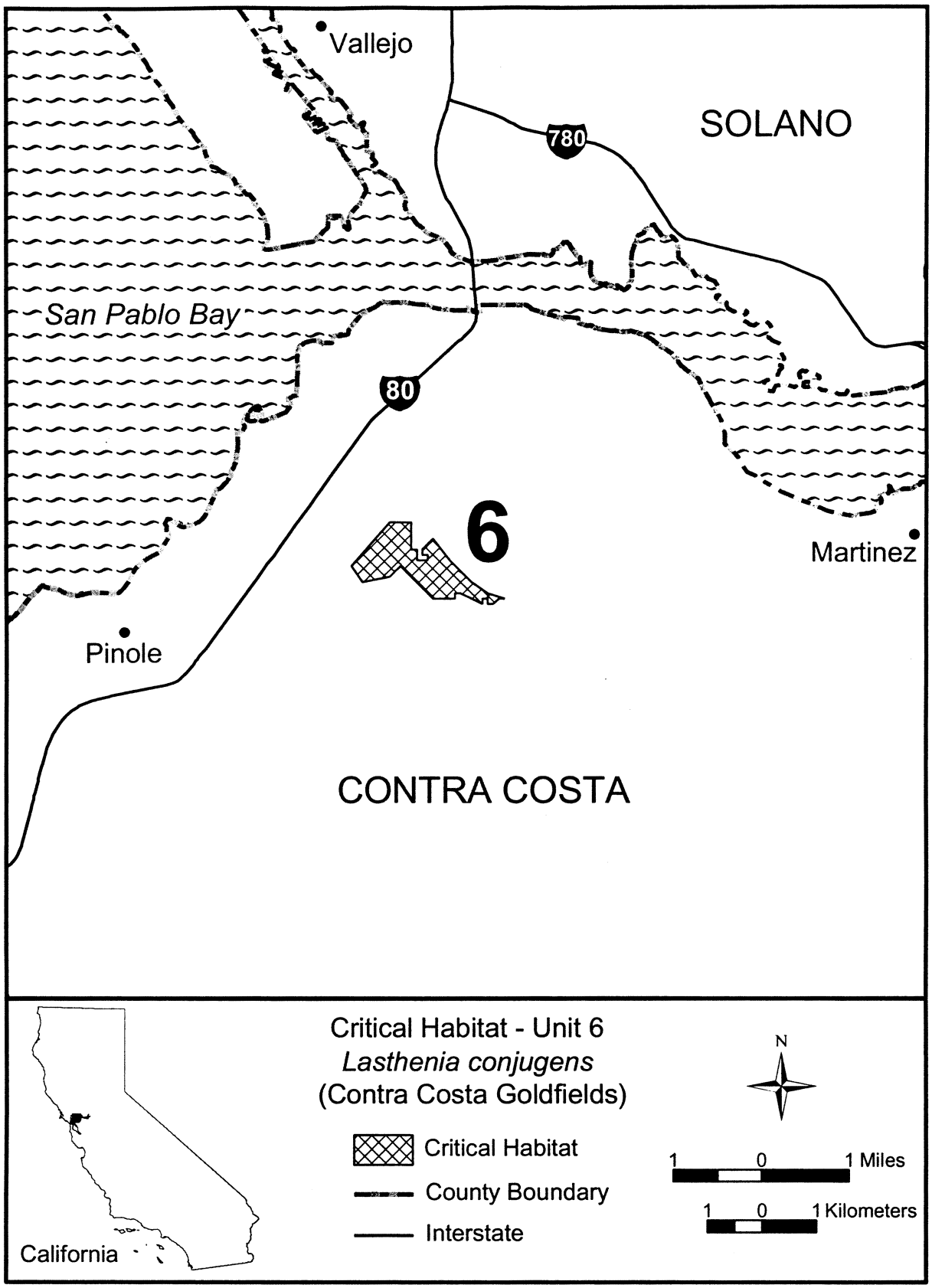
(14) Unit 9: Monterey County, California. From USGS 1:24,000 quadrangle maps Marina, Salinas, Seaside, and Spreckles, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 608100, 4048800; 607700, 4048800; 607200, 4048900; 606700, 4049100; 606500, 4049200; 606400, 4049300; 606300, 4049500; 606100, 4049800; 606000, 4049900; 605600, 4050300; 605500, 4050500; 605400, 4050800; 605400, 4051200; 605700, 4052100; 606000, 4052700; 606000, 4052800; 606900, 4053300; 607200, 4053200; 607900, 4053100; 608100, 4053100; 608400, 4053000; 609100, 4053000; 609300, 4053200; 609500, 4053500; 609600, 4053700; 609700, 4053900; 609700, 4054100; 609800, 4054300; 609900, 4054600; 609900, 4054900; 610200, 4055500; 610200, 4056300; 610400, 4056500; 610600, 4056600; 610700, 4056700; 610900, 4056800; 611100, 4056700; 611200, 4056700; 612200, 4056600; 612700, 4056600; 612900, 4056600; 613000, 4056600; 613100, 4056500; 613100, 4056400; 613200, 4056200; 613100, 4056000; 613100, 4055500; 613000, 4055200; 613000, 4055000; 612900, 4054900; 612600, 4054300; 612400, 4053900; 612000, 4053800; 611600, 4053600; 611300, 4053400; 610800, 4052900; 610400, 4051900; 610400, 4051300; 610700, 4050800; 610600, 4050600; 610200, 4050600; 609900, 4050500; 609800, 4050300; 609800, 4050000; 609900, 4049700; 609900, 4049400; 609800, 4049300; 608600, 4049000; 608400, 4049000; 608200, 4048900; returning to 608100, 4048800.

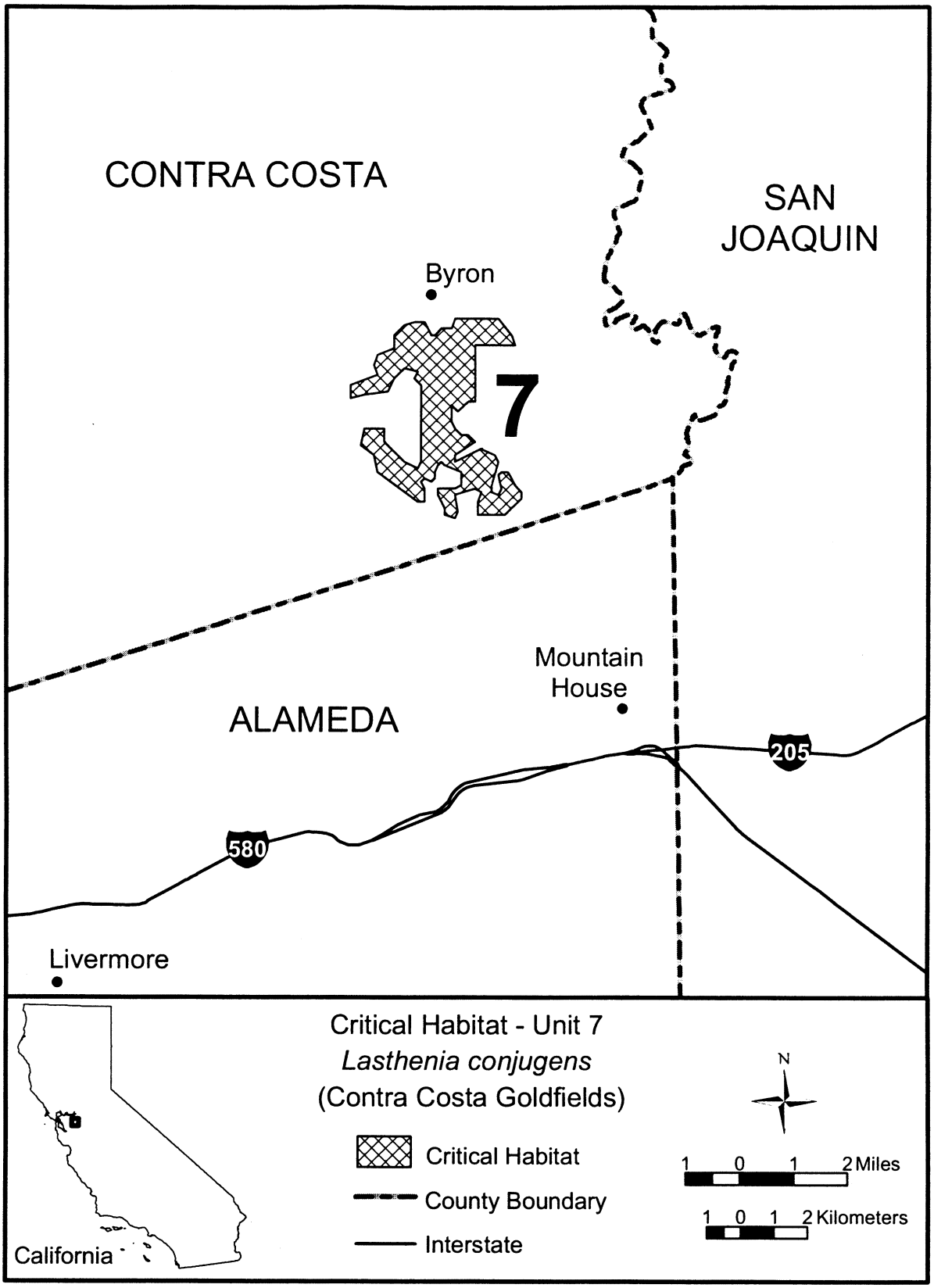
(15) Maps follow of critical habitat units 1, 2 through 5, 6, 7, 8, and 9 (respectively) for Contra Costa goldfields.

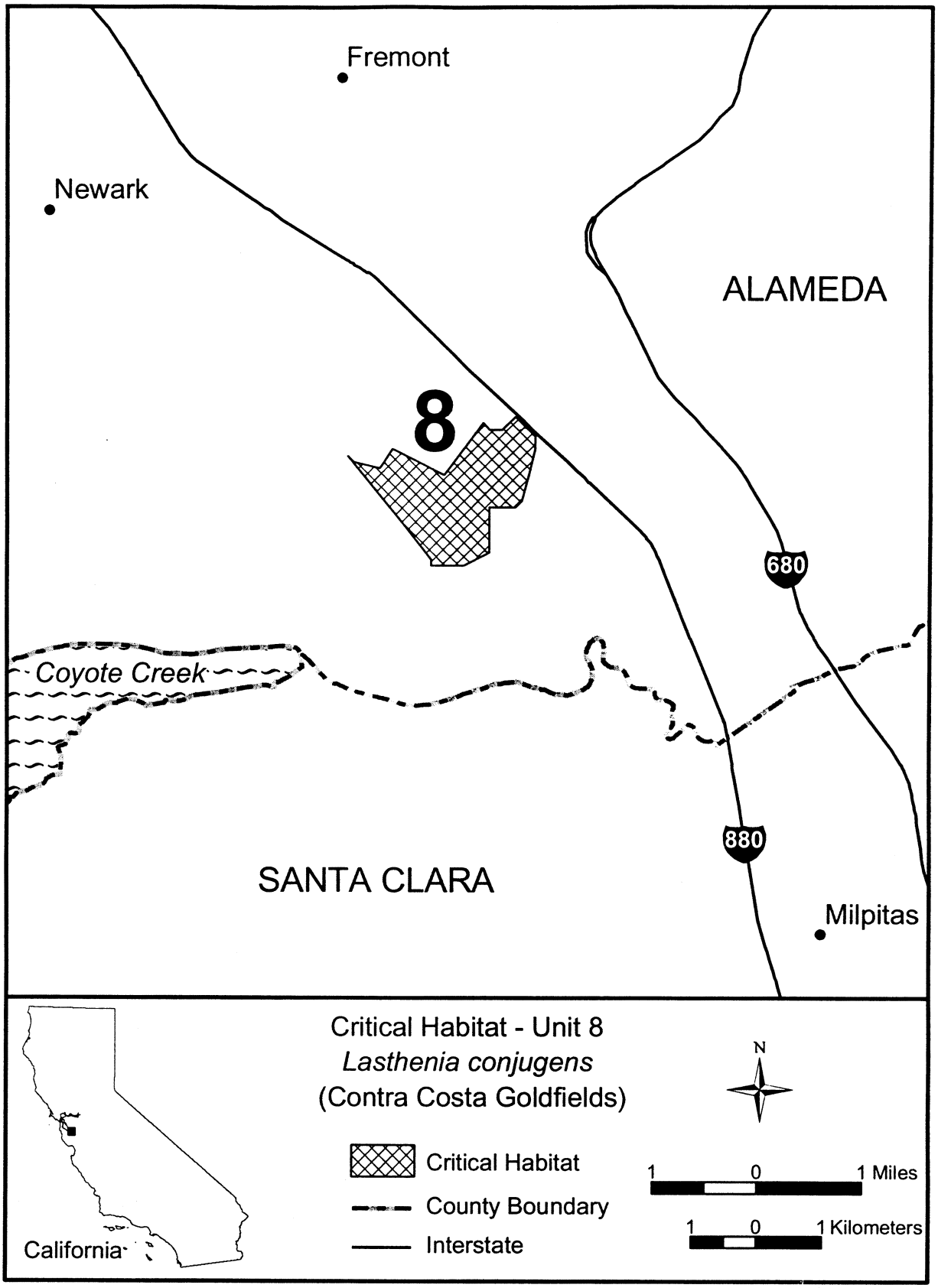
BILLING CODE 4310–55–P

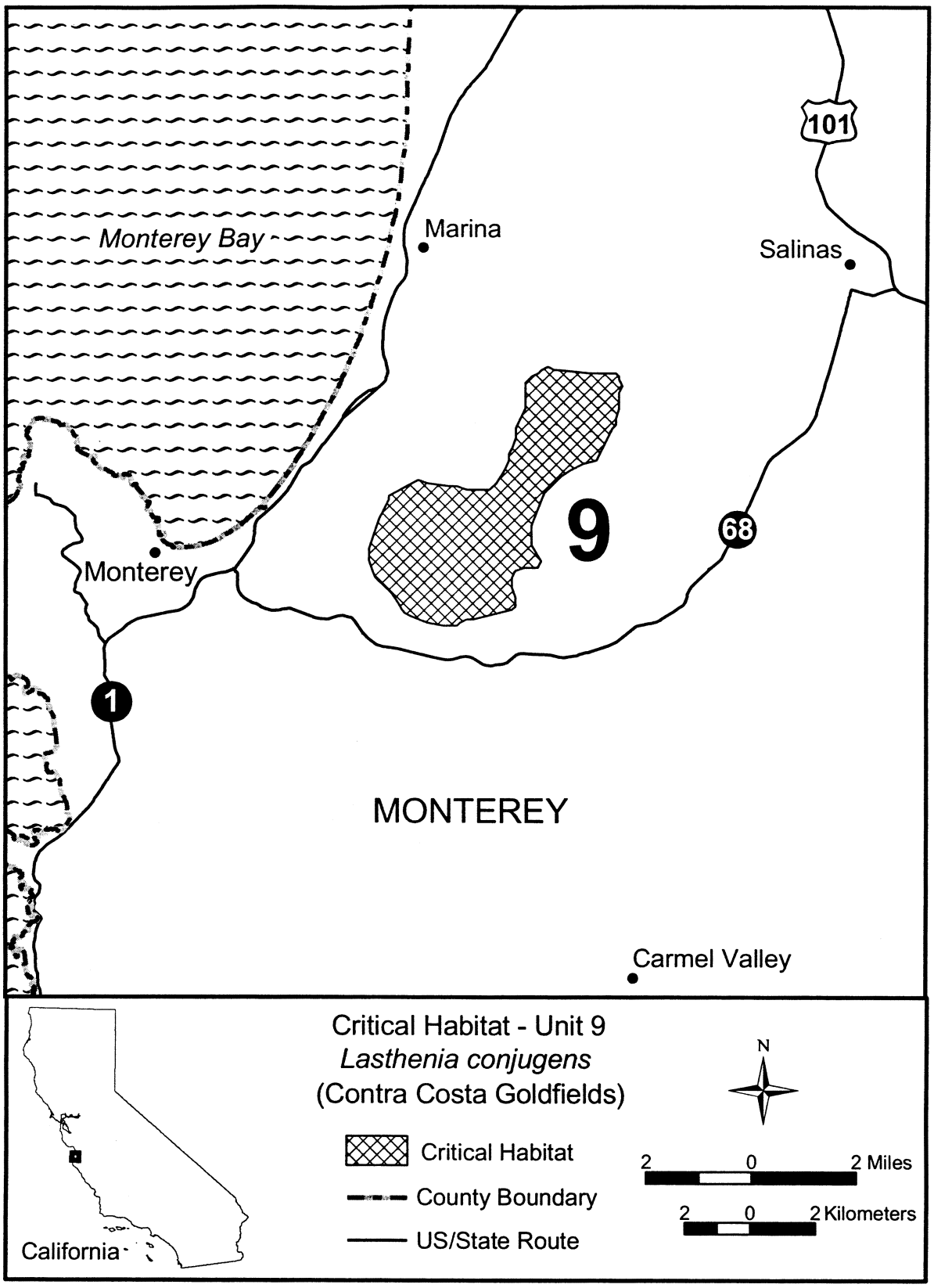

Pacific Ocean
MENDOCINO
1
Man-
chester
1
Point Arena
Critical Habitat - Unit 1
Lasthenia conjugens
(Contra Costa Goldfields)
N
Critical Habitat
County Boundary
State Route
1 0 1 Miles
1 0 1 Kilometers
California


NAPA
SOLANO
505
2
Vacaville
80
Napa
3
4
Fairfield
5B
5A
680
Critical Habitat - Units 2-5
Lasthenia conjugens
(Contra Costa Goldfields)
Critical Habitat
County Boundary
Interstate
N
2 0 2 Miles
2 0 2 Kilometers
California


Vallejo
SOLANO
780
San Pablo Bay
80
6
Martinez
Pinole
CONTRA COSTA
Critical Habitat - Unit 6
Lasthenia conjugens
(Contra Costa Goldfields)
Critical Habitat
County Boundary
Interstate
N
1 0 1 Miles
1 0 1 Kilometers
California


CONTRA COSTA
SAN JOAQUIN
Byron
7
Mountain House
ALAMEDA
205
580
Livermore
Critical Habitat - Unit 7
Lasthenia conjugens
(Contra Costa Goldfields)
Critical Habitat
County Boundary
Interstate
N
1 0 1 2 Miles
1 0 1 2 Kilometers
California


Fremont
Newark
ALAMEDA
8
680
Coyote Creek
880
SANTA CLARA
Milpitas
Critical Habitat - Unit 8
Lasthenia conjugens
(Contra Costa Goldfields)
N
Critical Habitat
County Boundary
Interstate
1 0 1 Miles
1 0 1 Kilometers
California



BILLING CODE 4310–55–C

Family Euphorbiaceae: *Chamaesyce hooveri* (Hoovers Spurge).

(1) Critical habitat units are depicted for Tehama, Glenn, Colusa, Stanislaus, Tulare and Tuolumne Counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Chamaesyce hooveri* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Chamaesyce hooveri* germination, growth and reproduction, including but not limited to, vernal pools formed on neutral to saline-alkaline soils over lime-silica cemented hardpan or claypan, or on acidic soils over iron-silica cemented hardpan, that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Chamaesyce hooveri* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing manmade features and structures, such as buildings, roads, aqueduct, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Unit 1: Butte and Tehama Counties, California. From USGS 1:24,000 quadrangle maps Acorn Hollow, Foster Island, Los Molinos, Nord, Richardson Springs NW, and Vina, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 588700, 4429900; 588900, 4429500; 589500, 4429500; 589500, 4428600; 589500, 4428000; 589800, 4427100; 590500, 4426400; 590500, 4425300; 591200, 4424400; 591500, 4423300; 591600, 4422100; 590900, 4420900; 590700, 4419800; 588000, 4417000; 587500, 4416400; 587200, 4415500; 587200, 4415100; 587300, 4415000; 587300, 4414500; 587200, 4414400; 587100, 4414300; 586900, 4414000; 586400, 4413900; 586200, 4413700; 586000, 4413600; 585800, 4413600; 585800, 4414700; 585300, 4414700; 585300, 4413800; 585200, 4413700; 584800, 4413700; 584600, 4413600; 584400, 4413600; 584200, 4413500; 584000, 4413700; 583200, 4413400; 583000, 4414200; 583700, 4414600; 583500, 4415000; 583000, 4415900; 583000, 4416400; 582900, 4416700; 582800, 4416900; 582700, 4417000; 582700, 4417200; 582900, 4417300; 582800, 4417400; 582700, 4417500; 582700, 4417600; 582600, 4417700; 582600, 4418000; 582600, 4418100; 582600, 4418200; 582700, 4418300; 582500, 4418400; 582400, 4418300; 582200, 4418300; 582100, 4418400; 582100, 4418500; 582000, 4418600; 582100, 4418700; 582100, 4418900; 582200, 4419100; 582100, 4419300; 582200, 4419500; 582100, 4419600; 582000, 4419700; 582100, 4419800; 582100, 4419900; 582200, 4420000; 582200, 4420300; 582100, 4420500; 582200, 4420600; 582200, 4420800; 582300, 4421100; 582900, 4421500; 582900, 4421600; 583300, 4422000; 583400, 4422100; 583900, 4422100; 584100, 4422300; 584200, 4422300; 584300, 4422400; 584400, 4422500; 584600, 4422900; 585100, 4423400; 585600, 4423700; 585800, 4423900; 585800, 4424200; 586100, 4424200; 586600, 4424800; 586800, 4424900; 587300, 4425500; 587400, 4425600; 587500, 4425800; 587500, 4425900; 587600, 4426000; 587700, 4426100; 587800, 4426100; 587900, 4426200; 587900, 4426300; 587900, 4426800; 587800, 4426900; 587900, 4427000; 588000, 4427300; 587900, 4427300; 587800, 4427200; 587600, 4426800; 587500, 4426600; 587400, 4426400; 587200, 4426200; 586700, 4425700; 586500, 4425700; 586200, 4425400; 585900, 4425400; 585800, 4425400; 585500, 4425600; 584900, 4425600; 584900, 4425400; 584900, 4425200; 585000, 4425000; 584800, 4425000; 584600, 4424900; 584500, 4424900; 584300, 4425000; 584100, 4425000; 583900, 4425200; 583700, 4425400; 583400, 4425500; 583300, 4425500; 583300, 4425300; 583100, 4425300; 583000, 4425400; 582900, 4425200; 582800, 4425000; 582700, 4424800; 582700, 4424600; 582600, 4424500; 582600, 4424200; 582400, 4424100; 582300, 4423800; 582100, 4423600; 582100, 4423500; 581300, 4422800; 581000, 4422600; 580600, 4422800; 580200, 4423800; 579900, 4424500; 579700, 4424800; 579500, 4425400; 579700, 4425600; 580100, 4425600; 580800, 4426400; 581700, 4427000; 582300, 4427000; 582300, 4426900; 582400, 4426800; 582500, 4426800; 582700, 4426700; 582800, 4426700; 583500, 4426800; 583900, 4426900; 584000, 4427000; 584200, 4427100; 584600, 4427600; 584800, 4427900; 585100, 4428200; 585900, 4428500; 586300, 4428500; 586900, 4428900; 587300, 4429100; 588300, 4429600; 588500, 4430000; returning to 588700, 4429900.

(6) Unit 2: Butte County, California. [Reserved]

(7) Unit 3: Colusa and Glenn Counties, California. [Reserved]

(8) Unit 4: Stanislaus and Tuolumne Counties, California. From USGS 1:24,000 quadrangle maps Cooperstown, Keystone, Knights Ferry, La Grange Paulsell, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 720800, 4176400; 721400, 4175900; 722200, 4175300; 722700, 4175200; 722800, 4173600; 723000, 4173500; 723200, 4173600; 723700, 4173600; 724000, 4173300; 724100, 4172300; 722800, 4172200; 721700, 4171200; 721600, 4170700; 721500, 4170500; 721400, 4170400; 721200, 4170300; 721000, 4170100; 721000, 4169600; 720900, 4169600; 720000, 4168500; 718900, 4168000; 718700, 4168100; 718100, 4168500; 718000, 4168500; 717900, 4168600; 716200, 4168600; 715900, 4168500; 715600, 4168300; 715500, 4168200; 715400, 4168300; 715400, 4169400; 714900, 4169900; 714900, 4170000; 715100, 4170000; 715200, 4170200; 715300, 4170200; 715300, 4170400; 715300, 4171200; 715200, 4171200; 715200, 4171000; 715100, 4171000; 715100, 4170700; 714900, 4170700; 714900, 4170300; 713900, 4169800; 713800, 4169900; 713000, 4169500; 712500, 4169400; 712200, 4169400; 712000, 4169600; 711500, 4169900; 711300, 4169900; 710500, 4169100; 709300, 4169100; 709100, 4169500; 709100, 4169700; 708900, 4169700; 708800, 4169900; 708700, 4169900; 708600, 4169800; 708500, 4169900; 708400, 4170000; 708700, 4170200; 708800, 4170300; 708900, 4170400; 709100, 4170500; 709200, 4170600; 709400, 4170600; 709400, 4170800; 709300, 4170800; 709200, 4170900; 709100, 4170800; 708800, 4170700; 708800, 4170600; 708500, 4170500;

708400, 4170300; 708100, 4170200; 707900, 4170200; 707900, 4170300; 708100, 4170500; 708200, 4170500; 708200, 4170600; 708000, 4170600; 708200, 4170800; 708200, 4170900; 708100, 4170900; 707900, 4170700; 707700, 4170700; 707700, 4170800; 707600, 4170900; 707400, 4170900; 707100, 4171100; 707100, 4171200; 707200, 4171300; 707300, 4171200; 707500, 4171300; 707800, 4171600; 707900, 4171600; 708100, 4171600; 708200, 4171700; 708100, 4171800; 708100, 4171900; 708300, 4171900; 708300, 4172100; 708400, 4172100; 708500, 4172200; 708500, 4172300; 708700, 4172400; 708800, 4172500; 708800, 4172600; 708700, 4172700; 708500, 4172700; 708400, 4172800; 708300, 4172700; 708200, 4172700; 708100, 4172600; 708000, 4172500; 707900, 4172500; 707800, 4172700; 707600, 4172600; 707400, 4172500; 707400, 4172600; 707200, 4172700; 707100, 4172300; 707000, 4172200; 706700, 4172200; 706700, 4172300; 706500, 4172300; 706400, 4172300; 706400, 4172400; 706200, 4172600; 706300, 4172700; 706400, 4172800; 706300, 4172800; 706200, 4172800; 706100, 4172900; 705900, 4173100; 705800, 4173300; 705800, 4173500; 706000, 4173800; 705900, 4173900; 705800, 4174100; 705700, 4174200; 705500, 4174200; 705400, 4174100; 705400, 4173700; 705300, 4173500; 705200, 4173200; 705100, 4174700; 705400, 4175400; 705000, 4175900; 705300, 4176300; 705700, 4176700; 705700, 4177000; 705700, 4177500; 705700, 4177700; 705200, 4177900; 705000, 4178100; 705400, 4178900; 706200, 4178400; 706300, 4178000; 706200, 4177600; 706200, 4177100; 706700, 4177100; 706700, 4175900; 706800, 4175700; 707100, 4175600; 707400, 4175600; 707600, 4175500; 707700, 4175700; 707800, 4175700; 707900, 4175900; 707900, 4176000; 708000, 4176500; 708500, 4176400; 709800, 4176600; 709900, 4176400; 709900, 4176200; 710000, 4176100; 710300, 4176100; 710300, 4176200; 710400, 4176300; 710600, 4176400; 710700, 4176400; 710800, 4176500; 710800, 4176600; 711000, 4176700; 711200, 4176700; 711400, 4176700; 711600, 4176900; 711700, 4177200; 711700, 4177600; 711900, 4178100; 711800, 4178900; 710700, 4178900; 710600, 4178800; 710300, 4179200; 709900, 4179500; 709500, 4179600; 709100, 4180800; 709200, 4182200; 709700, 4182700; 710300, 4182900; 711400, 4182100; 712400, 4182100; 713200, 4182000; 714100, 4182600; 714700, 4182000; 715200, 4181600; 715600, 4180900; 715400, 4180400; 716600, 4180400; 716900, 4179900; 717700, 4180100; 718500, 4180000; 718700, 4179200; 719300, 4178700; 719700, 4177600; 720300, 4177700; 720700, 4177700; returning to 720800, 4176400; excluding land bound by 717800, 4170900; 718000, 4171000; 718000, 4171300; 718800, 4171500; 718800, 4171400; 718900, 4171000; 719000, 4171000; 719100, 4170900; 718900, 4170400; 718800, 4170200; 718600, 4170200; 718600, 4170100; 718100, 4170200; 717700, 4170200; 717300, 4170300; 717300, 4170500; 717800, 4170500; returning to 717800, 4170900.

(9) Unit 5: Merced and Stanislaus Counties, California. From USGS 1:24,000 quadrangle maps Cooperstown, La Grange, Merced Falls, Montpelier, Paulsell, Snelling, Turlock Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 724100, 4158200; 723800, 4158200; 723700, 4159000; 722500, 4159000; 722500, 4159200; 722400, 4159200; 722300, 4159300; 722200, 4159300; 721600, 4159300; 721600, 4159500; 721500, 4159600; 721500, 4159800; 721600, 4159800; 721600, 4159900; 721700, 4159900; 721700, 4160500; 721100, 4160500; 721100, 4160100; 720800, 4160100; 720800, 4160500; 719500, 4160500; 719500, 4160300; 720000, 4159600; 719600, 4159600; 719600, 4159500; 719500, 4159500; 719400, 4159500; 719300, 4159400; 719100, 4159400; 719000, 4159400; 718900, 4159300; 718700, 4159100; 718600, 4159000; 718600, 4158900; 718400, 4158900; 718200, 4158800; 718200, 4158700; 718300, 4158600; 718400, 4158500; 718500, 4158500; 718600, 4158400; 718700, 4158400; 718900, 4158300; 719000, 4158100; 719000, 4157900; 718700, 4157600; 718000, 4157700; 717800, 4157400; 717900, 4157200; 718000, 4157000; 718400, 4157300; 718700, 4156700; 718700, 4156300; 717500, 4156300; 717500, 4156700; 717100, 4156700; 717100, 4156300; 716600, 4156300; 716600, 4155800; 716300, 4155700; 716200, 4155000; 715900, 4154900; 715900, 4155100; 715800, 4155200; 715800, 4155300; 715700, 4155400; 715600, 4155700; 715500, 4155800; 715400, 4155800; 715300, 4156600; 715400, 4156600; 715400, 4157200; 715400, 4157400; 715500, 4157400; 715500, 4157600; 717600, 4157600; 717600, 4159700; 718100, 4160200; 718200, 4160500; 718400, 4160800; 718700, 4161100; 716800, 4161100; 716800, 4160400; 714900, 4160400; 714900, 4160900; 715000, 4160900; 715000, 4161000; 715200, 4161000; 715200, 4161100; 714400, 4161100; 714400, 4161200; 713700, 4161200; 713700, 4161100; 713300, 4161100; 713200, 4161200; 713100, 4161100; 713100, 4161000; 713400, 4160700; 713400, 4160600; 713600, 4160500; 713800, 4160800; 713900, 4160800; 714000, 4160700; 714000, 4160400; 711100, 4160300; 711100, 4161900; 709500, 4161900; 709500, 4163500; 707900, 4163500; 707900, 4163100; 707000, 4163100; 707000, 4165600; 707400, 4165600; 707400, 4165800; 706700, 4166100; 706500, 4165800; 706200, 4166000; 706300, 4166300; 706200, 4166400; 706200, 4166500; 706300, 4166500; 706300, 4166700; 706200, 4166700; 706200, 4167100; 706500, 4167100; 706700, 4166700; 706800, 4166700; 706800, 4166300; 707000, 4166300; 707000, 4166100; 707200, 4166100; 707200, 4166700; 707400, 4166700; 707800, 4166000; 707800, 4165600; 708000, 4165800; 708200, 4165800; 708400, 4165700; 708400, 4165500; 708200, 4165400; 708200, 4165300; 708300, 4165200; 708400, 4165200; 708500, 4165300; 708600, 4165400; 708800, 4165400; 709100, 4165100; 710200, 4165100; 710200, 4166400; 710100, 4166400; 710100, 4166500; 710000, 4166500; 709900, 4166500; 709900, 4166700; 709800, 4166700; 709800, 4167100; 710200, 4166800; 711000, 4167600; 711600, 4167800; 712400, 4167800; 712400, 4167300; 712900, 4167300; 712900, 4167200; 712600, 4166900; 711800, 4167000; 711600, 4166800; 711600, 4166600; 711800, 4166500; 711800, 4166600; 711900, 4166600; 712000, 4166300; 712100, 4166500; 712200, 4166500; 712300, 4166400; 712500, 4166400; 712500, 4166200; 712700, 4166200; 712700, 4166300; 712800, 4166300; 713000, 4166100; 712800, 4166000; 712700, 4165800; 712500, 4165800; 712500, 4165600; 712700, 4165600; 712600, 4165400; 712400, 4165500; 712300, 4165400; 712500, 4165300; 712500, 4165200; 712400, 4165100; 712600, 4165100; 712600, 4165000; 712600, 4164900; 712700, 4164800; 712600, 4164700; 712500, 4164800; 712400, 4164800; 712400, 4164300; 712800, 4164500; 713100, 4164300; 713200, 4164100; 712900, 4163800; 712900, 4163700; 713100, 4163800; 713500, 4164000; 713600, 4164000; 713600, 4164100; 713700, 4164300; 714200, 4164300; 714400, 4164500; 714500, 4164800; 714600, 4164800; 714800, 4164700; 714800, 4164200; 714400, 4164000; 714400, 4163600; 714500, 4163500; 715200, 4164000; 715300, 4164200; 715400, 4164200; 715300, 4163900; 715100, 4163700; 715000, 4163500; 714800, 4163300; 714900,

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(ii) Start at 704200, 4166200; 704000, 4166200; 703800, 4166400; 703400, 4166600; 703400, 4166800; 703500, 4166800; 703600, 4166900; 703700, 4167000; 703700, 4167200; 704600, 4167600; 704700, 4167600; 704800, 4167500; 705000, 4167400; 705300, 4167400; 705300, 4166400; 705000, 4166300; 704400, 4166300; returning to 704200, 4166200.

(iii) Start at 712600, 4155200; 712600, 4156800; 712900, 4156800; 712900, 4157100; 714800, 4157200; 714800, 4156800; 714300, 4156300; 714200, 4156200; 714000, 4155500; 714000, 4155400; 713800, 4155400; returning to 712600, 4155200.

(10) Subunit 6A: Merced County, California. [Reserved]

(11) Subunit 6B: Merced County, California. [Reserved]

(12) Subunit 6C: Merced County, California. [Reserved]

(13) Subunit 7A: Tulare County, California. From USGS 1:24,000 quadrangle maps Ivanhoe, and Stokes Mtn., California, land bounded by the following UTM 11 NAD 83 coordinates (E, N):

(i) Start at 300900, 4041500; 300900, 4041800; 300200, 4041800; 299900, 4041900; 299600, 4042100; 299200, 4042700; 298900, 4043000; 298900, 4043300; 299200, 4043500; 299700, 4043500; 299700, 4044700; 300100, 4045300; 300700, 4045400; 301200, 4044900; 301400, 4044900; 301400, 4045200; 301300, 4045200; 301300, 4045800; 302200, 4045800; 302200, 4045600; 302500, 4045600; 303000, 4045900; 303100, 4045900; 303300, 4045700; 303600, 4045700; 303800, 4046100; 304300, 4046100; 304500, 4046300; 304700, 4046300; 304900, 4046800; 304700, 4047700; 304800, 4047900; 304700, 4048300; 304800, 4048500; 305400, 4048500; 305800, 4048000; 306000, 4047900; 306300, 4047900; 306500, 4047600; 306500, 4047000; 306300, 4046900; 306100, 4045900; 305900, 4045300; 305600, 4045100; 305400, 4044300; 305400, 4044100; 305900, 4043900; 305700, 4043400; 305700, 4042400; 305000, 4042400; 304900, 4042000; 304200, 4042000; 304100, 4041600; 301400, 4041700; returning to 300900, 4041500.

(ii) Start at 300900, 4041500; 300900, 4041400; 300400, 4041400; 300400, 4040100; 300300, 4040100; 300300, 4039400; 300300, 4039300; 300000, 4039300; 300000, 4038600; 299200, 4038600; 298400, 4038600; 298400, 4039500; 298500, 4039800; 298900, 4039900; 298900, 4041000; 299700, 4041000; 299300, 4041500; returning to 300900, 4041500.

(14) Subunit 7B: Tulare County, California. From USGS 1:24,000 quadrangle maps Auckland, Ivanhoe, Stokes Mtn., and Woodlake, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N):

(i) Start at 308500, 4033700; 308200, 4033800; 308000, 4033900; 308100, 4034300; 308000, 4034500; 308000, 4034900; 307700, 4035100; 307500, 4035400; 307400, 4035600; 307400, 4035800; 307200, 4036300; 306900, 4036900; 307100, 4037300; 306700, 4038300; 306700, 4038400; 306800, 4038500; 307000, 4038500; 307200, 4038600; 307100, 4038700; 307100, 4039900; 308100, 4040200; 308500, 4040700; 308200, 4041500; 307600, 4041500; 307100, 4042000; 307100, 4042600; 307700, 4043700; 307800, 4044500; 308200, 4044700; 309000, 4043900; 309600, 4043400; 311700, 4043400; 312100, 4043000; 312700, 4043000; 313000, 4042700; 313000, 4042300; 312500, 4042000; 311000, 4041000; 311000, 4040400; 310600, 4040200; 310600, 4039900; 310400, 4039900; 310400, 4039800; 310000, 4039800; 310000, 4039500; 309900, 4039400; 309900, 4039200; 309700, 4039200; 309300, 4039200; 309300, 4038800; 308900, 4038800; 308900, 4038400; 308100, 4038400; 308000, 4038200; 307900, 4038200; 307900, 4037600; 308100, 4037600; 308100, 4037400; 308300, 4037400; 308300, 4038000; 308700, 4038000; 308700, 4037900; 308800, 4037800; 308700, 4037600; 308900, 4037600; 308900, 4037400; 308700, 4037400; 308700, 4037200; 309100, 4037200; 309100, 4036800; 308700, 4036800; 308700, 4037000; 308100, 4037000; 308100, 4036900; 308200, 4036900; 308200, 4036800; 308100, 4036800; 308100, 4036600; 308300, 4036600; 308300, 4036500; 308500, 4036500; 308400, 4035800; 308300, 4035800; 308300, 4035400; 308900, 4035000; 309000, 4034800; 308700, 4034800; 308700, 4034100; 308600, 4034100; 308600, 4034000; 308700, 4033900; returning to 308500, 4033700.

(ii) Start at 315900, 4034500; 314100, 4034600; 313400, 4034900; 312800, 4035000; 312800, 4035100; 313000, 4035100; 313000, 4035900; 312500, 4035900; 312500, 4035700; 312300, 4035700; 312100, 4035500; 312000, 4035500; 312000, 4035100; 311300, 4035100; 311300, 4035300; 311500, 4035300; 311500, 4035500; 311100, 4035600; 311100, 4035300; 311000, 4035200; 311000, 4035100; 310500, 4035100; 310400, 4035000; 310300,

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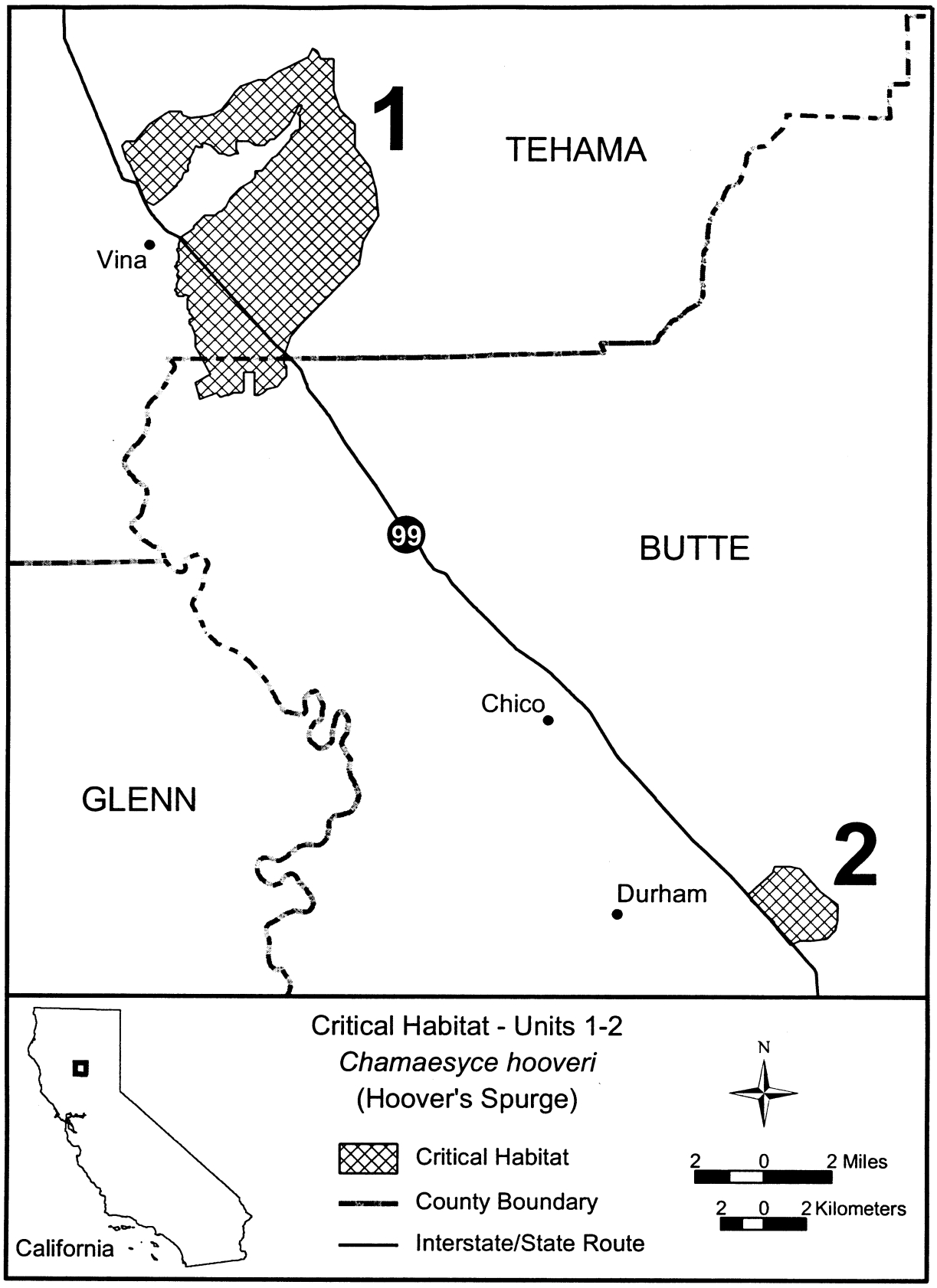
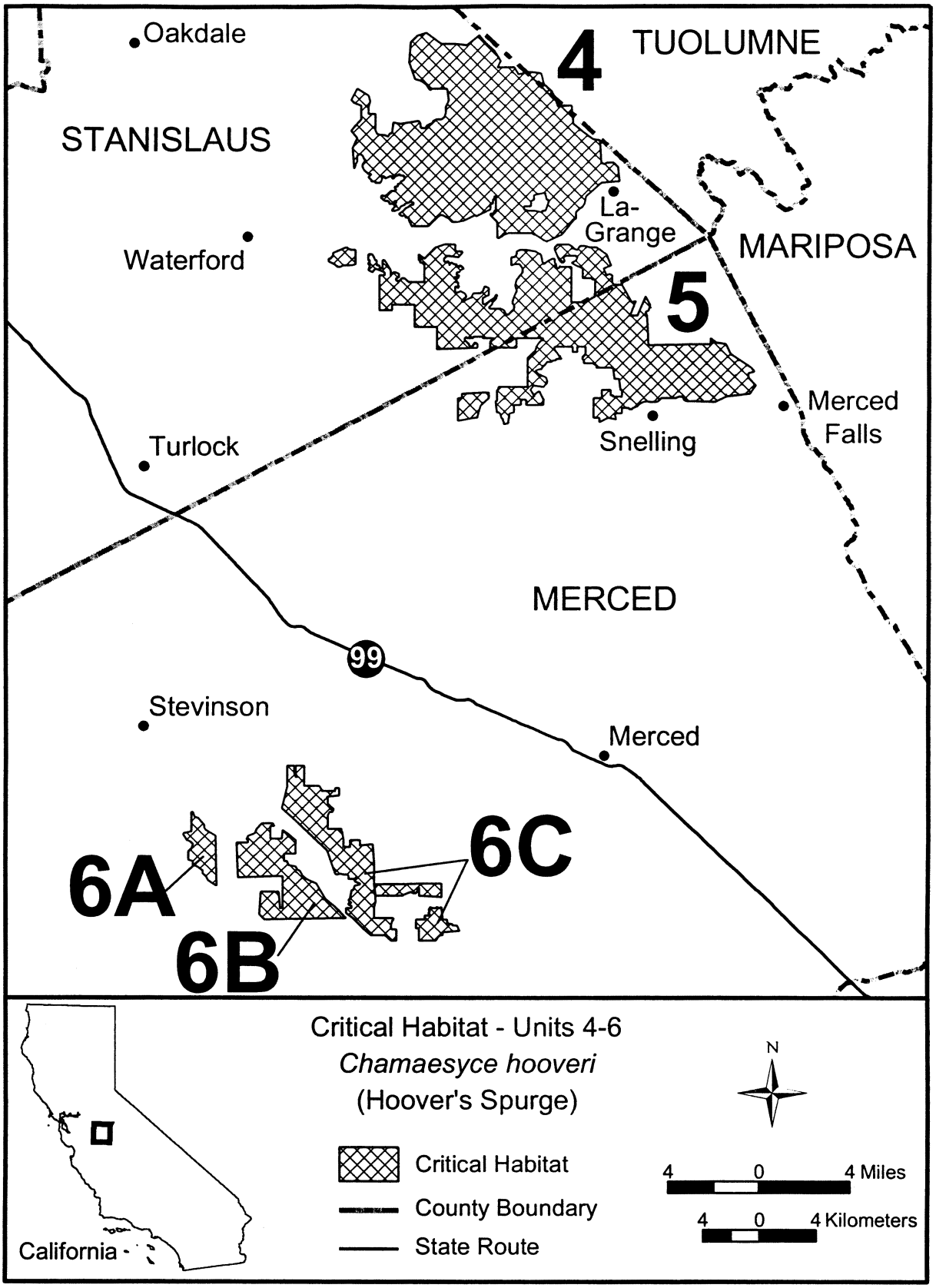
(15) Subunit 7C: Tulare County, California. From USGS 1:24,000 quadrangle map Monson, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 297500, 4035500; 297500, 4035200; 296800, 4035300; 296200, 4035300; 296700, 4036800; 297500, 4036700; 297500, 4036300; returning to 297500, 4035500.

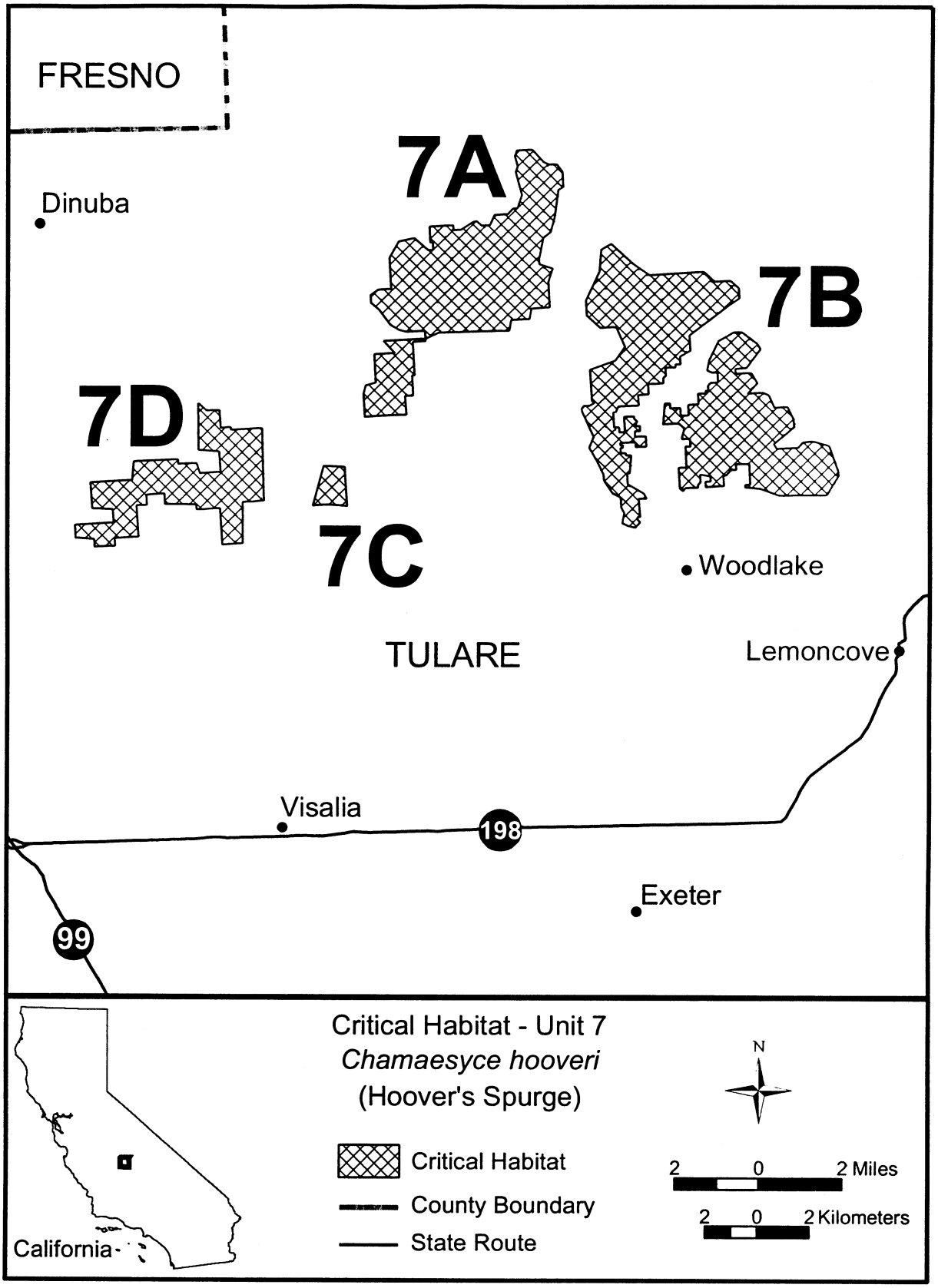
(16) Subunit 7D: Tulare County, California. From USGS 1:24,000 quadrangle maps Monson, and Traver, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 294300, 4035600; 293500, 4035600; 293400, 4034000; 292600, 4034000; 292600, 4035400; 291900, 4035400; 291700, 4035400; 291700, 4035600; 290500, 4035700; 290500, 4036100; 289800, 4036100; 289800, 4035700; 289400, 4035700; 289400, 4034500; 288500, 4034500; 288500, 4034200; 287700, 4034200; 287700, 4034500; 287000, 4034600; 287000, 4035100; 288500, 4035100; 288500, 4035600; 287700, 4035700; 287700, 4036700; 289300, 4036700; 289400, 4037400; 291100, 4037400; 291100, 4037200; 291800, 4037200; 291900, 4036800; 292700, 4036800; 292700, 4037600; 291900, 4037700; 292000, 4039500; 292300, 4039200; 292800, 4039200; 292800, 4038500; 293200, 4038500; 293200, 4038400; 294400, 4038400; returning to 294300, 4035600.

(17) Maps follow of critical habitat units 1 and 2, 4 through 6 and 7 (respectively) for Hoover's spurge.

BILLING CODE 4310–55–P


1
TEHAMA
Vina
99
BUTTE
Chico
GLENN
2
Durham
California
Critical Habitat - Units 1-2
Chamaesyce hooveri
(Hoover's Spurge)
Critical Habitat
County Boundary
Interstate/State Route
N
2 0 2 Miles
2 0 2 Kilometers


Oakdale
4
TUOLUMNE
STANISLAUS
La-
Grange
Waterford
MARIPOSA
5
Merced
Falls
Snelling
Turlock
MERCED
99
Stevinson
Merced
6C
6A
6B
Critical Habitat - Units 4-6
Chamaesyce hooveri
(Hoover's Spurge)
N
Critical Habitat
County Boundary
State Route
4 0 4 Miles
4 0 4 Kilometers
California



BILLING CODE 4310–55–C

Family Limnanthaceae: Limnanthes floccosa ssp. californica (Butte County Meadowfoam).

(1) Critical habitat units are depicted for Tehama County, California, on the map below.

(2) The primary constituent elements of critical habitat for *Limnanthes floccosa* ssp. *californica* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Limnanthes floccosa* ssp. *californica* germination, growth and reproduction, including but not limited to, vernal pool swales and the margins of vernal pools on the Tuscan, Redbluff, Riverbank, and Modesto geologic formations underlain by Tuscan-Anita and Igo-Redding complex soils among others. These habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Limnanthes floccosa* ssp. *californica* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing manmade features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Unit 1: Butte and Tehama Counties, California. From USGS 1:24,000 quadrangle maps Campbell Mound, Nord, Richardson Springs, and Richardson Springs NW, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 595500, 4408200; 594300, 4408200; 594100, 4408300; 594000, 4408400; 593600, 4408500; 593400, 4408200; 593300, 4408200; 593300, 4408500; 592900, 4408500; 592900, 4408600; 593000, 4408600; 593100, 4409200; 593200, 4409200; 593200, 4409300; 592900, 4409300; 592900, 4409500; 593100, 4409600; 593100, 4409500; 593200, 4409500; 593200, 4409800; 593300, 4409900; 593300, 4410400; 593100, 4410400; 592900, 4410200; 592600, 4410200; 592600, 4410000; 592500, 4409900; 592500, 4410800; 592700, 4411200; 593300, 4411400; 594000, 4411600; 594600, 4412400; 594400, 4412800; 594200, 4412800; 594100, 4412500; 593800, 4412500; 593800, 4412700; 593600, 4412900; 593300, 4413100; 593200, 4412400; 593000, 4412200; 592600, 4412200; 592400, 4412600; 591700, 4412600; 590900, 4411000; 590700, 4411000; 590000, 4411600; 589000, 4411900; 588100, 4412000; 588100, 4413300; 588200, 4413500; 588300, 4413900; 588500, 4414000; 588500, 4414600; 589200, 4414700; 589200, 4415000; 590800, 4416100; 592400, 4416700; 592500, 4416600; 592500, 4416000; 592000, 4416000; 592000, 4415800; 592500, 4415800; 593800, 4416300; 594100, 4416300; 594400, 4416300; 594400, 4415800; 594900, 4415800; 594900, 4416300; 595500, 4416300; 595500, 4416400; 595900, 4416500; 596000, 4416500; 596100, 4416400; 596200, 4416500; 596300, 4416600; 596400, 4416700; 596500, 4416700; 596500, 4416800; 596600, 4416800; 597100, 4416400; 597100, 4415600; 596800, 4415200; 597100, 4415000; 597800, 4415500; 598100, 4415200; 597600, 4414600; 597600, 4414400; 597300, 4413800; 597300, 4413300; 598200, 4413900; 598400, 4413900; 598400, 4413600; 597400, 4411900; 597600, 4411900; 598300, 4412700; 598500, 4413300; 598900, 4413300; 598900, 4411800; 599400, 4411700; 599800, 4411700; 599800, 4411000; 599300, 4410700; 599100, 4410800; 599000, 4410800; 598800, 4410600; 598500, 4410400; 598300, 4410100; 598100, 4410000; 598000, 4409900; 597700, 4409800; 597600, 4409600; 597500, 4409500; 597300, 4409500; 597100, 4409400; 596900, 4409200; 596800, 4409200; 596700, 4409100; 596200, 4409100; 596000, 4408900; 595900, 4408800; 595700, 4408800; returning to 595500, 4408200.

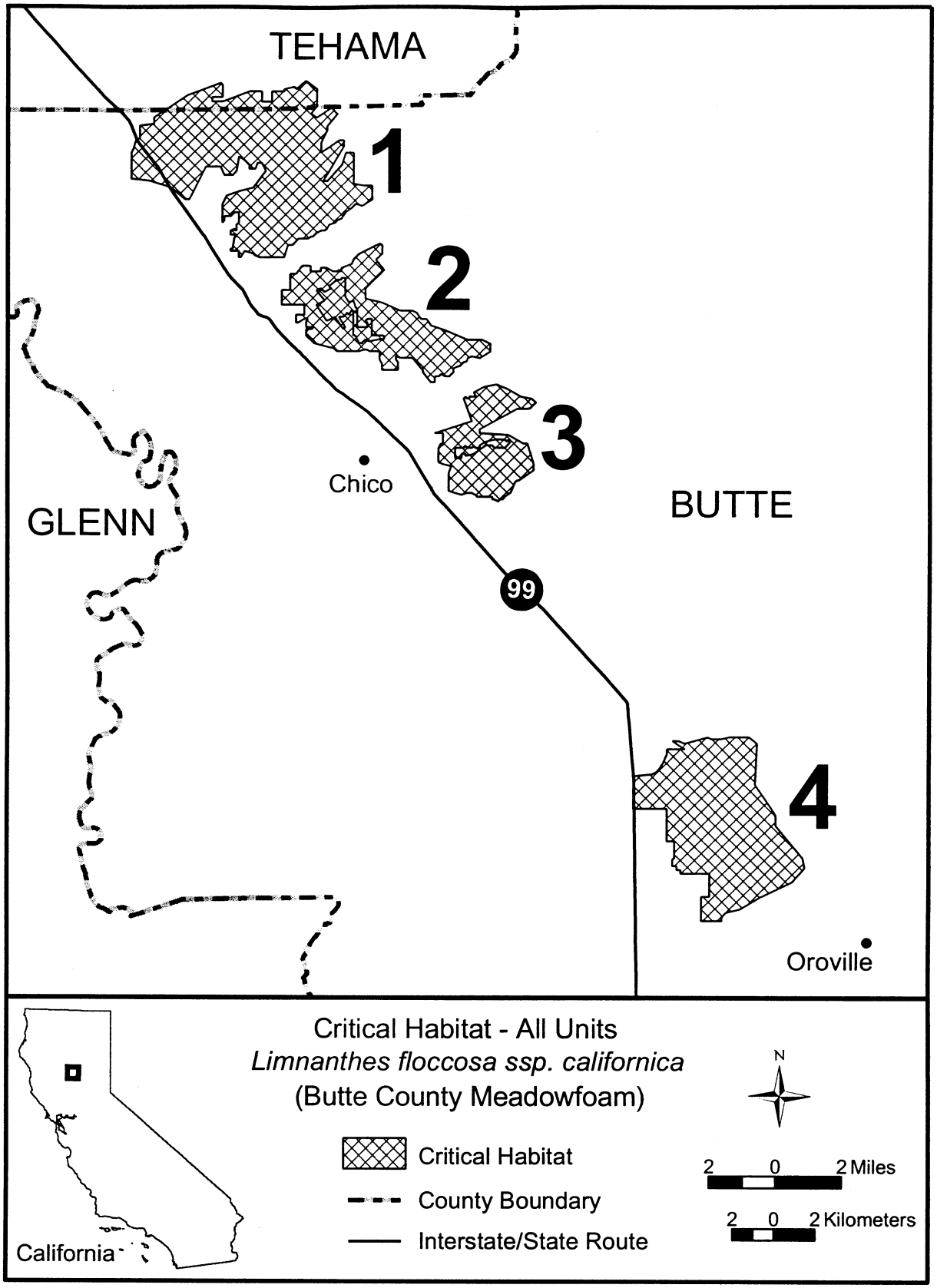
(6) Unit 2: Butte County, California. [Reserved]

(7) Unit 3: Butte County, California. [Reserved]

(8) Unit 4: Butte County, California. [Reserved]

(9) Map follows of critical habitat units 1 through 4 for Butte County meadowfoam.

BILLING CODE 4310–55–P


TEHAMA
1
2
3
Chico
GLENN
BUTTE
99
4
Oroville
Critical Habitat - All Units
Limnanthes floccosa ssp. californica
(Butte County Meadowfoam)
Critical Habitat
County Boundary
Interstate/State Route
N
2 0 2 Miles
2 0 2 Kilometers
California

BILLING CODE 4310–55–C

Family Poaceae: *Neostapfia colusana* (Colusa Grass)

(1) Critical habitat units are depicted for Yolo, Stanislaus, Mariposa, Tuolumne and Calaveras Counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Neostapfia colusana* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Neostapfia colusana* germination, growth and reproduction, and that typically become inundated during winter rains, including but not limited to vernal pools formed on the rim of alkaline basins in the Sacramento and San Joaquin valleys, as well as on acidic soils of alluvial fans and stream terraces along the eastern margin of the San Joaquin Valley and into the adjacent foothills. All of these pool types are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Neostapfia colusana* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing manmade features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Unit 1: Yolo County, California. From USGS 1:24,000 quadrangle maps Davis, and Saxon, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 615400, 4260700; 614500, 4260700; 614500, 4261500; 614200, 4261500; 614200, 4261800; 614000, 4261800; 614000, 4262300; 615400, 4262300; returning to 615400, 4260700.

(6) Unit 2: Solano County, California. [Reserved]

(7) Unit 3: Calaveras and Stanislaus Counties, California. From USGS 1:24,000 quadrangle maps Bachelor Valley, Copperopolis, Farmington, Knights Ferry, and Oakdale, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 697300, 4184800; 697100, 4185000; 696900, 4185400; 696500, 4185700; 696900, 4186000; 696900, 4186300; 696600, 4186300; 696600, 4187000; 696000, 4187000; 696000, 4186900; 695800, 4186700; 695600, 4186700; 695500, 4186500; 695400, 4185900; 695100, 4185400; 694600, 4185500; 694600, 4185700; 694900, 4186200; 694800, 4186200; 694600, 4186100; 694400, 4186100; 694300, 4186000; 694200, 4186000; 693900, 4186200; 693800, 4186200; 693700, 4186100; 693700, 4185900; 693500, 4185800; 693300, 4185600; 693100, 4185500; 693000, 4185200; 692500, 4185200; 692400, 4185400; 692500, 4185500; 692500, 4185600; 692500, 4186200; 692600, 4186300; 692600, 4186800; 692500, 4186800; 692400, 4186900; 692300, 4186800; 692200, 4187000; 692100, 4186800; 692000, 4187000; 691900, 4187000; 691900, 4186800; 691800, 4186800; 691700, 4187200; 691600, 4187200; 691400, 4187200; 691300, 4187200; 691200, 4187300; 691000, 4187400; 690800, 4187800; 690800, 4187900; 690900, 4187900; 691000, 4188000; 691000, 4187900; 691100, 4187900; 691100, 4188100; 691000, 4188200; 690900, 4188200; 690900, 4188100; 690700, 4188000; 690600, 4188100; 690600, 4188300; 690400, 4188500; 690300, 4188700; 690300, 4188800; 690100, 4188900; 690200, 4189100; 690300, 4189100; 690500, 4189200; 690000, 4189300; 689900, 4189400; 691100, 4189400; 691100, 4189900; 690900, 4190000; 691000, 4190100; 690900, 4190500; 691000, 4190600; 691000, 4190800; 691100, 4190800; 691200, 4190600; 691400, 4190700; 691600, 4190600; 691600, 4190500; 691700, 4190500; 691800, 4190400; 691800, 4190600; 692100, 4190600; 692200, 4190400; 692300, 4190500; 692300, 4190700; 692200, 4190700; 692200, 4190800; 692000, 4190800; 691900, 4190900; 691700, 4190700; 691600, 4190700; 691600, 4190800; 691500, 4191100; 691700, 4191100; 691700, 4191700; 693100, 4191900; 693600, 4192400; 693800, 4193200; 694000, 4193300; 693900, 4193200; 694000, 4193200; 694100, 4193100; 694200, 4193100; 694600, 4192900; 694700, 4192800; 694500, 4192500; 695200, 4192500; 695400, 4192400; 695700, 4192100; 695800, 4192000; 695800, 4191700; 695900, 4191700; 695900, 4191500; 696000, 4191400; 696000, 4191200; 696400, 4191200; 696400, 4191500; 696500, 4191500; 696500, 4192500; 696300, 4192500; 695100, 4193400; 695100, 4193500; 694900, 4193600; 694800, 4193800; 694600, 4193800; 694600, 4193900; 694500, 4193900; 694500, 4193800; 694400, 4193800; 694400, 4193900; 694300, 4193900; 694300, 4193700; 694200, 4193700; 694000, 4193800; 693900, 4193900; 693700, 4194200; 693700, 4194400; 693600, 4194700; 693500, 4194700; 693500, 4194600; 693300, 4194500; 693100, 4194600; 692900, 4194500; 692000, 4194900; 692000, 4195900; 691800, 4195900; 691300, 4195600; 691100, 4195900; 691400, 4196000; 691400, 4196100; 691300, 4196200; 691300, 4196300; 691400, 4196400; 691400, 4196500; 691200, 4196500; 690900, 4196300; 690800, 4196200; 690600, 4196400; 690600, 4196500; 690700, 4196600; 690500, 4196600; 690300, 4196500; 689800, 4196500; 689500, 4196400; 689500, 4197000; 689100, 4197000; 688900, 4196600; 688900, 4196700; 688800, 4196700; 688800, 4196200; 686900, 4196200; 687000, 4196400; 687200, 4197000; 687900, 4197100; 687900, 4198500; 688200, 4198800; 688400, 4198800; 688500, 4199200; 688800, 4199100; 688800, 4199900; 688500, 4199900; 688500, 4200000; 688000, 4200200; 688100, 4201700; 686600, 4201800; 686300, 4202600; 686300, 4202900; 686500, 4203100; 687700, 4203800; 687800, 4203800; 687900, 4203500; 688600, 4203800; 689100, 4203600; 689400, 4203800; 689400, 4204400; 690200, 4204400; 690300, 4203600; 691600, 4204200; 692500, 4204600; 692400, 4203100; 693200, 4202800; 693200, 4202100; 692800, 4200800; 695000, 4199200; 695800, 4199200; 696200, 4199100; 696500, 4198900; 696600, 4198700; 696800, 4198100; 696900,

4197800; 697300, 4198400; 697700, 4198400; 697500, 4197100; 697800, 4196700; 698300, 4196700; 699100, 4195600; 699300, 4195300; 699600, 4195300; 700000, 4194700; 700200, 4194600; 700200, 4194000; 700900, 4194000; 702000, 4193700; 702300, 4193800; 702300, 4194600; 702600, 4194700; 702900, 4194500; 702900, 4193800; 702200, 4193100; 702300, 4192400; 703900, 4191600; 703900, 4191100; 704400, 4190700; 705400, 4190400; 705700, 4189100; 705500, 4188600; 705100, 4188500; 704800, 4188500; 704300, 4188900; 703800, 4188500; 703600, 4188500; 703400, 4189100; 702300, 4189000; 700700, 4188500; 700100, 4188500; 700000, 4188800; 699600, 4188300; 699800, 4188200; 700100, 4187600; 699900, 4186200; 698400, 4185200; returning to 697300, 4184800.

(8) Unit 4: Stanislaus and Tuolumne Counties, California. From USGS 1:24,000 quadrangle maps Cooperstown, Keystone, Knights Ferry, La Grange, Oakdale, Paulsell, and Waterford, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 710300, 4182900; 711400, 4182100; 712400, 4182100; 713200, 4182000; 714100, 4182600; 714700, 4182000; 715200, 4181600; 715600, 4180900; 715400, 4180400; 716600, 4180400; 716900, 4179900; 717700, 4180100; 718500, 4180000; 718700, 4179200; 719300, 4178700; 719700, 4177600; 720300, 4177700; 720700, 4177700; 720800, 4176400; 721400, 4175900; 722200, 4175300; 722700, 4175200; 722800, 4173600; 723000, 4173500; 723200, 4173600; 723700, 4173600; 724000, 4173300; 724100, 4172300; 722800, 4172200; 721700, 4171200; 721600, 4170700; 721500, 4170500; 721400, 4170400; 721200, 4170300; 721000, 4170100; 721000, 4169600; 720900, 4169600; 720000, 4168500; 718900, 4168000; 718700, 4168100; 718100, 4168500; 718000, 4168500; 717900, 4168600; 716200, 4168600; 715900, 4168500; 715600, 4168300; 715500, 4168200; 715400, 4168300; 715400, 4169400; 714900, 4169900; 714900, 4170000; 715100, 4170000; 715200, 4170200; 715300, 4170200; 715300, 4170400; 715300, 4171200; 715200, 4171200; 715200, 4171000; 715100, 4171000; 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(ii) Start at 702000, 4169700; 701000, 4169700; 700700, 4169700; 700700, 4170500; 700500, 4170500; 700500, 4170900; 700300, 4170900; 700300, 4171100; 700300, 4171800; 701200, 4171800; 702000, 4171800; 702000, 4169800; returning to 702000, 4169700.

(9) Unit 5: Merced and Stanislaus Counties, California. From USGS 1:24,000 quadrangle maps Cooperstown, La Grange, Merced Falls, Montpelier, Paulsell, Snelling, and Turlock Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 724100, 4158200; 723800, 4158200; 723700, 4159000; 722500, 4159000; 722500, 4159200; 722400, 4159200; 722300, 4159300; 722200, 4159300; 721600, 4159300; 721600, 4159500; 721500, 4159600; 721500, 4159800; 721600, 4159800; 721600, 4159900; 721700, 4159900; 721700, 4160500; 721100, 4160500; 721100, 4160100; 720800, 4160100; 720800, 4160500; 719500, 4160500; 719500, 4160300; 720000, 4159600; 719600, 4159600; 719600, 4159500; 719500, 4159500; 719400, 4159500; 719300, 4159400; 719100, 4159400; 719000, 4159400; 718900, 4159300; 718700, 4159100; 718600, 4159000; 718600, 4158900; 718400, 4158900; 718200, 4158800; 718200, 4158700; 718300, 4158600; 718400, 4158500; 718500, 4158500; 718600, 4158400; 718700, 4158400; 718900, 4158300; 719000, 4158100; 719000, 4157900; 718700, 4157600; 718000, 4157700; 717800, 4157400; 717900, 4157200; 718000, 4157000; 718400, 4157300; 718700, 4156700; 718700, 4156300; 717500, 4156300; 717500, 4156700; 717100, 4156700; 717100, 4156300; 716600, 4156300; 716600, 4155800; 716300, 4155700; 716200, 4155000; 715900, 4154900; 715900, 4155100; 715800, 4155200; 715800, 4155300; 715700, 4155400; 715600, 4155700; 715500, 4155800; 715400, 4155800; 715300, 4156600; 715400, 4156600; 715400, 4157200; 715400, 4157400; 715500, 4157400; 715500, 4157600; 717600, 4157600; 717600, 4159700; 718100, 4160200; 718200, 4160500; 718400, 4160800; 718700, 4161100; 716800, 4161100; 716800, 4160400; 714900, 4160400; 714900, 4160900; 715000, 4160900; 715000, 4161000; 715200, 4161000; 715200, 4161100; 714400, 4161100; 714400, 4161200; 713700, 4161200; 713700, 4161100; 713300, 4161100; 713200, 4161200; 713100, 4161100; 713100, 4161000; 713400, 4160700; 713400, 4160600; 713600, 4160500; 713800, 4160800; 713900, 4160800; 714000, 4160700; 714000, 4160400; 711100, 4160300; 711100, 4161900; 709500, 4161900; 709500, 4163500; 707900, 4163500; 707900, 4163100; 707000, 4163100; 707000, 4165600; 707400, 4165600; 707400, 4165800; 706700, 4166100; 706500, 4165800; 706200, 4166000; 706300, 4166300; 706200, 4166400; 706200, 4166500; 706300, 4166500; 706300, 4166700; 706200, 4166700; 706200, 4167100; 706500, 4167100; 706700, 4166700; 706800, 4166700; 706800, 4166300; 707000, 4166300; 707000, 4166100; 707200, 4166100; 707200, 4166700; 707400, 4166700; 707800, 4166000; 707800, 4165600; 708000, 4165800; 708200, 4165800; 708400, 4165700; 708400, 4165500; 708200, 4165400; 708200, 4165300; 708300, 4165200; 708400, 4165200; 708500, 4165300; 708600, 4165400; 708800, 4165400; 709100, 4165100; 710200, 4165100; 710200, 4166400; 710100, 4166400; 710100, 4166500; 710000, 4166500; 709900, 4166500; 709900, 4166700; 709800, 4166700; 709800, 4167100; 710200, 4166800; 711000, 4167600; 711600, 4167800; 712400, 4167800; 712400, 4167300; 712900, 4167300; 712900, 4167200; 712600, 4166900; 711800, 4167000; 711600, 4166800; 711600, 4166600; 711800, 4166500; 711800, 4166600; 711900, 4166600; 712000, 4166300; 712100, 4166500; 712200, 4166500; 712300, 4166400; 712500, 4166400; 712500, 4166200; 712700, 4166200; 712700, 4166300; 712800, 4166300; 713000, 4166100; 712800, 4166000; 712700, 4165800; 712500, 4165800; 712500, 4165600; 712700, 4165600; 712600, 4165400; 712400, 4165500; 712300, 4165400; 712500, 4165300; 712500, 4165200; 712400, 4165100; 712600, 4165100; 712600, 4165000; 712600, 4164900; 712700, 4164800; 712600, 4164700; 712500, 4164800; 712400, 4164800; 712400, 4164300; 712800, 4164500; 713100, 4164300; 713200, 4164100; 712900, 4163800; 712900, 4163700; 713100, 4163800; 713500, 4164000; 713600, 4164000; 713600, 4164100; 713700, 4164300; 714200, 4164300; 714400, 4164500; 714500, 4164800; 714600, 4164800; 714800, 4164700; 714800, 4164200; 714400, 4164000; 714400, 4163600; 714500, 4163500; 715200, 4164000; 715300, 4164200; 715400, 4164200; 715300, 4163900; 715100, 4163700; 715000, 4163500; 714800, 4163300; 714900, 4163200; 715000, 4163200; 715700, 4163200; 715900, 4163100; 716000, 4162900; 716100, 4162800; 716200, 4162800; 716300, 4162900; 716400, 4163000; 716500, 4163100; 716600, 4163200; 716600, 4163500; 716500, 4163600; 716500, 4163800; 716600, 4164100; 716800, 4164500; 716700, 4164900; 716800, 4165300; 717200, 4165800; 717200, 4166100; 717000, 4166400; 716600, 4166400; 716400, 4166300; 716400, 4166900; 716600, 4166900; 716800, 4167100; 716800, 4167350; 717000, 4167400; 717500, 4167400; 718100, 4167300; 718500, 4167100; 718600, 4166600; 718700, 4166400; 719100, 4166700; 719300, 4166800; 719500, 4166800; 719500, 4166500; 719600, 4166400; 719600, 4166100; 719800, 4166100; 719900, 4166300; 719900, 4166200; 720700, 4166200; 720700, 4163700; 721700, 4163700; 722400, 4164100; 722400, 4165300; 722200, 4165300; 722200, 4165400; 721500, 4165400; 721500, 4166100; 721000, 4166300; 720700, 4166500; 720900, 4166600; 721000, 4166700; 721100, 4166900; 721000,

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(ii) Start at 712600, 4155200; 712600, 4156800; 712900, 4156800; 712900, 4157100; 714800, 4157200; 714800, 4156800; 714300, 4156300; 714200, 4156200; 714000, 4155500; 714000, 4155400; 713800, 4155400; returning to 712600, 4155200.

(10) Unit 6: Mariposa and Merced Counties, California. From USGS 1:24,000 quadrangle maps Haystack Mtn., Indian Gulch, Merced, Merced Falls, Owens Reservoir, Planada, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 736600, 4134200; 733900, 4134200; 733900, 4134800; 733800, 4134900; 733800, 4135000; 733000, 4135000; 733000, 4135800; 732500, 4135800; 730300, 4135700; 730200, 4135600; 730100, 4135600; 729900, 4135700; 729900, 4136500; 729900, 4136700; 730000, 4136700; 730100, 4136600; 730200, 4136600; 730300, 4136600; 730400, 4136700; 730500, 4136800; 730600, 4136900; 730600, 4137000; 730600, 4137200; 730600, 4137300; 730500, 4137400; 730400, 4137500; 730300, 4137500; 729900, 4137700; 729800, 4137700; 729700, 4137600; 729400, 4137600; 729300, 4137800; 729300, 4138400; 729200, 4138500; 729000, 4138400; 728800, 4138700; 728400, 4138800; 728200, 4138800; 727900, 4138600; 727700, 4138500; 727600, 4138400; 727400, 4138300; 727400, 4137800; 727300, 4137800; 727300, 4137600; 727400, 4137600; 727400, 4137500; 727300, 4137500; 727300, 4137400; 727400, 4137400; 727400, 4137200; 726500, 4137200; 726500, 4136500; 726400, 4136400; 725800, 4136400; 725800, 4137200; 725000, 4137200; 724900, 4138800; 725500, 4138800; 725500, 4138700; 725800, 4138700; 725800, 4138800; 725900, 4138800; 725900, 4139500; 726500, 4139500; 726500, 4139600; 725900, 4139600; 725800, 4139600; 725800, 4140200; 725900, 4140200; 725900, 4140900; 725400, 4140900; 725400, 4140800; 725100, 4140800; 725100, 4141000; 724900, 4141000; 724900, 4141200; 724100, 4141200; 724100, 4141600; 723400, 4141600; 723400, 4141100; 723200, 4141100; 723200, 4140600; 723400, 4140500; 723400, 4139500; 724000, 4139500; 724000, 4139400; 723900, 4138900; 723900, 4138700; 723500, 4138200; 723400, 4138200; 723400, 4138300; 723000, 4138300; 723000, 4138700; 723000, 4138900; 723100, 4139100; 723200, 4139400; 723300, 4139500; 722100, 4139500; 722000, 4140500; 721900, 4141100; 721900, 4141900; 721900, 4143400; 720800, 4143400; 720900, 4141800; 721000, 4141500; 721000, 4141200; 721100, 4141100; 721000, 4141000; 717800, 4140900; 717700, 4142500; 714500, 4142400; 714500, 4144900; 715500, 4144900; 715500, 4145000; 715800, 4145000; 715900, 4145000; 716000, 4145000; 716100, 4145100; 716100, 4145200; 716000, 4145200; 715900, 4145300; 715900, 4145400; 716000, 4145500; 716000, 4145600; 716100, 4145700; 717000, 4145700; 717700, 4145300; 717800, 4145300; 717800, 4145200; 717800, 4145100; 717600, 4144900; 717600, 4144800; 717600, 4144700; 717800, 4144500; 717900, 4144600; 718200, 4144600; 718400, 4144500; 718700, 4144500; 718700, 4144800; 718600, 4145000; 718700, 4145100; 718700, 4145600; 718600, 4145600; 718600, 4145700; 718700, 4145800; 718600, 4145900; 718500, 4146000; 718500, 4146100; 718600, 4146200; 718600, 4146500; 718300, 4146500; 718200, 4146600; 718200, 4146800; 718300, 4146800; 718500, 4146900; 718600, 4147000; 718600, 4147100; 718400, 4147200; 718500, 4147300; 718500, 4147600; 718700, 4147600; 718700, 4147400; 719000, 4147500; 719100, 4147700; 719300, 4147600; 719600, 4147900; 719700, 4148000; 719700, 4148100; 719800, 4148200; 720000, 4148200; 720600, 4148200; 720600, 4148300; 720700, 4148400; 720800, 4148400; 720900, 4148500; 722700, 4148500; 722700, 4148600; 722900, 4148600; 723200, 4148700; 723400, 4148700; 723200, 4148600; 723100, 4148500; 723000, 4148400; 723200, 4148200; 723400, 4148200; 723500, 4148300; 723600, 4148400; 723600, 4148500; 723800, 4148500; 723800, 4148400; 723900, 4148400; 723900, 4148500; 724000, 4148700; 724200, 4148500; 724200, 4148900; 724300, 4149000; 724300, 4149100; 724500, 4149000; 724500, 4149300; 724700, 4149400; 724900, 4149600; 725000, 4149700; 725000, 4150000; 724900, 4150100; 725000, 4150200; 725200, 4150200; 725300, 4150400; 725400, 4150500; 725400, 4150600; 725100, 4150900; 724700, 4150900; 724700, 4153400; 725000, 4153500; 725400, 4153900; 725600, 4154100; 725800, 4154200; 726000, 4154300; 726200, 4154000; 726300, 4153800; 726300, 4153700; 727800, 4153700; 727800, 4153400; 727900, 4153400; 727900, 4153500; 728400, 4153600; 728700, 4153700; 729000, 4153700; 729000, 4153600; 729100, 4153500; 729300, 4153400; 729400, 4153400; 729400, 4153300; 729300, 4153200; 729500, 4153100; 729800, 4153100; 729900, 4153200; 729900, 4154200; 730000, 4154200; 730100, 4154300; 730600, 4154300; 730700, 4154400; 731000, 4154600; 731200, 4154700; 731500, 4154700; 731800, 4154900; 732200, 4154900; 732600, 4154800; 733200, 4154500; 733400, 4154500; 733700, 4154300; 734700, 4154300; 734900, 4154600; 735100, 4154800; 735100, 4154900; 735500, 4155300; 735600, 4155300; 735800, 4155500; 736100, 4155900; 737100, 4155400; 737800, 4155000; 738200, 4154200; 738300, 4153300; 739000, 4152800; 739100, 4152200; 740200, 4151800; 740800, 4151500; 740800,

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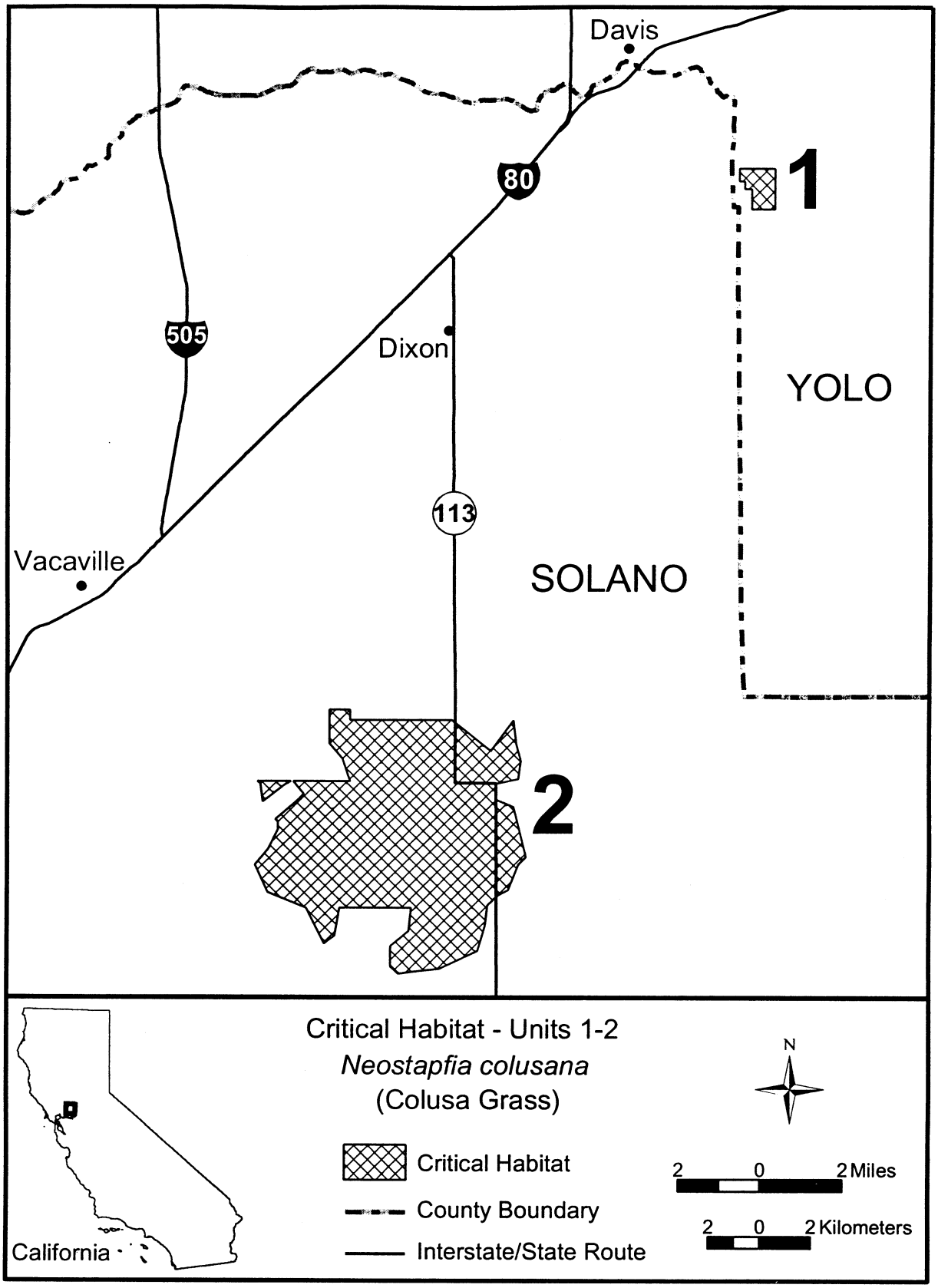
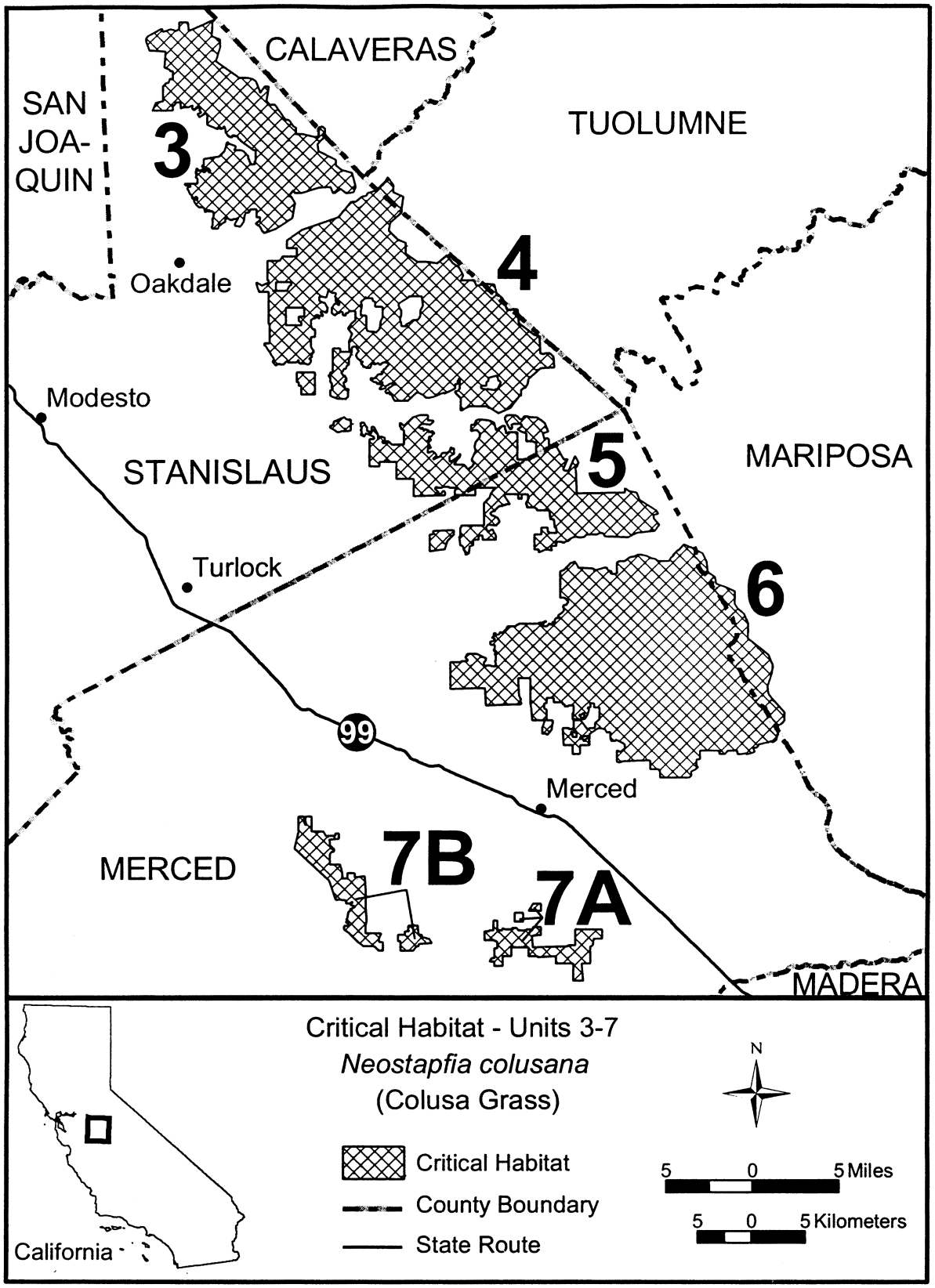
(11) Subunit 7A: Merced County, California. [Reserved]

(12) Subunit 7B: Merced County, California. [Reserved]

(13) Maps follow of critical habitat units 1 and 2, and 3 through 7 (respectively) for Colusa grass.

BILLING CODE 4310–55–P


Davis
80
1
505
Dixon
YOLO
113
Vacaville
SOLANO
2
Critical Habitat - Units 1-2
Neostapfia colusana
(Colusa Grass)
N
Critical Habitat
County Boundary
Interstate/State Route
2 0 2 Miles
2 0 2 Kilometers
California



BILLING CODE 4310–55–C

Family Poaceae: Orcuttia inaequalis (San Joaquin Valley Orcutt Grass).

(1) Critical habitat units are depicted for Mariposa, Fresno and Tulare Counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Orcuttia inaequalis* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Orcuttia inaequalis* germination, growth and reproduction, including but not limited to vernal pools on alluvial fans, high and low stream terraces, and tabletop lava flows. These habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Orcuttia inaequalis* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing manmade features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Unit 1: Mariposa and Merced Counties, California. From USGS 1:24,000 quadrangle maps Haystack Mtn., Indian Gulch, Merced, Merced Falls, Owens Reservoir, Planada, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 736600, 4134200; 733900, 4134200; 733900, 4134800; 733800, 4134900; 733800, 4135000; 733000, 4135000; 733000, 4135800; 732500, 4135800; 730300, 4135700; 730200, 4135600; 730100, 4135600; 729900, 4135700; 729900, 4136500; 729900, 4136700; 730000, 4136700; 730100, 4136600; 730200, 4136600; 730300, 4136600; 730400, 4136700; 730500, 4136800; 730600, 4136900; 730600, 4137000; 730600, 4137200; 730600, 4137300; 730500, 4137400; 730400, 4137500; 730300, 4137500; 729900, 4137700; 729800, 4137700; 729700, 4137600; 729400, 4137600; 729300, 4137800; 729300, 4138400; 729200, 4138500; 729000, 4138400; 728800, 4138700; 728400, 4138800; 728200, 4138800; 727900, 4138600; 727700, 4138500; 727600, 4138400; 727400, 4138300; 727400, 4137800; 727300, 4137800; 727300, 4137600; 727400, 4137600; 727400, 4137500; 727300, 4137500; 727300, 4137400; 727400, 4137400; 727400, 4137200; 726500, 4137200; 726500, 4136500; 726400, 4136400; 725800, 4136400; 725800, 4137200; 725000, 4137200; 724900, 4138800; 725500, 4138800; 725500, 4138700; 725800, 4138700; 725800, 4138800; 725900, 4138800; 725900, 4139500; 726500, 4139500; 726500, 4139600; 725900, 4139600; 725800, 4139600; 725800, 4140200; 725900, 4140200; 725900, 4140900; 725400, 4140900; 725400, 4140800; 725100, 4140800; 725100, 4141000; 724900, 4141000; 724900, 4141200; 724100, 4141200; 724100, 4141600; 723400, 4141600; 723400, 4141100; 723200, 4141100; 723200, 4140600; 723400, 4140500; 723400, 4139500; 724000, 4139500; 724000, 4139400; 723900, 4138900; 723900, 4138700; 723500, 4138200; 723400, 4138200; 723400, 4138300; 723000, 4138300; 723000, 4138700; 723000, 4138900; 723100, 4139100; 723200, 4139400; 723300, 4139500; 722100, 4139500; 722000, 4140500; 721900, 4141100; 721900, 4141900; 721900, 4143400; 720800, 4143400; 720900, 4141800; 721000, 4141500; 721000, 4141200; 721100, 4141100; 721000, 4141000; 717800, 4140900; 717700, 4142500; 714500, 4142400; 714500, 4144900; 715500, 4144900; 715500, 4145000; 715800, 4145000; 715900, 4145000; 716000, 4145000; 716100, 4145100; 716100, 4145200; 716000, 4145200; 715900, 4145300; 715900, 4145400; 716000, 4145500; 716000, 4145600; 716100, 4145700; 717000, 4145700; 717700, 4145300; 717800, 4145300; 717800, 4145200; 717800, 4145100; 717600, 4144900; 717600, 4144800; 717600, 4144700; 717800, 4144500; 717900, 4144600; 718200, 4144600; 718400, 4144500; 718700, 4144500; 718700, 4144800; 718600, 4145000; 718700, 4145100; 718700, 4145600; 718600, 4145600; 718600, 4145700; 718700, 4145800; 718600, 4145900; 718500, 4146000; 718500, 4146100; 718600, 4146200; 718600, 4146500; 718300, 4146500; 718200, 4146600; 718200, 4146800; 718300, 4146800; 718500, 4146900; 718600, 4147000; 718600, 4147100; 718400, 4147200; 718500, 4147300; 718500, 4147600; 718700, 4147600; 718700, 4147400; 719000, 4147500; 719100, 4147700; 719300, 4147600; 719600, 4147900; 719700, 4148000; 719700, 4148100; 719800, 4148200; 720000, 4148200; 720600, 4148200; 720600, 4148300; 720700, 4148400; 720800, 4148400; 720900, 4148500; 722700, 4148500; 722700, 4148600; 722900, 4148600; 723200, 4148700; 723400, 4148700; 723200, 4148600; 723100, 4148500; 723000, 4148400; 723200, 4148200; 723400, 4148200; 723500, 4148300; 723600, 4148400; 723600, 4148500; 723800, 4148500; 723800, 4148400; 723900, 4148400; 723900, 4148500; 724000, 4148700; 724200, 4148500; 724200, 4148900; 724300, 4149000; 724300, 4149100; 724500, 4149000; 724500, 4149300; 724700, 4149400; 724900, 4149600; 725000, 4149700; 725000, 4150000; 724900, 4150100; 725000, 4150200; 725200, 4150200; 725300, 4150400; 725400, 4150500; 725400, 4150600; 725100, 4150900; 724700, 4150900; 724700, 4153400; 725000, 4153500; 725400, 4153900; 725600, 4154100; 725800, 4154200; 726000, 4154300; 726200, 4154000; 726300, 4153800; 726300, 4153700; 727800, 4153700; 727800, 4153400; 727900, 4153400; 727900, 4153500; 728400, 4153600; 728700, 4153700; 729000, 4153700; 729000, 4153600; 729100, 4153500; 729300, 4153400; 729400, 4153400; 729400, 4153300; 729300, 4153200; 729500, 4153100; 729800, 4153100; 729900, 4153200; 729900, 4154200; 730000, 4154200; 730100, 4154300; 730600, 4154300; 730700, 4154400; 731000, 4154600; 731200, 4154700; 731500, 4154700; 731800, 4154900; 732200, 4154900; 732600, 4154800; 733200, 4154500; 733400, 4154500; 733700, 4154300; 734700, 4154300; 734900, 4154600; 735100, 4154800; 735100, 4154900; 735500, 4155300; 735600, 4155300; 735800, 4155500; 736100, 4155900; 737100, 4155400; 737800, 4155000; 738200, 4154200; 738300, 4153300; 739000, 4152800; 739100, 4152200; 740200, 4151800; 740800, 4151500; 740800, 4150300; 741100, 4149900; 741700, 4149400; 742100, 4148500; 742100,

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(6) Unit 2: Madera, Mariposa, and Merced Counties, California. From USGS 1:24,000 quadrangle maps Illinois Hill, Indian Gulch, Le Grand, Owens Reservoir, Plainsburg, and Raynor Creek, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 4124000; 757000, 4123700; 757600, 4123900; 757900, 4123200; 758400, 4122900; 759200, 4122900; 760300, 4121300; 761000, 4121000; 761300, 4120300; 762100, 4119400; 762100, 4119300; 762000, 4119200; 761900, 4119200; 761800, 4119100; 761700, 4119200; 761600, 4119100; 761500, 4119100; 761400, 4119000; 761200, 4118800; 761000, 4118800; 760900, 4118700; 760800, 4118700; 760500, 4118500; 760200, 4118500; 759900, 4118400; 759700, 4118500; 759600, 4118400; 759400, 4118300; 759300, 4118200; 759200, 4118200; 759000, 4118100; 758800, 4118000; 758600, 4117900; 758200, 4117900; 758000, 4118000; 757800, 4117900; 757600, 4117800; 757500, 4117800; 757400, 4117600; 757300, 4117600; 757200, 4117500; 757100, 4117400; 757000, 4117400; 756900, 4117300; 756800, 4117300; 756600, 4117100; 756500, 4117200; 756200, 4117300; 755800, 4117200; 755700, 4117200; 755700, 4116700; 755700, 4116600; 755500, 4116500; 755400, 4116500; 754900, 4116300; 754800, 4116300; 754800, 4116600; 753700, 4116600; 753700, 4116400; 753300, 4116400; 753300, 4115600; 753100, 4115500; 752700, 4115400; 752400, 4115300; 752200, 4115200; 752200, 4115600; 751800, 4115600; 752000, 4115800; 751900, 4116000; 751400, 4116100; 751100, 4116300; 751300, 4116300; 751300, 4116900; 751100, 4116900; 750800, 4116900; 750700, 4117000; 750000, 4116800; 749300, 4116800; 749300, 4116500; 746000, 4116500; 746000, 4116600; 745200, 4116600; 745200, 4117800; 744600, 4117800; 744600, 4118600; 743600, 4118600; 743600, 4119000; 745400, 4119000; 745400, 4119700; 744700, 4119700; 744700, 4120500; 745300, 4120500; 745500, 4120600; 745600, 4120700; 746000, 4120700; 746000, 4121400; 746200, 4121500; 746200, 4121600; 746400, 4121700; 746400, 4121800; 747600, 4120700; 746500, 4120700; 746500, 4119700; 747000, 4119700; 747000, 4120300; 747800, 4120300; 747800, 4120000; 748400, 4120000; 747800, 4120500; 747800, 4121400; 748600, 4121400; 748600, 4121900; 747800, 4121900; 747800, 4123300; 748300, 4123300; 748300, 4123500; 748500, 4123500; 748600, 4123500; 748600, 4123900; 747800, 4123900; 747800, 4124600; 747400, 4125100; 747400, 4125500; 746900, 4125500; 746900, 4125800; 747000, 4125900; 746900, 4125900; 746600, 4125800; 746300, 4125700; 746200, 4125600; 746200, 4125500; 745700, 4125500; 745700, 4125100; 744500, 4125100; 744500, 4125300; 744400, 4125300; 744400, 4125200; 743700, 4125200; 743700, 4125800; 744500, 4125800; 744500, 4126200; 743700, 4126200; 743700, 4127000; 742400, 4127000; 742000, 4127200; 742000, 4128600; 742800, 4128600; 742800, 4129100; 742900, 4129100; 743000, 4129100; 743000, 4129200; 743400, 4129300; 743600, 4129500; 743600, 4130700; 743500, 4130700; 743500, 4130900; 743500, 4132200; 744000, 4133400; 742700, 4133400; 742600, 4133500; 741500, 4132900; 740900, 4132200; 740800, 4132600; 740300, 4132600; 740300, 4132800; 740300, 4133500; 741000, 4133500; 741000, 4133900; 741900, 4133900; 741800, 4135800; 741000, 4135800; 741000, 4136400; 741100, 4136400; 741400, 4136400; 741800, 4136500; 742000, 4136400; 742400, 4136500; 742700, 4136600; 742600, 4136900; 742700, 4137000; 742900, 4137000; 743100, 4137200; 743100, 4137300; 743400, 4137400; 743800, 4137500; 744000, 4137500; 744200, 4137600; 744400, 4137500; 744700, 4137700; 744900, 4138500; 744800, 4138800; 744900, 4139000; 745200, 4139200; returning to 745300, 4139300.

(7) Unit 3: Madera County, California. [Reserved]

(8) Unit 4: Fresno County, California. From USGS 1:24,000 quadrangle map Friant, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 259800, 4086700; 259300, 4086700; 259300, 4087600; 259600, 4087500; 260000, 4087500; 260100, 4087900; 260000, 4088100; 259700, 4088300; 258500, 4088300; 258000, 4088300; 258000, 4089100; 258200, 4089200; 258200, 4089100; 258500, 4089100; 258700, 4089200; 258700, 4089600; 258800, 4089600; 258900, 4089700; 258900, 4089800; 258600, 4089800; 258600, 4089900; 258200, 4089900; 258200, 4089700; 258100, 4089600; 257700, 4089600; 257700, 4089200; 257400, 4089200; 257400, 4089900; 257200, 4089900; 257200, 4089200; 256600, 4089200; 256600, 4089700; 256800, 4089700; 256800, 4090000; 256600, 4090000; 256600, 4090200; 256800, 4090800; 257000, 4091500; 257100, 4092700; 257100, 4092900; 257200, 4093100; 257300, 4094300; 257300, 4095400; 257400, 4095500; 258200, 4096300; 258900, 4096300; 258900, 4096700; 259600, 4096700; 259600, 4094700; 260300, 4094700; 260300, 4093300; 259400, 4091700; 260800, 4091700; 262200, 4091100; 262900, 4091100; 262900, 4090400; 263000, 4090100; 262700, 4089600; 262400, 4089500; 261800, 4089100; 261700, 4089200; 261700, 4089400; 261600, 4089400; 261500, 4089400; 261300, 4089400; 261300, 4088200; 261100, 4088200; 261100, 4087400; 260400, 4087400; 260400, 4087500; 260100, 4087500; 260100, 4086900; 259800, 4086900; returning to 259800, 4086700.

(9) Subunit 5A: Madera County, California. [Reserved]

(10) Subunit 5B: Fresno County, California. From USGS 1:24,000

quadrangle maps Academy, and Millerton Lake East, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 267300, 4097300; 266900, 4097300; 267000, 4097600; 267800, 4098300; 268100, 4098700; 268100, 4098900; 268000, 4099100; 267400, 4099800; 267400, 4100300; 267700, 4100800; 268100, 4101400; 268600, 4101400; 269100, 4101100; 269600, 4101100; 269800, 4101300; 269900, 4101500; 269600, 4102200; 269200, 4102400; 268600, 4102800; 268700, 4103800; 269100, 4103800; 269600, 4103100; 270200, 4103500; 270300, 4103500; 270700, 4102500; 270500, 4102400; 270300, 4102200; 270300, 4101900; 270500, 4101500; 270600, 4101100; 270500, 4101000; 270200, 4100700; 269400, 4100500; 268300, 4100500; 268100, 4100300; 268100, 4100100; 268400, 4099800; 268600, 4099500; 268700, 4099200; 268700, 4098900; 268600, 4098300; 268500, 4098100; 268400, 4097800; 268100, 4097600; 267800, 4097400; returning to 267300, 4097300.

(11) Subunit 6A: Tulare County, California. From USGS 1:24,000 quadrangle maps Monson, and Traver, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 294300, 4035600; 293500, 4035600; 293400, 4034000; 292600, 4034000; 292600, 4035400; 291900, 4035400; 291700, 4035400; 291700, 4035600; 290500, 4035700; 290500, 4036100; 289800, 4036100; 289800, 4035700; 289400, 4035700; 289400, 4034500; 288500, 4034500; 288500, 4034200; 287700, 4034200; 287700, 4034500; 287000, 4034600; 287000, 4035100; 288500, 4035100; 288500, 4035600; 287700, 4035700; 287700, 4036700; 289300, 4036700; 289400, 4037400; 291100, 4037400; 291100, 4037200; 291800, 4037200; 291900, 4036800; 292700, 4036800; 292700, 4037600; 291900, 4037700; 292000, 4039500; 292300, 4039200; 292800, 4039200; 292800, 4038500; 293200, 4038500; 293200, 4038400; 294400, 4038400; returning to 294300, 4035600.

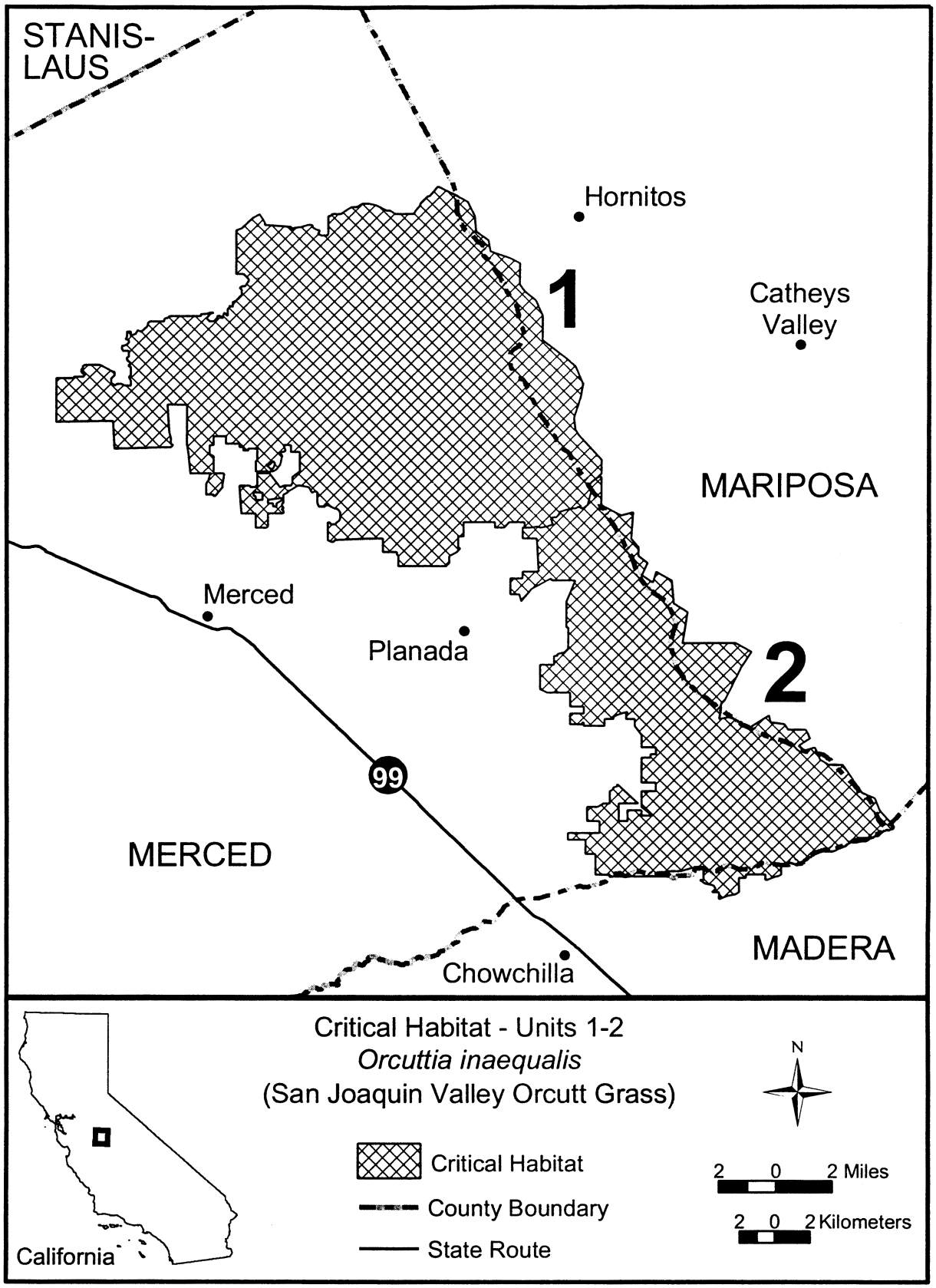
(12) Subunit 6B: Tulare County, California. From USGS 1:24,000 quadrangle maps Auckland, Ivanhoe, Stokes Mtn., and Woodlake, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N):

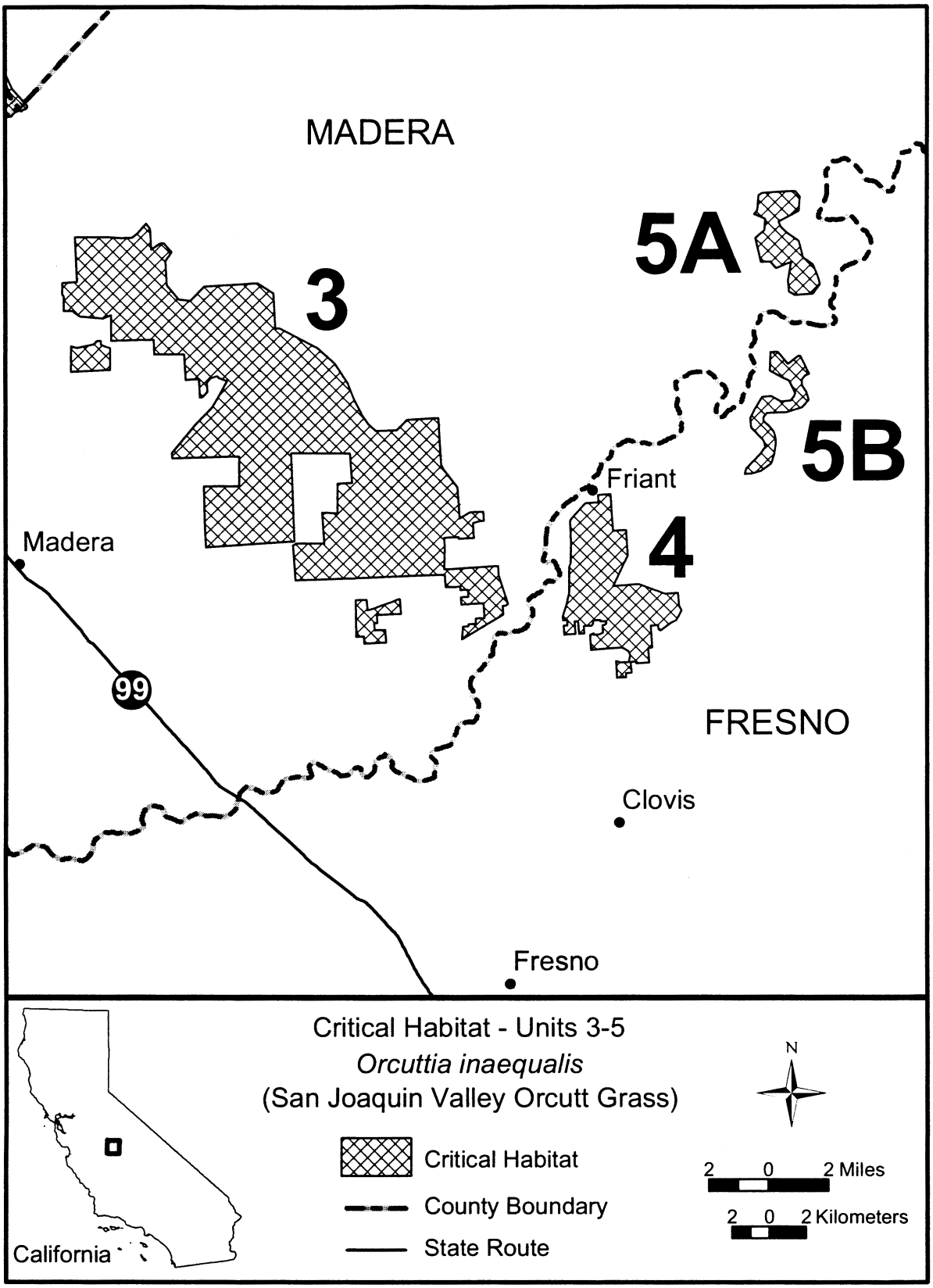
(i) Start at 308500, 4033700; 308200, 4033800; 308000, 4033900; 308100, 4034300; 308000, 4034500; 308000, 4034900; 307700, 4035100; 307500, 4035400; 307400, 4035600; 307400, 4035800; 307200, 4036300; 306900, 4036900; 307100, 4037300; 306700, 4038300; 306700, 4038400; 306800, 4038500; 307000, 4038500; 307200, 4038600; 307100, 4038700; 307100, 4039900; 308100, 4040200; 308500, 4040700; 308200, 4041500; 307600, 4041500; 307100, 4042000; 307100, 4042600; 307700, 4043700; 307800, 4044500; 308200, 4044700; 309000, 4043900; 309600, 4043400; 311700, 4043400; 312100, 4043000; 312700, 4043000; 313000, 4042700; 313000, 4042300; 312500, 4042000; 311000, 4041000; 311000, 4040400; 310600, 4040200; 310600, 4039900; 310400, 4039900; 310400, 4039800; 310000, 4039800; 310000, 4039500; 309900, 4039400; 309900, 4039200; 309700, 4039200; 309300, 4039200; 309300, 4038800; 308900, 4038800; 308900, 4038400; 308100, 4038400; 308000, 4038200; 307900, 4038200; 307900, 4037600; 308100, 4037600; 308100, 4037400; 308300, 4037400; 308300, 4038000; 308700, 4038000; 308700, 4037900; 308800, 4037800; 308700, 4037600; 308900, 4037600; 308900, 4037400; 308700, 4037400; 308700, 4037200; 309100, 4037200; 309100, 4036800; 308700, 4036800; 308700, 4037000; 308100, 4037000; 308100, 4036900; 308200, 4036900; 308200, 4036800; 308100, 4036800; 308100, 4036600; 308300, 4036600; 308300, 4036500; 308500, 4036500; 308400, 4035800; 308300, 4035800; 308300, 4035400; 308900, 4035000; 309000, 4034800; 308700, 4034800; 308700, 4034100; 308600, 4034100; 308600, 4034000; 308700, 4033900; returning to 308500, 4033700.

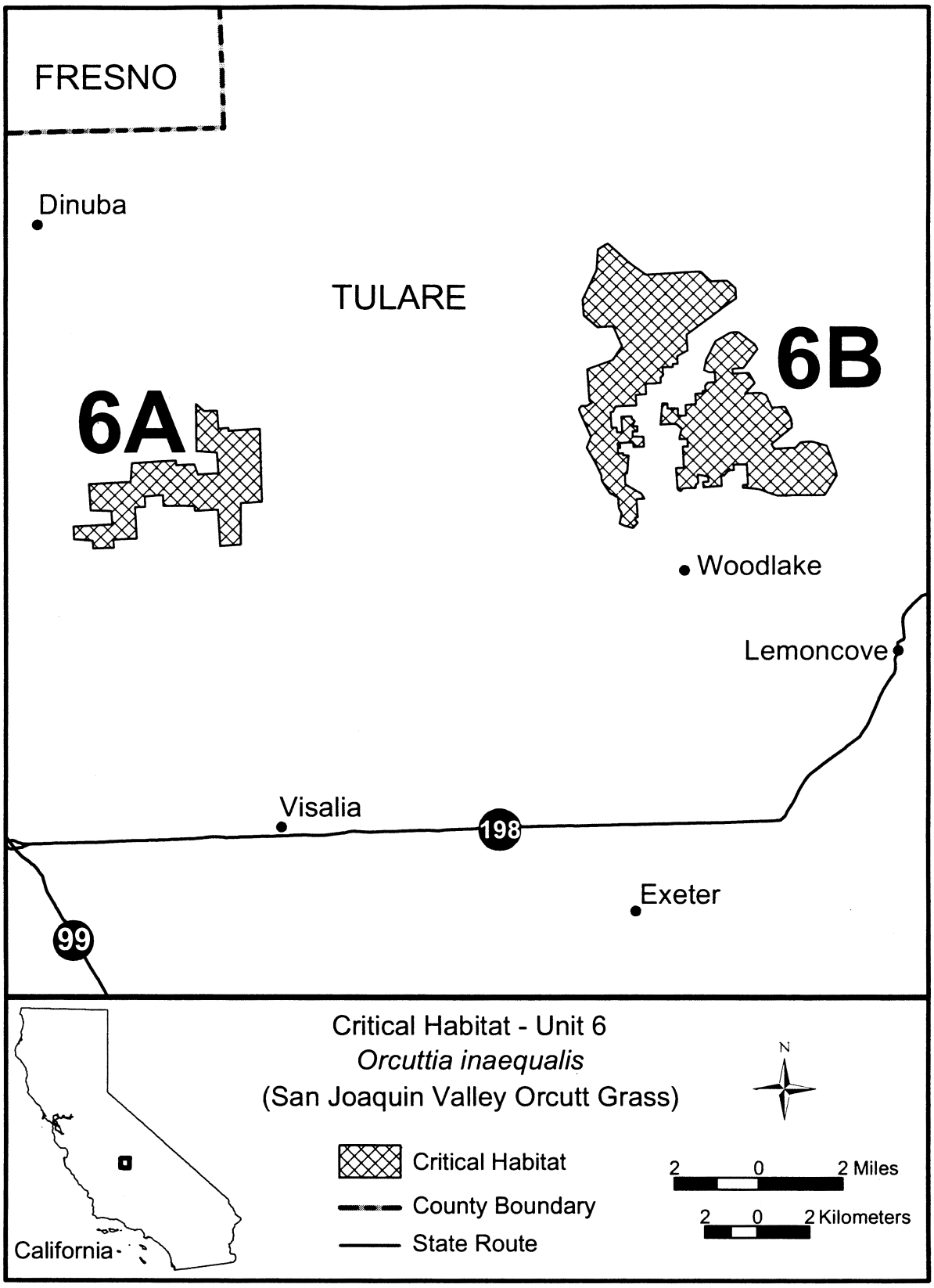
(ii) Start at 315900, 4034500; 314100, 4034600; 313400, 4034900; 312800, 4035000; 312800, 4035100; 313000, 4035100; 313000, 4035900; 312500, 4035900; 312500, 4035700; 312300, 4035700; 312100, 4035500; 312000, 4035500; 312000, 4035100; 311300, 4035100; 311300, 4035300; 311500, 4035300; 311500, 4035500; 311100, 4035600; 311100, 4035300; 311000, 4035200; 311000, 4035100; 310500, 4035100; 310400, 4035000; 310300, 4035100; 310300, 4035900; 310600, 4035900; 310600, 4036700; 310800, 4036700; 310800, 4037000; 310500, 4037000; 310500, 4037100; 310600, 4037400; 310400, 4037600; 309800, 4037600; 309900, 4038400; 310100, 4038400; 310100, 4038200; 310500, 4038200; 310500, 4037900; 310800, 4037900; 310800, 4038300; 311200, 4038300; 311200, 4038700; 311500, 4038700; 311500, 4038800; 311600, 4038800; 311600, 4039000; 311700, 4039100; 312000, 4039100; 312000, 4039500; 311800, 4039500; 311600, 4039600; 311700, 4040000; 312100, 4040700; 312700, 4041000; 313000, 4041000; 313600, 4040500; 313700, 4040300; 313100, 4039600; 312700, 4039600; 312700, 4039400; 313300, 4039400; 313500, 4039000; 313100, 4038600; 313700, 4038600; 313900, 4038500; 314100, 4038000; 314600, 4038000; 314800, 4037500; 314800, 4037200; 314000, 4036600; 314100, 4036400; 314900, 4036400; 315100, 4036600; 315500, 4036600; 316100, 4036400; 316400, 4035400; 316400, 4035200; returning to 315900, 4034500.

(13) Maps follow of critical habitat units 1 and 2, 3 through 5 and 6 (respectively) for San Joaquin Valley Orcutt grass.

BILLING CODE 4310–55–P


STANIS-
LAUS
Hornitos
1
Catheys
Valley
MARIPOSA
Merced
Planada
2
99
MERCED
MADERA
Chowchilla
Critical Habitat - Units 1-2
Orcuttia inaequalis
(San Joaquin Valley Orcutt Grass)
California
Critical Habitat
County Boundary
State Route
N
2 0 2 Miles
2 0 2 Kilometers


MADERA
3
5A
5B
Friant
4
Madera
99
FRESNO
Clovis
Fresno
Critical Habitat - Units 3-5
Orcuttia inaequalis
(San Joaquin Valley Orcutt Grass)
Critical Habitat
County Boundary
State Route
N
2 0 2 Miles
2 0 2 Kilometers
California



BILLING CODE 4310–55–C

Family Poaceae: Orcuttia pilosa (Hairy Orcutt Grass).

(1) Critical habitat units are depicted for Tehama, Glenn, Colusa, Stanislaus, Mariposa and Fresno Counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Orcuttia pilosa* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Orcuttia pilosa* germination, growth and reproduction, including but not limited to features occurring on both acidic and saline-alkaline soils, with an iron-silica cemented hardpan or claypan, and that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Orcuttia pilosa* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing manmade features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Unit 1: Butte and Tehama Counties, California. From USGS 1:24,000 quadrangle maps Acorn Hollow, Foster Island, Nord, Richardson Springs NW, and Vina, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 583200, 4413400; 583000, 4414200; 583700, 4414600; 583500, 4415000; 583000, 4415900; 583000, 4416400; 582900, 4416700; 582800, 4416900; 582700, 4417000; 582700, 4417200; 582900, 4417300; 582800, 4417400; 582700, 4417500; 582700, 4417600; 582600, 4417700; 582600, 4418000; 582600, 4418100; 582600, 4418200; 582700, 4418300; 582500, 4418400; 582400, 4418300; 582200, 4418300; 582100, 4418400; 582100, 4418500; 582000, 4418600; 582100, 4418700; 582100, 4418900; 582200, 4419100; 582100, 4419300; 582200, 4419500; 582100, 4419600; 582000, 4419700; 582100, 4419800; 582100, 4419900; 582200, 4420000; 582200, 4420300; 582100, 4420500; 582200, 4420600; 582200, 4420800; 582300, 4421100; 582900, 4421500; 582900, 4421600; 583300, 4422000; 583400, 4422100; 583900, 4422100; 584100, 4422300; 584200, 4422300; 584300, 4422400; 584400, 4422500; 584600, 4422900; 585100, 4423400; 585600, 4423700; 585800, 4423900; 585800, 4424200; 586100, 4424200; 586600, 4424800; 586800, 4424900; 587300, 4425500; 587400, 4425600; 587500, 4425800; 587500, 4425900; 587600, 4426000; 587700, 4426100; 587800, 4426100; 587900, 4426200; 587900, 4426300; 588200, 4426500; 588700, 4429900; 588900, 4429500; 589500, 4429500; 589500, 4428600; 589500, 4428000; 589800, 4427100; 590500, 4426400; 590500, 4425300; 591200, 4424400; 591500, 4423300; 591600, 4422100; 590900, 4420900; 590700, 4419800; 588000, 4417000; 587500, 4416400; 587200, 4415500; 587200, 4415100; 587300, 4415000; 587300, 4414500; 587200, 4414400; 587100, 4414300; 586900, 4414000; 586400, 4413900; 586200, 4413700; 586000, 4413600; 585800, 4413600; 585800, 4414700; 585300, 4414700; 585300, 4413800; 585200, 4413700; 584800, 4413700; 584600, 4413600; 584400, 4413600; 584200, 4413500; 584000, 4413700; returning to 583200, 4413400.

(6) Unit 2: Butte County, California. [Reserved]

(7) Unit 3: Colusa and Glenn Counties, California. [Reserved]

(8) Unit 4: Mariposa, Merced, and Stanislaus Counties, California. From USGS 1:24,000 quadrangle maps Cooperstown, La Grange, Merced Falls, Montpelier, Paulsell, Snelling, and Turlock Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 732200, 4162500; 732700, 4162700; 733000, 4162600; 733600, 4162100; 733700, 4161500; 733600, 4161000; 734600, 4160400; 734800, 4160200; 734800, 4159500; 734400, 4158700; 734300, 4158100; 734500, 4157900; 734700, 4158000; 734900, 4158300; 735000, 4158800; 735500, 4158800; 735700, 4158600; 735600, 4158100; 736200, 4157500; 736800, 4157300; 736900, 4157100; 736900, 4156500; 736300, 4156500; 736000, 4156300; 735500, 4156300; 734100, 4156900; 733400, 4157100; 731700, 4156900; 730900, 4156500; 728900, 4156600; 728700, 4156700; 728700, 4156800; 728600, 4156900; 728300, 4156900; 728100, 4156800; 727900, 4156800; 727100, 4156800; 726900, 4156600; 726700, 4156500; 726300, 4156500; 726100, 4156600; 725800, 4156500; 725600, 4156400; 725500, 4156300; 725400, 4156200; 725100, 4156100; 725000, 4156000; 724900, 4156000; 724800, 4156100; 724300, 4156100; 724300, 4155700; 723800, 4155700; 723900, 4155300; 723300, 4155400; 722700, 4155100; 722700, 4155400; 722300, 4155400; 722300, 4156800; 722900, 4156800; 722900, 4157400; 723500, 4157400; 723500, 4157000; 723700, 4157000; 723700, 4156900; 724300, 4156900; 724300, 4157400; 724200, 4157400; 724100, 4158200; 723800, 4158200; 723700, 4159000; 722500, 4159000; 722500, 4159200; 722400, 4159200; 722300, 4159300; 722200, 4159300; 721600, 4159300; 721600, 4159500; 721500, 4159600; 721500, 4159800; 721600, 4159800; 721600, 4159900; 721700, 4159900; 721700, 4160500; 721100, 4160500; 721100, 4160100; 720800, 4160100; 720800, 4160500; 719500, 4160500; 719500, 4160300; 720000, 4159600; 719600, 4159600; 719600, 4159500; 719500, 4159500; 719400, 4159500; 719300, 4159400; 719100, 4159400; 719000, 4159400; 718900, 4159300; 718700, 4159100; 718600, 4159000; 718600, 4158900; 718400, 4158900; 718200, 4158800; 718200, 4158700; 718300, 4158600; 718400, 4158500; 718500, 4158500; 718600, 4158400; 718700, 4158400; 718900, 4158300; 719000, 4158100; 719000, 4157900; 718700, 4157600; 718000, 4157700; 717800, 4157400; 717900, 4157200; 718000, 4157000; 718400, 4157300; 718700, 4156700; 718700, 4156300; 717500, 4156300; 717500, 4156700; 717100, 4156700; 717100, 4156300; 716600, 4156300; 716600, 4155800; 716300, 4155700; 716200, 4155000; 715900, 4154900; 715900, 4155100; 715800, 4155200; 715800, 4155300; 715700, 4155400; 715600, 4155700; 715500, 4155800; 715400, 4155800; 715300, 4156600; 715400, 4156600; 715400, 4157200; 715400, 4157400; 715500, 4157400; 715500, 4157600; 717600, 4157600; 717600, 4159700; 718100, 4160200; 718200, 4160500; 718400, 4160800; 718700,

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(ii) Start at 704200, 4166200; 704000, 4166200; 703800, 4166400; 703400, 4166600; 703400, 4166800; 703500, 4166800; 703600, 4166900; 703700, 4167000; 703700, 4167200; 704600, 4167600; 704700, 4167600; 704800, 4167500; 705000, 4167400; 705300, 4167400; 705300, 4166400; 705000, 4166300; 704400, 4166300; returning to 704200, 4166200.

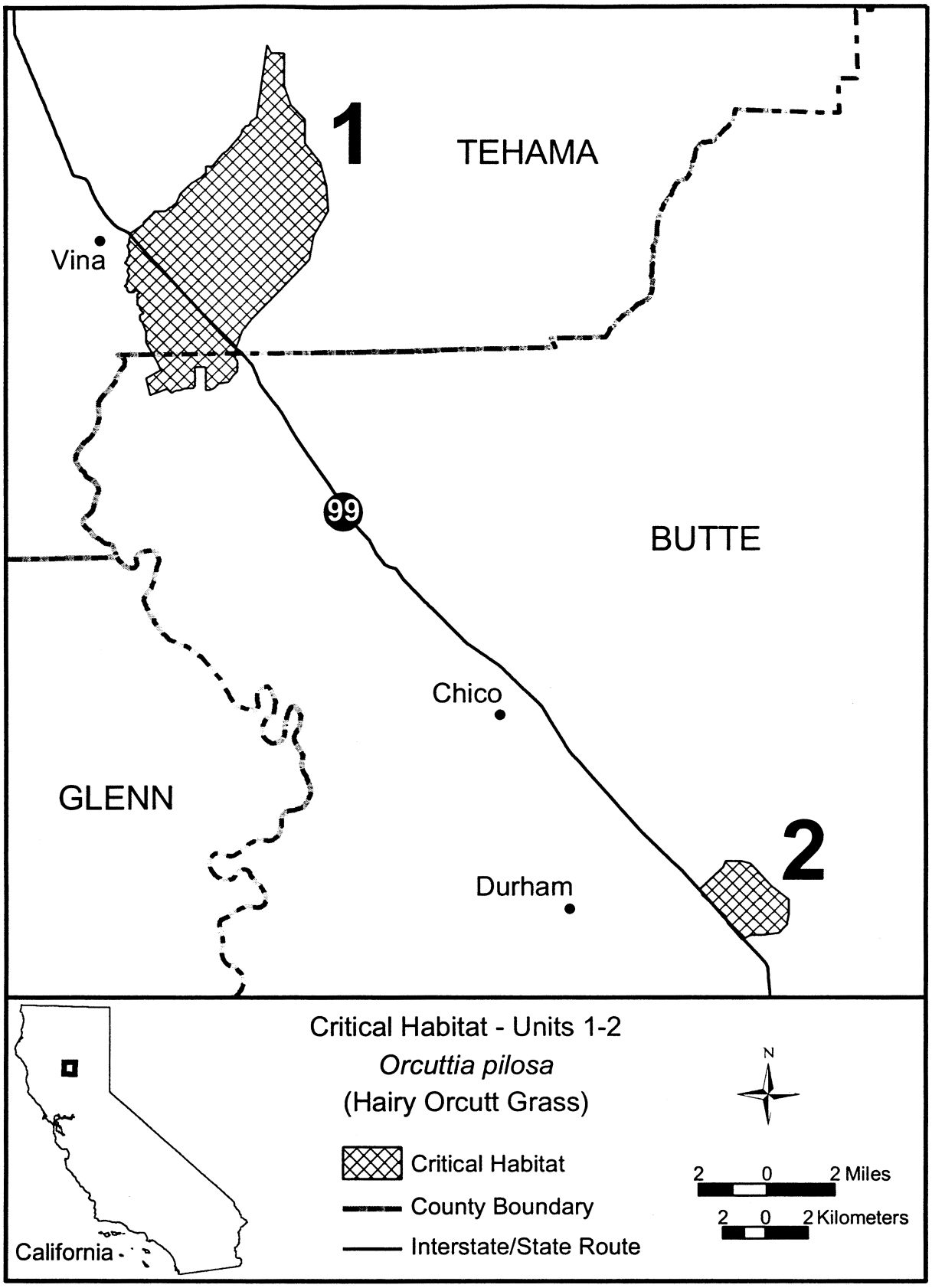
(iii) Start at 712600, 4155200; 712600, 4156800; 712900, 4156800; 712900, 4157100; 714800, 4157200; 714800, 4156800; 714300, 4156300; 714200, 4156200; 714000, 4155500; 714000, 4155400; 713800, 4155400; returning to 712600, 4155200.

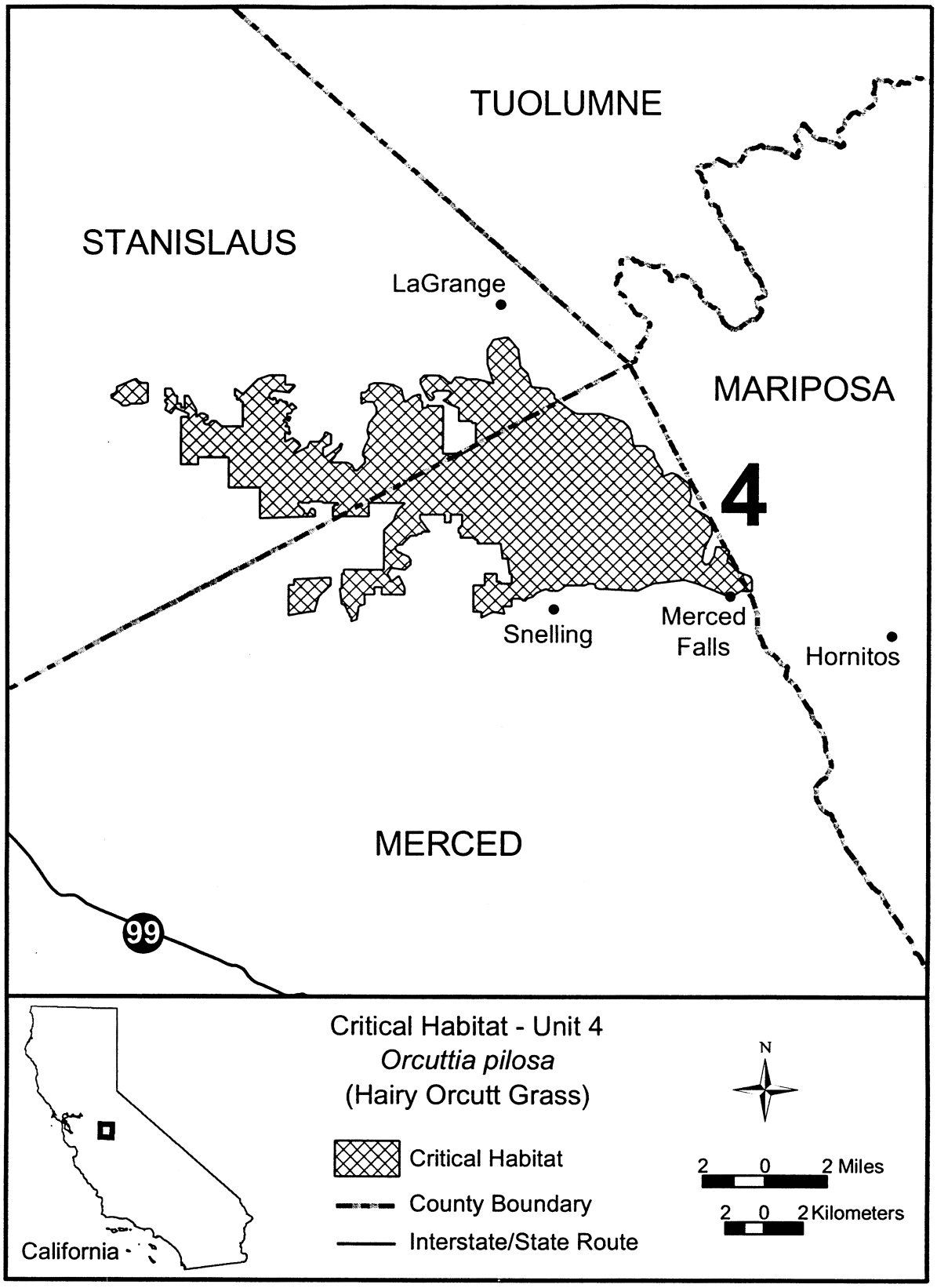
(9) Unit 5: Madera County, California. [Reserved]

(10) Unit 6: Fresno and Madera Counties, California. [Reserved]

(11) Maps follow of critical habitat units 1 and 2, and 4 (respectively) for hairy Orcutt grass.

BILLING CODE 4310–55–P


1
TEHAMA
Vina
99
BUTTE
Chico
GLENN
2
Durham
Critical Habitat - Units 1-2
Orcuttia pilosa
(Hairy Orcutt Grass)
Critical Habitat
County Boundary
Interstate/State Route
N
2 0 2 Miles
2 0 2 Kilometers
California



BILLING CODE 4310–55–C

Family Poaceae: *Orcuttia tenuis* (Slender Orcutt Grass).

(1) Critical habitat units are depicted for Siskiyou, Modoc, Shasta, Lassen, Tehama, Plumas, and Lake Counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Orcuttia tenuis* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Orcuttia tenuis* germination, growth and reproduction, including but not limited to, Northern Volcanic Ashflow and Northern Volcanic Mudflow vernal pools (Sawyer and Keeler-Wolf 1995) with iron-silica and bedrock hardpan impervious layers, and that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Orcuttia tenuis* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing manmade features and structures, such as buildings, roads, aquaducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Subunit 1A: Modoc, Shasta, and Siskiyou Counties, California. From USGS 1:24,000 quadrangle maps Day and Timbered Crater, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 627500, 4561300; 626000, 4561600; 626000, 4562200; 626200, 4562900; 625800, 4563900; 626000, 4564100; 626100, 4564300; 626200, 4564400; 626300, 4564600; 626400, 4564700; 626400, 4564900; 626500, 4565100; 626700, 4565100; 626700, 4565400; 626800, 4565600; 627000, 4565700; 627000, 4566000; 627100, 4566100; 627300, 4566200; 627500, 4566200; 627700, 4566200; 627800, 4566100; 627900, 4566000; 628000, 4565900; 628200, 4565800; 628200, 4565600; 628300, 4565200; 628000, 4565000; 627900, 4564700; 628000, 4564400; 627900, 4564200; 627900, 4564000; 627900, 4563805; 628100, 4563700; 628200, 4563600; 628100, 4563300; 628200, 4563200; 628200, 4563000; 628300, 4562900; 628600, 4562800; 628600, 4562600; 628700, 4562500; 628900, 4562300; 628900, 4562000; 628700, 4561900; 628500, 4561800; 628400, 4561800; 628100, 4561700; 628000, 4561600; 627900, 4561500; 627800, 4561400; 627600, 4561400; returning to 627500, 4561300.

(ii) Start at 634900, 4557900; 634100, 4558300; 633900, 4559000; 633700, 4560000; 634000, 4560800; 634500, 4561300; 634600, 4560900; 635000, 4560700; 635100, 4561000; 635700, 4561000; 636000, 4561100; 637300, 4560000; 637400, 4559300; 637300, 4558900; 636900, 4558700; 636700, 4558300; 636100, 4558000; returning to 634900, 4557900.

(6) Subunit 1B. Shasta County, California. From USGS 1:24,000 quadrangle maps Burney Falls, and Dana, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 616900, 4549000; 616800, 4549000; 615900, 4549500; 615700, 4549800; 615600, 4549900; 615600, 4550000; 615500, 4550100; 615400, 4550200; 615300, 4550400; 615300, 4550600; 615600, 4550700; 615900, 4550700; 616200, 4550500; 616400, 4550300; 616700, 4550100; 616800, 4549800; 617000, 4549400; 617100, 4549100; returning to 616900, 4549000.

(7) Subunit 1C. Shasta County, California. From USGS 1:24,000 quadrangle map Burney, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 612800, 4536000; 612700, 4536000; 612600, 4536100; 612600, 4536200; 612500, 4536300; 612500, 4536500; 612300, 4536500; 612300, 4536700; 612300, 4537100; 612500, 4537400; 612500, 4537600; 612600, 4537700; 612700, 4537700; 612900, 4537800; 613000, 4537900; 613000, 4538100; 612900, 4538300; 612900, 4538500; 613000, 4538600; 613100, 4538800; 613400, 4538900; 613600, 4539000; 613700, 4539100; 613800, 4539100; 613900, 4539100; 614000, 4539000; 614100, 4538900; 614200, 4538800; 614400, 4538700; 614400, 4538600; 614300, 4538500; 614100, 4538400; 614000, 4538400; 613800, 4538300; 613600, 4538100; 613400, 4537900; 613400, 4537700; 613400, 4537500; 613200, 4537400; 613200, 4537100; 613100, 4536800; 613000, 4536500; 613000, 4536200; returning to 612800, 4536000.

(8) Subunit 1D: Shasta County, California. From USGS 1:24,000 quadrangle map Burney, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 611900, 4529900; 611700, 4529900; 611500, 4529900; 611000, 4529900; 610500, 4530200; 610400, 4530300; 610200, 4530400; 610200, 4530600; 610300, 4530900; 610600, 4531100; 610500, 4531400; 610200, 4531600; 610200, 4531800; 610100, 4532200; 610100, 4532600; 610000, 4532800; 610000, 4533000; 609900, 4533200; 609900, 4533500; 609700, 4533900; 609600, 4534100; 609600, 4534300; 609600, 4534600; 609600, 4534800; 609600, 4535200; 609500, 4535300; 609300, 4535400; 609100, 4535500; 608800, 4535600; 608600, 4535600; 608300, 4535700; 608200, 4535800; 608000, 4535800; 608100, 4536000; 609700, 4536000; 610300, 4535500; 610500, 4535000; 610600, 4534600; 610500, 4533700; 610800, 4532700; 611000, 4532500; 611000, 4532400; 611100, 4532100; 611300, 4531900; 611500, 4531600; 611500, 4531400; 611600, 4531200; 611800, 4531100; 612000, 4531000; 612200, 4530800; 612200, 4530500; 612100, 4530100; returning to 611900, 4529900.

(9) Subunit 1E: Shasta County, California. From USGS 1:24,000 quadrangle maps Murken Bench and Old Station, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 634800, 4510800; 634600, 4511200; 634400, 4511400; 634600, 4512400; 634200, 4512800; 634300, 4513000; 634400, 4512900; 634800, 4512900; 635100, 4513200; 635800, 4513200; 636000, 4513100; 636000, 4512800; 636000, 4512400; 635600, 4512100; 635500, 4511700; 635500, 4511400; 635400, 4511200; 635100, 4510900; returning to 634800, 4510800.

(10) Subunit 1F. Lassen, and Shasta Counties, California. From USGS 1:24,000 quadrangle maps Poison Lake, and Swains Hole, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 644800, 4500100; 644300, 4500300; 643500, 4500400; 642400, 4500800; 641500, 4501500; 641200, 4502700; 641300, 4502900; 641600, 4502900; 641700, 4503100; 642100,

4503100; 642100, 4503200; 642500, 4503300; 642700, 4503300; 643000, 4503400; 643200, 4503500; 643400, 4503600; 644000, 4503500; 644100, 4503500; 644200, 4503400; 644400, 4503300; 645000, 4503400; 645200, 4503200; 645200, 4502900; 645500, 4502200; 645500, 4501700; 645300, 4501300; 645300, 4500600; 645200, 4500200; returning to 644800, 4500100.

(ii) Start at 648700, 4503600; 648100, 4504000; 647400, 4505400; 647800, 4505900; 647500, 4506600; 647700, 4507200; 648800, 4507600; 649500, 4507400; 650300, 4507600; 651200, 4507700; 651500, 4507600; 651800, 4506500; 652200, 4505700; 651700, 4504900; 651500, 4505100; 650800, 4504400; 650300, 4504700; 649500, 4504900; 648800, 4504600; 648900, 4503800; returning to 648700, 4503600.

(11) Subunit 1G. Lassen County, California. From USGS 1:24,000 quadrangle maps Bogard Buttes, Harvey Mountain, Pine Creek Valley, and Poison Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 661100, 4497700; 659900, 4497900; 659300, 4497700; 657500, 4499000; 655500, 4500700; 655000, 4501200; 654900, 4501700; 655100, 4501600; 655600, 4501800; 656600, 4502600; 656700, 4502800; 657700, 4503200; 658700, 4503200; 660000, 4503600; 661300, 4504400; 662200, 4505000; 662900, 4505100; 663600, 4504700; 664200, 4504500; 664400, 4504300; 664400, 4503100; 664100, 4503000; 662800, 4502300; 661600, 4501100; 661300, 4499600; 660800, 4498800; 660700, 4498600; 660700, 4498200; 660800, 4498000; 661000, 4498000; returning to 661100, 4497700.

(12) Subunit 1H. Shasta County, California. From USGS 1:24,000 quadrangle maps Old Station, and West Prospect, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 630400, 4492700; 629900, 4493100; 629300, 4493500; 629100, 4493700; 629300, 4494200; 629500, 4494700; 629400, 4494800; 629400, 4495200; 629700, 4495500; 630500, 4495700; 630500, 4496500; 631700, 4497100; 631700, 4497600; 631800, 4498000; 631900, 4498200; 632000, 4498400; 632100, 4498400; 632400, 4498400; 633900, 4497900; 634200, 4496800; 634200, 4496700; 634100, 4496600; 634100, 4496300; 634400, 4496100; 634400, 4495800; 634600, 4495600; 634600, 4495400; 634800, 4495400; 635000, 4495200; 635000, 4494900; 635200, 4494800; 635200, 4494500; 635100, 4494400; 634800, 4494000; 635100, 4493500; 635000, 4493400; 635200, 4493100; 634900, 4492900; 634300, 4492900; 634300, 4493700; 634100, 4493900; 634100, 4494100; 633600, 4494400; 632500, 4495100; 631900, 4495300; 631300, 4495200; 631000, 4495000; 630700, 4494500; 630500, 4494000; 630500, 4493400; 630400, 4493300; returning to 630400, 4492700.

(13) Subunit 1I: Plumas County, California. From USGS 1:24,000 quadrangle map Almanor, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 655400, 4452100; 655000, 4452100; 654900,4452500; 654400, 4452700; 654100, 4453000; 653900, 4453200; 653700, 4453200; 653400, 4453000; 652600, 4453000; 652300, 4453500; 651900, 4453700; 651600, 4454400; 651600, 4454700; 652000, 4455400; 652400, 4455500; 652700, 4455700; 653200, 4455300; 653000, 4455100; 653000, 4454800; 653300, 4454400; 653500, 4454100; 653900, 4453900; 654500, 4453700; 654900, 4453400; 655300, 4452900; 655400, 4452600; returning to 655400, 4452100.

(14) Subunit 2A: Shasta County, California. From USGS 1:24,000 quadrangle map Enterprise, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 558800, 4488900; 558500, 4488900; 558000, 4489000; 558000, 4489800; 558100, 4489800; 558300, 4489900; 558200, 4490100; 558000, 4490100; 558000, 4491700; 558500, 4491700; 558900, 4491600; 559100, 4491300; 559100, 4490700; 559000, 4490600; 559000, 4490400; 559200, 4490200; 559200, 4490000; 559400, 4489800; 559400, 4489300; 559200, 4489000; returning to 558800, 4488900.

(15) Subunit 2B: Shasta County, California. From USGS 1:24,000 quadrangle maps Balls Ferry, Cottonwood, Enterprise, and Palo Cedro, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 564200, 4480900; 563600, 4480900; 563300, 4481000; 563100, 4480900; 562900, 4480900; 562500, 4481200; 562400, 4481500; 562400, 4481700; 562300, 4482400; 562000, 4482500; 561900, 4482800; 561800, 4483300; 561500, 4483700; 561000, 4484000; 560700, 4485400; 560700, 4486500; 560800, 4486700; 561000, 4486900; 561200, 4487000; 561300, 4487600; 561600, 4487900; 562000, 4487900; 562500, 4487400; 562700, 4487100; 562900, 4487200; 563200, 4487200; 563300, 4487000; 563300, 4486700; 563800, 4486400; 564300, 4484700; 564300, 4484400; 564500, 4484100; 564500, 4483800; 564600, 4483700; 564600, 4483400; 564400, 4483100; 564100, 4482800; 564100, 4482600; 564300, 4482600; 564300, 4482400; 564300, 4482300; 564200, 4482200; 564100, 4482100; 564000, 4482100; 564200, 4481800; returning to 564200, 4480900; excluding land bounded by 562900, 4485000; 562100, 4485000; 562100, 4485372; 562100, 4485400; 561700, 4485400; 561700, 4485400; 561700, 4485779; 561700, 4485800; 561300, 4485800; 561300, 4484100; 562100, 4484100; 562300, 4484010; 562300, 4484000; 562300, 4483803; 562300, 4483800; 562304, 4483794; 562500, 4483500; 562500, 4483500; 562400, 4483500; 562400, 4483500; 562400, 4482600; returning to 562900, 4482600.

(ii) Start at 559900, 4482000; 559400, 4482000; 558900, 4482400; 558900, 4482900; 558900, 4483600; 558300, 4483600; 558200, 4483900; 558200, 4484500; 558000, 4484800; 558000, 4485100; 558000, 4485300; 557800, 4485600; 557600, 4485900; 557300, 4486100; 557300, 4487400; 559000, 4487400; 559000, 4486800; 559000, 4484000; 559300, 4484000; 559300, 4483900; 559500, 4483900; 559800, 4483600; 560700, 4483600; 560900, 4483500; 560500, 4483500; 560500, 4482600; 560100, 4482500; 559900, 4482500; returning to 559900, 4482000.

(16) Subunit 2C: Shasta County, California. From USGS 1:24,000 quadrangle maps Balls Ferry, and Palo Cedro, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 566900, 4477300; 566700, 4477300; 566100, 4478200; 565900, 4478900; 565500, 4479200; 565500, 4479300; 565600, 4479600; 565300, 4479700; 565300, 4479900; 565400, 4480200; 566100, 4480400; 566100, 4480700; 565700, 4480800; 565700, 4481000; 565700, 4481300; 565700, 4481700; 565500, 4482500; 565100, 4482600; 564900, 4482900; 564900, 4483100; 565000, 4483300; 565400, 4483800; 565700, 4484900; 566400, 4485400; 567400, 4485000; 568100, 4483800; 568100, 4483300; 568400, 4483000; 568400, 4482100; 568200, 4481600; 567500, 4481300; 567500, 4480200; 567700, 4479400; 567700, 4478400; 567500, 4477800; returning to 566900, 4477300.

(17) Unit 3: Shasta and Tehama Counties, California. From USGS 1:24,000 quadrangle maps Balls Ferry, Bend, Dales, Red Bluff East, Shingletown, and Tuscan Buttes NE, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 570200, 4454800; 570200, 4455000; 570600, 4455900; 570000, 4456100; 569500, 4456300; 569300, 4456500; 568900, 4456500; 568600, 4456500; 568000, 4456800; 567900, 4457100; 567900, 4458000; 568400, 4458800; 569100, 4459800; 569600,

4460500; 569500, 4460800; 569000, 4460600; 568300, 4460700; 567500, 4460700; 566800, 4460000; 566400, 4460000; 565900, 4461100; 565800, 4461400; 565800, 4461700; 566000, 4462000; 565800, 4462300; 565900, 4462400; 565800, 4462500; 565900, 4462600; 565800, 4462800; 565900, 4462900; 565900, 4463000; 566000, 4463100; 566300, 4463100; 566500, 4463300; 566500, 4463600; 566700, 4463700; 566800, 4463700; 566900, 4463600; 567100, 4463500; 567200, 4463600; 567600, 4463400; 568300, 4463200; 569800, 4463200; 570600, 4463900; 570800, 4464300; 572000, 4465200; 572000, 4466300; 572100, 4466600; 572800, 4467300; 573500, 4468600; 573400, 4469000; 573100, 4469400; 572900, 4469600; 572600, 4469600; 571800, 4468800; 571400, 4468100; 571000, 4467900; 571000, 4468700; 571200, 4468700; 571100, 4469200; 571200, 4469500; 571200, 4470500; 570500, 4470900; 570300, 4471000; 570100, 4471000; 569800, 4470900; 569600, 4471000; 569400, 4471400; 569400, 4471800; 569700, 4471900; 569600, 4472000; 569900, 4472200; 570200, 4472100; 570500, 4472000; 570800, 4472200; 570900, 4472100; 571000, 4472100; 571300, 4472200; 571700, 4472200; 571900, 4472200; 572200, 4472300; 572500, 4472100; 573900, 4472100; 574300, 4473200; 575100, 4473200; 575600, 4473500; 576000, 4473900; 576600, 4473900; 577300, 4473900; 577700, 4474200; 578600, 4474200; 579300, 4474400; 580000, 4474400; 580600, 4474700; 581900, 4474700; 582400, 4475300; 583000, 4475400; 583200, 4475400; 583700, 4475000; 584200, 4475200; 584600, 4475200; 585400, 4474500; 586000, 4473600; 586100, 4473400; 585800, 4472600; 585500, 4472100; 584800, 4471900; 584500, 4471600; 584500, 4471400; 584700, 4471100; 584700, 4470800; 584500, 4470500; 583400, 4469700; 583100, 4469400; 582600, 4468500; 582600, 4467600; 582700, 4466900; 582700, 4466700; 581900, 4465800; 581000, 4465500; 580600, 4465200; 580400, 4464000; 580200, 4463300; 578900, 4462700; 578500, 4462300; 578100, 4462000; 577800, 4460900; 577700, 4460000; 576700, 4459300; 576600, 4458800; 576800, 4458300; 576800, 4457100; 576400, 4456700; 575500, 4456800; 574900, 4456800; 574100, 4455900; 573500, 4455600; 572300, 4455300; 572000, 4455300; 571600, 4455600; 571400, 4455400; 571100, 4454900; 570600, 4454900; returning to 570200, 4454800.

(18) Unit 4: Butte, and Tehama Counties, California. From USGS 1:24,000 quadrangle maps Acorn Hollow, Foster Island, Los Molinos, Nord, Richardson Springs NW, and Vina, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 588700, 4429900; 588200, 4426500; 587900, 4426300; 587900, 4426800; 587800, 4426900; 587900, 4427000; 588000, 4427300; 587900, 4427300; 587800, 4427200; 587600, 4426800; 587500, 4426600; 587400, 4426400; 587200, 4426200; 586700, 4425700; 586500, 4425700; 586200, 4425400; 585900, 4425400; 585800, 4425400; 585500, 4425600; 584900, 4425600; 584900, 4425400; 584900, 4425200; 585000, 4425000; 584800, 4425000; 584600, 4424900; 584500, 4424900; 584300, 4425000; 584100, 4425000; 583900, 4425200; 583700, 4425400; 583400, 4425500; 583300, 4425500; 583300, 4425300; 583100, 4425300; 583000, 4425400; 582900, 4425200; 582800, 4425000; 582700, 4424800; 582700, 4424600; 582600, 4424500; 582600, 4424200; 582400, 4424100; 582300, 4423800; 582100, 4423600; 582100, 4423500; 581300, 4422800; 581000, 4422600; 580600, 4422800; 580200, 4423800; 579900, 4424500; 579700, 4424800; 579500, 4425400; 579700, 4425600; 580100, 4425600; 580800, 4426400; 581700, 4427000; 582300, 4427000; 582300, 4426900; 582400, 4426800; 582500, 4426800; 582700, 4426700; 582800, 4426700; 583500, 4426800; 583900, 4426900; 584000, 4427000; 584200, 4427100; 584600, 4427600; 584800, 4427900; 585100, 4428200; 585900, 4428500; 586300, 4428500; 586900, 4428900; 587300, 4429100; 588300, 4429600; 588500, 4430000; returning to 588700, 4429900.

(ii) Start at 588700, 4429900; 588900, 4429500; 589500, 4429500; 589500, 4428600; 589500, 4428000; 589800, 4427100; 590500, 4426400; 590500, 4425300; 591200, 4424400; 591500, 4423300; 591600, 4422100; 590900, 4420900; 590700, 4419800; 588000, 4417000; 587500, 4416400; 587200, 4415500; 587200, 4415100; 587300, 4415000; 587300, 4414500; 587200, 4414400; 587100, 4414300; 586900, 4414000; 586400, 4413900; 586200, 4413700; 586000, 4413600; 585800, 4413600; 585800, 4414700; 585300, 4414700; 585300, 4413800; 585200, 4413700; 584800, 4413700; 584600, 4413600; 584400, 4413600; 584200, 4413500; 584000, 4413700; 583200, 4413400; 583000, 4414200; 583700, 4414600; 583500, 4415000; 583000, 4415900; 583000, 4416400; 582900, 4416700; 582800, 4416900; 582700, 4417000; 582700, 4417200; 582900, 4417300; 582800, 4417400; 582700, 4417500; 582700, 4417600; 582600, 4417700; 582600, 4418000; 582600, 4418100; 582600, 4418200; 582700, 4418300; 582500, 4418400; 582400, 4418300; 582200, 4418300; 582100, 4418400; 582100, 4418500; 582000, 4418600; 582100, 4418700; 582100, 4418900; 582200, 4419100; 582100, 4419300; 582200, 4419500; 582100, 4419600; 582000, 4419700; 582100, 4419800; 582100, 4419900; 582200, 4420000; 582200, 4420300; 582100, 4420500; 582200, 4420600; 582200, 4420800; 582300, 4421100; 582900, 4421500; 582900, 4421600; 583300, 4422000; 583400, 4422100; 583900, 4422100; 584100, 4422300; 584200, 4422300; 584300, 4422400; 584400, 4422500; 584600, 4422900; 585100, 4423400; 585600, 4423700; 585800, 4423900; 585800, 4424200; 586100, 4424200; 586600, 4424800; 586800, 4424900; 587300, 4425500; 587400, 4425600; 587500, 4425800; 587500, 4425900; 587600, 4426000; 587700, 4426100; 587800, 4426100; 587900, 4426200; 587900, 4426300; 588200, 4426500; returning to 588700, 4429900.

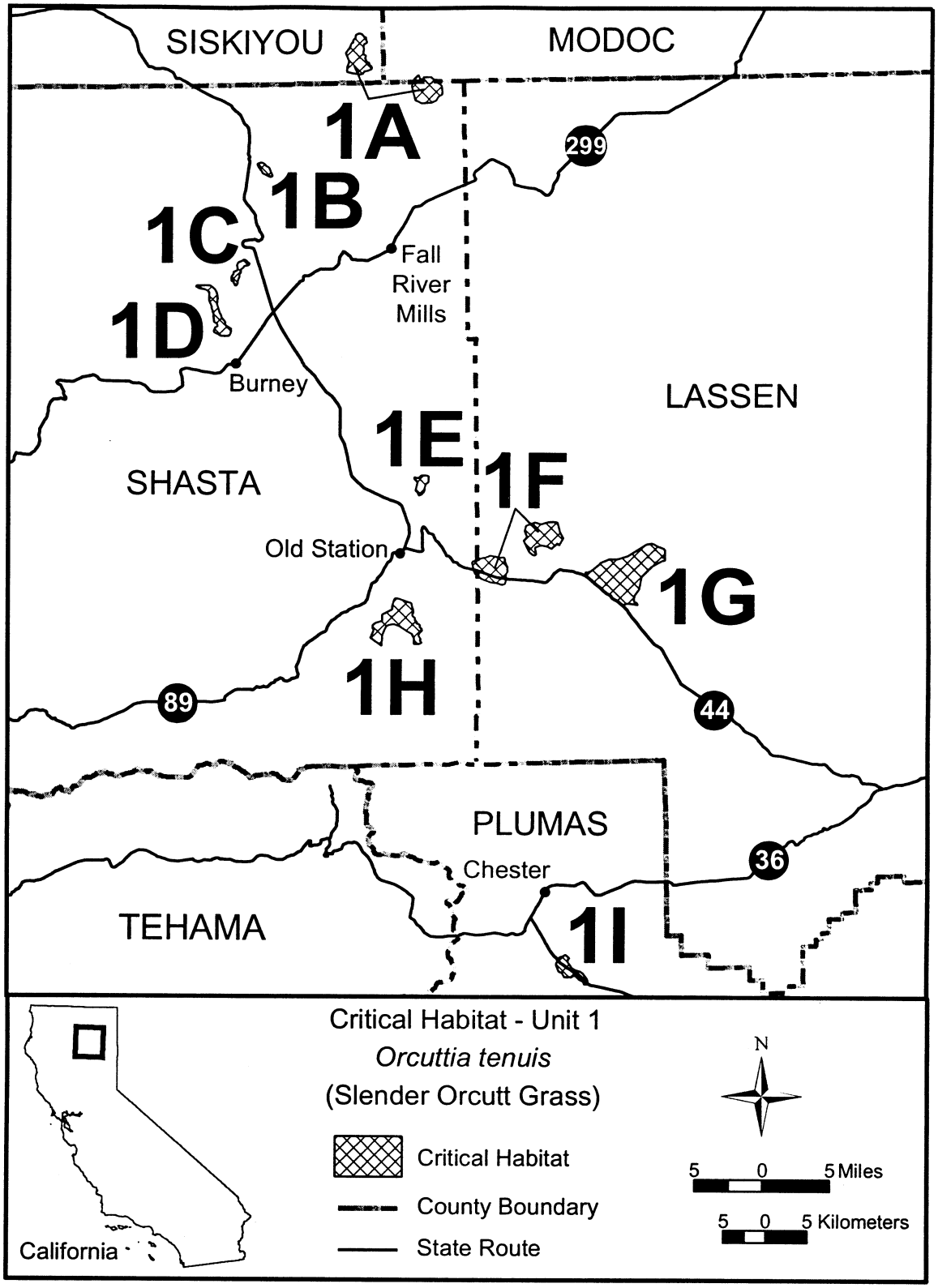
(19) Subunit 5A: Lake County, California. From USGS 1:24,000 quadrangle maps Kelseyville, and The Geysers, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 520000, 4302900; 519600, 4302900; 519200, 4303200; 518600, 4303600; 518400, 4304000; 517700, 4304500; 517700, 4305500; 518000, 4305800; 518900, 4305800; 519400, 4305600; 519400, 4305200; 520600, 4304700; 520700, 4304400; 521200, 4303900; 521200, 4303500; 520900, 4303400; returning to 520000, 4302900.

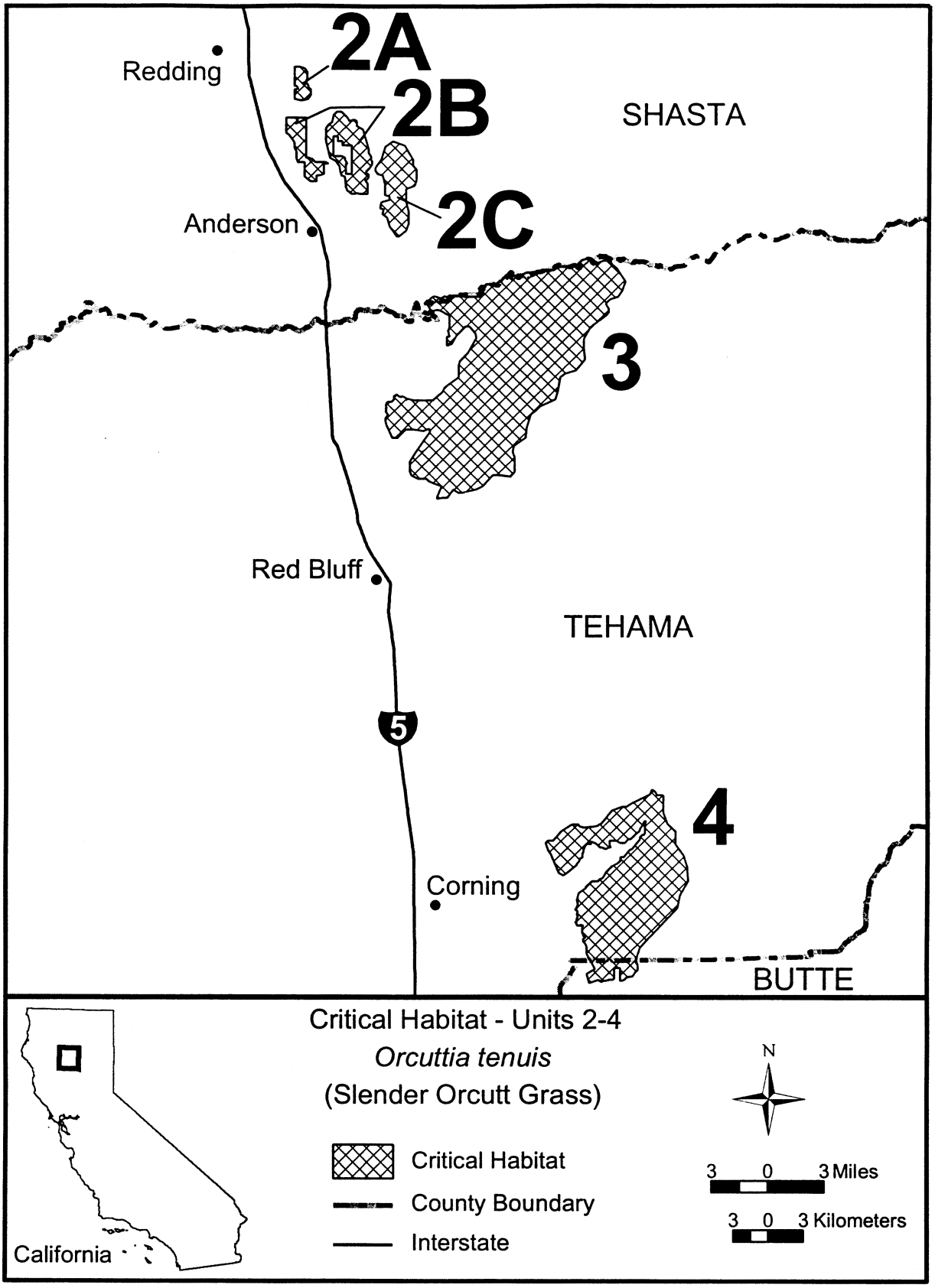
(20) Subunit 5B: Lake County, California. From USGS 1:24,000 quadrangle maps Middletown, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 540700, 4298300; 540200, 4298400; 539100, 4299100; 538800, 4299200; 538400, 4299200; 538100, 4299500; 538300, 4300200; 537900, 4300700; 537400, 4300600; 536900, 4299900; 536300, 4299700; 536000, 4299700; 535100, 4300400; 535000, 4300800; 535000, 4301200; 535100, 4301800; 535300, 4302200; 535700, 4302400; 536100, 4302400; 536900, 4302300; 538700, 4301200; 539100, 4300600; 540000, 4300000; 540700, 4299700; 541000, 4299300; 541100, 4298700; returning to 540700, 4298300.

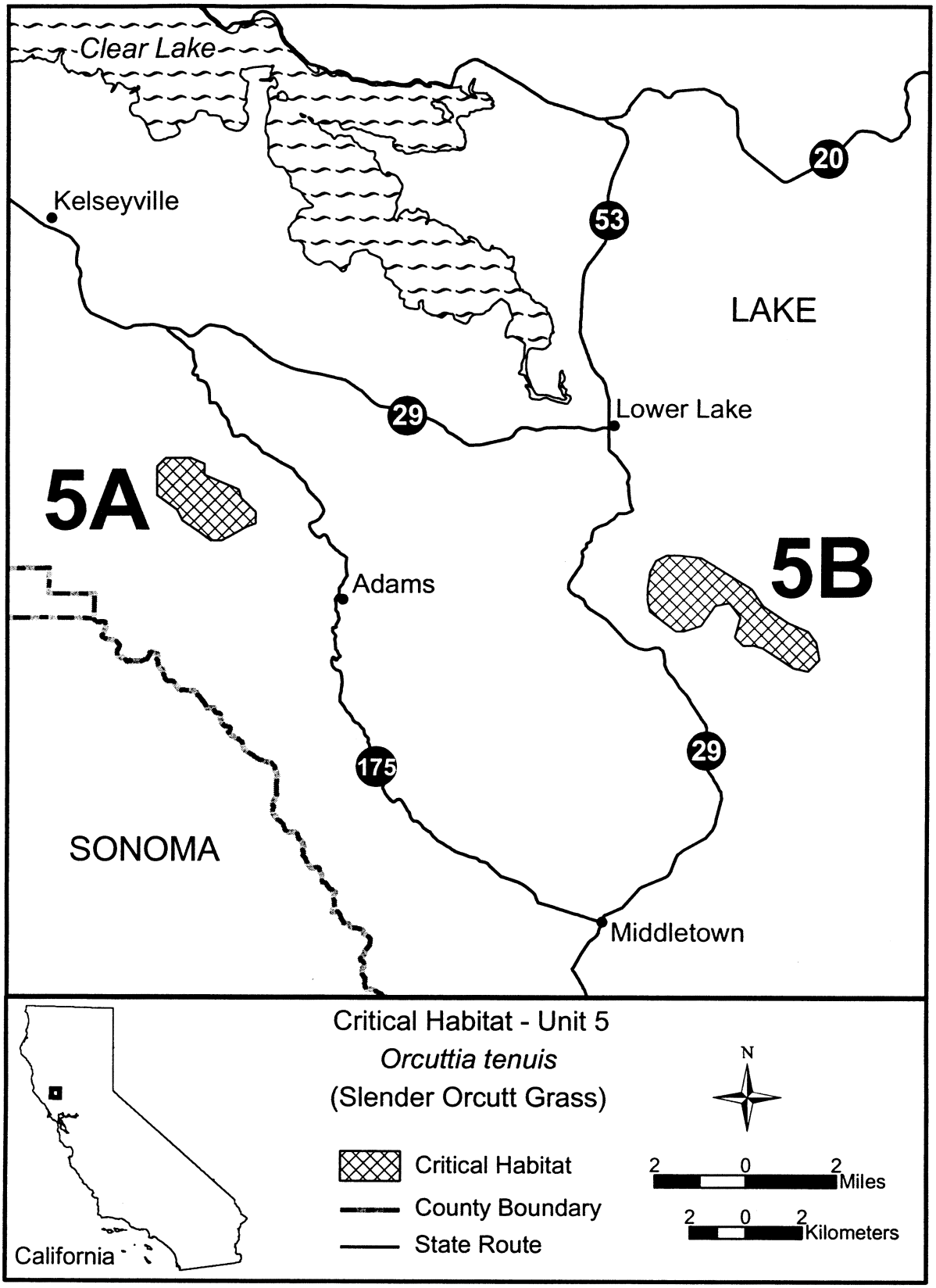
(21) Unit 6: Sacramento County, California. [Reserved]

(22) Maps follow of critical habitat unit 1, 2 through 4, and 5 (respectively) for slender Orcutt grass.

BILLING CODE 4310–55–P


SISKIYOU
MODOC
1A
1B
1C
1D
299
Fall
River
Mills
Burney
LASSEN
1E
1F
SHASTA
Old Station
1G
1H
89
44
PLUMAS
Chester
36
TEHAMA
1I
Critical Habitat - Unit 1
Orcuttia tenuis
(Slender Orcutt Grass)
Critical Habitat
County Boundary
State Route
N
5 0 5 Miles
5 0 5 Kilometers
California


2A
2B
2C
3
4
Redding
Anderson
Red Bluff
Corning
SHASTA
TEHAMA
BUTTE
5
Critical Habitat - Units 2-4
Orcuttia tenuis
(Slender Orcutt Grass)
Critical Habitat
County Boundary
Interstate
N
3 0 3 Miles
3 0 3 Kilometers
California



BILLING CODE 4310–55–C

Family Poaceae: *Orcuttia viscida* (Sacramento Orcutt Grass).

(1) Critical habitat units are depicted for Amador County, California, on the map below.

(2) The primary constituent elements of critical habitat for *Orcuttia viscida* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Orcuttia viscida* germination, growth and reproduction, including but not limited to vernal pools on high terrace landforms on acidic soils such as Red Bluff, Redding, and Corning soil series. These habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Orcuttia viscida* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing manmade features and structures, such as buildings, roads, aquaducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

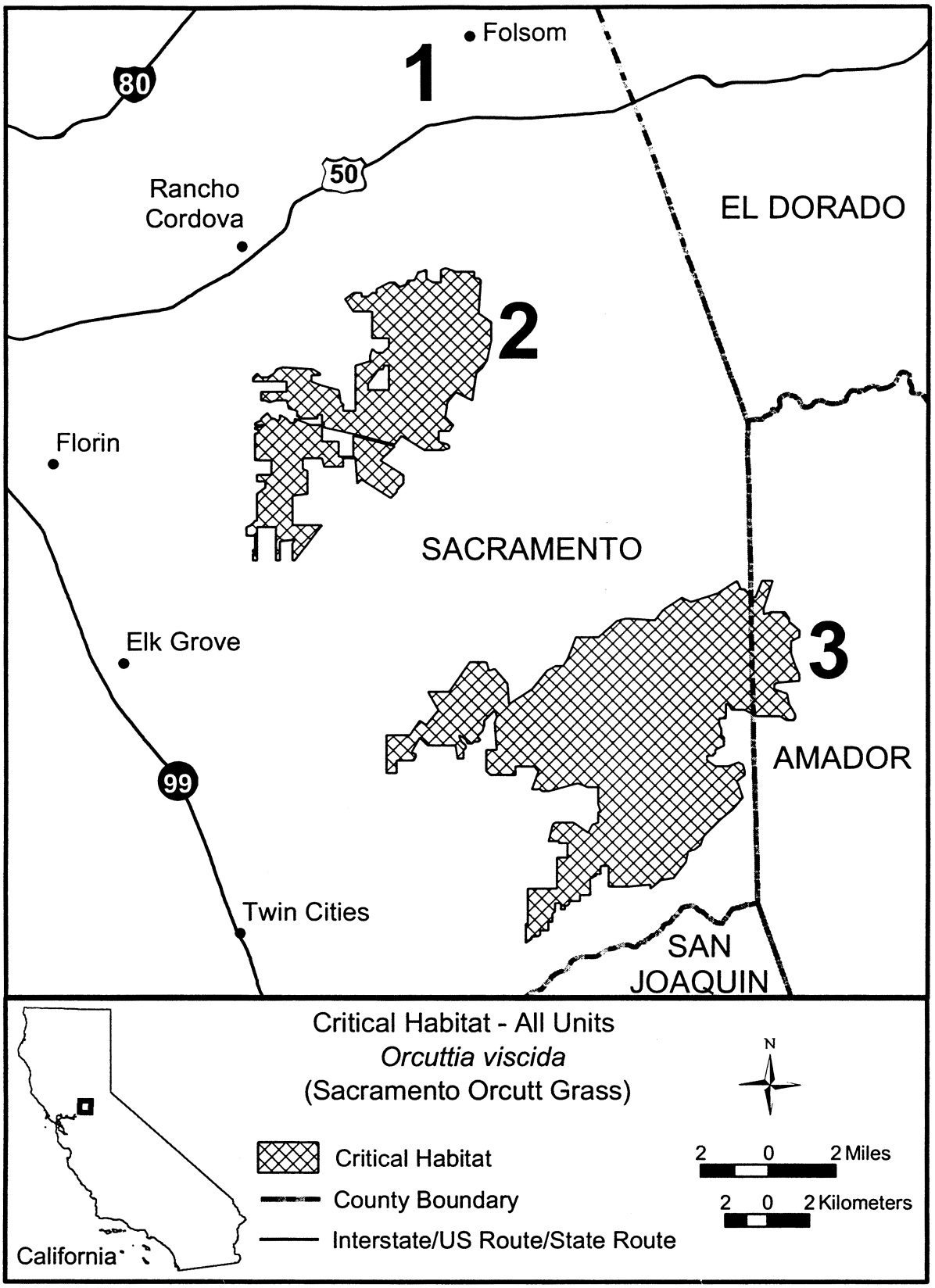
(5) Unit 1: Sacramento County, California. [Reserved]

(6) Unit 2: Sacramento County, California. [Reserved]

(7) Unit 3: Amador and Sacramento Counties, California. From USGS 1:24,000 quadrangle maps Carbondale, Clay, Goose Creek, and Sloughhouse, California land bounded by the following UTM 10 NAD 83 coordinates (E N): 661400, 4239000; 661400, 4239900; 661500, 4239900; 661500, 4241600; 662900, 4241600; 662900, 4243100; 663400, 4243100; 663400, 4243800; 663000, 4243800; 663000, 4243900; 662500, 4243900; 662700, 4244700; 662850, 4244800; 663700, 4244800; 664400, 4244300; 664600, 4244700; 664900, 4244800; 664900, 4245275; 665000, 4245300; 664900, 4245700; 664900, 4246500; 664400, 4246500; 663900, 4246700; 662500, 4246300; 662200, 4246300; 662100, 4246400; 661700, 4246400; 662000, 4247300; 661800, 4247500; 660900, 4247500; 660850, 4247100; 659700, 4247100; 659500, 4247300; 659500, 4248300; 660000, 4248300; 659900, 4249600; 660000, 4249900; 659900, 4250200; 659400, 4249700; 659400, 4249500; 659300, 4249200; 659100, 4249000; 659100, 4248900; 659200, 4248800; 659100, 4248700; 658900, 4248700; 658800, 4248600; 658600, 4248600; 658500, 4248800; 658400, 4248900; 658200, 4249000; 658200, 4248900; 658300, 4248700; 658500, 4248500; 658500, 4248400; 658400, 4248300; 658400, 4247900; 658100, 4247900; 658000; 4248500; 656700, 4248500; 656300, 4248900; 655900, 4248200; 656100, 4248100; 656100, 4248000; 656000, 4247800; 655200, 4247800; 655200, 4247200; 654700, 4247200; 654700, 4248750; 654700, 4249000; 655100, 4249000; 655800, 4249000; 656300, 4249700; 656600, 4249500; 657200, 4250200; 656700, 4251100; 657700, 4251100; 658700, 4252500; 659500, 4252500; 659600, 4252100; 659900, 4252200; 660500, 4251500; 660600, 4250500; 661700, 4251200; 662400, 4252100; 662800, 4252300; 663200, 4252300; 663400, 4252700; 663800, 4253700; 664900, 4253700; 665800, 4254500; 666200, 4254600; 667600, 4254500; 668000, 4255000; 668900, 4255600; 669300, 4255400; 670600, 4255800; 671500, 4256400; 671700, 4256000; 671900, 4256000; 672200, 4255600; 672400, 4255600; 672700, 4256400; 673200, 4256400; 672800, 4255100; 672800, 4254800; 673100, 4254900; 673800, 4254900; 674000, 4254600; 674000, 4254400; 674500, 4254000; 674500, 4253700; 674100, 4253500; 674100, 4252900; 674300, 4252300; 674500, 4251900; 674500, 4251600; 673400, 4251500; 673300, 4251400; 673300, 4251200; 673900, 4251000; 674000, 4250500; 674300, 4250000; 674300, 4249800; 674200, 4249700; 673900, 4249700; 673600, 4249900; 672500, 4249900; 671900, 4250200; 671300, 4250200; 671100, 4250500; 671000, 4250500; 671000, 4249800; 670700, 4249800; 670700, 4249500; 670800, 4249300; 670800, 4249000; 670900, 4248900, 670900, 4248500; 670500, 4248300; 670500, 4248125; 670400, 4248100; 670400, 4248000; 670100, 4248000; 670100, 4247800; 670500, 4247500; 671100, 4247500; 671600, 4247700; 671800, 4247600; 671900, 4247300; 671900, 4247100; 671500, 4246800; 671600, 4246600; 671800, 4246000; 671300, 4245400; 670800, 4245000; 670000, 4244200; 669900, 4244100; 669800, 4243700; 669500, 4243500; 669200, 4243400; 669100, 4242900; 668500, 4242100; 667900, 4242000; 667400, 4241600; 667400, 4241800; 666400, 4241700; 665400, 4241700; 665400, 4242700; 665000, 4242700; 665000, 4242300; 664800, 4242300; 664800, 4242200; 664700, 4242200; 664600, 4242100; 664500, 4242100; 664500, 4241300; 664000, 4241300; 664000, 4241000; 663500, 4241000; 663500, 4240900; 663400, 4240800; 663300, 4240800; 663300, 4240600; 663100, 4240600; 663100, 4240900; 662800, 4240900; 662800, 4240500; 662700, 4240400; 662700, 4240000; 662500, 4240000; 662500, 4239600; 662100, 4239600; 662100, 4239400; 662000, 4239300; 661700, 4239300; 661700, 4239200; returning to 661400, 4239000.

(8) Maps follow of critical habitat for units 1 through 3 for Sacramento Orcutt grass.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

Family Poaceae: *Tuctoria greenei* (Greene's Tuctoria).

(1) Critical habitat units are depicted for Shasta, Tehama, Glenn, Colusa, Stanislaus, Tuolumne, and Mariposa Counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Tuctoria greenei* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Tuctoria greenei* germination, growth and reproduction, including but not limited to, Northern Claypan, Northern Hardpan and Northern Basalt flow vernal pools, that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Tuctoria greenei* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing manmade features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Unit 1: Shasta County, California. From USGS 1:24,000 quadrangle map Merken Bench, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 00, 4521200; 630000, 4521200; 628900, 4522800; 629200, 4523500; 629600, 4523900; 630900, 4524100; 631800, 4523500; 632400, 4522900; 632000, 4521600; 631200, 4521600; 631100, 4521700; 630900, 4521600; 630500, 4521600; 630300, 4521300; returning to 630200, 4521200.

(6) Unit 2: Butte and Tehama Counties, California. From USGS 1:24,000 quadrangle maps Acorn Hollow, Foster Island, Los Molinos, Nord, Richardson Springs NW, and Vina, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 588700, 4429900; 588900, 4429500; 589500, 4429500; 589500, 4428600; 589500, 4428000; 589800, 4427100; 590500, 4426400; 590500, 4425300; 591200, 4424400; 591500, 4423300; 591600, 4422100; 590900, 4420900; 590700, 4419800; 588000, 4417000; 587500, 4416400; 587200, 4415500; 587200, 4415100; 587300, 4415000; 587300, 4414500; 587200, 4414400; 587100, 4414300; 586900, 4414000; 586400, 4413900; 586200, 4413700; 586000, 4413600; 585800, 4413600; 585800, 4414700; 585300, 4414700; 585300, 4413800; 585200, 4413700; 584800, 4413700; 584600, 4413600; 584400, 4413600; 584200, 4413500; 584000, 4413700; 583200, 4413400; 583000, 4414200; 583700, 4414600; 583500, 4415000; 583000, 4415900; 583000, 4416400; 582900, 4416700; 582800, 4416900; 582700, 4417000; 582700, 4417200; 582900, 4417300; 582800, 4417400; 582700, 4417500; 582700, 4417600; 582600, 4417700; 582600, 4418000; 582600, 4418100; 582600, 4418200; 582700, 4418300; 582500, 4418400; 582400, 4418300; 582200, 4418300; 582100, 4418400; 582100, 4418500; 582000, 4418600; 582100, 4418700; 582100, 4418900; 582200, 4419100; 582100, 4419300; 582200, 4419500; 582100, 4419600; 582000, 4419700; 582100, 4419800; 582100, 4419900; 582200, 4420000; 582200, 4420300; 582100, 4420500; 582200, 4420600; 582200, 4420800; 582300, 4421100; 582900, 4421500; 582900, 4421600; 583300, 4422000; 583400, 4422100; 583900, 4422100; 584100, 4422300; 584200, 4422300; 584300, 4422400; 584400, 4422500; 584600, 4422900; 585100, 4423400; 585600, 4423700; 585800, 4423900; 585800, 4424200; 586100, 4424200; 586600, 4424800; 586800, 4424900; 587300, 4425500; 587400, 4425600; 587500, 4425800; 587500, 4425900; 587600, 4426000; 587700, 4426100; 587800, 4426100; 587900, 4426200; 587900, 4426300; 587900, 4426800; 587800, 4426900; 587900, 4427000; 588000, 4427300; 587900, 4427300; 587800, 4427200; 587600, 4426800; 587500, 4426600; 587400, 4426400; 587200, 4426200; 586700, 4425700; 586500, 4425700; 586200, 4425400; 585900, 4425400; 585800, 4425400; 585500, 4425600; 584900, 4425600; 584900, 4425400; 584900, 4425200; 585000, 4425000; 584800, 4425000; 584600, 4424900; 584500, 4424900; 584300, 4425000; 584100, 4425000; 583900, 4425200; 583700, 4425400; 583400, 4425500; 583300, 4425500; 583300, 4425300; 583100, 4425300; 583000, 4425400; 582900, 4425200; 582800, 4425000; 582700, 4424800; 582700, 4424600; 582600, 4424500; 582600, 4424200; 582400, 4424100; 582300, 4423800; 582100, 4423600; 582100, 4423500; 581300, 4422800; 581000, 4422600; 580600, 4422800; 580200, 4423800; 579900, 4424500; 579700, 4424800; 579500, 4425400; 579700, 4425600; 580100, 4425600; 580800, 4426400; 581700, 4427000; 582300, 4427000; 582300, 4426900; 582400, 4426800; 582500, 4426800; 582700, 4426700; 582800, 4426700; 583500, 4426800; 583900, 4426900; 584000, 4427000; 584200, 4427100; 584600, 4427600; 584800, 4427900; 585100, 4428200; 585900, 4428500; 586300, 4428500; 586900, 4428900; 587300, 4429100; 588300, 4429600; 588500, 4430000; returning to 588700, 4429900.

(7) Unit 3: Butte County, California. [Reserved]

(8) Unit 4: Butte County, California. [Reserved]

(9) Unit 5: Colusa and Glenn Counties, California. [Reserved]

(10) Unit 6: Stanislaus and Tuolumne Counties, California. From USGS 1:24,000 quadrangle maps Cooperstown, Keystone, Knights Ferry, La Grange, Oakdale, Paulsell, and Waterford, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at 708700, 4190000; 709200, 4189300; 709200, 4188600; 710100, 4188200; 709900, 4186700; 708900, 4185800; 708800, 4185000; 709600, 4184200; 710300, 4183900; 710300, 4182900; 711400, 4182100; 712400, 4182100; 713200, 4182000; 714100, 4182600; 715100, 4182600; 715500, 4183400; 715800, 4183400; 716000, 4182700; 716900, 4182700; 717100, 4182500; 717100, 4182000; 716900, 4181300; 717200, 4180900; 717200, 4180600; 716900, 4179900; 717700, 4180100; 718500, 4180000; 718700, 4179200; 719300, 4178700; 719700,

4177600; 720300, 4177700; 720700, 4177700; 720800, 4176400; 721400, 4175900; 722200, 4175300; 722700, 4175200; 722800, 4173600; 723000, 4173500; 723200, 4173600; 723700, 4173600; 724000, 4173300; 724100, 4172300; 722800, 4172200; 721700, 4171200; 721600, 4170700; 721500, 4170500; 721400, 4170400; 721200, 4170300; 721000, 4170100; 721000, 4169600; 720900, 4169600; 720000, 4168500; 718900, 4168000; 718700, 4168100; 718100, 4168500; 718000, 4168500; 717900, 4168600; 716200, 4168600; 715900, 4168500; 715600, 4168300; 715500, 4168200; 715400, 4168300; 715400, 4169400; 714900, 4169900; 714900, 4170000; 715100, 4170000; 715200, 4170200; 715300, 4170200; 715300, 4170400; 715300, 4171200; 715200, 4171200; 715200, 4171000; 715100, 4171000; 715100, 4170700; 714900, 4170700; 714900, 4170300; 713900, 4169800; 713800, 4169900; 713000, 4169500; 712500, 4169400; 712200, 4169400; 712000, 4169600; 711500, 4169900; 711300, 4169900; 710500, 4169100; 709300, 4169100; 709100, 4169500; 709100, 4169700; 708900, 4169700; 708800, 4169900; 708700, 4169900; 708600, 4169800; 708500, 4169900; 708400, 4170000; 708700, 4170200; 708800, 4170300; 708900, 4170400; 709100, 4170500; 709200, 4170600; 709400, 4170600; 709400, 4170800; 709300, 4170800; 709200, 4170900; 709100, 4170800; 708800, 4170700; 708800, 4170600; 708500, 4170500; 708400, 4170300; 708100, 4170200; 707900, 4170200; 707900, 4170300; 708100, 4170500; 708200, 4170500; 708200, 4170600; 708000, 4170600; 708200, 4170800; 708200, 4170900; 708100, 4170900; 707900, 4170700; 707700, 4170700; 707700, 4170800; 707600, 4170900; 707400, 4170900; 707100, 4171100; 707100, 4171200; 707200, 4171300; 707300, 4171200; 707500, 4171300; 707800, 4171600; 707900, 4171600; 708100, 4171600; 708200, 4171700; 708100, 4171800; 708100, 4171900; 708300, 4171900; 708300, 4172100; 708400, 4172100; 708500, 4172200; 708500, 4172300; 708700, 4172400; 708800, 4172500; 708800, 4172600; 708700, 4172700; 708500, 4172700; 708400, 4172800; 708300, 4172700; 708200, 4172700; 708100, 4172600; 708000, 4172500; 707900, 4172500; 707800, 4172700; 707600, 4172600; 707400, 4172500; 707400, 4172600; 707200, 4172700; 707100, 4172300; 707000, 4172200; 706700, 4172200; 706700, 4172300; 706500, 4172300; 706400, 4172300; 706400, 4172400; 706200, 4172600; 706300, 4172700; 706400, 4172800; 706300, 4172800; 706200, 4172800; 706100, 4172900; 705900, 4173100; 705800, 4173300; 705800, 4173500; 706000, 4173800; 705900, 4173900; 705800, 4174100; 705700, 4174200; 705500, 4174200; 705400, 4174100; 705400, 4173700; 705300, 4173500; 705200, 4173200; 705100, 4173200; 705100, 4172600; 704900, 4172400; 704800, 4172100; 704600, 4172100; 704500, 4171900; 704400, 4171800; 704500, 4171600; 704600, 4171400; 704700, 4171500; 704900, 4171200; 704700, 4171100; 704900, 4171000; 704800, 4170900; 704600, 4170900; 704600, 4170700; 704800, 4170200; 705100, 4170200; 705000, 4170100; 705000, 4169600; 705000, 4169500; 704900, 4169400; 704800,

4169300; 704100, 4169300; 703500, 4169500; 703400, 4169600; 703400, 4170100; 703600, 4170200; 703600, 4170300; 703500, 4170300; 703500, 4170600; 703500, 4170700; 703500, 4170800; 703400, 4170900; 703400, 4171300; 703300, 4171400; 703200, 4171500; 703400, 4171500; 703400, 4171800; 703600, 4171800; 703600, 4174000; 704300, 4174000; 704300, 4173700; 705200, 4173700; 705100, 4174700; 705400, 4175400; 705000, 4175900; 705300, 4176300; 705700, 4176700; 705700, 4177000; 705700, 4177500; 705100, 4177500; 705000, 4177300; 704800, 4177300; 704800, 4177100; 704600, 4177100; 704500, 4177200; 704500, 4177400; 704300, 4177500; 704200, 4177300; 704000, 4177300; 703800, 4177100; 703500, 4177300; 703500, 4177800; 703800, 4178200; 704000, 4178200; 704100, 4178100; 704200, 4178100; 704200, 4178400; 703900, 4178400; 703900, 4178800; 703800, 4178900; 703900, 4179100; 703900, 4179200; 703500, 4179200; 703200, 4179500; 703000, 4178800; 702900, 4178800; 702600, 4178900; 702400, 4178900; 702400, 4178500; 702800, 4178300; 702900, 4178300; 703100, 4177800; 703100, 4177500; 703000, 4177300; 702700, 4177500; 702600, 4177500; 702500, 4177400; 702700, 4177200; 702700, 4177000; 702600, 4177100; 702400, 4177100; 702400, 4177000; 702400, 4176800; 702300, 4176800; 702300, 4177100; 702200, 4177200; 702000, 4177100; 702100, 4176900; 702000, 4176800; 701800, 4176800; 701600, 4176700; 701600, 4176500; 701600, 4176200; 701700, 4175900; 701800, 4175800; 702000, 4175800; 702000, 4175100; 701600, 4175100; 701600, 4174200; 701900, 4173700; 701800, 4173600; 701700, 4173500; 701700, 4173300; 701700, 4173200; 701600, 4173200; 701500, 4173100; 701500, 4173000; 701600, 4173000; 701600, 4172800; 701500, 4172600; 701300, 4172500; 701100, 4172600; 700700, 4172600; 700600, 4172600; 700500, 4172700; 700500, 4172900; 700400, 4172900; 700400, 4172800; 700100, 4172700; 699600, 4172700; 699500, 4172800; 699300, 4172800; 699100, 4172500; 698800, 4172500; 698700, 4172600; 698400, 4172400; 698100, 4172800; 698200, 4173000; 697400, 4174300; 697300, 4174300; 697300, 4174500; 697800, 4174500; 697800, 4176300; 697700, 4176300; 697700, 4179300; 696800, 4179300; 696600, 4180000; 696600, 4180200; 697100, 4179900; 697700, 4180200; 697700, 4180400; 697600, 4180400; 697600, 4182200; 698700, 4182200; 699000, 4182600; 700300, 4182600; 700300, 4183400; 699400, 4183400; 699400, 4184100; 700800, 4185100; 704100, 4186300; 705300, 4187700; 705700, 4187700; 706300, 4188200; 706300, 4188800; 706700, 4190100; 707300, 4190700; 707800, 4190700; 708400, 4190000; returning to 708700, 4190000; excluding land bound by 699400, 4179400; 698100, 4179400; 698400, 4179500; 698400, 4180200; 699800, 4180200; 699800, 4180000; 699600, 4179800; returning to 699400, 4179400; and excluding land bound by 709800, 4176600; 709800, 4177000; 709900, 4177000; 709900, 4177600; 709800, 4177700; 709700, 4178000; 709700, 4178200; 710600, 4178800; 710700, 4178900; 711800, 4178900; 711900, 4178100; 711700, 4177600; 711700, 4177200; 711600, 4176900; 711400, 4176700; 711200, 4176700; 711000, 4176700; 710800, 4176600; 710800, 4176500; 710700, 4176400; 710600, 4176400; 710400, 4176300; 710300, 4176200; 710300, 4176100; 710000, 4176100; 709900, 4176200; 709900, 4176400; returning to 709800, 4176600; and excluding land bound by 706200, 4178400; 706600, 4178700; 707300, 4178700; 707300, 4178500; 707500, 4178400; 707500, 4177900; 708200, 4177900; 708200, 4176900; 708000, 4176500; 708000, 4176500; 707900, 4176000; 707900, 4175900; 707800, 4175700; 707700, 4175700; 707600, 4175500; 707400, 4175600; 707100, 4175600; 706800, 4175700; 706700, 4175900; 706700, 4177100; 706200, 4177100; 706200, 4177600; 706300, 4178000; returning to 706200, 4178400; and excluding land bound by 700700, 4176200; 699400, 4176200; 699300, 4176200; 699300, 4177800; 701000, 4177800; 701000, 4177000; 700500, 4177000; 700500, 4176600; 700700, 4176400; returning to 700700, 4176200; and excluding land bound by 717800, 4170900; 718000, 4171000; 718000, 4171300; 718800, 4171500; 718800,

4171400; 718900, 4171000; 719000, 4171000; 719100, 4170900; 718900, 4170400; 718800, 4170200; 718600, 4170200; 718600, 4170100; 718100, 4170200; 717700, 4170200; 717300, 4170300; 717300, 4170500; 717800, 4170500; returning to 717800, 4170900.

(ii) Start at 702000, 4169800; 702200, 4169800; 702200, 4169700; 702200, 4169200; 701700, 4169000; 701300, 4168800; 701200, 4168600; 701000, 4168600; 701000, 4169700; 700700, 4169700; 700700, 4170500; 700500, 4170500; 700500, 4170900; 700300, 4170900; 700300, 4171100; 700300, 4171800; 701200, 4171800; 702000, 4171800; returning to 702000, 4169800.

(11) Unit 7: Mariposa and Merced Counties, California. From USGS 1:24,000 quadrangle maps Haystack Mtn., Illinois Hill, Indian Gulch, La Grand, Merced, Merced Falls, Owens Reservoir, Plainsburg, Planada, Raynor Creek, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 756700, 4123994; 756500, 4123700; 753500, 4122400; 750200, 4122400; 750200, 4121400; 748600, 4121400; 748600, 4121900; 747800, 4121900; 747800, 4123300; 748300, 4123300; 748300, 4123500; 748500, 4123500; 748600, 4123500; 748600, 4123900; 747800, 4123900; 747800, 4124600; 747400, 4125100; 747400, 4125500; 746900, 4125500; 746900, 4125800; 747000, 4125900; 746900, 4125900; 746600, 4125800; 746300, 4125700; 746200, 4125600; 746200, 4125500; 745700, 4125500; 745700, 4125100; 744500, 4125100; 744500, 4125300; 744400, 4125300; 744400, 4125200; 743700, 4125200; 743700, 4125800; 744500, 4125800; 744500, 4126200; 743700, 4126200; 743700, 4127000; 742400, 4127000; 742000, 4127200; 742000, 4128600; 742800, 4128600; 742800, 4129100; 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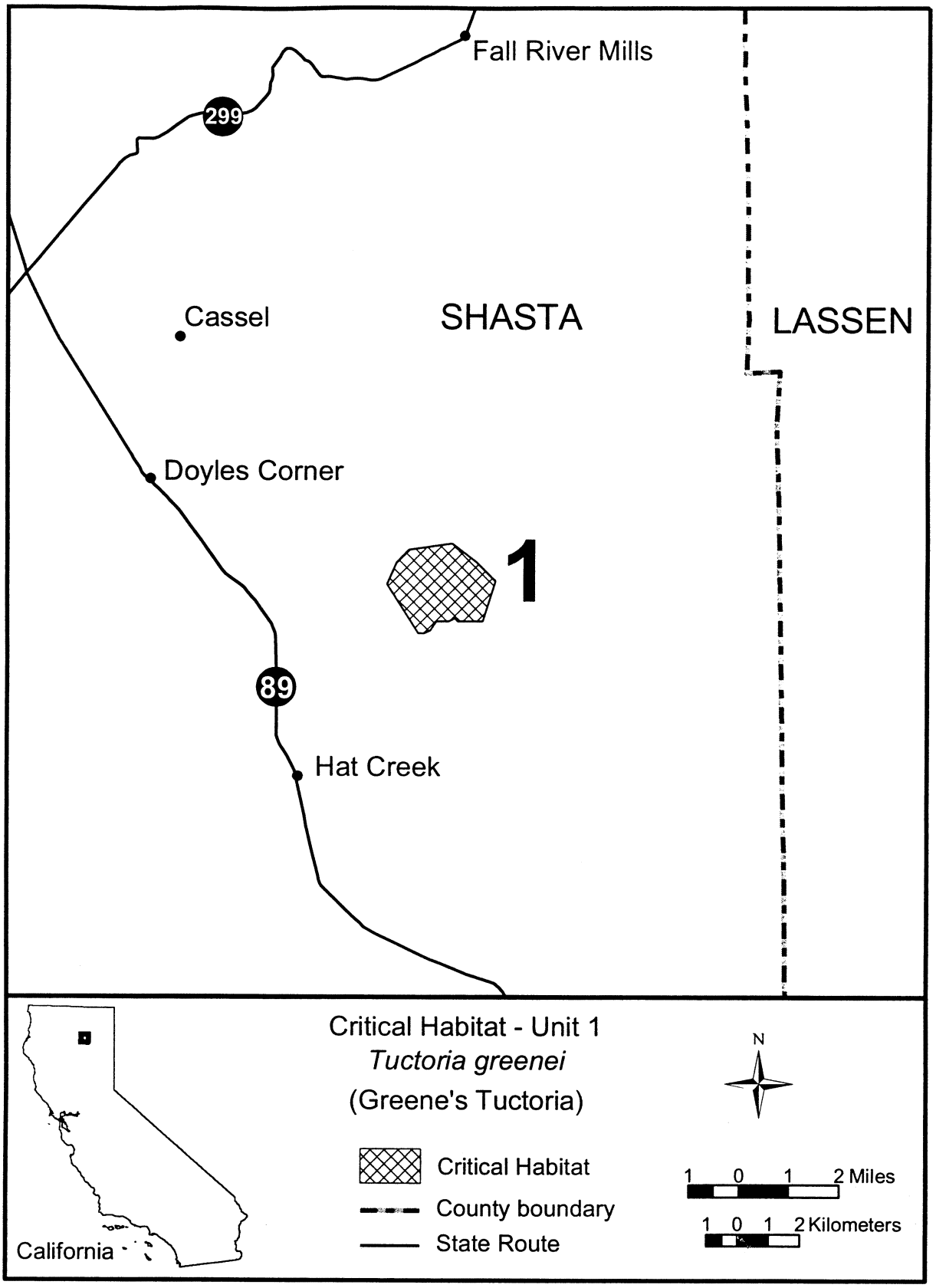
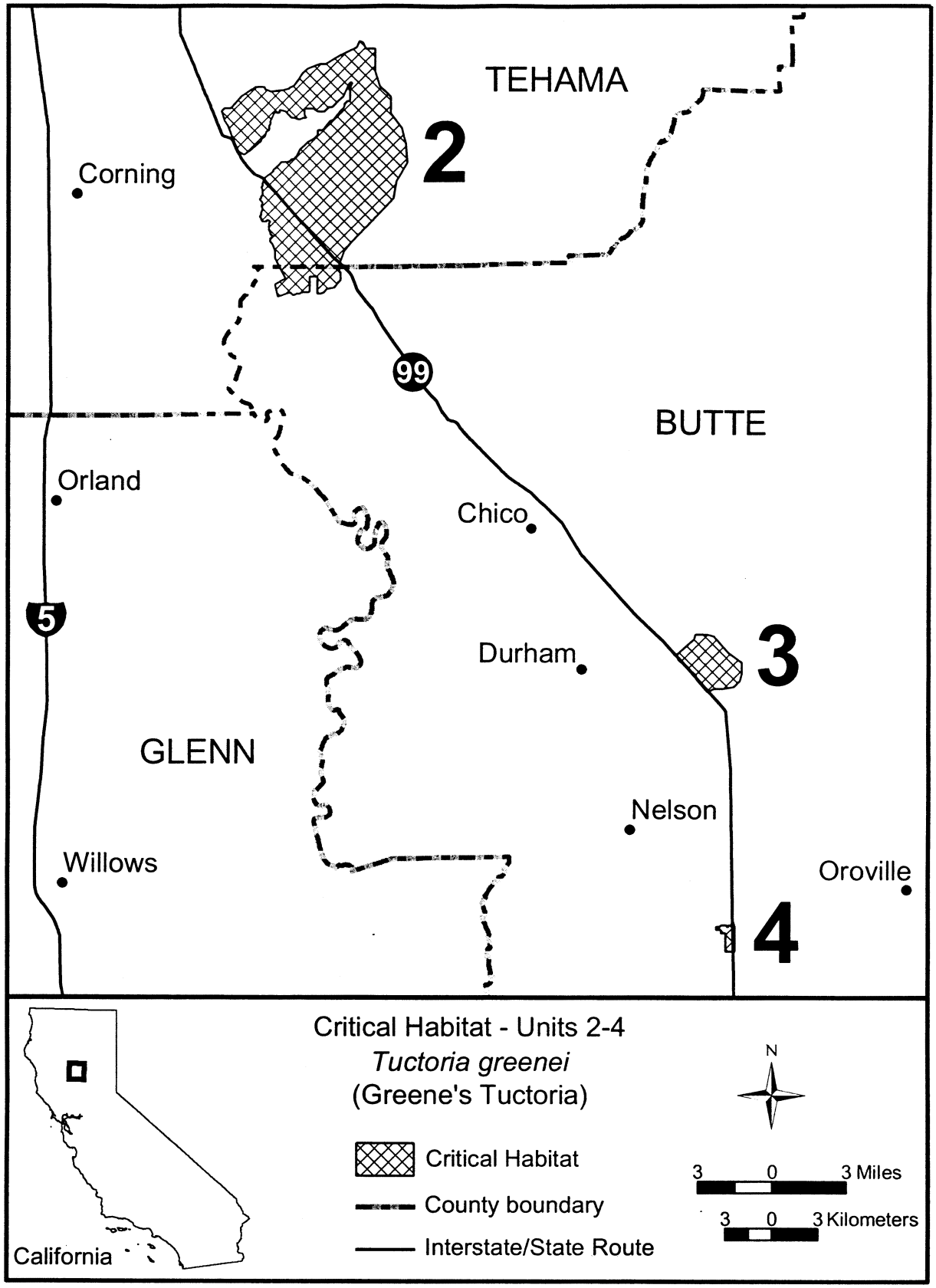
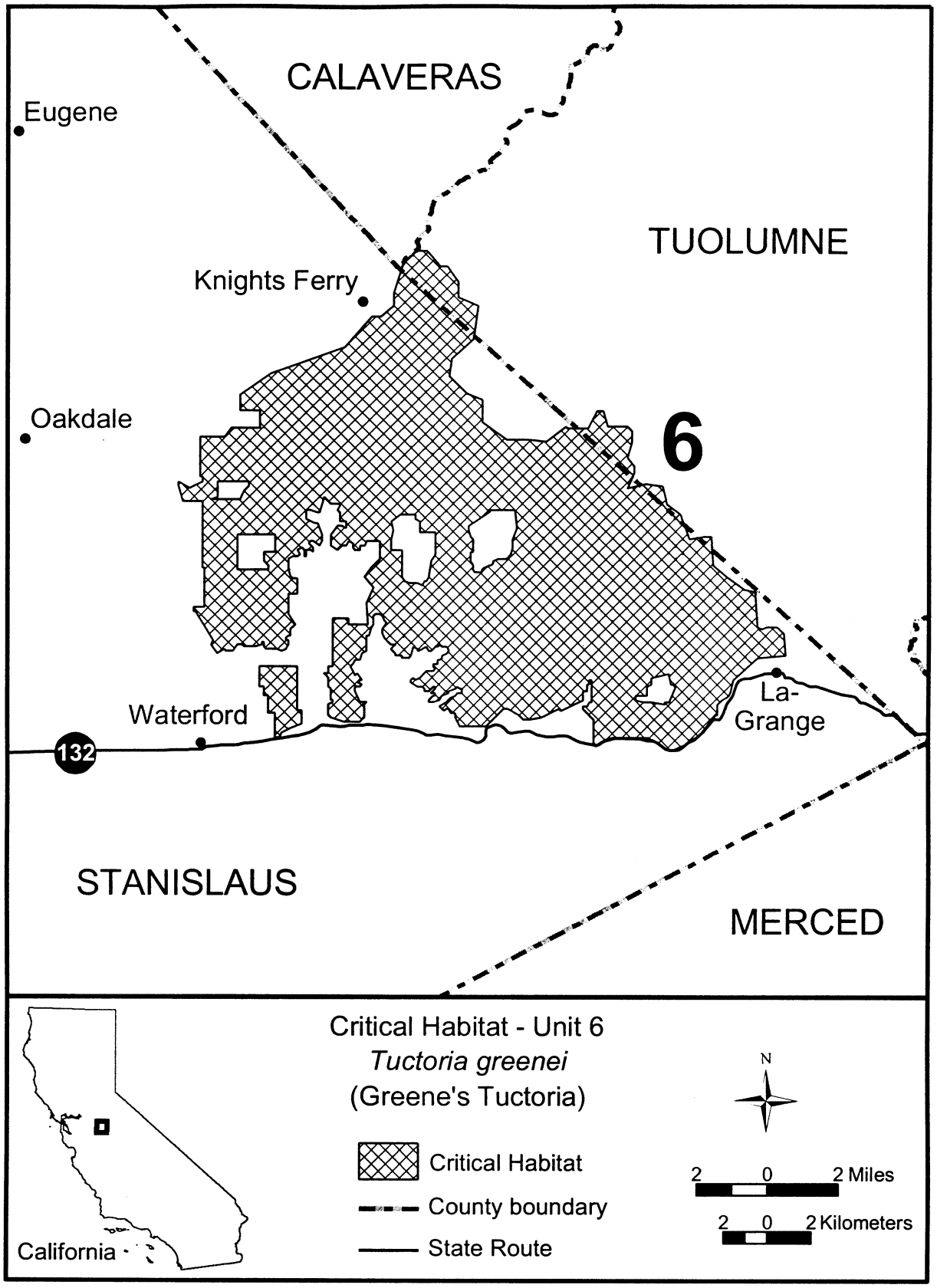
(12) Unit 8: Madera County, California. [Reserved]

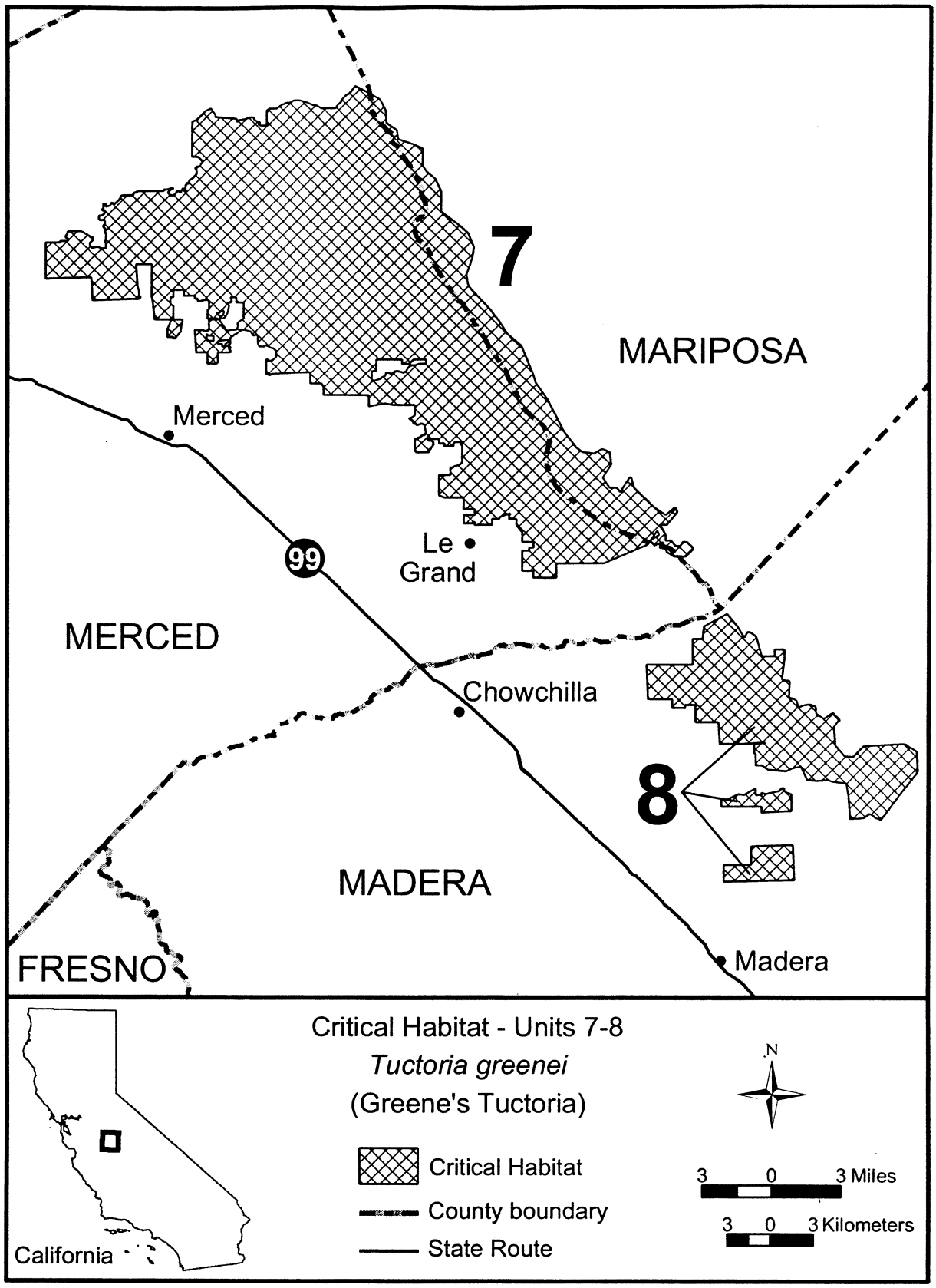
(13) Maps follow of critical habitat unit 1, 2 through 4, 6, and 7 and 8 (respectively) on Greene's tuctoria.

BILLING CODE 4310–55–P


Fall River Mills
299
Cassel
SHASTA
LASSEN
Doyles Corner
1
89
Hat Creek
Critical Habitat - Unit 1
Tuctoria greenei
(Greene's Tuctoria)
N
Critical Habitat
County boundary
State Route
1 0 1 2 Miles
1 0 1 2 Kilometers
California


TEHAMA
2
Corning
99
BUTTE
Orland
Chico
5
Durham
3
GLENN
Nelson
Willows
Oroville
4
Critical Habitat - Units 2-4
Tuctoria greenei
(Greene's Tuctoria)
N
Critical Habitat
County boundary
Interstate/State Route
3 0 3 Miles
3 0 3 Kilometers
California


CALAVERAS
Eugene
TUOLUMNE
Knights Ferry
Oakdale
6
Waterford
La-
Grange
132
STANISLAUS
MERCED
Critical Habitat - Unit 6
Tuctoria greenei
(Greene's Tuctoria)
Critical Habitat
County boundary
State Route
N
2 0 2 Miles
2 0 2 Kilometers
California



BILLING CODE 4310–55–C

Family Poaceae: *Tuctoria mucronata* (Solano Grass).

(1) Critical habitat units are depicted for Yolo County, California, on the map below.

(2) The primary constituent elements of critical habitat for *Tuctoria mucronata* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Tuctoria mucronata* germination, growth and reproduction, including but not limited to, Northern Claypan vernal pools (Sawyer and Keeler-Wolf 1995) on saline-alkaline clay or silty clay in the Pescadero soil series that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Tuctoria mucronata* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing manmade features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

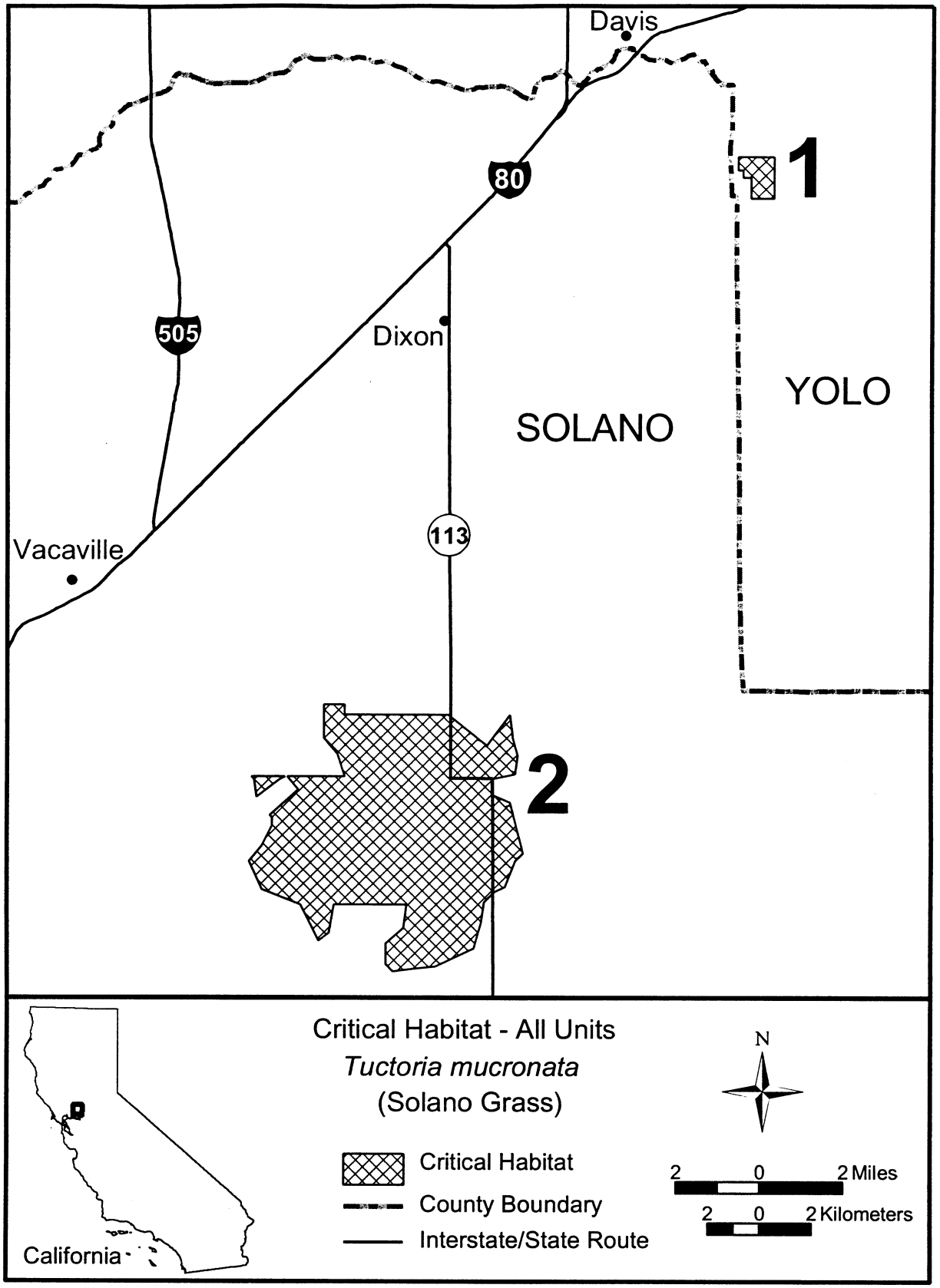
(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Unit 1: Yolo County, California. From USGS 1:24,000 quadrangle maps Davis, and Saxon, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 615400, 4260700; 614500, 4260700; 614500, 4261500; 614200, 4261500; 614200, 4261800; 614000, 4261800; 614000, 4262300; 615400, 4262300; returning to 615400, 4260700.

(6) Unit 2: Solano County, California. [Reserved]

(7) Map follows of critical habitat units 1 and 2 for Solano grass.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

Family Scrophulariaceae: *Castilleja campestris* ssp. *succulenta* (Fleshy Owl's Clover).

(1) Critical habitat units are depicted for San Joaquin, Stanislaus, Tuolumne,

Mariposa, and Fresno Counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Castilleja campestris* ssp. *succulenta* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Castilleja campestris* ssp. *succulenta* germination, growth and reproduction, including but not limited to, hardpan vernal pools on alluvial terraces and San Joaquin, Redding, Corning, Keyes, and Pentz soils series, among others, and northern basalt flow vernal pools on Hideaway soils series, that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Castilleja campestris* ssp. *succulenta* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing manmade features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat does not include the following lands although they may fall within the legal descriptions below:

(i) Lands within the following California counties: Butte, Madera, Merced, Sacramento, and Solano;

(ii) Federally-owned lands within the boundaries of the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery;

(iii) State-owned lands within the boundaries of the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves;

(iv) State-owned lands within the boundaries of the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas.

(5) Unit 1: Sacramento and San Joaquin Counties, California. From USGS 1:24,000 quadrangle maps Clay and Lockeford, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): ; 654000, 4232700; 653600, 4232700; 653600, 4234100; 654100, 4234800; 655100, 4234800; 655500, 4234500; 655900, 4234700; 656000, 4234700; 656000, 4234500; 656800, 4234500; 656800, 4234700; 657600, 4234700; 657900, 4235000; 658800, 4235200; 658700, 4235100; 658700, 4234600; 659200, 4234600; 659200, 4234700; 659000, 4234900; 660500, 4235300; 661000, 4235300; 661100, 4235100; 660700, 4234700; 660300, 4234400; 660000, 4234300; 659600, 4233400; 656900, 4233400; 654100, 4233200; 654000, 4233200; returning to 654000, 4232700.

(6) Unit 2: Stanislaus and Tuolumne Counties, California. From USGS 1:24,000 quadrangle maps Cooperstown, Keytone, La Grange, Knights Ferry, and Paulsell, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at: 714100, 4182600; 715100, 4182600; 715500, 4183400; 715800, 4183400; 716000, 4182700; 716900, 4182700; 717100, 4182500; 717100, 4182000; 716900, 4181300; 717200, 4180900; 717200, 4180600; 716900, 4179900; 716600, 4180400; 715400, 4180400; 715600, 4180900; 715200, 4181600; 714700, 4182000; returning to 714100, 4182600.

(ii) Start at: 716900, 4179900; 717700, 4180100; 718500, 4180000; 718700, 4179200; 719300, 4178700; 719700, 4177600; 720300, 4177700; 720700, 4177700; 720800, 4176400; 720500, 4175200; 719500, 4174100; 720700, 4173500; 720700, 4172500; 719800, 4171900; 718800, 4171400; 718800, 4171500; 718000, 4171300; 718000, 4171000; 717800, 4170900; 717700, 4170900; 717300, 4170700; 716800, 4171000; 716700, 4171800; 716500, 4171800; 716200, 4170900; 715500, 4170500; 715300, 4170406,715300, 4171200; 715200, 4171200; 715200, 4171000; 715100, 4171000; 715100, 4170700; 714900, 4170700; 714900, 4170300; 713900, 4169800; 713800, 4169900; 713000, 4169500; 712500, 4169400; 712200, 4169400; 712000, 4169600; 711500, 4169900; 711300, 4169900; 710500, 4169100; 709300, 4169100; 709100, 4169500; 709100, 4169700; 708900, 4169700; 708800, 4169900; 708700, 4169900; 708600, 4169800; 708500, 4169900; 708400, 4170000; 708700, 4170200; 708800, 4170300; 708900, 4170400; 709100, 4170500; 709200, 4170600; 709400, 4170600; 709400, 4170800; 709300, 4170800; 709200, 4170900; 709100, 4170800; 708800, 4170700; 708800, 4170600; 708500, 4170500; 708400, 4170300; 708100, 4170200; 707900, 4170200; 707900, 4170300; 708100, 4170500; 708200, 4170500; 708200, 4170600; 708000, 4170600; 708200, 4170800; 708200, 4170900; 708100, 4170900; 707900, 4170700; 707700, 4170700; 707700, 4170800; 707600, 4170900; 707400, 4170900; 707100, 4171100; 707100, 4171200; 707200, 4171300; 707300, 4171200; 707500, 4171300; 707800, 4171600; 707900, 4171600; 708100, 4171600; 708200, 4171700; 708100, 4171800; 708100, 4171900; 708300, 4171900; 708300, 4172100; 708400, 4172100; 708500, 4172200; 708500, 4172300; 708700, 4172400; 708800, 4172500; 708800, 4172600; 708700, 4172700; 708500, 4172700; 708400, 4172800; 708300, 4172700; 708200, 4172700; 708100, 4172600; 708000, 4172500; 707900, 4172500; 707800, 4172700; 707600, 4172600; 707400, 4172500; 707400, 4172600; 707200, 4172700; 707100, 4172300; 707000, 4172200; 706700, 4172200; 706700, 4172300; 706500, 4172300; 706400, 4172300; 706400, 4172400; 706200, 4172600; 706300, 4172700; 706400, 4172800; 706300, 4172800; 706200, 4172800; 706100, 4172900; 705900, 4173100; 705800, 4173300; 705800, 4173500; 706000, 4173800; 705900, 4173900; 705800, 4174100; 705700, 4174200; 705500, 4174200; 705400, 4174100; 705400, 4173700; 705300, 4173500; 705200, 4173200; 705100, 4174700; 705400, 4175400; 705000, 4175900; 705300, 4176300; 705700, 4176700; 705700, 4177000; 705700, 4177500; 705700, 4177700; 705200, 4177900; 705000, 4178100; 705400, 4178900; 706200, 4178400; 706300, 4178000; 706200, 4177600; 706200, 4177100; 706700, 4177100; 706700, 4175900; 706800, 4175700; 707100, 4175600; 707400, 4175600; 707600, 4175500; 707700, 4175700; 707800, 4175700; 707900, 4175900; 707900, 4176000; 708000, 4176500; 708500, 4176400; 709800, 4176600; 709900, 4176400; 709900, 4176200; 710000, 4176100; 710300, 4176100; 710300, 4176200; 710400, 4176300; 710600, 4176400; 710700, 4176400; 710800, 4176500; 710800, 4176600; 711000, 4176700; 711200, 4176700; 711400, 4176700; 711600, 4176900; 711700, 4177200; 711700, 4177600; 711900, 4178100; 711800, 4178900; 710700, 4178900; 710600, 4178800; 710300, 4179200; 709900, 4179500; 709500, 4179600; 709100, 4180800; 709200, 4182200; 709700, 4182700; 710300, 4182900; 711400,

4182100; 712400, 4182100; 713200, 4182000; 714100, 4182600; 714700, 4182000; 715200, 4181600; 715600, 4180900; 715400, 4180400; 716600, 4180400; returning to 716900, 4179900.

(7) Subunit 3A: Mariposa and Merced Counties, California. [Reserved]

(8) Unit 3B: Mariposa and Merced Counties, California. From USGS 1:24,000 quadrangle maps Haystack Mountain, Indian Gulch, Le Grand, Merced, Merced Falls, Owens Reservoir, Planada, Plainsburg, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N):

(i) Start at: 745300, 4139300; 745200, 4139200; 744900, 4139000; 744800, 4138800; 744900, 4138500; 744700, 4137700; 744400, 4137500; 744200, 4137600; 744000, 4137500; 743800, 4137500; 743400, 4137400; 743100, 4137300; 743100, 4137200; 742900, 4137000; 742700, 4137000; 742600, 4136900; 742600, 4136600; 742400, 4136500; 742000, 4136400; 741800, 4136500; 741400, 4136400; 741100, 4136400; 741100, 4136700; 740200, 4136700; 739900, 4136400; 739400, 4136400; 739400, 4136700; 737600, 4136700; 737600, 4135900; 737300, 4135900; 737300, 4135300; 737400, 4135200; 737200, 4135000; 736800, 4134800; 736800, 4134600; 736800, 4134400; 736600, 4134200; 733900, 4134200; 733900, 4134800; 733800, 4134900; 733800, 4135000; 733000, 4135000; 733000, 4135800; 732500, 4135800; 730300, 4135700; 730200, 4135600; 730100, 4135600; 729900, 4135700; 729900, 4136500; 729900, 4136700; 730000, 4136700; 730100, 4136600; 730200, 4136600; 730300, 4136600; 730400, 4136700; 730500, 4136800; 730600, 4136900; 730600, 4137000; 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723200, 4141100; 723200, 4140600; 723400, 4140500; 723400, 4139500; 724000, 4139500; 724000, 4139400; 723900, 4138900; 723900, 4138700; 723500, 4138200; 723400, 4138200; 723400, 4138300; 723000, 4138300; 723000, 4138700; 723000, 4138900; 723100, 4139100; 723200, 4139400; 723300, 4139500; 722100, 4139500; 722000, 4140500; 721900, 4141100; 721900, 4141900; 721900, 4143400; 720800, 4143400; 720900, 4141800; 721000, 4141500; 721000, 4141200; 721100, 4141100; 721000, 4141000; 717800, 4140900; 717700, 4142500; 714500, 4142400; 714500, 4144900; 715500, 4144900; 715500, 4145000; 715800, 4145000; 715900, 4145000; 716000, 4145000; 716100, 4145100; 716100, 4145200; 716000, 4145200; 715900, 4145300; 715900, 4145400; 716000, 4145500; 716000, 4145600; 716100, 4145700; 717000, 4145700; 717700, 4145300; 717800, 4145300; 717800, 4145200; 717800, 4145100; 717600, 4144900; 717600, 4144800; 717600, 4144700; 717800, 4144500; 717900, 4144600; 718200, 4144600; 718400, 4144500; 718700, 4144500; 718700, 4144800; 718600, 4145000; 718700, 4145100; 718700, 4145600; 718600, 4145600; 718600, 4145700; 718700, 4145800; 718600, 4145900; 718500, 4146000; 718500, 4146100; 718600, 4146200; 718600, 4146500; 718300, 4146500; 718200, 4146600; 718200, 4146800; 718300, 4146800; 718500, 4146900; 718600, 4147000; 718600, 4147100; 718400, 4147200; 718500, 4147300; 718500, 4147600; 718700, 4147600; 718700, 4147400; 719000, 4147500; 719100, 4147700; 719300, 4147600; 719600, 4147900; 719700, 4148000; 719700, 4148100; 719800, 4148200; 720000, 4148200; 720600, 4148200; 720600, 4148300; 720700, 4148400; 720800, 4148400; 720900, 4148500; 722700, 4148500; 722700, 4148600; 722900, 4148600; 723200, 4148700; 723400, 4148700; 723200, 4148600; 723100, 4148500; 723000, 4148400; 723200, 4148200; 723400, 4148200; 723500, 4148300; 723600, 4148400; 723600, 4148500; 723800, 4148500; 723800, 4148400; 723900, 4148400; 723900, 4148500; 724000, 4148700; 724200, 4148500; 724200, 4148900; 724300, 4149000; 724300, 4149100; 724500, 4149000; 724500, 4149300; 724700, 4149400; 724900, 4149600; 725000, 4149700; 725000, 4150000; 724900, 4150100; 725000, 4150200; 725200, 4150200; 725300, 4150400; 725400, 4150500; 725400, 4150600; 725100, 4150900; 724700, 4150900; 724700, 4153400; 725000, 4153500; 725400, 4153900; 725600, 4154100; 725800, 4154200; 726000, 4154300; 726200, 4154000; 726300, 4153800; 726300, 4153700; 727800, 4153700; 727800, 4153400; 727900, 4153400; 727900, 4153500; 728400, 4153600; 728700, 4153700; 729000, 4153700; 729000, 4153600; 729100, 4153500; 729300, 4153400; 729400, 4153400; 729400, 4153300; 729300, 4153200; 729500, 4153100; 729800, 4153100; 729900, 4153200; 729900, 4154200; 730000, 4154200; 730100, 4154300; 730600, 4154300; 730700, 4154400; 731000, 4154600; 731200, 4154700; 731500, 4154700; 731800, 4154900; 732200, 4154900; 732600, 4154800; 733200, 4154500; 733400, 4154500; 733700, 4154300; 734700, 4154300; 734900, 4154600; 735100, 4154800; 735100, 4154900; 735500, 4155300; 735600, 4155300; 735800, 4155500; 736100, 4155900; 737100, 4155400; 737800, 4155000; 738200, 4154200; 738300, 4153300; 739000, 4152800; 739100, 4152200; 740200, 4151800; 740800, 4151500; 740800, 4150300; 741100, 4149900; 741700, 4149400; 742100, 4148500; 742100, 4147100; 743400, 4146100; 744000, 4145600; 744400, 4144600; 744300, 4143900; 743900, 4142700; 744000, 4142000; 744200, 4141700; 745500, 4140300; 745500, 4139600; 745500, 4139500; 745400, 4139400; returning to 745300, 4139300,excluding land bounded by 726800, 4139800; 726900, 4140000; 726900, 4140100; 726800, 4140200; 726600, 4140000; 726400, 4140000; 726700, 4139700; excluding land bounded by 727400, 4138800; 727800, 4138800; 727900, 4139000; 727900, 4139300; 728300, 4139600; 728300, 4140700; 727800, 4140700; 727800, 4141100; 727400, 4141100; 727500, 4140800; 727400, 4140700; 727200, 4140700; 727300, 4140500; 727200, 4140000; 727000, 4139700; 726800, 4139600; 726600, 4139600; 726600, 4139500; 727200, 4138700; excluding land bounded by 726200, 4138400; 725800, 4138400; 725800, 4138500; 725700, 4138500; 725700, 4138200; 725800, 4138200; 725800, 4138000; returning to 726200, 4138000; excluding land bounded by 727000, 4137800; 727200, 4137900; 727300, 4138000; 727300, 4138100; 726500, 4138000; 726500, 4137800; 726800, 4137800; 726800, 4137600; returning to 727000, 4137600; excluding land bounded by 741000, 4136400; 740900, 4136400; 740700, 4136400; 740500, 4136400; 740300, 4136300; 740000,

4136300; 739800, 4136100; 739700, 4135900; 739500, 4135800; 739200, 4135900; 738900, 4135900; 738700, 4135700; 738500, 4135800; 738300, 4135800; 738200, 4135600; 738000, 4135500; 737900, 4135400; 737700, 4135300; 737400, 4135200; 737300, 4135300; 737300, 4135900; 737600, 4135900; 737600, 4136700; 739400, 4136700; 739400, 4136400; 739900, 4136400; 740200, 4136700; 741100, 4136700; 741100, 4136400; returning to 741000, 4136400.

(ii) Start at: 745300, 4139300; 745400, 4139400; 745500, 4139500; 745500, 4139600; 745500, 4140300; 746100, 4139500; 746800, 4138500; 747700, 4137700; 748500, 4135800; 748700, 4135100; 749500, 4134000; 749500, 4134000; 750700, 4131701; 750700, 4131700; 751600, 4130500; 752000, 4130200; 752200, 4130200; 752100, 4130200; 752000, 4130000; 751900, 4129900; 751900, 4129900; 751800, 4129800; 751700, 4129800; 751700, 4129800; 750100, 4129800; 750400, 4131600; 749600, 4132100; 749500, 4133400; 748600, 4133900; 748400, 4133300; 747800, 4133700; 748100, 4134400; 747600, 4134800; 747600, 4135300; 747200, 4135800; 747300, 4137300; 746600, 4137100; 745500, 4137700; 745500, 4139100; 745500, 4139300; returning to 745300, 4139300.

(iii) Start at: 741000, 4136400; 741100, 4136400; 741400, 4136400; 741800, 4136500; 742000, 4136400; 742400, 4136500; 742600, 4136600; 742600, 4136900; 742700, 4137000; 742900, 4137000; 743100, 4137200; 743100, 4137300; 743400, 4137400; 743800, 4137500; 744000, 4137500; 744200, 4137600; 744400, 4137500; 744700, 4137700; 744900, 4138500; 744800, 4138800; 744900, 4139000; 745200, 4139200; 745300, 4139300; 745500, 4139300; 745500, 4139100; 745500, 4137700; 746600, 4137100; 747300, 4137300; 747200, 4135800; 747600, 4135300; 747600, 4134800; 748100, 4134400; 747800, 4133700; 748400, 4133300; 748600, 4133900; 749500, 4133400; 749600, 4132100; 750400, 4131600; 750100, 4129800; 751700, 4129800; 751400, 4129700; 751300, 4129700; 751100, 4129500; 751000, 4129500; 751000, 4129400; 751000, 4129400; 750900, 4129200; 750800, 4129000; 750600, 4128900; 750500, 4128800; 750500, 4128800; 750400, 4128760; 750300, 4128700; 750000, 4128700; 750000, 4128700; 749900, 4128700; 749600, 4128800; 749400, 4128600; 749100, 4128500; 748900, 4128400; 748900, 4128100; 748800, 4128000; 748700, 4127800; 748500, 4127600; 748300, 4127500; 748300, 4127300; 748300, 4127100; 748200, 4127000; 748100, 4126800; 748000, 4126700; 747900, 4126700; 747800, 4126700; 747700, 4126400; 747500, 4126200; 747400, 4126000; 747200, 4126000; 747000, 4125900; 746900, 4125900; 746600, 4125800; 746300, 4125700; 746200, 4125600; 746200, 4125500; 745700, 4125500; 745700, 4125100; 744500, 4125100; 744500, 4125300; 744400, 4125300; 744400, 4125200; 743700, 4125200; 743700, 4125800; 744500, 4125800; 744500, 4126200; 743700, 4126200; 743700, 4127000; 742400, 4127000; 742000, 4127200; 742000, 4128600; 742800, 4128600; 742800, 4129100; 742900, 4129100; 743000, 4129100; 743000, 4129200; 743400, 4129300; 743600, 4129500; 743600, 4130700; 743500, 4130700; 743500, 4130900; 743500, 4132200; 744000, 4133400; 742700, 4133400; 742600, 4133500; 741500, 4132900; 740900, 4132200; 740800, 4132600; 740300, 4132600; 740300, 4132800; 740300, 4133500; 741000, 4133500; 741000, 4133900; 741900, 4133900; 741800, 4135800; 741028, 4135800; 741000, 4135800; returning to 741000, 4136400.

(iv) Start at: 737400, 4135200; 737700, 4135300; 737900, 4135400; 738000, 4135500; 738200, 4135600; 738300, 4135800; 738500, 4135800; 738700, 4135700; 738900, 4135900; 739200, 4135900; 739500, 4135800; 739700, 4135900; 739800, 4136100; 740000, 4136300; 740300, 4136300; 740500, 4136400; 740700, 4136400; 740900, 4136400; 741000, 4136400; 741000, 4135800; 741028, 4135800; 741800, 4135800; 741900, 4133900; 741000, 4133900; 741000, 4133500; 740300, 4133500; 738800, 4133500; 738300, 4133600; 738100, 4133600; 737100, 4133400; 737100, 4134200; 736600, 4134200; 736800, 4134400; 736800, 4134600; 736800, 4134800; 737200, 4135000; returning to 737400, 4135200.

(v) Start at: 743500, 4130900; 743100, 4130900; 743000, 4130800; 743000, 4130600; 742400, 4130600; 742400, 4130800; 742000, 4130800; 742000, 4131100; 741200, 4131100; 741300, 4131000; 741500, 4131000; 741600, 4130900; 741600, 4130700; 741400, 4130400; 741300, 4130200; 740400, 4130200; 740400, 4130300; 740300, 4130300; 740300, 4131100; 740500, 4131100; 740500, 4131200; 740700, 4131200; 740700, 4131300; 740800, 4131400; 741000, 4131400; 741000, 4131500; 741100, 4131500; 741100, 4131600; 741000, 4131900; 741000, 4132100; 740800, 4132200; 740700, 4132200; 740500, 4132100; 740400, 4132100; 740400, 4132200; 740300, 4132200; 740200, 4132200; 740200, 4132300; 739900, 4132600; 740000, 4132600; 740300, 4132800; 740300, 4132600; 740800, 4132600; 740900, 4132200; 741500, 4132900; 742600, 4133500; 742700, 4133400; 744000, 4133400; 743500, 4132200; returning to 743500, 4130900.

(9) Unit 4: Fresno, Madera, and Merced Counties, California. [Reserved]

(10) Unit 5: Fresno County, California. From USGS 1:24,000 quadrangle maps Academy, Clovis, Friant, and Round Mountain, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 263100, 4089400; 264700, 4088700; 265000, 4087900; 265300, 4087600; 265900, 4087600; 265900, 4086800; 267000, 4086800; 267600, 4087000; 267800, 4086500; 267200, 4085500; 267400, 4085100; 268100, 4085300; 268300, 4085800; 269100, 4085800; 269800, 4085400; 270300, 4084900; 271100, 4084800; 271900, 4085100; 272200, 4085600; 272800, 4086200; 273000, 4087300; 273300, 4087700; 273200, 4088500; 273200, 4089600; 274700, 4089600; 275400, 4090000; 275600, 4090500; 275900, 4090800; 276500, 4090900; 277100, 4090900; 277100, 4090200; 276100, 4088900; 276100, 4087900; 276000, 4087500; 275400, 4087200; 275100, 4086600; 274900, 4086000; 274400, 4085500; 274000, 4084900; 273400, 4084400; 273400, 4083800; 273600, 4083400; 273600, 4083000; 272900, 4082900; 272800, 4082200; 272800, 4081400; 273000, 4080800; 273200, 4080500; 273500, 4080100; 273700, 4079700; 273800, 4079100; 274200, 4078600; 274300, 4078100; 273300, 4078100; 273300, 4077100; 273000, 4076600; 271300, 4076700; 271400, 4076900; 271700, 4077100; 271800, 4077300; 271800, 4077500; 271500, 4077700; 271100, 4077700; 271100, 4078200; 271300, 4078400; 271600, 4078900; 271800, 4079100; 272100, 4079100; 272100, 4079900; 271100, 4079900; 268000, 4080000; 268000, 4080600; 268300, 4080600; 268300, 4080800; 268000, 4080800; 268000, 4081300; 267500, 4081300; 267500, 4080900; 266500, 4080900; 266500, 4081100; 266300, 4081100; 266300, 4081300; 266600, 4081300; 266600, 4081700; 267000, 4082300; 267000, 4082400; 268300, 4082400; 268300, 4081700; 268400, 4081600; 268400, 4081200; 268800, 4081200; 268800, 4082800; 269600, 4082800; 269600, 4083200; 270000, 4083200; 270100, 4083800; 268800, 4083500; 268800, 4083200; 266400, 4083300; 263900, 4083300; 263300, 4083800; 261900, 4083800; 261900, 4083400; 261800, 4083400; 261800, 4083500; 261700, 4083500; 261700, 4083400; 261600, 4083400; 261600, 4084300; 261200, 4084300; 261200, 4084400; 260900, 4084600; 260900, 4084700; 260800, 4084700; 260800, 4085000;

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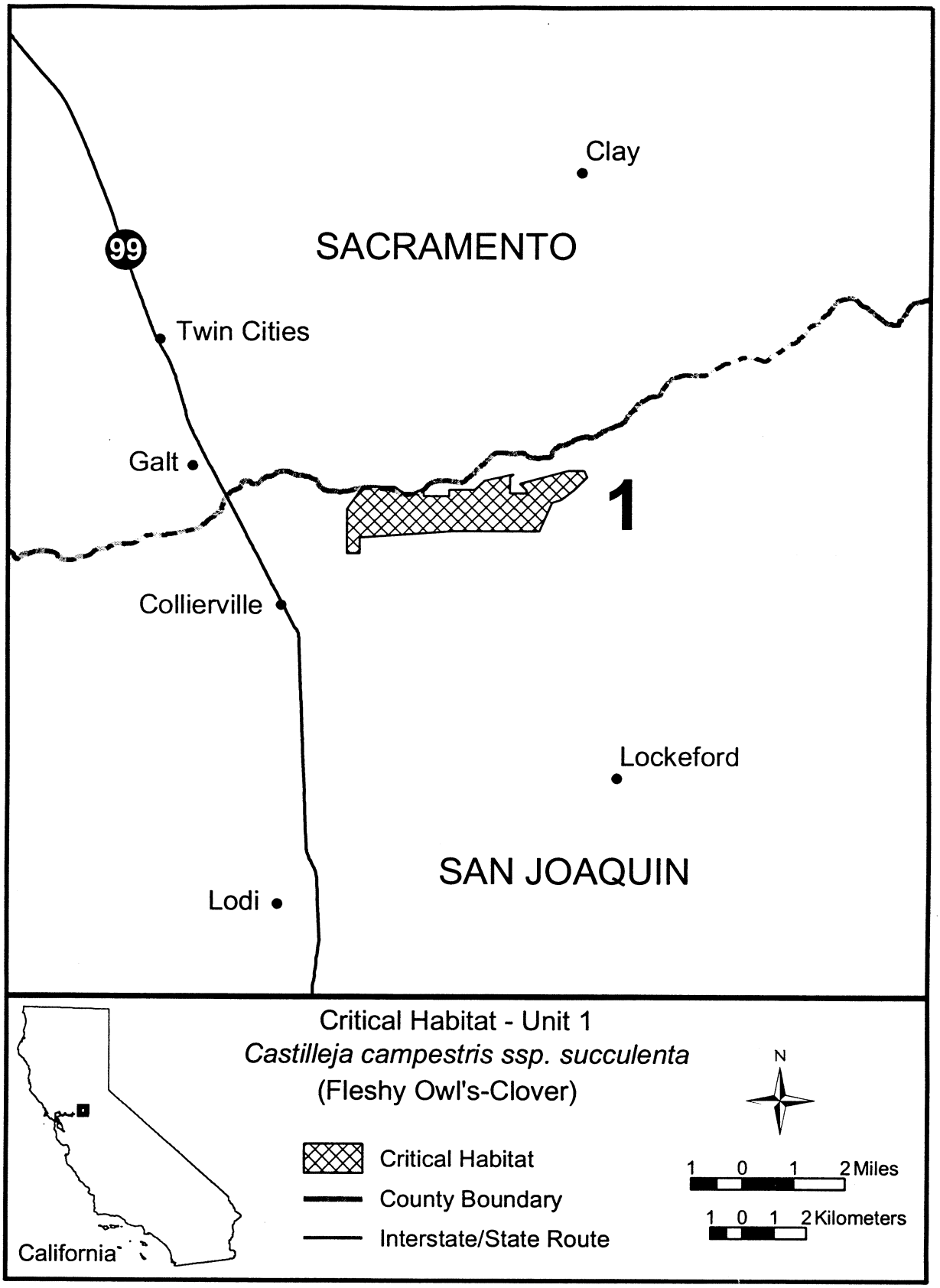
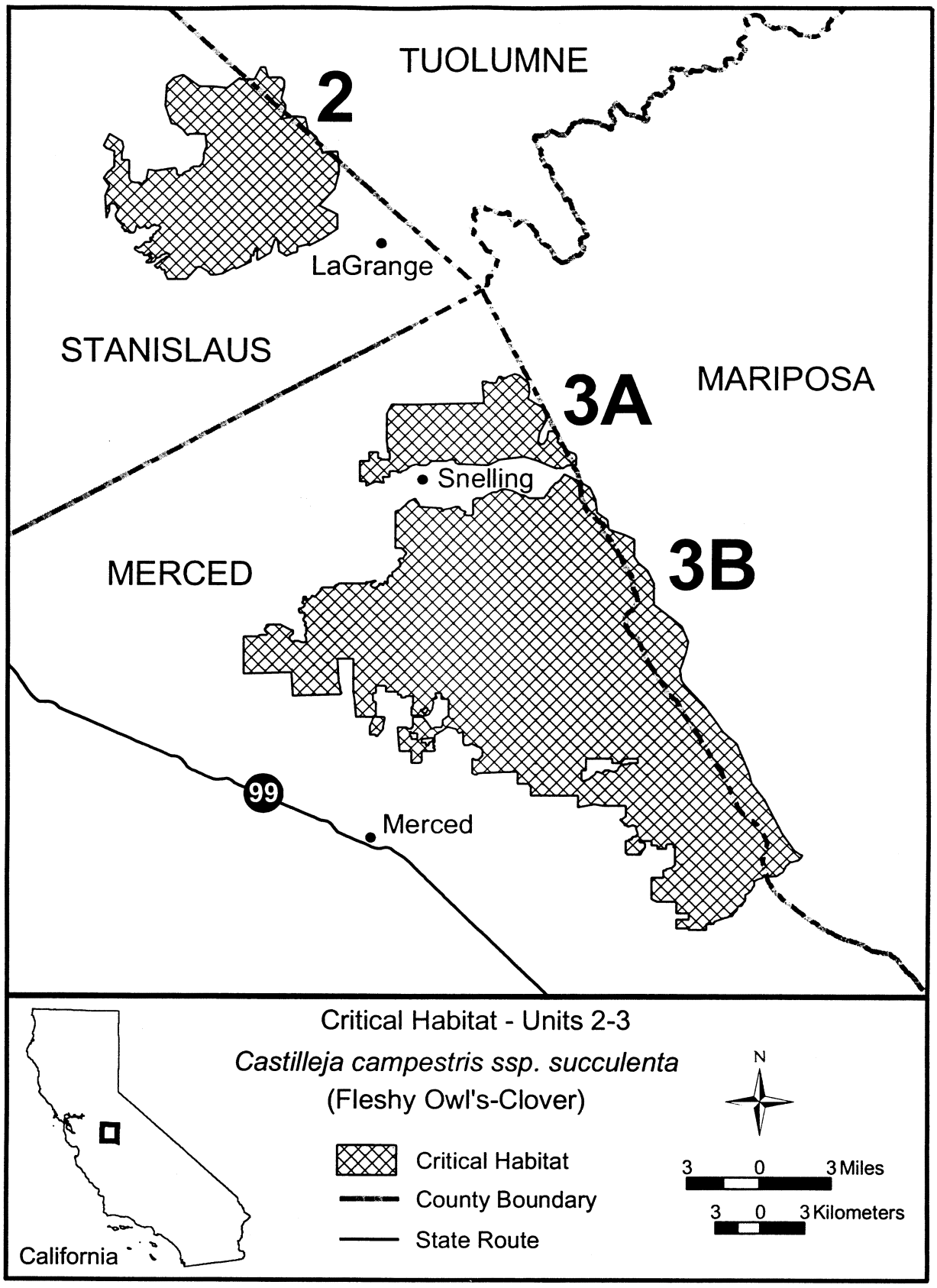
(11) Subunit 6A: Fresno County, California. From USGS 1:24,000 quadrangle maps Academy and Millerton Lake East, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 267300, 4097300; 266900, 4097300; 267000, 4097600; 267800, 4098300; 268100, 4098700; 268100, 4098900; 268000, 4099100; 267400, 4099800; 267400, 4100300; 267700, 4100800; 268100, 4101400; 268600, 4101400; 269100, 4101100; 269600, 4101100; 269800, 4101300; 269900, 4101500; 269600, 4102200; 269200, 4102400; 268600, 4102800; 268700, 4103800; 269100, 4103800; 269600, 4103100; 270200, 4103500; 270300, 4103500; 270700, 4102500; 270500, 4102400; 270300, 4102200; 270300, 4101900; 270500, 4101500; 270600, 4101100; 270500, 4101000; 270200, 4100700; 269400, 4100500; 268300, 4100500; 268100, 4100300; 268100, 4100100; 268400, 4099800; 268600, 4099500; 268700, 4099200; 268700, 4098900; 268600, 4098300; 268500, 4098100; 268400, 4097800; 268100, 4097600; 267800, 4097400; returning to 267300, 4097300.

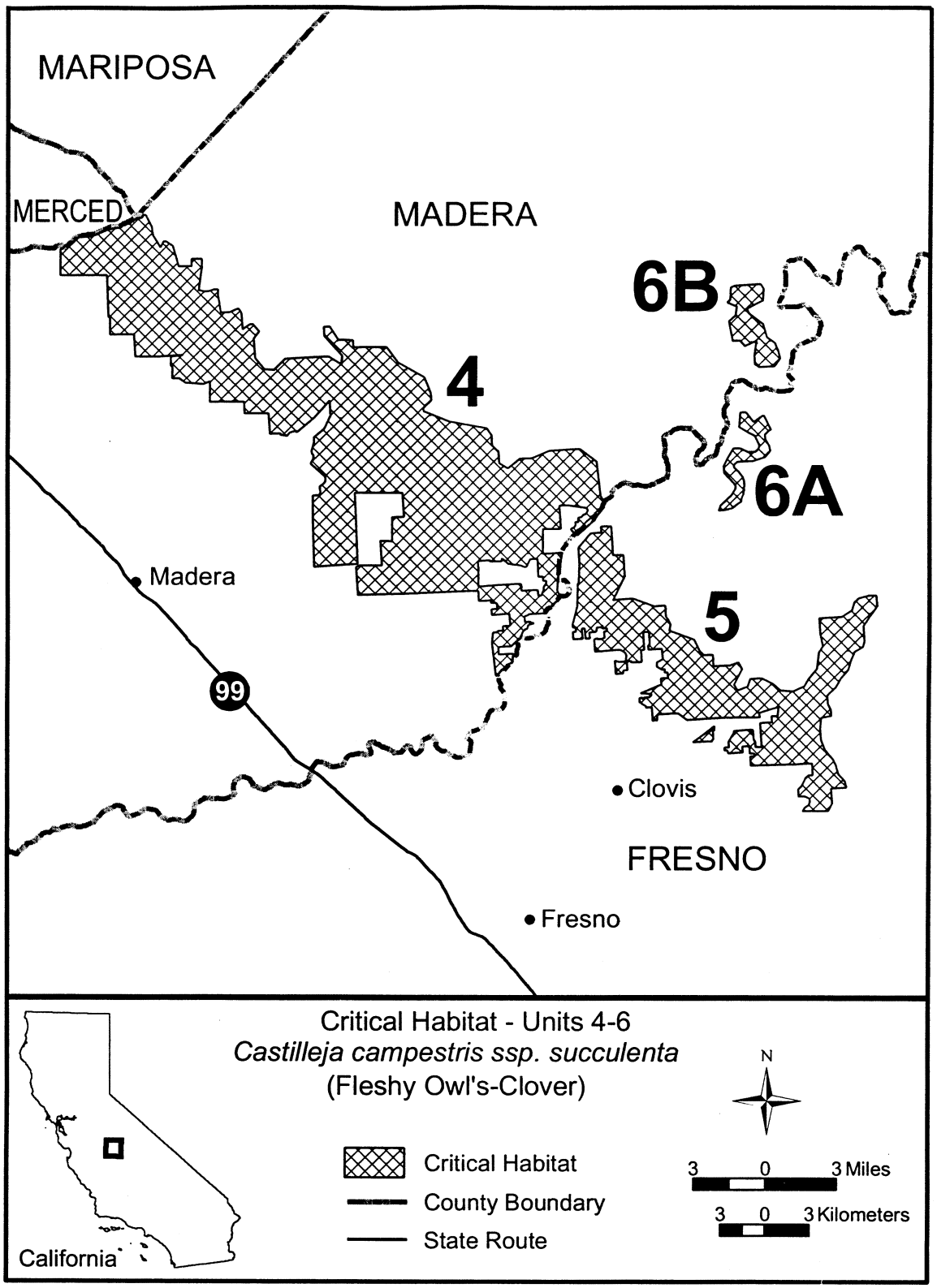
(12) Subunit 6B: Madera County, California. [Reserved]

(13) Maps follow of critical habitat unit 1, 2 and 3, and 4 through 6 (respectively) for fleshy owl's clover.

BILLING CODE 4310–55–P


Clay
SACRAMENTO
99
Twin Cities
Galt
1
Collierville
Lockeford
SAN JOAQUIN
Lodi
Critical Habitat - Unit 1
Castilleja campestris ssp. succulenta
(Fleshy Owl's-Clover)
N
Critical Habitat
County Boundary
Interstate/State Route
1 0 1 2 Miles
1 0 1 2 Kilometers
California


TUOLUMNE
2
LaGrange
STANISLAUS
3A
MARIPOSA
Snelling
MERCED
3B
99
Merced
Critical Habitat - Units 2-3
Castilleja campestris ssp. succulenta
(Fleshy Owl's-Clover)
Critical Habitat
County Boundary
State Route
N
3 0 3 Miles
3 0 3 Kilometers
California



Dated: July 15, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–18437 Filed 8–5–03; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
August 6, 2003

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Establishment of Three Additional Manatee Protection Areas in Florida; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ06

Endangered and Threatened Wildlife and Plants; Establishment of Three Additional Manatee Protection Areas in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), establish three additional manatee protection areas in Florida. This action is authorized under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA), to further recovery of the Florida manatee (*Trichechus manatus latirostris*) by preventing the taking of one or more manatees. We are designating areas in Lee, Duval, Clay, St. Johns, and Volusia counties as manatee refuges in which certain waterborne activities will be regulated. Specifically, watercraft will be required to operate at either slow speed or not more than 40 kilometers per hour (km/h) (25 miles per hour) in areas described in the rule. We also announce the availability of a final environmental assessment for this action.

DATES: *Effective date:* This rule is effective September 5, 2003.

Compliance date: Mandatory compliance with this rule will occur when appropriate signage has been installed in the regulated areas.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David Hankla, Peter Benjamin, Stefanie Barrett, or Jim Valade (see **ADDRESSES** section), telephone 904/232–2580; or visit our Web site at *http://northflorida.fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and the species is further protected as a depleted stock under the MMPA (16 U.S.C. 1361–1407). Florida manatees, a native subspecies of the West Indian manatee (Domning and Hayek, 1986), live in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in Florida waters throughout the year, and nearly all manatees use the waters of peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm water temperatures generally above 20 °Celsius (68 °Fahrenheit) to survive during periods of cold weather. During the winter months, most manatees rely on warm water from industrial discharges and natural springs for warmth. In warmer months, they expand their range and occasionally are seen as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Status of the Florida Manatee

Long-term studies, as described below, suggest that there are four relatively distinct regional populations of manatees in Florida—(a) The Northwest Region, along the Gulf of Mexico from Escambia County east and south to Hernando County; (b) the Upper St. Johns River Region, consisting of Putnam County from Palatka south to Lake and Seminole counties; (c) the Atlantic Region, consisting of counties along the Atlantic coast from Nassau County south to Miami-Dade County and that portion of Monroe County adjacent to the Florida Bay and the Florida Keys; and counties along the lower portion of the St. Johns River north of Palatka, including Putnam, St. Johns, Clay and Duval counties; and (d) the Southwest Region, consisting of counties along the Gulf of Mexico from Pasco County south to Whitewater Bay in Monroe County. We have concluded that these groups meet the criteria for designation as separate stocks, per the MMPA (67 FR 69081, November 14, 2002).

Despite significant efforts dating back to the late 1970s and early 1980s, scientists have been unable to develop a useful means of estimating or monitoring trends in the size of the overall manatee population in the southeastern United States (O'Shea, 1988; O'Shea *et al.*, 1992; Lefebvre *et al.*, 1995). In 2001, the Manatee Population Status Working Group (MPSWG) provided a statement summarizing what they believed to be the status of the Florida manatee at that time (Wildlife Trust, 2001). The MPSWG stated that, for the Northwest and Upper St. Johns River stocks, available evidence indicated that there had been a steady increase in animals over the last 25 years. The statement was less optimistic for the Atlantic Stock due to an adult survival rate that was lower than the rate necessary to sustain population growth. The MPSWG believed that this region had likely been growing slowly in the 1980s, but then may have leveled off or even possibly declined. They considered the status of the Atlantic Stock to be ''too close to call.'' This finding was consistent with high levels of human-related and, in some years, cold-related deaths in this Stock. Regarding the Southwest Stock, the MPSWG acknowledged that further data collection and analysis would be necessary to provide an assessment of the manatee's status in this region. Preliminary estimates of adult survival available to the MPSWG at that time indicated that the Southwest Stock was similar to the Atlantic Stock and ''substantially lower than [the adult survival estimates] for the Northwest and Upper St. Johns Regions.'' The Southwest Stock was cited as having had high levels of watercraft-related deaths and injuries and natural mortality events (*i.e.*, red tide and severe cold).

Recent information suggests that the overall manatee population has grown since the species was listed in 1967 (50 CFR 17.11). Based on data provided at the April 2002 Manatee Population Ecology and Management Workshop, we believe that the Northwest and Upper St. Johns River stocks are approaching demographic benchmarks established in the Florida Manatee Recovery Plan (Service, 2001) for reclassification from endangered to threatened status. We also believe that the Atlantic Stock is relatively close to meeting the downlisting benchmark for adult survival, and is close to meeting or exceeding other demographic criteria. We are less optimistic, however, regarding the Southwest Stock. Although data are still insufficient or lacking to compare the Southwest Stock's status to the downlisting/delisting criteria, preliminary data for adult survival and modeling results indicate that this stock is below the benchmarks established in the recovery plan, and may be experiencing a population decline.

Although we are optimistic about the potential for recovery in two out of the four regions, it is important to clarify that in order to downlist or delist the manatee, pursuant to the ESA, all four regions must simultaneously meet the appropriate criteria as described in the Florida Manatee Recovery Plan (Service, 2001). In addition to meeting the demographic criteria established in the recovery plan, in order for us to determine that an endangered species

has recovered to a point that it warrants reclassification to threatened or removal from the List of Endangered and Threatened Wildlife and Plants, the species' status must have improved to the point at which the current classification is no longer appropriate under the threat-based listing factors set out in section 4(a)(1) of the ESA. That is, threats to the species must be reduced or eliminated such that the species no longer fits the definition of endangered, if reclassifying to threatened, or threatened, for delisting. While suggestions of increasing manatee population size are very encouraging, there has been no confirmation that significant threats to the species, including human-related mortality, injury, and harassment, and habitat alteration, have been reduced or eliminated to the extent that the Florida manatee may be reclassified from endangered to threatened status. Accordingly, the Third Revision of the Florida Manatee Recovery Plan (Service, 2001) establishes criteria for downlisting and delisting the Florida manatee under the relevant threat factors in section 4(a)(1) of the ESA. Pursuant to our mission, we continue to assess this information with the goal of meeting our manatee recovery objectives.

Threats to the Species

Human activities, and particularly waterborne activities, are resulting in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass includes intentional or negligent acts or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the take and importation of marine mammals and marine mammal products (section 101(a)) and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) Has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a result of residential growth and increased visitation in this region. This phenomenon is particularly evident in the State of Florida. The human population of Florida has grown by 146 percent since 1970, from 6.8 million to 16.7 million residents (U.S. Census Bureau, 2003), and is expected to exceed 18 million by 2010, and 20 million by 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft that travel Florida waterways. In 2002, 961,719 vessels were registered in the State of Florida (Florida Division of Highway Safety and Motor Vehicles, 2003). This represents an increase of 59 percent since 1993. The Florida Department of Community Affairs estimates that, in addition to boats belonging to Florida residents, between 300,000 and 400,000 boats registered in other States use Florida waters each year.

Increases in the human population and the concomitant increase in human activities in manatee habitat compound the effect of such activities on manatees. Human activities in manatee habitat cause direct and indirect effects to manatees. Direct effects include injuries and deaths from watercraft collisions, deaths from water control structure operations, lethal and sublethal entanglements with recreational and commercial fishing gear, and alterations of behavior due to harassment. Indirect effects can result from habitat alteration and destruction, such as the creation of artificial warm water refuges, decreases in the quantity and quality of warm water in natural spring areas, changes in water quality in various parts of the State, the introduction of marine debris, and other, more general disturbances.

The number of watercraft-related deaths each year continues to rise. The following is an excerpt from an analysis conducted by the U.S. Geological Survey's Biological Resources Division (USGS–BRD) for our recent efforts to promulgate incidental take regulations for manatees pursuant to the MMPA. ''There has been an increasing trend in watercraft-related mortality in all four stocks over the past decade. This is reflected in increases in the average annual number of watercraft-related mortalities as the period over which the average is taken becomes more recent. For instance, in the Atlantic Stock, the mean observed mortality due to watercraft was 25.8 per year for the period 1990 to 1999, 29.8 per year for the period 1993 to 2002, and 37.0 per year for the most recent 5-year period. This trend is statistically significant in all four stocks. The slope of the increase (as fit to the period 1992 to 2002) does not differ between the Upper St. Johns and Northwest stocks (5.96 percent), nor does it differ between the Atlantic and Southwest regions (9.53 percent). To interpret these rates of increase, however, it is important to compare them to the historic growth rates (1990 to 1999) in each stock, to account for the increase in watercraft-related mortalities that would be expected due to increases in manatee population size. In the Atlantic and Southwest stocks, the rate of increase in watercraft-related mortality over that period far outstripped the estimated growth rate of those populations (by 8.5 percent in the Atlantic and 10.6 percent in the Southwest). In the Northwest stock, the rate of increase in mortality (6.0 percent) is somewhat larger than the estimated growth rate (3.6 percent). In the Upper St. John's stock, the increase in boat-related mortality can be completely explained by the estimated increase in the population size.

The continuing increase in the number of recovered dead manatees throughout Florida has been interpreted as evidence of increasing mortality rates (Ackerman *et al.*, 1995). From 1976 to 1999, the number of carcasses collected in Florida increased at a rate of 5.8 percent per year, and deaths caused by watercraft strikes increased by 7.2 percent per year (Service, 2002). Because the manatee has a low reproductive rate, a decrease in adult survivorship due to any cause, including watercraft collisions, could contribute to a long-term population decline (O'Shea *et al.*, 1985). It is believed that a 1 percent change in adult survival likely results in a

corresponding change in the rate of population growth or decline (Marmontel *et al.*, 1997). Accordingly, the Service is continuing to assess, and take steps to reduce, significant causes of mortality to manatees.

Collisions with watercraft are the largest cause of human-related manatee deaths. Data collected during manatee carcass salvage operations in Florida indicate that 1,145 manatees (from a total carcass count of 4,545) are confirmed victims of collisions with watercraft (1978 to 2002). This number may underestimate the actual number of watercraft-related mortalities, since many of the mortalities listed as ''undetermined causes'' show evidence of collisions with vessels and because not all carcasses are found. Collisions with watercraft comprise approximately 25 percent of all manatee mortalities since 1978. Approximately 75 percent of all watercraft-related manatee mortality has taken place in 11 Florida counties (Brevard, Lee, Collier, Duval, Volusia, Broward, Palm Beach, Charlotte, Hillsborough, Citrus, and Sarasota) (Florida Fish and Wildlife Commission's (FWCC) Florida Marine Research Institute (FMRI) Manatee Mortality Database, 2003). The last 5 years have been record high years for the number of watercraft-related mortalities.

The second largest cause of human-related manatee mortality is entrapment in water control structures and navigation locks (FWCC: FMRI Manatee Mortality Database, 2003). Manatees may be crushed in gates and locks or may be trapped in openings where flows prevent them from surfacing to breathe. Locks and gates were responsible for 164 manatee deaths from 1978 to 2002, or approximately 4 percent of all deaths during this period. While there are no well-defined patterns characterizing these mortalities, it is believed that periods of low rainfall increase the likelihood of manatees being killed in these structures. These periods require more frequent, large-scale movements of water, which require more frequent gate openings and closings in areas that attract manatees searching for fresh water. We have been working, through an interagency task force, with various Federal and State agencies to retrofit these structures with reversing mechanisms that prevent manatee crushings.

Manatees are also affected by other human-related activities. Impacts resulting from these activities include deaths caused by entrapment in pipes and culverts; entanglement in ropes, lines, and nets; ingestion of fishing gear or debris; vandalism; and poaching. These activities have accounted for 124 manatee deaths since 1978, an average of more than 4 deaths per year. As with watercraft-related mortalities, these deaths also appear to be increasing, with 40 of these deaths occurring from 1998 to 2002 (an average of 8 deaths per year over the last 5 years).

Manatee Protection Areas

To minimize the number of injuries and deaths associated with watercraft activities, we and the State of Florida have designated manatee protection areas at sites throughout coastal Florida where conflicts between boats and manatees have been well documented and where manatees are known to frequently occur. These areas include posted signs to inform the boating public about restrictions and prohibitions. We are enhancing existing protection by establishing three additional manatee refuges in five Florida counties.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR, part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever substantial evidence shows such establishment is necessary to prevent the taking of one or more manatees (that is, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct). In accordance with 50 CFR 17.106, areas may be established on an emergency basis when such takings are imminent.

We may establish two types of manatee protection area—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to, a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to, a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities.

Relationship to Manatee Lawsuit

On January 13, 2000, several organizations and individuals filed suit against the Service and the U.S. Army Corps of Engineers alleging violations of the ESA, the MMPA, the National Environmental Policy Act, and the Administrative Procedure Act. Four groups representing development and boating interests intervened. Following extensive negotiations, the suit was resolved by a Settlement Agreement dated January 5, 2001. On October 24, 2001, the plaintiffs filed a Formal Notice of Controversy alleging that the Service had violated provisions of the Settlement Agreement. On April 17, 2002, the plaintiffs filed an Expedited Motion to enforce the Settlement Agreement, and on July 9, 2002, the Court found that the Service had not fulfilled its settlement requirements to designate refuges and sanctuaries throughout peninsular Florida. On August 1, 2002, and November 7, 2002, the Court ordered the Federal defendants to show cause why they should not be held in contempt for violating the Court's orders of January 5, 2002, January 17, 2002, and August 1, 2002. To resolve these controversies, the plaintiffs and Federal defendants entered into a Stipulated Order wherein we agreed to submit to the **Federal Register** for publication a proposed rule for the designation of the additional manatee protection areas in the Caloosahatchee River in Lee County; the lower St. Johns River in Duval, St. Johns, and Clay Counties; and the Halifax and Tomoka Rivers in Volusia County, on or before March 31, 2003, and a final decision on the proposed rule on or before July 31, 2003. The proposed rule was submitted to the **Federal Register** on March 31, 2003, and published on April 4, 2003 (68 FR 16602). This notice constitutes the final rule and was submitted to the **Federal Register** on July 31, 2003.

Site Selection Process and Criteria

In order to establish a site as a manatee protection area, we must determine that substantial evidence shows such establishment is necessary to prevent the take of one or more manatees. We reviewed the sites referenced in the Stipulated Order and determined that the proposed sites met this test. This was based on aerial survey and telemetry data, mortality (carcass recovery) data, additional information from FMRI and the U.S. Geological Survey's Sirenia Project, manatee experts, and our best professional judgment. The areas designated in this final rulemaking are those that we have determined, based on the best currently available data and the public comments received, should be designated as manatee refuges. Where the final designations differ from

the proposal, we have determined that either alternative or existing measures are sufficient to protect manatees (*see* ''Summary of Comments and Recommendations'' and ''Summary of Changes From the Proposed Rule'' below).

Effective Date

This rule is effective 30 days after the date of this publication and once the manatee protection areas are marked and posted.

Definitions

The following terms are defined in 50 CFR 17.108. We present them here to aid in understanding this rule.

Planning means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

Slow speed means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Watercraft must not be operated at a speed that creates an excessive wake. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is *not* proceeding at slow speed if it is—(1) On a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft is proceeding at slow speed if it is fully off plane and completely settled in the water, not plowing or creating an excessive wake. Exceptions to slow speed restrictions are contained in 50 CFR 17.105 and include activities ''* * * reasonably necessary to prevent the loss of life or property due to weather conditions or other reasonably unforeseen circumstances, or to render necessary assistance to persons or property''.

Slow speed (channel exempt) designates a larger area where slow speed is required, through which a maintained, marked channel is exempt from the slow speed requirement (although the channel may also have a higher posted speed limit). Exceptions to slow speed restrictions are contained in 50 CFR 17.105 and include activities ''* * * reasonably necessary to prevent the loss of life or property due to weather conditions or other reasonably unforeseen circumstances, or to render necessary assistance to persons or property''.

Slow speed (channel included) means that the slow-speed designation applies to the entire marked area, including within the designated channel. Exceptions to slow speed restrictions are contained in 50 CFR 17.105 and include activities ''* * * reasonably necessary to prevent the loss of life or property due to weather conditions or other reasonably unforeseen circumstances, or to render necessary assistance to persons or property''.

Wake means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

Summary of Comments and Recommendations

In the April 4, 2003, proposed rule (68 FR 16602), we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We published legal notices announcing the proposal, inviting public comment, and announcing the schedule for public hearings, in the *Fort Myers News-Press, Daytona Beach News-Journal, Naples Daily News, Orlando Sentinel, Charlotte Sun-Herald, Sarasota Herald-Tribune, Florida Times-Union, St. Augustine Record,* and *Clay Today.* We held the public hearings at the Harborside Convention Hall in Fort Myers, Florida, on May 13, 2003; the Ocean Center in Daytona Beach, Florida, on May 14, 2003; and at the University Center, University of North Florida, in Jacksonville, Florida, on May 15, 2003. Approximately 3,325 people attended the public hearings. We received oral comments from 203 individuals. The comment period closed on June 3, 2003.

In addition to soliciting comments from the public, we solicited peer review comments from three independent experts in manatee ecology, boating activity, and waterway regulation, from The Ocean Conservancy, Mote Marine Laboratories, and the United States Coast Guard, respectively. Their comments and our responses are summarized below.

During the comment period, we received approximately 5,931 written and oral comments concerning the proposal. Most were form letters expressing support for the proposed designation; however, most substantive comments expressed concern or opposition to the proposed action. The following is a summary of the comments received and our responses. Comments of a similar nature have been grouped together.

Comment 1: Several commentors, including the FWCC, suggested that the Service does not have the resources to enforce these additional zones. They are concerned that lack of enforcement will result in the new zones being less protective than the existing zones. The FWCC also expressed concern that, in areas where Federal and State speed zones overlap, enforcement by State law enforcement officers may be complicated.

Response 1: We are fully committed to implementing these protection areas, including enforcement of these areas upon posting. However, we are very aware of the fact that compliance is critical to the effectiveness of manatee protection area regulations and that compliance is facilitated, in large part, by enforcement. We are also aware that enforcement resources are limited at all levels of government, and that cooperation among law enforcement agencies is needed to maximize effectiveness of limited resources. We know that State and local law enforcement agencies have many enforcement mandates in addition to manatee protection and that it may be difficult for these agencies to make enforcement of Federal manatee protection areas a high priority, particularly if they do not agree that the Federal designations are necessary or appropriate.

We believe that local and State law enforcement improves compliance with Federal designations and leads to more effective Federal rules. The final rule has been designed to reflect the best available information regarding manatee and boating use of these waters, and was also intended to address (to the extent possible) State and local concerns regarding the proposed rule. We have attempted to make our designations consistent with existing regulations, where possible, in order to minimize the boating public's confusion and facilitate signage, enforcement, and compliance, while ensuring appropriate protection for manatees.

Comment 2: Several commentors believe that adoption of new zones at this time is premature. The FWCC stated that they are currently studying the zones in Lee and Duval Counties and are currently collecting new data in Volusia County. Their report on Duval County is expected in November 2003. The new data collection from Volusia County is expected to be completed in June 2004.

Response 2: We have concluded that the actions identified in the final rule are warranted and prudent to undertake at this time, and that sufficient information is currently available to

support these designations. We recognize and support efforts to continually evaluate and improve information regarding manatee distribution and habitat use, boating activity, and the effectiveness of existing regulations. But we also know perfect information will never be available to definitively address all the issues that are raised by such rulemakings. We have attempted to design this final rule to address issues that we believe are necessary and appropriate to address at this time, without hindering the State's ability to make additional changes as needed in the future. In some areas there is considerable overlap between our final designations, existing State regulations, and FWCC regulatory actions anticipated in the near future (*e.g.*, the Halifax River). We are committed to working with the FWCC to make necessary changes through the rulemaking process at that time to our manatee protection areas to ensure consistency with State designations as long as manatee protection is not compromised. If changes are beneficial and/or necessary, we may initiate concurrent rulemaking with the FWCC to ensure consistency with State-designated zones to meet this goal.

Comment 3: Several commentors believe that implementation of Federal zones that are not consistent with the existing FWCC zones will confuse boaters, reduce compliance, and delay dissemination of educational material.

Response 3: We have made our final designations as consistent as possible with existing regulations, in order to minimize boater confusion and enhance compliance while ensuring appropriate protection for manatees. We recognize that, in those areas where these Federal designations represent considerable changes to the existing regulations, educational material specific to those areas will need to be updated.

Comment 4: The FWCC and other commentors believe that the Service could improve existing zones by providing funds for improved signage of existing manatee protection zones.

Response 4: Appropriate signage is critical to effective implementation of manatee protection areas. For example, we have long identified the inadequacy of the signage of the current State manatee protection zone on the St. Johns River as the primary deficiency of the existing regulations in this area. Establishment of Federal manatee protection areas will make it easier for us to devote Federal funding to signage in the areas designated.

Comment 5: The FWCC and other commentors also believe that the Service should/could have used funds spent on new rules to increase Federal enforcement of existing manatee protection zones.

Response 5: We agree that, in general, enforcement of existing manatee protection areas can be more cost effective than establishment of new areas. However, when substantial evidence shows that establishment of a manatee protection area is necessary to prevent the taking of one or more manatees then designation of a manatee protection area may be a proper course of action for us to take. Such a situation exists for the areas designated by this rule. Notwithstanding this determination, we would like to emphasize that we have increased our efforts to enforce existing Federal and State manatee protection areas.

Comment 6: Although they do not necessarily recommend it, the FWCC commented that, as an alternative to the proposed rule, the Service could adopt existing State zones, thereby eliminating any conflict between sign posting and enforcement issues. Further, adopting the existing State zones as Federal zones may provide more security to the zones by making legal challenges to the zones more difficult to mount.

Response 6: In some cases we did this, but in some cases we believe that adoption of existing State zones would hinder State efforts to modify zones in the future, and in some cases we believed that additional protection for manatees is needed at this time.

Comment 7: One peer reviewer noted that any manatee protection area with either a channel exempt, 25 mph in the channel, or shoreline buffer designation should, in general, result in minimal impact to recreational boating (the reviewer acknowledges that recreational boating activity varies widely from location to location, and some areas, as well as some commercial activities, may be more significantly impacted than others). According to the peer reviewer's studies, a vast majority of recreational boat traffic is already traveling between 20 and 30 mph. Additionally, very few hull designs are not capable of achieving and maintaining planing speed at 25 mph. Therefore, slow-speed, channel exempt (or 25 mph in the channel) seems to be a reasonably effective management alternative in areas where manatee use is well documented and there is a well defined, marked channel.

Response 7: We agree with this assessment, and as such believe that our final designations should result in minimal adverse impacts on the boating public, except in those limited areas in which high-speed travel was previously allowed.

Comment 8: One commentor stated that our proposed rule ''makes clear that there is a far more compelling basis for designating these areas as refuges than existed for some of the other protected areas recently created by the Service.''

Response 8: In our previous rulemakings (finalized in 2002) (67 FR 680–696 and 67 FR 68450–68489), we established four criteria for selecting Federal manatee protection areas. The sites addressed in this final rule were evaluated against those criteria during the previous rulemaking. They were not selected because in 2002 we concluded that, due to the earlier commitment of our limited resources to higher priority sites, we could not enact adequate protection measures at these sites and/or the State or local agencies were in a better position to address concerns at these sites. Per the Stipulated Order, we made a commitment to reevaluate these sites. As a result of this reevaluation we have concluded that Federal action is warranted at portions of these sites at this time, and that we now have the capability to implement these actions. Additionally, new information, such as FMRI's 2002 Caloosahatchee River study, was not available during the 2002 rulemaking. Specifically, the study showed significant manatee use of the Redfish Point area of the river and that manatees were likely crossing the river at this point, as opposed to confining most of their movement to shoreline habitat as they appear to do in most of the Caloosahatchee River. We do not agree with the commentor that these designations are more important to manatee conservation than previous Service actions.

Comment 9: One commentor noted that the Service stated in the March 18, 2003, Stipulated Order and the proposed rule that these zones were justified.

Response 9: It is correct to say that we had determined that portions of these three large areas met the criteria for designation as manatee protection areas. The proposed rule depicts the maximum extent of actions that were determined to be potentially warranted through the preliminary review conducted during the negotiations regarding the Stipulated Order. We put these sites out to the public as a proposed rule in order to collect information and data and have modified the designations in this final rule to reflect that analysis.

Comment 10: One commentor stated that the Service ''could refrain from adopting the refuges only by demonstrating that scientific data *not* previously available to the agency has

somehow eliminated the need for the refuges.''

Response 10: We disagree with the commentor. The Service would not have agreed to propose the manatee protection if we did not believe that substantial evidence shows such establishment is necessary to prevent the taking of one or more manatees. Nevertheless, our agreement in the Stipulated Order to propose the protection areas was ''based on the current best available data'' (Stipulation, ¶ 1) and the Service ''retain[ed] its discretion consistent with the Administrative Procedure Act in reaching its final decision with respect to [the] manatee protection areas.'' (Stipulation, ¶ 2) Numerous management options are available to improve manatee protection, and we could have concluded, after receiving input from the interested parties, the State, and other concerned citizens, that one of these other options would be more effective in protecting manatees in these areas.

Designation of manatee protection areas involves both scientific and practical considerations. This final rule reflects the results of in-depth analysis of the areas, including careful evaluation of manatee and watercraft use information, site visits, coordination with State and local regulatory experts, and review of public comments. This review revealed aspects of the available scientific information that were not fully considered during the development of the proposed rule, as well as many practical considerations that were not factored into the original analysis.

Comment 11: Peer review comments from the U.S. Coast Guard stated that speed limit requirements (*i.e.*, 25-mph maximum allowable speed) are not enforceable by the Coast Guard as they do not have the equipment or training necessary to determine the speed of a vessel.

Response 11: Our Division of Law Enforcement believes that a specific speed limit (*e.g.*, 25 mph) is enforceable. Additionally, we have adopted a 25-mph speed limit in several areas in order to be consistent with State regulations. In our view, this will improve manatee protection in these areas by enhancing public understanding and compliance.

Comment 12: Peer review comments from the U.S. Coast Guard stated that slow speed areas will be enforceable if zones are clearly and adequately marked. Otherwise, it will be difficult for enforcement officers to document cases based on distance judgments.

Response 12: We concur with the reviewer's comment. We intend to design and implement sign plans that will clearly and effectively mark the new manatee protection areas to facilitate public understanding and compliance, as well as ensure the enforceability of the zones. Additionally, we intend to work with State and local agencies to enforce these zones.

Comment 13: One peer reviewer concurred with the following assumptions of this proposed rule—(1) information on the existence of four subpopulations; (2) the difficulty of reliably monitoring trends in the overall population; (3) the problems associated with using uncalibrated indices based on maximum counts at winter refuges; and (4) the lack of utility and reliability of uncorrected counts as a basis for assessing population estimates or measuring trends in the population. These assumptions ''reflect the views of [the] manatee scientific community, including the consensus of the 2002 Manatee Population and Ecology Workshop panel of experts.''

Response 13: Comment noted.

Comment 14: One peer reviewer stated that assessments, such as the determination that the Atlantic and Southwest stocks are less stable than the Crystal River (*i.e.*, Northwest) and St. Johns River stocks, are supported by available scientific data. These assessments indicate that the Atlantic and Southwest stocks require additional management and conservation efforts.

Response 14: We concur with the reviewer regarding the need for additional management and conservation efforts in the Atlantic and Southwest stocks. We believe it is important to note that management and conservation efforts include a variety of options to improve or provide additional protection for manatees, such as enforcement, education, and improving the signage of existing zones. The designation of manatee protection areas is only one of those options and may not be the most beneficial or appropriate management/conservation tool in some areas or situations.

Comment 15: One peer reviewer noted that the current status of manatee populations within the Atlantic and Southwest stocks, while not critical or in imminent danger at this time, indicates that additional management and protection is warranted to expedite recovery and to put safeguards in place as the human population in Florida continues to grow. The reviewer concurs with the Service's assessment that ''* * * there has been no confirmation that significant threats to the species, including human-related mortality, injury, and harassment, and habitat alteration have been reduced or eliminated * * *'' (68 FR 16604). With the anticipated continued human population growth and development of Florida and the recent increase in human-related manatee mortality, especially from collision with watercraft, there is cause for concern relative to manatee adult survival and species recovery. The need for additional manatee protection areas is underscored by these facts.

Response 15: We concur with the reviewer regarding the status of the manatees in the Atlantic and Southwest stocks. The Caloosahatchee River-San Carlos Bay Manatee Refuge is located within the range of the Southwest Stock while the Lower St. Johns River Manatee Refuge and Halifax and Tomoka Rivers Manatee Refuge are both located within the range of the Atlantic Stock. As noted above, a variety of management and conservation options, in addition to or in lieu of manatee protection areas, can and should be explored to improve the status of these stocks.

Comment 16: One peer reviewer stated that further explanation was needed regarding the Service's assumption that designation of ''manatee protection areas at sites * * * where conflicts between boats and manatees have been well documented'' should ''minimize the number of injuries and deaths associated with watercraft activities'' (68 FR 16605). While the reviewer agrees with this assumption, she believes that a scientific basis for this assertion would better justify the rationale for designating manatee protection areas to minimize death and injury (for example, work by Mote Marine Laboratory and Brad Weigle using tethered and manned airships, respectively, and at the very least, anecdotal information from manatee researchers regarding manatee response to watercraft).

Response 16: We concur. The reviewer is correct in that, while no empirical studies specifically address this assumption, researchers have documented manatee response to oncoming boats. Manatee response to boats at distances of approximately 100 meters (328 feet) was documented in a study conducted in 1994 (Weigle *et al.*, 1994). Boat speeds during these response trials varied between slow speed and 48 km/h (30 mph). While no specific behavior was observed for each speed trial, researchers observed that bottom-resting manatees did not respond to oncoming boats and that manatees observed surface resting or

observed in shallows all responded to the presence of approaching boats. A study conducted from 1999 to 2000 documented manatee response to random boat traffic (Nowacek *et al.*, 2000). In each observation, manatees responded either by accelerating, turning, or moving toward or into a nearby channel when approached by boats.

Studies further addressed response times (Wells *et al.*, 1999). ''At an average initial response distance of 20 meters, the animal has less than two seconds to respond to a planing vessel and about seven seconds to respond to a vessel approaching at slow speed'' (Wells *et al.*, 1999). Based on these observations, it is apparent that manatees will respond to the presence of oncoming boats and that their ability to successfully do so is predicated on the speed of the oncoming boat. As such, protection areas that regulate boat speeds should minimize the incidence of manatee-boat encounters and, thereby, ''the number of injuries and deaths associated with watercraft activities.''

Comment 17: One peer reviewer believes the section on ''Relationship to Manatee Lawsuit'' is distracting to the overall intent of the rule, unless there is a legal requirement for its inclusion.

Response 17: The comment is noted; however, we believe it is important for the public to be aware of the lawsuit.

Comment 18: One peer reviewer suggested the addition of scale bars to the maps.

Response 18: The final maps have been revised accordingly.

Comment 19: One peer reviewer believed it would strengthen the rule and the Service's position to include a timeframe on which the requirement of ''preventing the take of one or more manatees'' is based.

Response 19: The only specific reference to a timeframe in our manatee protection area regulations is in regard to establishment on an emergency basis if the anticipated taking is ''imminent'' (50 CFR 17.106). That said, our regulations state that the establishment of manatee protection areas may occur if there is ''substantial evidence'' that the action is necessary to prevent the taking of one or more manatees. While not specific, this phrase strongly implies that there is a proximate connection between our action (establishment of a manatee protection area) and the result (prevention of take). We interpret this to mean that action may be warranted in those areas where take is documented and ongoing with sufficient regularity to indicate that it is likely to continue in the near future unless appropriate action is taken. In other words, our manatee protection area designations are intended to prevent take that we expect may occur in the near future in the absence of such regulations.

Comment 20: Several commentors suggest that the existing State and Federal zones on the Caloosahatchee are relatively new, and have so far been effective. Many of these commentors speculate that past manatee watercraft-related mortalities may have been related to fuel barges traveling the river to the power plant. These operations have now been greatly reduced.

Response 20: Our analysis indicates that the existing zones in the Caloosahatchee River do in fact provide appropriate protection over most of the areas on the river where manatees and watercraft are likely to interact. Our final designation has targeted those areas of the river and San Carlos Bay where the best available information indicates that the existing zones do not adequately protect manatees from high-speed collisions. Additionally, our adoption of the existing shoreline buffer zones will enable us to devote Federal funds to improving signage and enforcement.

Comment 21: One commentor noted that the most recently documented compliance rates on the Caloosahatchee River are low. The commentor cited this as evidence that the existing regulations are inadequate. Further, the commentor stated that Lee County boater compliance studies indicate the majority of boaters travel outside speed-restricted areas. The commentor concluded from this that manatees are being killed outside the existing zones and that the existing zones are therefore inadequate.

Response 21: The commentor does not indicate what percentage this ''majority'' comprises, or the level of boat traffic within the existing speed zones. Neither does the commentor mention that, while it is true that vessels navigating the Caloosahatchee River spend most of their time in the unregulated center of the river, all vessels navigating this river must pass through regulated waters at some point in their journey. Therefore, the statement is misleading. When the fact that all vessels on the river must travel through manatee speed zones is combined with the above-noted low levels of historic compliance, it is clear that this high volume of (noncompliant) high-speed vessel traffic in existing zones is the most likely contributing factor to manatee take in most parts of the river.

Comment 22: One commentor claims that the existing aerial survey data for the Caloosahatchee are skewed toward the shallower near-shore areas due to the flight path and observer and availability bias.

Response 22: We base our regulatory determinations on the best available information. We cannot base our determinations on speculation that manatees occur in areas not identified in the available data unless the data show such inferences to be reasonable. For example, we have determined that improved manatee protection in the vicinity of the Cape Coral Bridge is warranted. The data indicate that the Caloosahatchee River is used primarily as a travel corridor, and because aerial survey data indicate substantial manatee use upstream and downstream of the Cape Coral Bridge, it is reasonable to infer from these data that manatees do regularly occur near the Cape Coral Bridge. Additional protection is warranted due to the funneling effect of both watercraft and manatees that bridges often cause. Conversely, the commentor provides no basis, nor can we identify one, for assuming that manatees make more extensive use of the center portion of the river than is depicted in the available data.

Comment 23: With reference to the portion of the Caloosahatchee River from the Railroad Trestle to the Edison Bridge, one peer reviewer noted that aerial survey and telemetry data appear to indicate that manatees are distributed throughout this area, as opposed to concentrating along the shoreline as they appear to do in other areas of the river. The reviewer also noted that the seasonal component of the designation may not be warranted, as telemetry and aerial data do no show a strong seasonal bias. Furthermore, this area experiences generally lower overall watercraft use. Therefore, the reviewer believed that, although the proposed protection area (*i.e.*, slow speed in the channel from November 15 to March 31, 25-mph maximum speed in the channel April 1 to November 14) is justified, allowing a 25-mph maximum speed in the channel year-round may be feasible and justifiable without posing a significant threat to manatees. Another peer reviewer and other commentors also stated that it may be acceptable to leave the navigation channel as 25 mph year-round because this portion of the river has substantially less boat traffic than lower areas of the river. The FWCC stated that manatees are most abundant between Channel Marker ''23'' and the railroad tressle.

Response 23: Based on the comments as well as a more thorough evaluation by our biologists, we have modified our proposed rule to better reflect the best

available information regarding manatee use of this area. The final rule designates the portion of the Caloosahatchee River navigation channel from the Seaboard Coastline Railroad trestle downstream to Channel Marker ''25'' to be slow speed in the channel from November 15 to March 31, and not more than 25 mph in the remainder of the year.

Aerial survey data indicate that manatees do occur throughout this portion of the river throughout the year. However, the analysis of available data by FMRI (FWCC 2002) indicates that manatees are less likely to occur near the navigation channel downstream of the general area of Marker ''25''. This generally coincides with the change in the physiography of the river in this area. The river narrows upstream of channel Marker ''25,'' and Beautiful Island and other smaller islands act to further constrict the river. This constriction explains the change in manatee distribution at this point in the river. Manatees are more likely to be found in and near the navigation channel upstream of Marker ''25'' than downstream. This fact, combined with the above-referenced lower level of boat traffic in this portion of the river relative to areas further downstream, led us to conclude that the existing regulations downstream of Marker ''25'' were sufficient, whereas increased protection is warranted between Marker ''25'' and the railroad trestle.

Comment 24: With reference to the portion of the Caloosahatchee River from the Edison Bridge to the Caloosahatchee Bridge, one peer reviewer noted that manatee sightings are lower in this area than in other portions of the river and may not warrant the proposed slow speed (channel included) designation. However, a year-round slow speed zone in this area may be warranted for other reasons, such as travel through a constrained area and/or boater safety. Another peer reviewer stated that the proposed rule seems appropriate for this area, noting that the current slow speed restrictions are along the southern shore only, creating a situation where many boats ''short-cut'' the area by running on plane along the north shore. The FWCC stated that telemetry data, boat traffic patterns, and the physical configuration of the downtown area may combine to make that area higher risk for manatees.

Response 24: We have carefully reviewed the above comments and other public comments and concluded that the proposed action is warranted in this area due to the reasons cited in our proposed rule and comments received from the FWCC and peer review.

Comment 25: With reference to the portion of the Caloosahatchee River from the Caloosahatchee Bridge to the Cape Coral Bridge, one peer reviewer noted that distribution and travel data suggest that manatees remain close to the shoreline and away from the channel. Requiring slow speed within the 6-foot contour line would encompass most of the aerial survey sightings and is the depth at which manatees most frequently occur. This depth also provides manatees the opportunity to escape from passing watercraft. In the Caloosahatchee River, most of the manatee sightings as well as the 6-foot contour line appears to fall within 500 meters (1,640 feet) from the shore. From a scientific perspective, it may be feasible to allow a 25-mph corridor from major access points to the channel in waters deeper than 6 feet. Another peer reviewer indicated that the proposed designations seem appropriate based on boating activity in the area. The FWCC stated that data do not support expansion of the shoreline buffer beyond the existing 0.25-mile width, but designation of the waters between the existing buffer zones as 25-mph maximum speed would provide some potential reduction of risks to manatees.

Response 25: We generally agree with the reviewers' interpretation that manatee use data in this portion of the river indicate that manatees travel along the shoreline. We conducted a more detailed review of the recent special study of the Caloosahatchee River by the Florida Marine Research Institute (FWCC 2002), and it appears that the majority of manatee use in this area occurs within the current 0.25-mile (402 meters) shoreline buffer, a conclusion that is very similar to the peer reviewer's conclusions. Therefore, this final rule adopts a 0.25-mile minimum shoreline buffer, as marked. Between the shoreline buffers, the maximum allowable speed will be 25 mph, including the channel, except where the channel occurs within 0.25 mile from the shoreline and watercraft are restricted to slow speed.

While we agree that water depths of 6 feet or greater afford manatees greater opportunity to avoid collisions with watercraft, it does not appear that the 6-foot contour line approximates manatee distribution in this portion of the river, as this contour extends a great distance from shore in this area (particularly from the western shoreline), whereas manatee aerial survey data show manatee use concentrated closer (generally within 0.25 mile) to shore.

Comment 26: With reference to the portion of the Caloosahatchee River northwest and southeast of the Cape Coral Bridge, as with the Edison/Caloosahatchee Bridges area, peer reviewers noted that manatee sightings are lower in this area than in other portions of the river and may not warrant the proposed slow speed (channel included) designation. However, a year-round slow speed zone in this area may be warranted for other reasons, such as travel through a constrained area and/or boater safety. The FWCC and others stated that further speed restrictions were not warranted in the vicinity of this bridge.

Response 26: Even though manatees have not been sighted as frequently near the bridge as in other portions of the river, because this portion of the river is used primarily as a travel corridor it is reasonable to conclude that manatees sighted upstream and downstream of this bridge regularly travel under the bridge. Therefore, it is logical to conclude that manatees regularly occur in this area. We believe that, due to the presence of causeways and pilings, many bridges, including the Cape Coral Bridge, create a funneling effect for both watercraft traffic and manatees. Therefore, we believe additional protection measures are warranted in the vicinity of such bridges. Further, we believe that the river beneath the Cape Coral Bridge is sufficiently wide to allow for the higher speed operation in the navigation channel. As such, we have modified our proposal for this area from a shoreline-to-shoreline slow speed zone. We will allow watercraft to proceed at not more than 25 mph in the channel and slow speed outside the channel from 500 feet upstream and 500 feet downstream of the Cape Coral Bridge.

Comment 27: With reference to the portion of the Caloosahatchee River southeast of the Cape Coral Bridge to Channel Marker ''72,'' comments received were essentially the same as those addressed in comment 25 due to the similarity of the proposed designations.

Response 27: See the response to comment 25.

Comment 28: With reference to the portion of the Caloosahatchee River from Channel Marker ''72'' to Channel Marker ''82,'' one peer reviewer stated data indicate that manatees occur along the shoreline as well as toward the channel in this portion of the river, with telemetry data indicating that animals may be crossing the channel to get from one side of the river to the other at Redfish Point (a relatively narrow portion of the river). Therefore, the proposed rule for this portion of the river appears to be justified. Another

peer reviewer believed that this transition zone (requiring boaters to change speeds as they enter and leave this area) is not beneficial from a boating perspective. A common complaint among boaters is that there are too many changes in speed zones and that it is difficult for boaters to keep track of which zone they are in. Although the river narrows slightly at Redfish Point, this reviewer believed there is not sufficient evidence to suggest that boat traffic is significantly more concentrated in this area. The reviewer stated that, unless compelling evidence shows that there is an increased risk to manatees in this area, the shore-to-shore slow speed zone is not necessary, and suggested modifying the zone to be consistent with zones immediately upstream and downstream. The FWCC noted that a variety of data suggest that manatees may be at risk in the Redfish Point area of the river. We also received many comments from the boating public regarding the increased time needed to traverse the 1.9-mile slow speed zone we proposed to establish at Redfish Point. Many commentors recommended allowing for high-speed travel in the marked channel.

Response 28: We concur with the reviewers' interpretation of the available data regarding manatee movement patterns in the area of Redfish Point. Additionally, as the river narrows to approximately 1-half mile at Redfish Point, we believe that manatees are at higher risk of watercraft collision in this area. Because available evidence indicates that manatees cross the river regularly at this point, we do not believe it is appropriate to maintain a high-speed channel in this area. However, we did conduct a more detailed review of the available data and concluded that sufficient manatee protection could be achieved in this area by reconfiguring and shortening the slow speed zone, as reflected in the final rule. Our analysis of aerial and telemetry data indicates that manatee use is greatest between Channel Markers ''72'' and ''76.'' We have also attempted to address the concern associated with the frequent changes in designations along the river by maintaining a 25-mph corridor under the Cape Coral Bridge and through the channel between Channel Marker ''99'' and the Sanibel Causeway. These changes should make it easier for boaters to follow the designations as they navigate the river.

Comment 29: With reference to the portion of the Caloosahatchee River from Channel Marker ''82'' to Channel Marker ''93,'' comments received were essentially the same as those addressed in comment 25 due to the similarity of the proposed designations.

Response 29: See the response to comment 25.

Comment 30: With reference to the portion of the Caloosahatchee River from Channel Marker ''99'' to the Sanibel Causeway, one peer reviewer noted that aerial survey data indicate that manatees use both the deep and shallow water of this area and telemetry data show ''manatee places and corridors,'' particularly along the eastern boundary of this area. While allowing 25 mph in the deeper waters would provide relief for boaters, manatee use of the area justifies inclusion of the area in the proposed rule. Another peer reviewer noted that this area experiences an extremely high volume of boat traffic at times, in fact, so congested that travel speeds can be self-limiting. The majority of the vessel traffic remains in or near the marked channel between Channel Marker ''99'' and the Sanibel Causeway. It may be acceptable, therefore, to retain a speed of 25 mph in the channel and slow speed outside of the channel in this area. This area should be a priority for enforcement and compliance initiatives. The FWCC believes that regulation of the channel from marker ''99'' to the Sanibel Causeway would increase risks to manatees because of potential changes in boat traffic patterns. The data suggest that additional manatee protection zones should be considered around Fisherman's Key and Big Island. Several commentors noted that the configuration of the proposed rule (slow speed including the channel) would encourage boaters traveling between Sanibel Causeway and the Caloosahatchee River to travel up the unregulated channel on the western side of San Carlos Bay and through the Intracoastal Waterway (ICW) east-west ''Miserable Mile'' channel. This would place more high-speed boat traffic in an area of San Carlos Bay that is heavily used by manatees. Many commentors expressed concern regarding our proposed regulation of the navigation channel at slow speed, due to the resulting increase in travel time.

Response 30: We acknowledge that the proposal for this area may have done more harm than good for manatees utilizing the shallow seagrass flats of San Carlos Bay because the high volume of traffic would likely be diverted to the ''Miserable Mile'' channel where the manatees occur in the adjacent shallow seagrass flats. The diversion of a high volume of watercraft traffic into an already-congested channel may have also created a human safety issue. We have therefore modified this protection area to exclude the channel and an adjacent buffer from the regulation. The configuration of the final rule provides protection of the grass beds near the various keys in San Carlos Bay, without disrupting established boating travel patterns.

Comment 31: With reference to the portion of the St. Johns River from Reddie Point to the Main Street Bridge, one peer reviewer noted that, based on aerial survey data, manatee use of the area supports the proposed rule. The reviewer believes that the existing shoreline buffers are likely not adequate. The FWCC and the City of Jacksonville stated that available data indicate that the existing shoreline buffers are adequate in this area. The FWCC also stated that the existing buffer zones would be easier to mark than the proposed designations.

Response 31: We have reevaluated this area and believe that, based on the available data, our proposed rule for this portion of the St. Johns River is appropriate, with one exception. We have determined that the downstream boundary of this protection area should be moved upstream (south) to Channel Marker ''73'' instead of Reddie Point. We believe this revision is necessary given the configuration of the river relative to the marked navigation channel. Downstream of Channel Maker ''73'' the river widens and curves. At this point the navigation channel hugs the western shoreline. Such configuration is not intuitive and most boaters will tend to continue on a straighter path up the middle of the river, particularly if traveling upstream from Reddie Point. We agree with the FWCC that a clear and effective sign plan in this portion of the river would be difficult, at best, due to the channel configuration as well as water depth, minimal existing signs, and the current watercraft traffic in the areas (*i.e.*, large ships, barges, and tug boats in addition to recreational watercraft). We note the signage for the existing speed zones in this area is inadequate to inform boaters of the location of the existing zones. Overall, we believe that speed zones that follow the marked navigation channel in this area will be easier for boaters to understand, with the exception of the above noted area downstream of Channel Marker ''73,'' where we intend to work with the FWCC regarding signage of the existing zones.

Comment 32: With reference to the portion of the St. Johns River from the Main Street Bridge to the Fuller Warren Bridge, one peer reviewer noted that, based on aerial survey data, manatee use of this area is not notably higher than

in other areas of the river. The sighting data do not appear to justify the establishment of a year-round slow speed zone in this portion of the river for manatee protection. However, the proposed rule may be warranted based on other issues, such as constrained waterways and/or boater safety. The FWCC and others provided similar comments regarding this portion of the St. Johns River.

Response 32: This area of the river is used as a travel corridor, and because manatees are regularly sighted upstream and downstream of this area, it is reasonable to conclude that they regularly traverse this area. Additionally, in this area the river narrows and curves and the presence of many bridges in the downtown Jacksonville area creates a funneling effect for both watercraft traffic and manatees. This combination of factors warrants implementation of additional manatee protection measures in this area.

Comment 33: With reference to the portion of the St. Johns River upstream of the Fuller Warren Bridge including Doctors Lake, one peer reviewer noted that aerial survey data indicate that manatees routinely use these areas. Extending the shoreline buffers, as proposed, provides additional protection to manatees that often spend much of their time within these shoreline areas for many activities, such as resting, feeding, and caring for young. Additionally, several carcasses of manatees killed by watercraft have been recovered in this portion of the river. The available data justify the inclusion of this area in the proposed rule. The City of Jacksonville, Clay County, and others stated that the existing regulations were adequate in this area and that Federal designation was not warranted. The FWCC recommends that if we were to do anything in this area we should adopt a Federal zone the same as the existing State zones, or alternatively consider adoption of a fixed 700-foot buffer in this area. The FWCC further stated that the greatest contribution we could make to improving manatee protection in this area would be through improved signage and enforcement.

Response 33: We concur with the peer reviewer's interpretation of the data that manatees generally utilize the shoreline areas. Upon further review of the data and the public comments, our final rule is modified slightly from the proposed rule in that the shoreline slow speed buffer will be a minimum of 700 feet from the shoreline, but not more than 1,000 feet in the St. Johns River, as marked, and a minimum of 700 feet from the shoreline, but not more than 900 feet in Doctors Lake, as marked. The intent is to mark the zones as close to the 700-foot minimum as possible, but given the non-linear configuration of the shoreline in both the river and the lake, the maximum distance allows flexibility to design an effective, understandable, and enforceable sign plan. The Federal designation of this portion of the river and Doctors Lake will enable us to devote Federal funds to appropriately marking this area.

Comment 34: Peer review comments stated that the proposed rule in the St. Johns River will be easier to post than the existing configuration, which is beneficial because better signage translates to better compliance and better protection.

Response 34: We concur with the reviewer and believe that the final rule, which is modified slightly from the proposed rule, will allow us to effectively post the new Federal manatee protection areas in the lower St. Johns River. We note that the existing signage in this portion of the river is inadequate.

Comment 35: Peer review comments cautioned us not to assume that manatee deaths in the St. Johns River occurred at the location where the carcasses were recovered, as implied in the proposed rule (68 FR 16608). Often it is not known where the death occurred, rather it is known where the carcass was recovered.

Response 35: We agree. The language in the final rule has been changed to avoid giving this impression, which was not intended.

Comment 36: One commentor assumed that, since Duval County was designated as an ''Area of Inadequate Protection'' under the Service's final interim strategy for section 7 consultation, the waters of the County would be one of the highest priorities for refuge status.

Response 36: In response to the commentor, we wish to clarify that the reach of the St. Johns River within Duval County considered to be an ''Area of Inadequate Protection'' (AIP) was not designated as such due to inappropriate design of the existing zones, but rather because we believe the signage of the existing zones to be inadequate. In some areas of the Duval/Clay/St. Johns County portion of the St. Johns River, inadequate signage also resulted in a reduced ability to enforce the zones. We did not consider this area to be as high a priority as actions taken in previous rulemakings. Our final designation will enable us to correct the signage deficiency.

Comment 37: One commentor stated that the submerged aquatic vegetation in the main stem of the St. Johns River extends approximately 900 feet from the shoreline and states further that this distance is variable. The commentor believed that the proposed shoreline buffer will improve manatee protection by expanding it and creating consistency. The commentor claimed this expansion ''from 300 to 1,000 feet will only increase boater travel time by 1.6 minutes.''

Response 37: We believe that our final designation, which designates a slow speed shoreline buffer extending a minimum of 213 meters (700 feet) and a maximum of 305 meters (1,000 feet), encompasses the area most used by manatees and will have limited adverse effects on boater use of the St. Johns River.

Comment 38: With reference to the Halifax Creek from the Flagler/Volusia County line to Channel Marker ''9,'' peer review comments stated that manatees use this area as a travel corridor and have little room to navigate around boat traffic within or outside of the channel in this narrow, constrained northern stretch of the river. These factors support the proposed rule.

Response 38: We agree.

Comment 39: With reference to the Halifax River from Channel Marker ''9'' to the Granada Bridge, peer review comments stated that the proposed rule improves the existing zones without substantial changes. Extension of the shoreline buffers should increase protection of manatees without interfering with watercraft traffic.

Response 39: Manatees exhibit a general tendency to utilize the nearshore waters preferentially throughout their range. As such, establishment of slow speed shoreline buffers is often an effective strategy for minimizing collisions between manatees and watercraft. However, any given manatee may deviate from this pattern at any time and wander farther from shore than ''normal.'' Therefore, wider buffers would always be considered to be most protective of manatees if no other factors were considered.

With respect to the Halifax river, subsequent to publishing the proposed rule, we conducted a more detailed analysis of this area and determined that the river is approximately 2,000 feet wide over most of its length. The practical effect of our proposed rule (a 1,000-foot shoreline buffer) would have been to make the river slow speed outside the ICW channel. In areas where the river is somewhat wider than 2,000 feet, the proposed rule would have

created unregulated ''pockets'' that would have been difficult or impossible to regulate, and would have been of no practical use to boaters. While our stated intent in proposing a 1,000-foot shoreline buffer was, in part, to make the regulations in this area more understandable and enforceable, the proposed rule would have actually had the opposite effect by creating the unregulated ''pockets'' discussed above, thereby potentially compromising manatee protection instead of enhancing it. Additionally, the FWCC noted that manatee use data for this portion of Volusia County are limited and dated. We agree and further note that the limited available data do not support the need for a ''slow-speed outside the channel'' designation. We have, therefore, concluded that establishment of a 1,000-foot shoreline buffer is not prudent.

Subsequent to the publication of the proposed rule, we also examined possible alternatives for expanding the shoreline buffers to some other distance from shoreline. As stated previously, wider buffers are generally more protective, so expansion of the existing 300-foot buffer to some greater distance would arguably improve manatee protection. As indicated above, the widest possible buffer for the Halifax River would have been 1,000 feet (as proposed), or slow speed outside the channel for all practical purposes, which was determined to be unwarranted. Additionally, the quality of the available data is such that we cannot conclude that substantial evidence supports expansion of the shoreline buffer to some distance other than the currently designated 300 feet. In other words, we conclude that the selection of some other width for the shoreline buffer would be arbitrary. We support the FWCC's ongoing efforts to collect additional data regarding manatee distribution and habitat use in this area, in order to provide for better informed decision-making.

Comment 40: With reference to the Tomoka River upstream of U.S. 1, peer review comments noted that manatee sightings occur throughout the river and sightings of manatee calves coupled with perinatal carcasses close to I–95 indicate the importance of this section as a nursery area. The continuation of the slow speed designation to I–95 is justified. Another peer reviewer noted that eliminating the 25-mph status in narrow waterways such as the Tomoka River and Spruce Creek is appropriate for areas where manatee activity is well documented because the entire waterway can function as a channel, with boats traveling at high speeds along the entire width. Further, in-channel and out-of-channel designations in narrow waterways present a problem for law enforcement because it may be difficult to distinguish whether the vessel is in or out of the channel. There are also obvious human safety benefits to slowing watercraft down in narrow waterways. This peer reviewer also noted that, while there are differences in the established definitions of ''idle'' and ''slow'' speed zones, in the reviewer's experience, there is little practical difference between boats traveling at idle versus slow speed. Such differences between the two designations are difficult to enforce and may not provide a significantly different level of protection for manatees. The reviewer recommends the designation of more enforceable, consistent slow speed zones throughout the length of this river. The FWCC noted that the Tomoka River and its tributaries are known calving and nursing areas for manatees, so it is appropriate to consider extra protection in this system. However, they recommended that we defer Federal designation pending completion of their reevaluation of the zones in Volusia County, and stated that their review would consider whether speed zone designations in this area should be seasonal. Another commentor noted that manatee carcasses have been discovered from the Tomoka River in every month except February.

Response 40: Given the narrow configuration of the river, documented high seasonal use by manatees, and demonstrated watercraft-related mortality in this river, we have concluded that it is appropriate to take Federal action at this time to eliminate the 25-mph zone between Alligator Island and the I–95 Bridge on a seasonal basis. We agree with the peer reviewer that a consistent designation throughout the length of the Tomoka River would be preferable. However, we do not have the authority to undo more restrictive existing regulations, such as the existing idle speed and year-round zones. Except for the portion of the Tomoka River where we are implementing a Federal seasonal slow speed zone, we believe the existing zones in the river to be adequate and possibly more restrictive than necessary given the seasonality of manatee use. We decided not to overlay the existing zones with Federal designations over most of the river in order to avoid hindering State efforts to revise these zones in the future. We have determined that seasonal designations are appropriate for this area. While manatee carcasses may have been recovered throughout the year in the Tomoka River, it is important to note that no watercraft-related mortalities have been recorded during winter months. Carcasses found in winter months are more likely related to cold stress as there are no reliable warm water sources in the Tomoka River.

Comment 41: With reference to the Halifax River at the Granada Bridge, peer review comments indicated that, although manatees have been spotted in this area during aerial surveys, the sighting data do not justify the establishment of a year-round slow speed zone in this area for manatee protection. However, the proposed rule may be warranted based on other issues, such as constrained waterways and/or boater safety.

Response 41: We believe that the presence of causeways and pilings associated with many bridges (including the Granada Bridge) creates a funneling effect for both watercraft traffic and manatees. Therefore, we believe additional protection measures are warranted in the vicinity of such bridges and have finalized the rule as proposed in this portion of the Halifax River.

Comment 42: With reference to the Halifax River from the Granada Bridge to Seabreeze Bridge, peer reviewer comments noted that, although manatees have been sighted in this area, the abundance does not appear to be as great as in other regions. However, manatees moving from one higher-use area to another will likely move through this area as a travel corridor, justifying the need for some protection. Although no empirical data support the benefits of regulating watercraft speeds at 25 mph versus 30 mph; it is intuitive that watercraft traveling at higher speeds afford manatees less time to get out of the way, would impact a manatee with greater force, and would cause more harm than those at lower speeds. The available data support the proposed rule in this area. The FWCC commented that in its more recent rulemakings the agency has consistently used 25 mph as the ''minimum planing speed'' for most vessels.

Response 42: As noted above, a more detailed analysis of this area subsequent to publication of the proposed rule revealed that the proposed 1,000-foot slow speed shoreline buffers are not warranted. With reference to establishing a 25-mph speed limit outside the shoreline buffers, we believe that this action will enhance manatee protection by making the regulations more consistent throughout the area, thereby improving compliance by making the zones easier for boaters to understand.

Comment 43: With reference to the Halifax River from the Seabreeze Bridge to Channel Marker ''40,'' peer review comments stated that, based on the recovery of perinatal carcasses, this area may be an important nursery area. This may not be the best location for the high-speed watersports area.

Response 43: We concur with the reviewer's interpretation of the data. The final rule consists of a slow speed zone from 500 feet north to 500 feet south of the Seabreeze Bridge and reduces the speed in the Seabreeze watersports area to slow speed to be consistent with the existing speed zone in the area. Although our final rule for the area is scaled back from the proposed rule in that we do not overlay the entire existing zone with a Federal slow speed zone, we believe the final rule provides improved protection where it is most needed (i.e., at the pinch point created by the bridge and the high-speed watersports area). Additionally, we conclude that the existing designation of slow speed (channel included), is warranted through this section of the river because of the high volume of boat traffic in the Daytona Beach area.

Comment 44: With reference to the Halifax River from Channel Marker ''40'' to the Dunlawton Bridge, peer review comments stated that the proposed rule improves the existing zones without substantial changes. Extension of the shoreline buffers should increase protection of manatees without interfering with watercraft traffic. Manatees often rest, feed, mill, and socialize in waters less than 6 feet deep, not just within 300 feet of shore. The proposal eliminates a second high-speed watersports area. Although this area appears to be a travel corridor for manatees, and carcasses of manatees killed by watercraft have been recovered from the area, this high-speed area appears to be in a ''less egregious'' area than the high-speed area near the Seabreeze Bridge, based on the data.

Response 44: See the response to comment 39 regarding shoreline buffers, and the response to comment 41 regarding constricted areas near bridges.

Comment 45: With reference to the Halifax River north and south of the Dunlawton Bridge, peer review comments noted that, although manatees have been sighted in this area during aerial surveys and manatee carcasses attributed to watercraft collisions have been recovered from the area, the reviewer does not believe that those data justify the establishment of a year-round slow speed zone in this area for manatee protection. However, the proposed rule may be warranted based on other issues, such as constrained waterways and/or boater safety.

Response 45: See response to comment 41.

Comment 46: With reference to the Halifax River from south of the Dunlawton Bridge to Ponce Inlet, peer review comments stated that the proposed rule improves the existing zones without substantial changes. Extension of the shoreline buffers should increase protection of manatees without interfering with watercraft traffic. Manatees often rest, feed, mill, and socialize in waters less than 6 feet deep, not just within 300 feet of shore. The change from 30 mph to 25 mph intuitively improves manatee protection, but the reviewer knows of no empirical data to support it. The proposed rule will increase the uniformity of the regulations, which should improve boater comprehension of and compliance with the manatee protection zones.

Response 46: There is a wide variety of existing speed zones in this area that we believe to be unnecessarily complicated and confusing. Our proposed rule would have simplified the speed zones to a degree, by eliminating the 30 mph designation, and would have improved manatee protection somewhat in this area, but would not have improved the logistical situation enough to significantly reduce or eliminate boater confusion and increase compliance. We do not have the ability to substantially modify the existing zones in this area unilaterally because many of the State-designated speed zones are as restrictive as the proposed rule and we do not have the authority to impose regulations that are less restrictive than existing State rules. Simplifying these zones would necessarily need to be done by the FWCC. The FWCC stated in its comments that the agency is collecting additional data on manatee distribution in Volusia County for the purpose of reevaluating the existing speed zones. Because we do not want to hinder the State's efforts to improve the existing zones, we have decided not to designate this area at this time beyond reducing the maximum allowable speed, outside of existing slow speed zones, from 30 mph to 25 mph.

Comment 47: One peer reviewer was unclear as to why the Ponce Inlet has a proposed speed limit of 30 mph. This speed may be appropriate if it has been determined that 30 mph is necessary to navigate through the inlet, or it is a designated watersports area. Otherwise, it creates confusion for boaters to have too many types of speed zones.

Response 47: We believe the existing State-designated zone in the Ponce Inlet is adequate and have, therefore, decided not to implement Federal regulations in the Ponce Inlet at this time. Our proposed rule in this area simply mirrored the existing zone. The FWCC is currently collecting additional data regarding manatee distribution in this area, and we concluded that, in the absence of such information, we did not have a solid basis for action at this time. Additionally, Federal designation could possibly hinder State efforts to modify the speed zones in this area, should updated information warrant such action.

Comment 48: With reference to the Live Oak Point to Channel Marker ''2,'' peer review comments noted that manatee sightings in this area are more frequent than in other nearby areas; therefore, the proposed rule is supported by the available data.

Response 48: We concur with the reviewer's interpretation of the data. However, the proposed rule would have simply resulted in the federalization of the existing State-designated zones. For this final rule, we believe that it is not necessary to overlay the existing zones that appear to be appropriately designed and signed. Therefore, we will not proceed with designating this area at this time.

Comment 49: With reference to the ICW from Redland Canal to the A1A Bridge, peer review comments noted that manatee sightings in the area just south of the Ponce Inlet are more frequent than in other nearby areas, and these sightings are probably why the area is currently designated as slow speed. The existing 30-mph stretch occurs in an area where manatee sightings have occurred. The data support the proposed designation of the area to slow speed.

Response 49: We agree.

Comment 50: Some commentors strongly suggested that the Service maintain at least a 25-mph channel at New Smyrna.

Response 50: We carefully considered this comment in light of the increased travel time that would result from our proposed designation. However, in light of the available information, we have concluded that slow speed designation in this area should include the channel in order to effectively improve manatee protection in this area.

Comment 51: One peer reviewer stated that the proposed rule in the Halifax and Tomoka Rivers will be easier to post than the existing configuration, which is beneficial because better signage translates to better compliance and better protection.

Response 51: We agree.

Comment 52: One commentor claims that the proposed zones in the Halifax River will help improve boater compliance by reducing the complex mosaic of different zones without indicating how the proposed zones would be more understandable than the existing zones.

Response 52: Based on our analysis and information provided by Volusia County, we have determined that aspects of our proposed zones would have actually created additional confusion, while eliminating very little (*see* Response 39). Our final designations provide for some simplification of the regulations in this area; further improvements are dependent on State action. We have attempted to design our manatee protection areas to avoid hindering future State actions, while ensuring appropriate protection for manatees.

Comment 53: One commentor stated that the Service has previously designated both refuges and sanctuaries in areas without documented mortality; therefore, these proposed refuges are fully justified.

Response 53: Manatee protection area designations serve different purposes in different areas. The previously designated protection areas to which the commentor is referring were located at and around warm water sites where take by harassment was the primary concern. By contrast, the proposed regulations are not specifically designed to provide additional protection at warm water sites, except in a small portion of the upstream extent of the Caloosahatchee River-San Carlos Bay Manatee Refuge (*i.e.*, in the vicinity of the Seaboard Coastline Railroad trestle to the Beautiful Island area). There are, in fact, no warm water aggregation sites within either the Lower St. Johns River Manatee Refuge or the Halifax and Tomoka Rivers Manatee Refuge. Rather, the purpose of the proposed refuges, which establish slow speed zones, is to minimize the risk of high-speed collisions between watercraft and manatees in areas where collisions are likely to occur.

Comment 54: We received two comments regarding the effects of the proposed regulations on seaplane operations. Both recommended that seaplanes in general should be excluded from regulation under the rules, and one identified a seaplane operation that would be severely affected by the proposed speed restrictions on the Caloosahatchee River.

Response 54: According to our regulations the terms ''Water vehicle, watercraft, and vessel'' are defined to include, but are not limited to, ''boats (whether powered by engine, wind, or other means), ships (whether powered by engine, wind, or other means), barges, surfboards, personal watercraft, water skis, or any other device or mechanism the primary or an incidental purpose of which is locomotion on, or across, or underneath the surface of the water.'' This definition is sufficiently broad to include seaplanes, and the 25-mph speed limit on the Caloosahatchee River would effectively preclude the use of seaplanes in this area. After reviewing the information provided during the public comment period we have concluded that the seaplane business currently operating on the Caloosahatchee River poses an insignificant and discountable threat to manatees. Based on information provided during the public comment period, the seaplanes operating at this location take off and land in the middle of the river, well outside the existing 0.25 mile buffer zones. This portion of the river does not receive significant manatee use, based on review of aerial survey and telemetry data. During take-off and landing, the seaplanes are operating at speeds in excess of 25 mph for no more than a few seconds over a distance of approximately 1,500 feet. Given the location on the river and the short distance involved, it is exceedingly unlikely that seaplanes would encounter manatees while taking off and landing.

By definition, a manatee refuge is an area in which ''certain'' waterborne activities are restricted to prevent the taking of one or more manatees. For the portion of the Caloosahatchee River-San Carlos Bay Refuge between the Caloosahatchee River Bridge and the Cape Coral Bridge (the area currently utilized by seaplanes), we have concluded that the waterborne activities to be regulated per this rule need not include seaplanes. As such, the final rule has been modified to state that in this portion of the Caloosahatchee River all watercraft, except seaplanes, are required to operate at speeds less than 25 mph. As far as we know, no other seaplane operations would be affected by these regulations, so we are not adopting a broader exclusion for seaplanes at this time.

Comment 55: One peer reviewer commented that, based on boat surveys he conducted in the Caloosahatchee River, it appears that the proposed rule should not have a significant impact on the majority of boaters using this river because—(1) The Caloosahatchee River functions as a boating corridor as opposed to a destination (*i.e.*, it is used as a pathway to and from other boating destinations); (2) the majority of boat traffic remains within or near the Intracoastal Waterway when traveling through the river; and (3) speedgun studies conducted in the river prior to a numerical speed regulation demonstrated that the average vessel speed was 24.33 mph. Similar speedgun results have been found in other areas. Many of the public comments, however, expressed concern that the proposed rule would concentrate boat traffic within the navigation channel, thereby compromising boater safety.

Response 55: The available research on boating activity in this area (as summarized in the reviewers' comments) appears to indicate that threats to boater safety are more perceived than actual. Nonetheless, these perceptions are strong among local boaters and would clearly undermine public support for the proposed speed zones, thereby compromising compliance and ultimately the effectiveness of the regulation. Additionally, we have determined that the configuration of the proposed rule lacks a solid biological basis (*see* Response 25). As such, we have modified the final rule to better reflect the best available information regarding manatee use of this river, which will have the additional benefit of assuaging boater concerns for safety.

Comment 56: Many commentors believe that the economic impacts of the rule are underestimated. In particular, several commentors believe that the rule fails to properly analyze the full range of businesses that will be affected or the cumulative effect of reduced boating in Florida resulting from slower speed zones. Some commentors stated that the proposed rule does not adequately address how the restrictions will affect the dock building industry, restaurants, hotels, and marinas. Other commentors indicated that businesses dependent on water access or transportation, such as commercial fishing, waterfront restaurants, and fishing guides, would be severely impacted and may no longer be economically viable. One commentor believes all service industries on the Caloosahatchee River would be affected. One commentor believes that the economic impact on commercial fishing is dismissed in the analysis. Another commentor noted that recreational fishing trips will be affected.

Response 56: The discussion in the proposed rule assesses in a qualitative manner the economic effects of the rule to determine if it would have a significant economic effect. In order to make this determination, we examined the categories of impact that are likely to have minor impact and focused on

activities that are likely to incur the greatest economic impacts. In particular, the analysis focuses on recreational and commercial boating activities likely to be affected by the rule. We believe that the rule will lead to changes in recreational activities based on increased travel time and may cause some consumers to forgo some activities. The economic impacts associated with these changes are above-and-beyond those associated with the system of State-designated manatee protection areas already in place in each of the manatee refuges established in this rule. For example, some impacts associated with manatee protection areas in the Caloosahatchee River are already occurring because of existing slow speed zones implemented by the State beginning in 1979. The economic impacts of this rule are related only to the inconvenience of travel time that is additional to these existing slow speed zones. We do not expect that changes in consumer activity related to these additional speed zones would result in significant economic impacts. Moreover, based on further review by the Service and in response to various comments, the extent of the speed zone restrictions initially proposed has been reduced in the final rule. Therefore, we continue to believe that the economic impact of the speed zones in the final rule will not be significant (*i.e.*, over $100 million annually).

We consider only economic impacts associated with this rule. Comments that discuss the overall contribution of industries in general do not describe the effects of this proposed rule specifically. In addition, the analysis estimates impacts on a broad geographic area. Comments that provide information on the impacts to specific sites that cannot be generalized to the broad geographic area are not able to be incorporated into the current analysis.

Comment 57: One commentor noted that popular activities such as water skiing and wakeboarding will not be possible along the entire length of the Caloosahatchee River.

Response 57: The analysis acknowledges that some recreationists may have to travel farther to participate in certain activities or may choose to forgo some activities. However, the speed zone restrictions imposed by the rule do not preclude participation in any recreational activities. Further, based on Caloosahatchee River data, the major use of the river is for travel and not waterskiing or wakeboarding (Gorzelany, 1998). Thus, it is unlikely that including the number of forgone waterskiing and wakeboarding trips resulting from the rule would result in a determination of significant economic impact. Moreover, based on further review by the Service and in response to various comments, the speed zone restrictions initially proposed for the Caloosahatchee River and San Carlos Bay have been reduced in the final rule. Therefore, the number of forgone waterskiing and wakeboarding trips are expected to be minimal, and we continue to believe that the economic impact of the speed zones in the final rule will not be significant.

Comment 58: One commentor stated that Clay County is unlikely to experience any benefits due to an increase in tourism related to manatee viewing because of the shallow and/or brackish nature of the water.

Response 58: While the brackish nature of Doctors Lake and the shallow waters of St. Johns River do not lend themselves to manatee viewing as well as clear, deep water, there are currently manatee viewing points in these areas within the proposed designated manatee protection areas. Economic benefits related to increased tourism resulting from increased manatee protections afforded by this rule are indeed expected to be small, if any occur. The rule does not attempt to quantify these benefits, or to assign them to a particular area; however, we believe that such benefits may occur as a result of this rule.

Comment 59: One commentor stated that consumer surplus is not defined in the proposed rule.

Response 59: Consumer surplus is an economic measure based on the principle that some consumers benefit at current prices because they are able to purchase goods and services at a price that is less than their total willingness to pay for the good. For example, boaters may incur consumer surplus benefits when they can drive at faster speeds on the water because their enjoyment of the boating experience increases. Due to lack of available data, the Service did not quantify the net change in consumer surplus resulting from this rule.

Comment 60: One commentor believes that it is incumbent upon the Service to perform a cost-benefit analysis in order to determine whether the economic impact of the rule is over $100 million.

Response 60: Agencies should assess the potential costs and benefits of significant regulatory actions. Accordingly, the Service has performed a preliminary economic analysis and determined that the economic impact of designating three additional manatee protection areas will not be significant (*i.e.*, over $100 million annually). However, a qualitative discussion of the likely costs and benefits is found in the Required Determinations section of the preamble. As was noted in the proposed rule, and supported by statements of several commentors, existing manatee protection regulations in the affected areas are already extensive. Based on further review by the Service and in response to various comments, the speed zone restrictions proposed have been reduced in the final rule. Therefore, we continue to believe that the economic impact of the speed zones in the final rule will not be significant.

Comment 61: A number of commentors were concerned that the proposed rule would affect property owners' ability to build docks on their property.

Response 61: This rule establishes three manatee protection areas. In so doing, we are regulating the speed at which boats can travel in certain waters in five counties in Florida. This rule in no way affects property owners' ability to build a dock on their property. The Service considers it unlikely that property owners would choose not to build a dock on their property as a result of this rule.

Comment 62: A number of commentors were concerned that the proposed rule would negatively affect property values. In addition, one commentor noted that, despite the introduction of slow speed zones in the Tomoka and Halifax Rivers, property values have continued to increase. Several commentors believe that property values will increase as a result of the rule. Another commentor noted that property values on Doctors Lake have risen considerably over the past 10 years during which time slow speed zones have been established in the lake. Another commentor stated that the impact of the rule could be greater than $100 million based on the belief that the rule could cause 200 people each to decide not to spend $500,000 on a home in Cape Coral because of the rule.

Response 62: We determined the economic impact of the proposed rule by considering the net effect of the rule on the housing market. The analysis is not based on a single site-specific study. However, we do believe that more information is needed to better understand the impact of manatee protection areas on property values in specific areas. Given the timeframe of the analysis, performing primary research such as an original study of property values is not feasible.

Comment 63: One commentor stated that our analysis was based on the Bell and McLean (1997) study, which they believe is suspect and out-of-date.

Response 63: There is very little published information available regarding the impact of slow speed zones on property values. We believe that more information is needed to better understand the impact of manatee protection areas on property values in specific areas. Given the timeframe of the analysis, performing primary research, such as an original study of property values, was not feasible. The study by Bell and McLean appears to be one of the few studies and the most recent study addressing this issue.

Comment 64: Several commentors suggested that tax revenues from a loss in property values could be negatively impacted by the rule. That is, property value reductions in an area may lead to lower real estate and other tax revenues.

Response 64: While some existing properties may realize a gain in value (thereby generating greater tax revenues), other properties may experience a loss in value (thereby reducing tax revenues). Given the lack of data, it is difficult to know the magnitude of this overall effect. However, the Bell and McLean (1997) study suggests that property values may increase with slow speed zone implementation, which would lead to increased tax revenue. However, given the timeframe of the analysis, performing the primary research to determine the overall effect was not feasible.

Comment 65: One commentor believes the rule to be a major rule (will have an annual impact of more than $100 million on the economy), given that it threatens the recreation of 1.4 million boaters in Florida and a $15 billion marine industry in Florida.

Response 65: It appears that the commentor's boater and marine industry information is based on a 2001 study performed by Thomas J. Murray and Associates for the Marine Industries Association of Florida, titled ''Florida's Recreational Marine Industry—Economic Impact and Growth 1980–2000'' (no citation was provided). This study conducts a regional economic impact of retail sales by motorboat and yacht dealers in the State of Florida (Revenue Kind Code 28). The analysis estimates the direct, indirect, and induced impacts associated with this sector to calculate the $14.1 billion economic impact. We have focused on the economic impact likely resulting from the rule—those impacts associated with a reduction in marine recreational and commercial fishing activities due to slow speed zones. Murray *et al.* measures an impact not associated with the proposed rule; thus, these impacts have not been incorporated into the analysis.

Comment 66: The Small Business Administration's Office of Advocacy (SBA-Advocacy) recommends that the Service complete an Initial Regulatory Flexibility Analysis.

Response 66: This screening-level study indicates that changes to existing speed zones would affect a number of small entities, but the economic impacts would not be to a substantial number of entities. In addition, we believe that the rule would not have a significant economic impact on these affected entities. Because we certify that this rule would not have a significant economic impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis is not required.

Comment 67: SBA-Advocacy recommends that the Service refine its analysis in order to determine whether a substantial number of small entities will be significantly affected by the rule. In particular, SBA-Advocacy suggests revising the analysis to focus exclusively on entities affected by the rule.

Response 67: Based on a review of publicly available data sources, the data that would be needed to satisfy SBA-Advocacy's concerns are not available. Alternative analyses, different from the one described in the proposed rule, could be conducted; however, none of these analyses would be able to produce the level of detail recommended by SBA-Advocacy.

Comment 68: SBA-Advocacy has indicated that, as a result of preliminary outreach conducted, a substantial number of small entities will face significant economic impacts from the rule. Affected entities identified generally by SBA-Advocacy include charter fishing companies, a ferry company, a boat builder, harbor facilities, restaurants, marine construction firms, and realtors. SBA-Advocacy recommended that the Service conduct outreach to affected small entities to obtain information on the potential impacts of the proposed rule and to solicit input on alternatives to minimize regulatory burdens imposed on small entities.

Response 68: While we agree that there is the potential for an economic effect on a number of small entities in the affected area, information on the total number of small businesses in the affected area does not exist. Conducting outreach efforts to obtain data on the impact to small entities, beyond providing a public review comment period, would require a level of effort that is incompatible with the timeframe of the rule. In addition, we received no comments during the public comment that included information on substantial numbers of entities impacted, or significant impacts.

Furthermore, Federal courts and Congress have indicated that a Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (RFA/SBREFA) analysis should be limited to direct and indirect impacts on entities subject to the requirements of the regulation. As such, entities not directly regulated by the proposed establishment of manatee protection areas need not be considered in this RFA/SBREFA screening analysis. For example, SBA-Advocacy suggested impacts on restaurants and realtors should be considered; however, these entities are not subject to the restrictions on speed at which a boat can travel, and are therefore correctly excluded from the analysis.

Comment 69: One commentor suggested his fast ferry business would experience dire effects from the regulation. Another commentor suggested his jet ski business would be negatively affected. Other commentors suggested that the rule would impact small businesses.

Response 69: Because of its location in Fort Myers, this ferry service is currently incurring costs related to speed zones affecting its travel time. The commentor did not provide a specific estimate of how much time would be added to his trip that would impact the value of his business. While the length of a trip aboard this ferry service will be affected, it may still be the fastest alternative available to consumers and consumers may still choose this option. Given available information, it is difficult to determine whether this business will be significantly affected. Because the jet ski business indicated that personal watercraft sales and service are only approximately 20 percent of revenues for this business and the expected reduction in sales and service related to jet skis is 17 to 25 percent, the expected overall impact on revenues would be less than 5 percent. Based on further review by the Service and in response to various comments, the speed zone restrictions initially proposed have been reduced in the final rule. Therefore, the impacts anticipated by the commentors will likely also be reduced correspondingly. Given our analysis of available information, we continue to believe that the economic impact of the speed zones in the final rule will not result in significant impacts to a substantial number of small entities.

Summary of Changes From the Proposed Rule

In the Caloosahatchee River-San Carlos Bay Manatee Refuge, we have reduced the length of the seasonal slow speed area of the channel from the Seaboard Coastline Railroad trestle. This portion of the manatee protection area was proposed to be approximately 7.2 km (4.5 miles) in length and has been reduced to approximately 1.6 km (1.0 mile). Based on the comments as well as a more thorough evaluation by our biologists, we have modified our proposed rule to better reflect the best available information regarding manatee use of this area. The final rule designates the portion of the Caloosahatchee River navigation channel from the Seaboard Coastline Railroad trestle downstream to Channel Marker ''25'' to be slow speed in the channel from November 15 to March 31, and not more than 25 mph in the remainder of the year.

Aerial survey data indicate that manatees do occur throughout this portion of the river throughout the year. However, the analysis of available data by FMRI (FWCC 2002) indicates that manatees are less likely to occur near the navigation channel downstream of the general area of Marker ''25.'' This generally coincides with the change in the physiography of the river in this area. The river narrows upstream of Channel Marker ''25'' and Beautiful Island and other smaller islands act to further constrict the river. This explains the change in manatee distribution at this point in the river. Manatees are more likely to be found in and near the navigation channel upstream of Marker ''25'' than downstream. This fact, combined with the above-referenced lower level of boat traffic in this portion of the river relative to areas further downstream, led us to conclude that the existing regulations downstream of Marker ''25'' were sufficient, whereas increased protection is warranted between Marker ''25'' and the railroad trestle.

In three segments of the main body of the river, we are establishing ''slow speed'' shoreline buffers similar to the existing 0.40-km (0.25-mile) shoreline buffers, and are establishing a speed limit not to exceed 40 km per hour (25 mph) between the buffers. In the proposed regulations, the shoreline slow speed buffers would have extended out to within 91 meters (300 feet) of the marked navigation channel. We conducted a more detailed review of the recent special study of the Caloosahatchee River by the Florida Marine Research Institute (FWCC 2002) and it appears that the majority of manatee use in this area occurs within the current 0.40 km (0.25 mile) shoreline buffer. We believe these changes better reflect the known shoreline use patterns of manatees, allow boaters to have more time to avoid manatees should they be encountered between the buffers, and provide manatees greater time to react to oncoming vessels. Our final regulation states that the slow speed shoreline buffers will have a minimum width of 0.40 km (0.25 mile), as marked, recognizing that in some locations signage may be placed at a slightly greater distance from shore in order to provide a more easily identifiable boundary.

While we acknowledge that water depths of 6 feet or greater afford manatees greater opportunity to avoid collisions with watercraft, it does not appear that the 6-foot contour line approximates manatee distribution in this portion of the river, as this contour extends a great distance from shore in this area (particularly from the western shoreline), whereas manatee aerial survey data show manatee use concentrated closer (generally within 0.40 km (0.25 mile)) to shore.

For the portion of the Caloosahatchee River—San Carlos Bay Refuge between the Caloosahatchee River Bridge and the Cape Coral Bridge, we have concluded that the waterborne activities to be regulated per this rule need not include seaplanes. After reviewing the information provided during the public comment period, we have concluded that the seaplane business currently operating on the Caloosahatchee River poses an insignificant and discountable threat to manatees. Based on information provided during the public comment period, the seaplanes operating at this location take off and land in the middle of the river, well outside the existing 0.40 km (0.25 mile) buffer zone. This portion of the river does not receive significant manatee use, based on review of aerial survey and telemetry data. During take-off and landing, the seaplanes are operating at speeds in excess of 40 km per hour (25 mph) for no more than a few seconds over a distance of approximately 457 meters (1,500 feet). Given the location on the river and the short distance involved, it is exceedingly unlikely that seaplanes would encounter manatees while taking off and landing. As such, the final rule has been modified to state that, in this portion of the Caloosahatchee River, all watercraft, except seaplanes, are required to operate at speeds less than 25 mph.

At Redfish Point, we are reducing the downstream extent of the shoreline to shoreline slow speed zone from Channel Marker ''82'' to Channel Marker ''76.'' This better reflects the known manatee use patterns and provides a slow speed corridor for manatees crossing between the canals of Cape Coral and Deep Lagoon. We conducted a more detailed review of the available data and concluded that sufficient manatee protection could be achieved in this area by reconfiguring and shortening the slow speed zone. Our analysis of aerial and telemetry data indicates that manatee use is greatest between Channel Markers ''72'' and ''76.''

In San Carlos Bay, the navigation channel and adjacent waters from Channel Marker ''99'' south to the Sanibel Causeway will be excluded from regulation. The proposal to make this slow speed would have potentially done more harm than good for manatees utilizing the shallow seagrass flats of San Carlos Bay because the high volume of traffic would likely be diverted to the ''Miserable Mile'' channel where the manatees occur in the adjacent shallow seagrass flats. The diversion of a high volume of watercraft traffic into an already-congested channel may have also created a human safety issue. The final designation protects the known areas of high manatee use in San Carlos Bay.

In the Lower St. Johns River Manatee Refuge, we have reduced the downstream extent of the manatee protection area from Reddie Point to Channel Marker ''73,'' a distance of about 1.6 kilometers (1 mile). Existing manatee protection measures downstream of Channel Marker ''73'' to Reddie Point are sufficient, provided that signage is improved by the State, and moving the boundary will improve compliance in the area without compromising manatee protection. We intend to work with the State to improve the signage in the Reddie Point area.

Shoreline buffers in the St. Johns River upstream of the Fuller Warren Bridge have been revised to be from 213 to 305 meters (700 to 1,000 feet) in the river (as marked) and 213 to 274 meters (700 to 900 feet) in Doctors Lake (as marked). This will encompass the areas of highest known manatee use. The adopted zone width will allow us to approximate the current manatee protection area configuration, remedy the posting issue with the current zones, and minimize any perceived increased risk to human safety in Doctors Lake as a result of our action.

In the Halifax and Tomoka Rivers Manatee Refuge, there have been several

changes. In the Tomoka River we are including only a seasonal slow speed zone in the area currently designated as 40 km per hour (25 mph) immediately downstream of the I–95 bridge. This will protect manatees during their highest use period. We believe the existing slow and idle speed zones in the river to be adequate and the year-round zones are possibly more restrictive than necessary given the seasonality of manatee use.

We are maintaining the current 91-meter (300-foot) slow speed buffer zones in much of the river and are adopting a 40-km-per-hour (25-mph) speed limit between the buffers. This will provide sufficient protection in areas known to be used by manatees and will improve compliance by making the zones easier to understand. It will also avoid creating any additional safety risks to boaters as a result of our action. We had proposed a 305-meter (1,000-foot) buffer in many of these areas. In some cases, these buffers could have compressed high-speed use into very small areas as much of the river is very close to 610 meters (2,000 feet) wide. The practical effect of our proposed rule would have been to make the river slow speed outside the ICW channel. In areas where the river is somewhat wider than 2,000 feet, the proposed rule would have created unregulated ''pockets'' that would have been difficult or impossible to regulate, and would have been of no practical use to boaters. While our stated intent in proposing a 1,000-foot shoreline buffer was, in part, to make the regulations in this area more understandable and enforceable, the proposed rule would have actually had the opposite effect by creating the unregulated ''pockets'' discussed above, thereby, potentially compromising manatee protection instead of enhancing it. Additionally, the FWCC noted that manatee use data for this portion of Volusia County are limited and dated. We agree and further note that the limited available data do not support the need for a ''slow-speed outside the channel'' designation. We have, therefore, concluded that establishment of a 1,000-foot shoreline buffer is not prudent.

Subsequent to the publication of the proposed rule, we also examined possible alternatives for expanding the shoreline buffers to some other distance from shoreline. As stated previously, wider buffers are generally more protective; so expansion of the existing 300-foot buffer to some greater distance would arguably improve manatee protection. As indicated above, the widest possible buffer for the Halifax River would have been 1,000 feet (as proposed), or slow speed outside the channel for all practical purposes, which was determined to be unwarranted. Additionally, the quality of the available data is such that we cannot conclude that substantial evidence supports expansion of the shoreline buffer to some distance other than the currently designated 300 feet. In other words, we conclude that the selection of some other width for the shoreline buffer would be arbitrary. We support the FWCC's ongoing efforts to collect additional data regarding manatee distribution and habitat use in this area, in order to provide for better informed decisionmaking.

In other portions of the Halifax River and adjacent waterbodies north and south of Ponce Inlet, we are placing a 40-km-per-hour (25-mph) cap on speeds not more restrictively regulated. We had proposed slow speed outside of marked channels in many of these areas.

The key features of this final designation in the Halifax and Tomoka Rivers are the elimination or modification of watersports areas and slowing boat speeds around the bridges' areas, which may function as pinch points where manatees and boats are forced into close proximity. We believe these are the areas that are most problematic for manatees within the original proposal and are the measures necessary to avoid take of manatees.

Areas Designated as Manatee Refuges

Caloosahatchee River—San Carlos Bay Manatee Refuge

We are establishing a manatee refuge in portions of the Caloosahatchee River and San Carlos Bay in Lee County (in the Southwest Region) for the purpose of regulating vessel speeds, from the Seaboard Coastline Railroad trestle, downstream to Channel Marker ''93,'' and from Channel Marker ''99'' to the Sanibel Causeway. Except as provided in 50 CFR 17.105, watercraft will be required to proceed as follows:

a. From the Seaboard Coastline Railroad trestle at Beautiful Island, downstream to a Channel Marker ''25,'' a distance of approximately 1.6 km (1 mile), slow speed in the marked navigation channel from November 15 to March 31, and not more than 40 kilometers (km) per hour (25 miles per hour (mph)) in the channel from April 1 to November 14;

b. from a point 152 meters (500 feet) east of the Edison Bridge downstream to a point 152 meters (500 feet) west of the Caloosahatchee Bridge, approximately 1.1 km (0.7 miles) in length, slow speed year-round, shoreline-to-shoreline including the marked navigation channel;

c. from a point 152 meters (500 feet) west of the Caloosahatchee Bridge downstream to a point 152 meters (500 feet) northeast of the Cape Coral Bridge, a distance of approximately 10.9 km (6.8 miles), year-round, slow speed shoreline buffers extending out to a distance of approximately 402 meters (1,320 feet), as marked. Vessel speeds between these buffers (including the marked navigation channel) are limited to not more than 40 km per hour (25 mph) throughout the year, with the exception of seaplanes;

d. from a point 152 meters (500 feet) northeast of the Cape Coral Bridge downstream to a point 152 meters (500 feet) southwest of the Cape Coral Bridge, a distance of approximately 0.3 km (0.2 mile), slow speed outside the marked navigation channel and a speed limit of not more than 40 km per hour (25mph) in the channel, year-round;

e. from a point 152 meters (500 feet) southwest of the Cape Coral Bridge to Channel Marker ''72,'' a distance of approximately 1.9 km (or 1.2 miles), year-round, slow speed shoreline buffers extending out to a minimum distance of approximately 402 meters (1,320 feet), as marked. Vessel speeds between these buffers (including the marked navigation channel) are limited to not more than 40 km per hour (25 mph) throughout the year;

f. from Channel Marker ''72'' to Channel Marker ''76'' (in the vicinity of Redfish Point), for a distance of approximately 1.8 kilometers (1.1 miles) in length, slow speed year-round shoreline-to-shoreline, including the marked navigation channel;

g. from Channel Marker ''76'' to Channel Marker ''93,'' a distance of approximately 5.2 kilometers (3.2 miles), in length, year-round, slow speed shoreline buffers extending out to a minimum distance of approximately 402 meters (1,320 feet), as marked. Vessel speeds between these buffers (including the marked navigation channel) are limited to not more than 40 km per hour (25 mph) throughout the year; and

h. In San Carlos Bay, from Channel Marker ''99'' to the Sanibel Causeway, slow speed year-round within the following limits—a northern boundary described by the southern edge of the marked navigation channel, a line approximately 2.9 kilometers (1.8 miles) in length; a southern boundary described by the Sanibel Causeway (approximately 1.9 kilometers (1.2 miles) in length); a western boundary described by a line that connects the western end of the easternmost Sanibel Causeway island and extending northwest to Channel Marker ''7''

(approximately 2.9 kilometers (1.8 miles) in length); the eastern boundary includes the western limit of the State-designated manatee protection area (68C–22.005) near Punta Rassa (approximately 2.9 kilometers (1.8 miles) in length). However this area excludes the marked navigation channel from Channel Marker ''99'' to the Sanibel Causeway and adjacent waters, as marked.

Manatee presence has been documented in the designated areas through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program (FWCC 2002). Per these data and analysis, it is apparent the Caloosahatchee River is used throughout its length throughout the year by manatees. Primary winter-use areas include the Florida Power and Light Company's Fort Myers Power Plant and Matlacha Pass, upstream and downstream (respectively) of the refuge. The power plant is a major winter refuge for manatees. On January 6, 2001, 434 manatees were observed wintering in this region (FWCC: FMRI Aerial Survey Database, 2003).

In warmer months, manatee use is concentrated within the existing 402-meter (0.25-mile) buffer. They use the river as a travel corridor between upstream fresh water, foraging, and resting sites and downstream foraging areas. Manatees use the canal systems in Fort Myers and Cape Coral (between the Edison Bridge upstream and Shell Point) to rest and drink fresh water (Weigle *et al.*, 2002). Manatees travel west of Shell Point to feed in the seagrass beds in San Carlos Bay and adjacent waterways.

A more in-depth analysis of the telemetry data indicates that manatees appear to travel along shallow areas relatively close (within approximately 402 meters or 0.25 miles) to shore and cross the river in narrow areas near Redfish Point and Shell Point (FWCC 2002). The Redfish and Shellfish Point sections of the river represent specific areas where manatees and boats overlap during their travels (Weigle *et al.*, 2002). The funneling of high-speed watercraft and manatees through these narrow areas increases the likelihood of manatee-watercraft collisions in this area. Four watercraft-related manatee mortalities occurred in this area since January 2001 (FWCC: FMRI Manatee Mortality Database, 2003). Given these findings, we designated Shell Island (the area around Shell Point) as a manatee refuge on November 8, 2002 (67 FR 68450).

The number of registered vessels in Lee County has increased by 25 percent over the past 5 years (from 36,255 vessels in 1998 to 45,413 in 2002) (FWCC, 2002). According to the FWCC's recent study of manatee mortality, manatee habitat, and boating activity in the Caloosahatchee River (FWCC 2002), vessel traffic increases as the day progresses and doubles on the weekends compared to weekdays. The highest volumes of traffic were recorded in the spring and lowest volume in the winter. Highest vessel traffic densities occurred at Shell Point where the Caloosahatchee River and San Carlos Bay converge. Many of the boats in the lower Caloosahatchee River originate from the Cape Coral canal system and head toward the Gulf of Mexico.

Presently, there are State-designated, manatee speed zones throughout most of Lee County. Seasonal speed zones were established in the Caloosahatchee and Orange Rivers around the Fort Myers power plant in 1979 (68C–22.005 FAC). Additional speed zones were established in the Caloosahatchee River downstream of the power plant in November 1989 (68C–22.005 FAC). Speed zones were established countywide in November 1999 (68C–22.005 FAC). The majority of these zones include shoreline buffers that provide protection in nearshore areas frequented by manatees. All zones were to be posted with the appropriate signage by July 2001 (68C–22.004 and 68C–22.005 FAC). Compliance with speed zones in the Caloosahatchee averaged only 57 percent (FWCC, 2002).

According to FWCC: FMRI's manatee mortality database, 764 manatee carcasses were recorded in Lee County from 1974 to 2002 (FWCC: FMRI Manatee Mortality Database, 2003). Of this total, 163 manatee deaths were watercraft-related (21 percent of the total number of deaths in Lee County). Over the past 13 years, the County's rate of increase in watercraft-related manatee mortality is higher than the rates of increase in watercraft-related mortality in southwest Florida and in watercraft-related deaths statewide. Areas east of the Edison Bridge and west of Shell Point are areas with recent increases in watercraft-related mortality; eight watercraft-related carcasses have been recovered east of the railroad trestle and seven have been recovered in San Carlos Bay since 2000, including two watercraft-related carcasses in San Carlos Bay since July 2001, when State speed zones were marked (FWCC: FMRI Manatee Mortality Database, 2003). From January 1, 2003, to June 30, 2003, there have been 7 watercraft-related manatee mortalities in Lee County, one of which occurred in the Caloosahatchee River.

We believe the measures in this regulation will improve manatee protection in the Caloosahatchee River and San Carlos Bay and are necessary to prevent the take of at least one manatee in this area by harassment, injury, and/or mortality by extending coverage and/or improving upon existing protection measures in areas used by manatees.

Lower St. Johns River Manatee Refuge

We are establishing a manatee refuge for the purpose of regulating waterborne vessel speeds in portions of the St. Johns River (in the Atlantic Region) and adjacent waters in Duval, Clay, and St. Johns Counties from Channel Marker ''73'' upstream to the mouth of Peter's Branch (including Doctors Lake) in Clay County on the western shore, and to the southern shore of the mouth of Julington Creek in St. Johns County on the eastern shore. Except as provided in 50 CFR 17.105, watercraft will be required to proceed as follows:

a. From Channel Marker ''73'' upstream to the Main Street Bridge, a distance of approximately 16.8 kilometers (10.4 miles), slow speed, year-round, outside the navigation channel and not more than 40 km per hour (25 mph) in the channel (from Channel Marker ''81'' to the Main Street Bridge, the channel is defined as the line of sight extending west from Channel Markers ''81'' and ''82'' to the bridge fenders of the Main Street Bridge);

b. from the Main Street Bridge to the Fuller Warren Bridge, a distance of approximately 1.6 km (or 1.0 miles) slow speed (channel included), year-round;

c. upstream of the Fuller Warren Bridge, a 213- to 305-meter (700- to 1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Peter's Branch in Clay County along the western shore (approximately 31.1 km or 19.3 miles); and in Doctors Lake in Clay County, slow speed, year-round, along a 213- to 274-meter (700- to 900-foot) shoreline buffer (approximately 20.8 km or 12.9 miles); and a 213- to 305-meter (700- to 1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Julington Creek in St. Johns County along the eastern shore (approximately 32.5 km or 20.2 miles) to a line north of a western extension of the Nature's Hammock Road North.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Manatees occur throughout the manatee protection area; the extent of use varies by habitat type and time of

year (White *et al.*, 2002). Telemetry and aerial survey data indicate that peak numbers occur between March and June with heaviest use along the St. Johns River shorelines (typically within 213 meters or 700 feet of shore) upstream of the Fuller Warren Bridge and along the southeast shoreline of Doctors Lake. The latter appears to correlate with the highest quality feeding habitat. Recent studies demonstrate little use during the December through February period (White *et al.*, 2002). While there were warm water discharges (*i.e.*, power plant and industrial effluents) located within the area of the refuge, these man-made attractants no longer exist.

Vessel speeds are currently restricted throughout the manatee protection area. In 1989, boating restricted areas were adopted by Duval County and established by the State of Florida for portions of the St. Johns River. These include a bank-to-bank, slow-speed zone between the Florida East Coast Railroad Bridge and the Main Street Bridge and a ''slow down/minimum wake when flashing'' zone between the Main Street and Hart Bridges, activated during special events at the discretion of the Jacksonville Sheriff's Office (16N–24.016 Duval County Boating Restricted Areas). The first manatee protection areas were adopted in 1989 by Duval County and in 1994 by the State of Florida. These measures included a slow speed (channel exempt) zone from Reddie Point to the Main Street Bridge and a 91-meter (300-foot) shoreline buffer in portions of the St. Johns River upstream of the Fuller Warren Bridge. The manatee protection areas were reconfigured in 2001. Current protection measures consist of shoreline buffers that vary in width from 91 to 274 meters (300 to 900 feet). There are provisions upstream of the Fuller Warren Bridge that include a shoreline buffer of 152 meters (500 feet) or 61 meters (200 feet) from the end of docks, whichever is greater (an expansion of the 1989 91-meter (300-foot) buffer) (68C–22.027 FAC). We believe that the variable shoreline buffers are not adequately posted, which makes these areas hard to enforce and difficult for the boating public to understand and comply with these measures.

Overall, 270 manatee deaths were recorded in Duval County between 1974 and 2002 (FWCC: FMRI Manatee Mortality Database, 2003). Ninety-four of these deaths included deaths caused by watercraft collision. Fifty-one watercraft-related manatee carcasses were recovered within the manatee protection area. Of these, 24 were recovered between Channel Marker ''73'' and the Matthews Bridge, 10 were recovered between the Hart and Acosta bridges, 6 were recovered between the Fuller Warren and Buckman bridges, and 11 were recovered upstream of the Buckman Bridge. Most of these carcasses have been recovered in that portion of the river where manatees and boats are most constricted (FWCC 2003). From 1994 to 2001, when the area was protected under the initial State rule, watercraft-related manatee deaths averaged two per year between Channel Marker ''73'' and the Fuller Warren Bridge. In 2002, subsequent to adoption of the current rule, one watercraft-related carcass was documented in this area; a single watercraft-related carcass was recovered upstream of the Fuller Warren Bridge in 2001.

We believe the measures in this regulation will improve manatee protection in the Lower St. Johns River and are necessary to prevent the taking of at least one manatee in this area through harassment, injury, and/or mortality. The regulation extends coverage to currently unprotected areas used by manatees, improves the ability of the public to comply with the vessel operation restrictions, and improves the ability of law enforcement personnel to enforce the restrictions. The configuration is less complicated, easier to post, and will reduce reliance on waterway users to judge distances from the shoreline or the ends of docks and piers. The regulation will not detract from operation of the boater safety zone downstream of the Main Street Bridge during special events.

Halifax and Tomoka Rivers Manatee Refuge

We are establishing a manatee refuge in portions of the Halifax River and associated waterbodies in Volusia County (in the Atlantic Region) for the purpose of regulating vessel speeds, from the Volusia/Flagler county line to New Smyrna Beach. Except as provided in 50 CFR 17.105, watercraft will be required to proceed as follows:

a. From the Volusia County/Flagler County line at Halifax Creek south to Channel Marker ''9,'' a distance of approximately 11.3 km (7.0 miles) in length, not more than 40 km per hour (25 mph) in the channel;

b. from Channel Marker ''9'' to a point 152 meters (500 feet) north of the Granada Bridge (State Road 40) (including the Tomoka Basin), a distance of approximately 5.0 km (3.1 miles) in length, not more than 40 km per hour (25 mph) in areas between the existing 91-meter (300-foot) buffers (and including the marked navigation channel);

c. in the Tomoka River, the current 40-km-per-hour (25-mph) zone approximately 1.6 km (1 mile) downstream of the I–95 bridge will be slow speed shoreline to shoreline from April 1 through August 31;

d. from 152 meters (500 feet) north to 305 meters (1,000 feet) south of the Granada Bridge (State Road 40), a distance of approximately 0.5 km (0.3 miles) in length, slow speed, year-round, channel included;

e. from a point 305 meters (1,000 feet) south of the Granada Bridge (State Road 40) to a point 152 meters (500 feet) north of the Seabreeze Bridge, a distance of approximately 6.4 km (4.0 miles) in length, not more than 40 km per hour (25 mph) in areas between the existing 91-meter (300-foot) buffers, and including the marked navigation channel;

f. from 152 meters (500 feet) north of the Seabreeze Bridge, to 152 meters (500 feet) north of the Main Street Bridge, a distance of approximately 1 km (0.6 miles) in length, slow speed, year-round, channel included;

g. from Channel Marker ''40'' south of the Seabreeze Bridge to a point a minimum of 152 meters (500 feet) north, as marked, of the Dunlawton Bridge, a distance of approximately 6.6 kilometers (4.1 miles) in length, not more than 40 km per hour (25 mph) in areas between the existing 91-meter (300-foot) buffers, and including the marked navigation channel;

h. from a minimum of 152 meters (500 feet) north, as marked, to a minimum of 152 meters (500 feet) south, as marked, of the Dunlawton Bridge, a distance of approximately 0.3 km (0.2 miles) in length, slow speed, year-round, channel included. The existing 30-meter (100-foot) shoreline buffer immediately north and west of the bridge/causeway for a distance of approximately 640 meters (2,100 feet) would also be increased to 91 meters (300 feet) as marked;

i. from a minimum of 152 meters (500 feet) south, as marked, of the Dunlawton Bridge to Ponce Inlet, a distance of approximately 10.5 km (6.5 miles) in length, not more than 40 km per hour (25 mph) in waters not more restrictively designated; along the western shore of the Halifax River, a distance of approximately 3.1 km (1.9 miles), not more than 40 km per hour (25 mph) in the waters not more restrictively designated; in Rose Bay, a distance of approximately 2.7 km (1.7 miles), not more than 40 km per hour (25 mph) in waters not more restrictively designated; in Turnbull Bay, a distance of approximately 3.9 km (2.4 miles), not more than 40 km per

hour (25 mph) in waters not more restrictively designated; and

j. in the Intracoastal Waterway and adjacent waters from Redland Canal to the A1A Bridge (New Smyrna Beach), for a distance of approximately 5.3 km (3.3 miles) in length, slow speed, year-round, channel included.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program (FWCC, 2003). In general, manatees primarily use the Halifax River as a travel corridor (Deutsch *et al.*, 1998 and Deutsch *et al.*, 2000); manatees use the downtown Daytona Beach area marinas as a source of drinking water and may calve there. The Tomoka River system is a known calving area, as evidenced by observations of calving manatees (McNerney 1982) and aerial observations of significant numbers of cow and calf pairs (FWCC 2000). Other activities observed throughout these systems include playing and/or engaging in sexual activity, feeding, and resting. Manatees are known to occur in these areas throughout the year (Deutsch *et al.*, 1998 and Deutsch *et al.*, 2000), although they are more abundant during the warmer months of the year (FWCC 2000).

Two hundred and eight manatee deaths occurred in Volusia County between 1974 and 2002 (FWCC: FMRI Manatee Mortality Database, 2003). This number includes 60 watercraft-related deaths. Of these, 30 carcasses attributed to watercraft were recovered in coastal Volusia County, (including 6 in the Tomoka River system and 16 in the Halifax River). Twenty of these carcasses were recovered over the past 10 years and seven of these over the past 2 years. Three of the watercraft-related carcasses were found in the Tomoka River in 2001. Carcass recovery sites for manatees known to have died as a result of watercraft collision include the lower Tomoka River and tributaries, the Halifax River in downtown Daytona Beach, areas to the south of Channel Marker ''40'' and the Dunlawton Bridge, and areas to the south of Ponce Inlet. Watercraft-related deaths occur between the months of March and October, with most occurring in May, June, and July.

The existing, State-designated manatee protection areas in coastal Volusia County were adopted by the State of Florida in 1994 (68C–22.012 FAC). These measures include slow and idle speed restrictions in the Tomoka River and associated waterbodies (except for in those areas upstream and downstream of Alligator Island), 91-meter (300-foot) shoreline buffers along most of the Halifax River (with maximum speeds varying between 40 and 48 km per hour (25 and 30 mph) outside of the buffers), slow speeds in the downtown Daytona Beach area (except for a watersports area to the south of Seabreeze Bridge), and a complex of varying restrictions between the Dunlawton Bridge and New Smyrna Beach. The existing State measures include 10 different types of restrictions that are used to restrict 30 discrete areas within the area of the final refuge. Fifteen watercraft-related manatee carcasses were recovered within the area of the final refuge since the State protection areas were first adopted. Seven of these deaths occurred in 2001, and no watercraft-related deaths were known to have occurred in 2002.

We believe the measures in this regulation will improve manatee protection in the Halifax and Tomoka Rivers and will prevent the take of at least one manatee in this area through harassment, injury, and/or mortality by reducing boat speeds in areas used by manatees, and by improving the ability of the public to understand and, thus, comply with protection measures through simplification of restrictions.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic impact of over $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A quantitative assessment of the costs and benefits is not required, nor is consideration of alternatives. It is not expected that any significant economic impacts would result from the establishment of three manatee refuges (approximately 141.6 river km (87.8 river miles)) in five counties in the State of Florida.

The purpose of this rule is to establish three manatee protection areas in Florida. The three areas are located in the Caloosahatchee River in Lee County, the St. Johns River in Duval, Clay and St. Johns Counties, and the Halifax River and Tomoka River in Volusia County. We are preventing take of manatees by controlling certain human activity in these three areas. For the three manatee refuges, the areas are year-round or seasonal slow speed, or speed limits of 40 km per hour (25 mph). Affected waterborne activities include transiting, cruising, water skiing, fishing, and the use of all water vehicles. This rule will impact recreational boaters, commercial charter boats, and commercial fishermen, primarily in the form of restrictions on boat speeds in specific areas. We will experience increased administrative costs due to this rule. Conversely, the rule may also produce economic benefits for some parties as a result of increased manatee protection and decreased boat speeds in the manatee refuge areas.

Regulatory impact analysis requires the comparison of expected costs and benefits of the rule against a ''baseline,'' which typically reflects the regulatory requirements in existence prior to the rulemaking. For purposes of this analysis, the baseline assumes that we take no additional regulatory actions to protect the manatee. In fact, even with no further activity by us, an extensive system of State-designated manatee protection areas is already in place in each of the manatee refuges. Thus, the rule will have only an incremental effect. As discussed below, the net economic impact is not expected to be significant, but cannot be monetized given available information.

The economic impacts of this rule would be due to the changes in speed zone restrictions in the manatee refuge areas. These speed zone changes are summarized below.

In Lee County, in the Caloosahatchee River area, the designation of the Caloosahatchee-San Carlos Bay Manatee Refuge results in the following changes:

- The portion of the channel from the Seaboard Coastline Railroad trestle at Beautiful Island, downstream to Channel Marker ''25'' changes from a 40 km per hour (25 mph) limit to seasonal slow speed in the marked navigation channel from November 15 to March 31, and not more than 40 kilometers (km) per hour (25 miles per hour (mph)) in the channel from April 1 to November 14.
- The portion of the channel 152 meters (500 feet) east and west of the Edison/ Caloosahatchee Bridge complex changes from 40 km per hour (25 mph) to slow speed year-round.
- Between the Edison/Caloosahatchee Bridge complex and Cape Coral Bridge, shoreline buffers approximate the existing shoreline protection configuration (*i.e.*, slow speed within 0.4 km (0.25 mile) but limits speeds between the buffers to not more than 40 km per hour (25 mph). However, this change also eliminates two unprotected shoreline areas along the north shore at and below the Edison/Caloosahatchee Bridge complex.

• The shore to shore, channel-included buffer, 152 meters (500 feet) east and west of Cape Coral Bridge changes from 40 km per hour (25 mph) year-round to slow speed year-round, channel excluded.

• Between the Cape Coral Bridge and the Shell Island Manatee Refuge, shoreline buffers approximate the existing shoreline protection configuration (*i.e.*, slow speed within 0.4 km (0.25 mile)) but limits speeds between the buffers to not more than 40 km per hour (25 mph). The exception to this is from Channel marker ''72'' to Channel marker ''76,'' where the slow speed zone runs from shoreline to shoreline.

• In San Carlos Bay, much of the area to the west of the Shell Island Manatee Refuge, south of the Intracoastal Waterway, north of the Sanibel Causeway, to a line extending southwest from Channel Marker ''7'', changes from unregulated to slow speed year-round. The exception to this is the navigation channel and adjacent waters, which extend from Channel Marker ''99'' to the Sanibel Causeway, and which remain unregulated.

Speed zones have been in existence in the Caloosahatchee River since 1979. Since 1989, almost all of the near-shore waters of the Caloosahatchee have been under a slow speed restriction year-round. The Caloosahatchee River Manatee Refuge affects approximately 25.8 km (16 river miles) overall. For the most part, the regulation expands existing slow speed zones in areas around the bridges, maintains or slightly expands shoreline buffers, and slows portions of the navigation channel.

In Duval, Clay, and St. Johns Counties, in the St. Johns River and tributaries (including Doctors Lake), the designation of the Lower St. Johns River Manatee Refuge results in the following changes from the current speed restrictions:

• In the downtown Jacksonville area, between Channel marker ''73'' and the Main Street Bridge, slow speed zones extend out to the channel from 91- to 274-meter (300- to 900-foot) shoreline buffers. The channel changes from unrestricted speed to a 40-km-per-hour (25-mph) limit.

• Between the Main Street Bridge and the Fuller Warren Bridge, slow speed shoreline buffers change from variable width, slow speed (currently variable width along the western and northern shore and 183 meters (600 feet) on the eastern shore) to bank-to-bank, slow speed (channel included).

• South of the Fuller Warren Bridge to the southern bank of the mouth of Julington Creek (St. Johns County) on the eastern shore and to the mouth of Peter's Creek (Clay County) along the western shore, slow speed shoreline buffers change from variable width (152 meters (500 feet) from shore or 61 meters (200 feet) from the end of docks) to between 213–305 meters (700–1,000 feet) as marked. Boat speed remains unregulated outside of the buffer.

• In Doctors Lake and Inlet, slow speed shoreline buffers extend from variable width (152 meters (500 feet) minimum or 61 meters (200 feet) beyond docks), to a 213–274 meter (700–900 feet) as marked buffer along both shorelines. Boat speed also remains unregulated outside of the buffer.

Overall, the Lower St. Johns River Manatee Refuge affects approximately 56 km (35 miles) of the St. Johns River and adjacent waters. In areas upstream of the Fuller Warren Bridge, newly protected areas extend existing slow speed areas out no more than an additional 152 meters (500 feet) but will approximate the existing shoreline buffer in many areas. Downstream of the Fuller Warren Bridge, shoreline buffers will be slightly extended from their variable widths to the channel. The greatest width of the shoreline buffer in this area is approximately 1.6 km (1 mile).

In Volusia County, for the Halifax and Tomoka Rivers Manatee Refuge including the Halifax River and tributaries (including Halifax Creek and the Tomoka River Complex), the Ponce Inlet area, and Indian River North, the final rule will result in the following changes from current speed restrictions:

• The channel in Halifax Creek changes to 40 km per hour (25 mph) from 48 km per hour (30 mph) (40 km per hour (25 mph) at night).

• An approximate 1.6-km (1-mile) reach of the Tomoka River downstream of I–95, where the speed restriction was 40 km per hour (25 mph), changes to a seasonal (April 1 to August 31) slow speed restriction.

• In the Halifax River from the Tomoka River Basin and the southern extent of Halifax Creek to 152 meters (500 feet) north of the Seabreeze Bridge (except in the vicinity of the Granada Bridge), the speed limit changes from 48 km per hour (30 mph) (40 km per hour (25 mph) at night) outside the buffer and in the marked navigation channel to 40 km per hour (25 mph).

• In the vicinity of the Granada Bridge (the SR 40 Bridge), the current shore-to-shore, channel-included buffer, 152 meters (500 feet) north and 305 meters (1,000 feet) south of the bridge, changes from a 91-meter (300-foot) slow speed buffer (48 km per hour (30 mph) outside of buffer) to slow speed.

• The area approximately 152 meters (500 feet) north of the Seabreeze Bridge to 152 meters (500 feet) north of the Main Street Bridge, changes from slow speed (channel included) excepting the watersports area, to slow speed (channel included) (including the watersports area) shoreline to shoreline.

• Between the shoreline buffers in the Halifax River from Channel Marker ''40'' south of the Seabreeze Bridge to a minimum of 152 meters (500 feet) north, as marked, of the Dunlawton Bridge, the speed limit changes from 48 km per hour (30 mph) (40 km per hour (25 mph) at night) outside the buffer and in the marked navigation channel to 40 km per hour (25 mph).

• The shore-to-shore, channel included buffer, a minimum of 152 meters (500 feet) north and south, as marked, of the Dunlawton Bridge would change from a 91-meter (300-foot) slow speed buffer 56 km per hour (35 mph outside of buffer) to slow speed. The adjacent western shoreline slow speed buffer north of the bridge increases from 30 meters (100 feet) to 91 meters (300 feet) for a distance of 640 meters (2,100 feet).

• Waters between the Dunlawton Bridge and Ponce Inlet will change from 48 km per hour (30 mph) to 40 km per hour (25 mph) where it is not more restrictively designated by existing regulation.

• Waters adjacent to Ponce Inlet change from variable zones with 48 km per hour (30 mph) within the channel to not more than 40 km per hour (25 mph) in waters not more restrictively designated.

• The Intracoastal Waterway (Indian River North) and adjacent waters from Redland Canal to the A1A Bridge (New Smyrna Beach) maintains the existing slow speed (channel included), year round, designation but eliminates the existing exception for the New Smyrna Beach watersports area.

Overall, the Halifax River and Tomoka River Manatee Refuge will affect approximately 58.2 km (36.1 miles) of Volusia County's waterways. The majority of the changes would include reducing the maximum speed limit, slowing boats around the bridges, and reducing or eliminating watersports zones. The overall impact of the changes would be to reduce the likelihood of take of manatees in areas where boats and manatees are most likely to interact and to reduce some of the complexity of the speed restrictions to be more consistent and clear and thus improve compliance.

In addition to speed zone changes, the rule no longer allows for the speed zone exemption process in place under State

regulations. Currently, Florida's Manatee Sanctuary Act allows the State to provide exemptions from speed zone requirements for certain activities, including fishing and events such as high-speed boat races. Under State law, commercial fishermen and professional fishing guides can apply for permits granting exemption from speed zone requirements in certain counties. However, speed zone exemptions have not been authorized in most of the areas affected by the rule. Speed zone exemption permits for commercial fishing and professional fishing guides are not available for affected areas in Duval County, coastal Volusia County, and in the Caloosahatchee River (except along a small portion of San Carlos Bay/Matlacha Pass, at the mouth of the river) (FWCC, 2003g). Exceptions to these final Federal speed zones will require a formal rulemaking (including publishing a proposed rule in the **Federal Register**, public review, and comment) prior to our making a final decision. Based on available information, very few events have been permitted to take place in the affected areas in the past 5 years (Service, 2003c; Lee County, 2003). Therefore, the lack of a process for speed zone exemptions is not likely to have much impact.

In order to gauge the economic effect of this rule, both benefits and costs must be considered. Potential economic benefits related to this rule include increased manatee protection and tourism related to manatee viewing, increased property values, increased boater safety, increased fisheries health, and decreased seawall maintenance costs. Potential economic costs are related to increased administrative activities related to implementing the rule and affected waterborne activities, as well as potential decreased property values. Economic costs are measured primarily by the number of recreationists who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. In addition, the rule may have some impact on commercial fishing because of the need to maintain slower speeds in some areas. While the State of Florida has 19,312 km (12,000 miles) of rivers and 1.21 million hectares (3 million acres) of lakes, this rule will affect approximately 141.6 km (87.8 river miles). The extension of slower speed zones in this rule is not expected to affect enough waterborne activity to create a significant economic impact (*i.e.*, an annual impact of over $100 million).

Economic Benefits

We believe that the designation of the three manatee refuges in this rule will increase the level of manatee protection in these areas. Two studies have examined the public's willingness to pay for protection of the manatee (Bendle and Bell, 1995; Fishkind & Associates, 1993). Based on these contingent valuation studies, we believe that there is large public support for manatee protection regulations.

It is difficult to apply the results of these studies to this rule, because neither study measures an impact similar to that associated with this rulemaking. For example, the Fishkind study was designed to gauge the economic impact of the Florida Manatee Sanctuary Act. First, the estimates of economic benefit are predicated on a different baseline in terms of both the manatee population being protected at that time versus now and the regulatory conditions in existence, such as current manatee protection areas. Second, the Fishkind study is not clear about the type and extent of manatee protection. The study does not clearly state if protection refers simply to the establishment of speed zones, or whether implementation and enforcement are included. Nor does the study clearly state whether residents are providing a willingness to pay for manatee protection for a specific region or for the entire manatee population in the State of Florida. While neither of these studies is specific enough to apply to this rule, they provide an indication that the public holds substantial value for the protection of the manatee.

Another potential economic benefit is increased tourism resulting from an increase in manatee protection. To the extent that some portion of Florida's tourism is due to the existence of the manatee in Florida waters, the protection provided by this rule may result in an economic benefit to the tourism industry. We are not able to make an estimate of this benefit given available information.

Florida waterfront property owners may benefit from manatee protection areas such as the three manatee refuges. Bell and McLean (1997) showed that speed zone enforcement may provide an economic benefit to adjacent landowners. Bell and McLean studied the impact of posted manatee speed zones on the property values of waterfront homes in Fort Lauderdale, Broward County, Florida. The authors found a strong relationship between property values and slow speed zones, and found evidence that slow speed zones may have a positive impact on home sale price. Slow speed zones were found to correlate with as much as a 15 to 20 percent increase in sale price, although this result has not been corroborated by other studies. The authors speculated that speed zones may increase property values by reducing noise and fast traffic, as well as making it easier for boats to enter and leave primary waterways. In each of the three manatee refuge areas there are stretches of river where residential property owners may experience these benefits.

In addition, due to reductions in boat wake associated with speed zones, property owners may experience some economic benefits related to decreased expenditures for maintenance and repair of shoreline stabilization structures (*i.e.*, seawalls along the water's edge). Speed reductions may also result in increased boater safety. Another potential benefit of slower speeds is that fisheries in these areas may be more productive because of less disturbance. These types of benefits cannot be quantified with available information.

Based on previous studies, we believe that this rule produces some economic benefits. However, given the lack of information available for estimating these benefits, the magnitude of these benefits is unknown.

Economic Costs

The economic impact of the designation of three manatee protection areas results from the fact, that in certain areas, boats are required to go slower than under current conditions. As discussed above, an extensive system of manatee speed zones promulgated by the State exists in each of the areas covered under this rule. The rule will add to these areas by extending shoreline buffers and reducing speed limits slightly in some channels. Some impacts may be felt by recreationists who have to use alternative sites for their activity or who have a reduced quality of the waterborne activity experience at the designated sites because of the rule. For example, the extra time required for anglers to reach fishing grounds could reduce onsite fishing time and could result in lower consumer surplus for the trip. Other impacts of the rule may be felt by commercial charter boat outfits, commercial fishermen, and agencies that perform administrative activities related to implementing the rule.

Affected Recreational Activities

For some boating recreationists, the inconvenience and extra time required to cross additional slow speed areas

may reduce the quality of the waterborne activity, or cause them to forgo the activity. This will manifest in a loss of consumer surplus to these recreationists. In addition, to the extent that recreationists forgo recreational activities, this could result in some regional economic impact. In this section, we examine the waterborne activities taking place in each area and the extent to which they may be affected by designation of the manatee refuges. The resulting potential economic impacts are discussed below for each manatee refuge area. These impacts cannot be quantified because the number of recreationists and anglers using the designated sites is not known.

Caloosahatchee River Area: In the Caloosahatchee River Manatee Refuge, affected waterborne activities include transiting, fishing, sailing, waterskiing, and personal watercraft use. The number of registered recreational vessels in Lee County in 2002 was 45,413 (Division of Highway Safety and Motor Vehicles, 2003). Based on aerial surveys and boat traffic surveys conducted in 1997 and 1998, the highest number of vessels observed on the Caloosahatchee River sites on a given day was 477 vessels. Based on aerial, boat traffic, and boater compliance surveys of the Caloosahatchee River, over 60 percent of vessels observed were small powerboats, while less than seven percent were personal watercraft (*e.g.*, jet skis) (Gorzelany, 1998). Waterskiing and personal watercraft use in the Caloosahatchee primarily occurs between the Caloosahatchee and Cape Coral Bridges (Lee County, 2003). Shell Point and Redfish Point are also popular access areas where personal watercraft use may be affected (FWCC, 2002). The Caloosahatchee River area is also a popular location for recreational guiding for snook and redfish fishing, particularly at night (FWCC, 2003c). The extra time required for anglers to reach fishing grounds could reduce onsite fishing time and could result in lower consumer surplus for the trip. The number of anglers on the Caloosahatchee, and their origins and destinations, are currently unknown. One study indicates that approximately 70 percent of the boat traffic on the Caloosahatchee originates from the Cape Coral Canal system (FWCC, 2002). Another boat traffic survey indicated that the majority of boat traffic exits the Caloosahatchee River in the morning and enters the river in the afternoon. The majority of vessels leaving the Caloosahatchee River travel south toward the Sanibel Causeway and Gulf of Mexico. Approximately 94 percent of vessel traffic on the Caloosahatchee was reported as ''traveling,'' while less than one percent was engaged in ''skiing'' based on boater compliance observations at 10 sites along the Caloosahatchee River (Gorzelany, 1998).

Based on these trends, it appears that most recreational waterborne activity on the Caloosahatchee River will be affected by the manatee refuge. While the designation will cause an increase in travel time, it is unlikely that the increase will be great enough to cause a significant economic dislocation. Much of the boat traffic on the Caloosahatchee likely originates from the Cape Coral Canal system (FWCC, 2002) and would experience added travel time of approximately 15 minutes (from Cape Coral Bridge to Sanibel Causeway) for a trip that currently lasts 50 minutes. At most, a boat traveling from Beautiful Island to the Sanibel Causeway will experience an estimated added travel time of 20 minutes to 35 minutes (depending on time of the year) due to the final designation; currently this trip would take approximately 1 and one-quarter hours.

The small percentage of recreational boaters using the river for waterskiing or personal watercraft use will choose either to go to alternative sites such as San Carlos Bay or Pine Island Sound or to forgo the activity. The amount of added travel time to get to an alternative site will depend on the origin of the trip and whether the trip originates from a dock or a ramp. For example, ramp users may choose to trailer their boats to a different location, closer to the alternative site, and may experience little added travel time. For dock users, under the rule, travel time on the Caloosahatchee from the Cape Coral Bridge to the Sanibel Causeway could be approximately 1 and one-quarter hours. The amount of added travel time and the expected quality of the experience will likely influence the recreationists' choice of whether to travel to an alternative site or forgo the activity. The number of recreationists who will use alternative sites or forgo recreational activities is unknown, but it is not expected to be a large enough number to result in a significant economic impact.

St. Johns River Area: In the Lower St. Johns River Manatee Refuge, the affected recreational waterborne activities are likely to include cruising, fishing, and waterskiing. Based on a survey of boat ramp users in Duval County, these three activities were the most popular reasons cited as the primary purpose of the trip. Recreational fishing was cited as the primary purpose by 62 percent of those surveyed, while cruising was cited by 19 percent and waterskiing was cited by 7 percent (Jacksonville University, 1999). The total number of recreational vessels registered in Duval, Clay, and St. Johns counties in 2002 is 57,388 (Division of Highway Safety and Motor Vehicles, 2003). The portion of these vessels using the St. Johns River area covered by the designation is unknown. Recreational fishing for bass, redfish, sea trout, croaker, and flounder, as well as shrimping with nets, are popular activities in the near-shore waters of the St. Johns River south of the Fuller Warren Bridge. Because the submerged aquatic vegetation near shore provides food, and docks provide protection, for the fish, this is where the fishing activity primarily takes place (FWCC, 2003c). Because recreational fishing is likely occurring primarily in existing slow speed areas, the extension of slow speed zones by not more than 152 meters (500 feet) further will not have a significant effect. Recreationists engaging in fishing or cruising are unlikely to experience much impact due to the regulation. The expanded/extended buffers are not expected to increase travel times by any more than about 8 minutes (one way). The designation will cause some inconvenience in travel time, but alternative sites within the proximity of designated areas are available for all waterborne activities. Because the designated areas are part of larger waterbodies where large areas remain unrestricted, the impact of the designation on recreational waterborne activities in the St. Johns River and adjacent waterbodies will be limited. Recreationists engaging in cruising, fishing, and waterskiing may experience some inconvenience by having to go slower or use undesignated areas; however, the extension of slow speed zones is not likely to result in a significant economic impact.

Halifax River and Tomoka River Area: In the Halifax River and Tomoka River Manatee Refuge, affected waterborne activities include fishing, traveling, cruising, waterskiing, and personal watercraft use. Based on a boating activity study that relied on a variety of survey mechanisms, the two most popular activities in the Intracoastal Waterway in Volusia County were recreational fishing and traveling (Volusia County Environmental Management Services, 1996). Recreationists engaging in fishing or traveling are unlikely to experience much impact due to the regulation. The two most popular destinations are the Mosquito Lagoon and the Ponce Inlet

area (Volusia County Environmental Management, 2002). Recreationists engaging in fishing or traveling may experience some inconvenience by having to go slower; however, small changes in boater behavior due to the extension of slow speed zones should not result in a significant economic impact.

For the Tomoka River, the primary activity affected by the designation is waterskiing. A ski club has used the river in an area currently designated at 40 km per hour (25 mph). This will change to slow speed for a portion of the year. The nearest alternative site where these recreationists can water ski is at least 11 to 16 km (7 to 10 miles) away (Volusia County, 2003). It is estimated that the on-the-water travel time for the skiers to reach the nearest alternative site could be up to 2½ hours. The regulation may cause some water skiers to forgo this activity, or may reduce the quality of their experience. The number of skiers that may be affected and the number of trips per year are not currently known. With additional information on the number of affected individuals, we could estimate the impact of lost or diminished skiing days given the value of a waterskiing day published in the literature. One study by Bergstrom and Cordell (1991) suggested the lost surplus value may be $38/day (2002$) for a day of waterskiing. They applied a multi-community, multi-site travel cost model to estimate demand for 37 outdoor recreational activities and trip values, including water skiing. The analysis was based on nationwide data from the Public Area Recreational Visitors Study collected between 1985 and 1987 and several secondary sources.

In the Halifax River, one of the activities that may be affected by the designation is personal watercraft (PWC) use. These activities are primarily taking place in the recreational zones located south of the Seabreeze Bridge and north of the Dunlawton Bridge. PWC likely represent a very small portion of vessels on the Intracoastal Waterway in Volusia County. Based on a boating activity study from 1994 to 1995, less than two percent of observations in the Intracoastal Waterway area were PWCs (based on 12,000 observations during aerial, boat ramp and shoreline, and mailing surveys) (Volusia County Environmental Management Services, 1996). The number of pleasure PWC in Volusia County in 2000 was 2,432, with 204 rental PWC (FWCC, 2000a). The nearest alternative site for using personal watercraft is near the Dunlawton Bridge, where an area remains unrestricted between the channel and the expanded shoreline buffer, or in the Ponce Inlet vicinity, approximately 20 km (12.5 miles) downriver. Under the rule, travel time from the Daytona Beach watersports area (south of Seabreeze Bridge) to the Ponce Inlet area would be approximately one hour. Added travel time to reach alternative sites would depend on the origin of the trip, which is currently unknown. The regulation may cause some personal watercraft users to forgo this activity, or may reduce the quality of their experience. The number of PWC users that may be affected and the number of trips per year are not currently known. To the extent that these recreationists choose to forgo the activity, this could also impact local businesses that rent personal watercraft.

Currently, not enough data are available to estimate the loss in consumer surplus that water skiers in the Tomoka River or PWC users in the Halifax River will experience. While some may use substitute sites, others may forgo the activity. The economic impact associated with these changes on demand for goods and services is not known. However, given the number of recreationists potentially affected, and the fact that alternative sites are available, it is not expected to amount to a significant economic impact.

Affected Commercial Charter Boat Activities

Various types of charter boats use the waterways in the affected counties, primarily for fishing and nature tours. The number of charter boats using the Caloosahatchee, Halifax, and St. Johns Rivers, and their origins and destinations, are currently unknown. For nature tours, the extension of slow speed zones is unlikely to cause a significant impact, because these boats are likely traveling at slow speeds. The extra time required for commercial charter boats to reach fishing grounds could reduce onsite fishing time and could result in fewer trips. The fishing activity is likely occurring at a slow speed and will not be affected. In the Caloosahatchee and St. Johns Rivers, fishing charters may experience some impact from the extension of slow speed zones, depending on their origins and destinations. Added travel time may affect the length of a trip, which could result in fewer trips overall, creating an economic impact. In the Halifax River, it is likely that most fishing charters are heading offshore or to the Mosquito Lagoon and will experience little impact from the rule (Volusia County, 2003).

Affected Commercial Fishing Activities

Several commercial fisheries may experience some impact due to the regulation. Specifically, the blue crab fishery and, to a lesser extent, mullet fishing, along the Caloosahatchee River; the crab and shrimp industries in the St. Johns River; and the crab and mullet fishing industries in Volusia County may experience some economic impact. To the extent that the regulation establishes additional speed zones in commercial fishing areas, this may increase the time spent on the fishing activity, affecting the efficiency of commercial fishing. While limited data are available to address the size of the commercial fishing industry in the manatee refuges, county-level data generally provide an upper bound estimate of the size of the industry and potential economic impact. This section first provides some background on the blue crab industry in Florida, and then addresses the impact of the rule on the commercial fishing industry for each manatee refuge area.

One industry in particular that may be affected by the rule is the blue crab fishery, which represents a sizeable industry in the State of Florida. Based on a study done for the Florida Fish and Wildlife Commission, Division of Marine Fisheries (Murphy *et al.*, 2001), between 1986 and 2000 the average annual catch statewide was 6.4 million kilograms (14.1 million pounds) (39.7 million crabs). However, year to year fluctuation is significant, including highs of 8.2 million kilograms (18 million pounds) statewide in 1987 and 1996 and a low of 2.5 million kilograms (5.5 million pounds) statewide in 1991. In the last 3 years, blue crab landings have been depressed throughout the East Coast and Gulf of Mexico, though specific reasons for this are unknown at this time (FWCC, 2003d). Landings in 2001 were approximately 3.4 million kilograms (7.4 million pounds) statewide. Based on a 2001 weighted average price of $1.06 per 0.5 kilograms (pound) of crab, this represents just under $8 million (FWCC: FMRI, 2003). Data from 2001 on marine fisheries landings from FWCC: FMRI is preliminary and subject to revision.

Caloosahatchee River Area: Lee County, where the Caloosahatchee River Manatee Refuge is located, had 157 licensed blue crab boat operators in 2001 (FWCC: FMRI, 2003). Crabbing in the Caloosahatchee is likely to be minimally impacted by limited extension of slow speed areas. In slow speed areas crab boats have to travel at slower speeds between crab pots, thereby potentially reducing the number

of crabs landed on a daily basis. For example, to the extent that crab boat operators frequently change fish pot locations in search of optimal fishing grounds, this activity could be slightly affected by extension of some existing slow speed zones (FWCC, 2003a).

In 2001, blue crab landings in Lee County were 175,805 kilograms (387,585 pounds), and the weighted average price was $1.06 per 0.5 kilograms (pound) for blue crab statewide. The entire value of the blue crab fishery in Lee County is estimated to be $411,167 (FWCC: FMRI, 2003). Only a very small portion of this value is likely to be affected, as the activity will still occur but with some limited changes due to additional speed zones. In addition, this figure includes landings for all of Lee County. The number of crab boats operating and the amount of blue crab landings occurring in areas that would be newly designated speed zones under this rule is unknown. Crabbing likely occurs in parts of Lee County outside of the Caloosahatchee River, including Charlotte Harbor, San Carlos Bay, Estero Bay, etc. (FWCC, 2003e). The county-wide figures provide an upper bound estimate of the economic impact on this fishery; this would assume that the regulation closed down the entire fishery, which is not the case.

In Lee County, commercial mullet fishing is also occurring in the Caloosahatchee River Manatee Refuge area. These fishermen may also be impacted by slower commuting times from boat launch (e.g., dock or ramp) to fishing grounds. However, fishing activity associated with mullet fishing generally includes slow net casting within a relatively small geographic area (FWCC, 2003e). Therefore, speed limits are likely to have a very limited effect on mullet fishing. In 2001, based on mullet landings in Lee County of 997,903 kilograms (2.2 million pounds), and the weighted average price of $0.66 for mullet statewide, the value of the mullet fishery in Lee County is estimated to be $1.4 million (FWCC: FMRI, 2003). Only a very small portion of these values is likely to be affected, as the activity will still occur but with some changes due to additional speed zones. In addition, this figure includes landings for all of Lee County. The amount of mullet fishing occurring in areas that would be newly designated speed zones under this rule is unknown.

St. Johns River Area: In the Lower St. Johns River Manatee Refuge, most of which is in Duval County, current commercial fishing can be divided into activity south and north of the Fuller Warren Bridge. Commercial fishing north (*i.e.*, downstream) of the bridge consists primarily of shrimping, while commercial fishing activity south of the bridge consists primarily of blue crab fishing. Commercial net shrimping is not allowed south of the Fuller Warren Bridge (Jacksonville Port Authority, 2003).

Commercial blue crab fishing occurs both north and south of the Fuller Warren Bridge. Crab fishing is likely to be impacted by the manatee refuge. The extension of the shoreline buffer zone may impact fishing operations because the majority of crabbing activity takes place in the submerged aquatic vegetation, which is located along the immediate shoreline (FWCC, 2003b). Therefore, when crabbers enter and exit these shoreline areas, they will be required to travel slowly (*i.e.*, 6.4 to 12.9 km per hour (4 to 8 mph)) for not more than 152 additional meters (500 feet) (incremental to the existing variable width shoreline buffer). In addition, travel between pots within the buffer will also be slowed, thereby potentially reducing the number of crabs landed on a daily basis. However, once outside the shoreline buffer, boats can travel up to 40 km per hour (25 mph) in areas downstream of the Fuller Warren Bridge, and at unrestricted speeds upstream.

There were 61 commercial licences for blue crab issued in Duval County in 2001 (FWCC: FMRI, 2003). In 2001, based on blue crab landings in Duval County of 506,401 pounds, and the weighted average price of $1.06 per 0.5 kilogram (pound) for blue crab statewide, the value of the blue crab fishery in Duval County is estimated to be $537,213 (FWCC: FMRI, 2003). Only a small portion of this value is likely to be affected, as the activity will still occur but with some changes due to additional speed zones. In addition, this figure includes landings for all of Duval County. The number of crab boats operating and the amount of blue crab landings occurring in areas that are newly designated speed zones under this rule is unknown. The county-wide figures provide an upper bound estimate of the economic impact on this fishery; this would assume that the regulation closed down the entire fishery, which is not the case.

Commercial shrimping north of the Fuller Warren Bridge in the St. Johns River is likely to receive minimal impact due to the extension of year-round slow speed areas outside of the marked channels. Impacts to this industry are likely to be minimal because shrimp boats tend to trawl at a slow speed. Nonetheless, shrimp boats will still be required to travel at slower speeds between fishing grounds, thereby potentially increasing the time it takes to access fishing areas and reducing shrimp landed on a daily basis (Jacksonville Port Authority, 2003).

The majority of commercial shrimping activity in the St. Johns River occurs between the mouth of Trout River and the Fuller Warren Bridge, which approaches the northern limit of the St. Johns Manatee Refuge (Jacksonville Port Authority, 2003). Commercial shrimping activity in Duval County also occurs along the Nassau River, which represents the border between Duval and Nassau County, and, to a lesser extent, along the Intracoastal Waterway (FWCC, 2003f). Shrimp landings in Clay County are negligible, based on the fact that commercial shrimping is not allowed upriver of the Fuller Warren Bridge. Shrimp landings in St. Johns County most likely represent activity along the Intracoastal Waterway and not in the St. Johns River area. While some limited commercial bait shrimping occurs along this stretch of river, the vast majority of commercial shrimping in this area is related to the harvest of shrimp for food production (FWCC, 2003e). In 2001, based on shrimp landings in Duval County of 997,903 kilograms (2.2 million pounds), and the weighted average price of $2.33 for shrimp statewide, the value of the shrimp fishery in Duval County is estimated to be about $5.2 million (FWCC: FMRI, 2003). Less than one percent of commercial shrimp landings in 2001 in Duval County are related to bait shrimp (FWCC: FMRI, 2003); therefore, these figures represent only food shrimp harvest. Only a small portion of this value is likely to be affected, as the activity will still occur but with some changes due to additional speed zones. In addition, this figure includes landings for all of Duval County. The number of shrimp boats operating and the amount of shrimp landings occurring in areas that would be newly designated speed zones under this rule is unknown. The county-wide figures provide an upper bound estimate of the economic impact on this fishery; this would assume that the regulation closed down the entire fishery, which is not the case.

Halifax River and Tomoka River Area: In Volusia County, the Halifax River and Tomoka River Manatee Refuge includes a variety of waterways, including the Tomoka River, the Tomoka Basin, Halifax Creek, and the Halifax River. In these areas, it is likely that blue crab and mullet fishing activities will be impacted by the speed zones. As discussed above for Lee County, crab boats will have to travel at slower

speeds in some locations between crab pots, thereby potentially reducing the number of crabs landed on a daily basis. The speed limits may also slow transit speeds between fishing grounds for both crab and mullet fishing boats. As noted above, mullet fishing activity generally includes slow net casting and, therefore, such activities are unlikely to receive much impact. Note also that along the Halifax River, a corridor is available for boats to travel up to 25 mph. The manatee refuge area along the Halifax River stretches from the Flagler-Volusia County line in Halifax Creek past the Ponce de Leon Inlet to the South Causeway Bridge (New Smyrna Beach), a distance of approximately 43.5 km (27 miles). The waterbody ranges from 0.5 km (0.3 miles) to just over 1.6 km (1 mile) in width. The manatee refuge also includes tributaries and river basins of varying length and width. The number of fishing boats operating and the amount of blue crab and mullet landings occurring in areas that are newly designated speed zones under this rule is unknown.

There were 128 licensed blue crab operators in Volusia County in 2001. In 2001, based on blue crab landings in Volusia County of 230,577 kilograms (508,337 pounds), and the weighted average price of $1.06 for blue crab statewide, the value of the blue crab fishery in Volusia County is estimated to be $539,266 (FWCC: FMRI, 2003). In 2001, based on mullet landings in Volusia County of 188,675 kilograms (415,958 pounds), and the weighted average price of $0.66 for mullet statewide, the value of the mullet fishery in Volusia County is estimated to be $272,591 (FWCC: FMRI, 2003). Only a very small portion of these values is likely to be affected, as the crabbing and fishing activities will still occur but with some changes due to additional speed zones. In addition, crabbing and mullet fishing occur in parts of Volusia County outside of the manatee refuge area, including Mosquito Lagoon, St. Johns River, Lake George, etc. (Ponce Inlet Authority, 2003). The county-wide figures provide an upper bound estimate of the economic impact on these fisheries; this would assume that the regulation closed down the entire fishery, which is not the case.

Given available data, the impact on the commercial fishing industry of extending slow speed zones in portions of the Caloosahatchee, St. Johns, and Halifax Rivers cannot be quantified. The designation will likely affect commercial fishermen by way of added travel time, which may result in an economic impact. However, because the manatee refuge designations will not prohibit any commercial fishing activity, and because there is a corridor available for boats to travel up to 40 km per hour (25 mph) in most affected areas, it is unlikely that the rule will result in a significant economic impact on the commercial fishing industry. It is important to note that in 2001, the total annual value of potentially affected fisheries is approximately $8.3 million (2001$); this figure represents the economic impact on commercial fisheries in these counties in the unlikely event that the fisheries would be entirely shut down, which is not the situation associated with this rule.

Agency Administrative Costs

The cost of implementing the rule has been estimated based on historical expenditures by the Service for manatee refuges and sanctuaries established previously. The Service expects to spend approximately $600,000 (2002$) for posting and signing 15 previously designated manatee protection areas. This represents the amount that the Service will pay contractors for creation and installation of manatee signs. While the number and location of signs needed to post the manatee refuges is not known, the cost of manufacturing and posting signs to delineate the manatee refuges in this rule is not expected to exceed the amount being spent to post previously designated manatee protection areas (Service, 2003a). In addition, the Service anticipates that it will spend $1.7 million (2002$) for enforcement of newly designated manatee refuges annually. These costs are overstated because they represent the cost of enforcing 13 new manatee refuges and sanctuaries designated earlier on November 8, 2002, as well as the 3 manatee refuges included in this rule. The costs of enforcement include hiring and training five new law enforcement agents and two special agents, and the associated training, equipment, upkeep, and clerical support (Service, 2003b). Finally, there may be some costs for education and outreach to inform the public about these new manatee refuge areas.

While the State of Florida has 19,312 km (12,000 miles) of rivers and 1.21 hectares (3 million acres) of lakes, the rule will affect approximately 156 kilometers (97 river miles). The speed restrictions on approximately 156 km (97 miles) of manatee refuges in this rule will cause inconvenience due to added travel time for recreationists and commercial charter boats and fishermen. As a result, the rule will impact the quality of waterborne activity experiences for some recreationists, and may lead some recreationists to forgo the activity. The extension of existing State speed zones for 156 km (97 miles) is not expected to affect waterborne activity to the extent that it would have a significant economic impact. The rule does not prohibit recreationists from participating in any activities. Alternative sites are available for all waterborne activities that may be affected by this rule. The distance that recreationists may have to travel to reach an un-designated area varies. Water skiers in the Tomoka River will likely experience the greatest inconvenience in terms of added travel time, as travel by water to the nearest alternative site could take approximately 2½ hours depending on time of year. The regulation will likely impact some portion of the charter boat and commercial fishing industries in these areas as well. The inconvenience of having to go somewhat slower in some areas may result in changes to commercial and recreational behavior, resulting in some regional economic impacts. Given available information, the net economic impact of designating the three manatee refuges is not expected to be significant (*i.e.*, an annual economic impact of over $100 million). While the level of economic benefits that may be attributable to the manatee refuges is unknown, these benefits would cause a reduction in the economic impact of the rule.

b. The precedent to establish manatee protection areas has been established primarily by State and local governments in Florida. We recognize the important role of State and local partners and continue to support and encourage State and local measures to improve manatee protection. We are designating areas where existing State and local designations are considered minimal protection and where existing designations are confusing and/or unenforceable.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restriction to existing human uses of the sites would result from this rule, but the restriction is believed to enhance manatee viewing opportunities. No entitlements, grants, user fees, loan programs or effects on the rights and obligations of their recipients are expected to occur.

d. This rule does not raise novel legal or policy issues. We have previously established other manatee protection areas.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

In order to determine whether the rule will have a significant economic effect on a substantial number of small entities, we utilize available information on the industries most likely to be affected by the designation of three manatee refuges. Currently no information is available on the specific number of small entities that are potentially affected. This rule will add travel time to boating recreationist's and commercial activities resulting from extension of existing speed zones. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic effect on small entities resulting from changes in recreational use patterns will not be significant. The economic effects on small business resulting from this rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 40 km per hour (25 mph) in most areas, we believe that any economic effect on small commercial fishing or charter boat entities will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

In order to determine whether small entities will be affected significantly, we examined county-level earnings data. We compared personal income data for the counties potentially affected to statewide averages to provide some background information about each county's economic situation. Because specific information about earnings of small entities potentially affected (both the total level and the amount of earnings potentially affected by the rule) is not available, we examined county-level earnings for industries potentially impacted by the designation. We further analyzed county business patterns data to examine the numbers of establishments in the affected counties that have a small number of employees. As stated above, economic impacts are believed to be minor and mostly will not interfere with the existing operation of small businesses in the affected counties.

Selected economic characteristics of the five affected counties are shown in Table 1. As demonstrated in the table, all counties except St. Johns have a lower per capita income than the State average. Growth in total personal income is slower than the statewide average in Duval, Lee, and Volusia Counties. St. Johns County greatly exceeds the statewide average in growth in both total and per capita personal income. For all five counties, the services sector represents the industry with the greatest earnings. The proportion of industry earnings attributable to amusement and recreation (a subcategory of the services industry potentially impacted by the rule) was relatively low for each county, ranging from one to five percent of total industry earnings. As a result, a small impact to the recreation sector is unlikely to have a significant effect on county-level income. Similarly, the proportion of industry earnings related to the fishing sector was less than 0.2 percent for each county. Thus, a small impact to the fishing sector is unlikely to adversely affect county-level income.

TABLE 1.—ECONOMIC CHARACTERISTICS OF THE FIVE AFFECTED COUNTIES IN FLORIDA—2000

Counties	Per capita personal income 2000 ($)	10-year annual growth of per capita income [a] (percent)	Total personal income 2000 (000$)	10-year annual growth of total personal income [a] (percent)	Total earnings by industry—all industries (000$)	Amusement and recreation industry earnings		Fishing industry earnings	
						Thousands of dollars	Percent of total	Thousands of dollars	Percent of total
Clay	25,421	3.8	3,601,576	8.4	1,225,569	18,565	1.5	73	0.01
Duval	27,084	4.1	21,118,751	6.3	19,916,074	194,900	1.0	3,440	0.02
Lee	26,655	3.0	11,833,528	7.0	6,379,956	106,875	1.7	10,619	0.17
St. Johns	40,635	7.7	5,057,864	15.9	1,553,900	82,280	5.3	581	0.04
Volusia	22,574	3.6	10,046,808	6.2	4,748,268	128,280	2.7	([b])	na
State of Florida	27,764	4.0	445,739,968	7.2	282,260,357	5,392,786	1.9	85,609	0.03

Source: Bureau of Economic Analysis (BEA), Regional Economic Information System, Regional Accounts Data, Local Area Personal Income (*http://www.bea.doc.gov/bea/regional/reis/*).

[a]Growth rates were calculated from 1990 and 2000 personal income data.

[b]BEA has withheld this information in order to avoid disclosure of confidential information.

The employment characteristics of the five affected counties are shown in Table 2. The latest available published data for the total number of establishments broken down by industry and county are from 1997. We included the following SIC (Standard Industrial Classification) categories, because they include businesses most likely to be directly affected by the designation of the manatee refuges:

- Fishing, hunting, trapping (SIC 09)
- Water transportation (SIC 44)
- Miscellaneous retail (SIC 59)
- Amusement and recreation services (SIC 79)
- Non-classifiable establishments (NCE)

TABLE 2.—EMPLOYMENT CHARACTERISTICS OF THE FIVE AFFECTED COUNTIES IN FLORIDA—1997

(Includes SIC Codes 09, 44, 59, 79, and NCE[a])

Counties	Total Mid-March employment[b] (all industries)	Mid-March employment[b] (select SIC codes)	Total establishments (all industries)	Select SIC Codes (Includes SIC Codes 09, 44, 59, 79, and NCE[a])				
				Total establishments	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19 employees)	Number of establishments (20+ employees)
Clay	28,106	1,940	2,747	255	158	48	30	19
Duval	361,302	14,459	21,016	1,510	877	330	164	139
Lee	135,300	7,734	11,386	974	602	193	92	87
St. Johns	33,173	1,971	3,127	273	177	58	24	14
Volusia	127,948	7,116	10,716	989	643	188	73	85

Source: U.S. Census County Business Patterns (*http://www.census.gov/epcd/cbp/view/cbpview.html*).

[a] Descriptions of the SIC codes included in this table as follows:
SIC 09—Fishing, hunting, and trapping
SIC 44—Water transportation
SIC 59—Miscellaneous retail service division.
SIC 79—Amusement and recreation services
NCE—non-classifiable establishments division

[b] Table provides the high-end estimate whenever the Census provides a range of mid-March employment figures for select counties and SIC codes.

As shown in Table 2, the vast majority (over 80 percent) of these business establishments in each of the five affected counties have less than ten employees, with the largest number of establishments employing less than four employees. In addition, in 1997, only four to seven percent of total mid-March employment for industries in the affected counties was in the industries likely to be affected by the rule. Any economic impacts associated with this rule will affect some proportion of these small entities.

Since the designation is for the development of manatee refuges, which only require a reduction in speed, we do not believe the designation would cause significant economic effect on small businesses. For example, because the manatee refuge designations will not prohibit any commercial fishing activity, and because there is a route available for boats to travel at up to 40 km per hour (25 mph) in most areas, it is unlikely that the rule will result in a significant economic impact on commercial fishing entities. Currently available information does not allow us to quantify the number of small business entities such as charter boats or commercial fishing entities that may incur direct economic impacts due to the inconvenience of added travel times resulting from the rule. An examination of county level information indicates that these economic impacts will not be significant for the affected counties. Based on an analysis of public comment, further refinement of the impact on small entities may be possible. In addition, the inconvenience of slow speed zones may cause some recreationists to change their behavior, which may cause some loss of income to some small businesses. The number of recreationists that will change their behavior, and how their behavior will change, is unknown; therefore, the impact on potentially affected small business entities cannot be quantified. However, because boaters will experience only minimal added travel time in most affected areas, we believe that this designation will not cause a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5. U.S.C. 804 (2). This rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this rule may cause some inconvenience in the form of added travel time for recreationists and commercial fishing and charter boat businesses because of speed restrictions in manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the five affected counties. An unknown portion of the establishments shown in Table 2 could be affected by this rule. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic impact on small entities resulting from changes in recreational use patterns will not be significant. The economic impacts on small business resulting from this rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 40 km per hour (25 mph) in most areas, we believe that any economic impact on small commercial fishing or charter boat entities will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this rule. The recreational charter boat and commercial fishing industries may be affected by lower speed limits for some areas when traveling to and from fishing grounds. However, because of the availability of 40-km-per-hour (25-mph) routes in most areas, this impact is likely to be limited.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to recreationists due to added travel time, but the resulting economic impacts are believed to be minor and will not interfere with the normal operation of businesses in the affected counties.

Added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to proceed at slow or idle speeds in less than 11.2 km (7 miles) of waterways in Florida, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges imposes no substantial new obligations on State or local governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The manatee protection areas are located over State-or privately-owned submerged bottoms. Any property owners in the vicinity will have navigational access to and the wherewithal to maintain their property.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. We coordinated with the State of Florida to the extent possible on the development of this rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The regulation would not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment has been prepared and is available for review upon request by writing to the Field Supervisor (*see* **ADDRESSES** section).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

References Cited

A complete list of all references cited in this rule is available upon request from the Jacksonville Field Office (*see* **ADDRESSES** section).

Author

The primary authors of this document are Stefanie Barrett, James Valade, Peter Benjamin, Kalani Cairns, and David Hankla (*see* **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

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 follows:

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 § 17.108 by adding paragraphs (c)(12) through (c)(14) as follows:

§ 17.108 List of designated manatee protection areas.

* * * * *

(c) * * *

(12) *The Caloosahatchee River—San Carlos Bay Manatee Refuge.*

(i) The Caloosahatchee River—San Carlos Bay Manatee Refuge is described as all waters of the Caloosahatchee River and San Carlos Bay downstream of the Seaboard Coastline trestle at Beautiful Island to Channel Marker ''93'' and from Channel Marker ''99'' to the Sanibel Causeway, in Lee County. A map showing the refuge and four maps showing specific areas in the refuge are at paragraph (12)(x) of this section.

(ii) From the Seaboard Coastline Railroad trestle at Beautiful Island, downstream to Channel Marker ''25'', a distance of approximately 1.6 kilometers (1 mile), watercraft are required to proceed at slow speed in the marked navigation channel from November 15 to March 31 and at not more than 40 kilometers per hour (km/h) (25 miles per hour) in the channel from April 1 to November 14. See map of ''Edison Bridge Area'' in paragraph (12)(x) of this section.

(iii) From a point 152 meters (500 feet) east of the Edison Bridge downstream to a point 152 meters (500 feet) west of the Caloosahatchee Bridge, approximately 1.1 kilometers (0.7 mile) in length, shoreline-to-shoreline (including the marked navigation channel), watercraft are required to proceed at slow speed (channel included), year-round. See map of ''Edison Bridge Area'' in paragraph (12)(x) of this section.

(iv) From a point 152 meters (500 feet) west of the Caloosahatchee Bridge downstream to a point 152 meters (500 feet) northeast of the Cape Coral Bridge, a distance of approximately 10.9 kilometers (6.8 miles), watercraft are required to proceed year-round at slow speed, while traveling within shoreline buffers extending out from the shore to a minimum distance of approximately

402 meters (1,320 feet), as marked. Watercraft, with the exception of seaplanes, are required to proceed at not more than 40 km/h (25 miles per hour) throughout the year between these buffers (including the marked navigation channel where not more restrictively designated). See map of ''Cape Coral Bridge Area'' in paragraph (12)(x) of this section.

(v) From a point 152 meters (500 feet) northeast of the Cape Coral Bridge downstream to a point 152 meters (500 feet) southwest of the Cape Coral Bridge, a distance of approximately 0.4 kilometer (0.25 mile), shoreline-to-shoreline (excluding the marked navigation channel), watercraft are required to proceed at slow speed, year-round. In the marked navigation channel, watercraft are required to proceed at not more than 40 km/h (25 miles per hour) throughout the year. See map of ''Cape Coral Bridge Area'' in paragraph (12)(x) of this section.

(vi) From a point 152 meters (500 feet) southwest of the Cape Coral Bridge to Channel Marker ''72,'' a distance of approximately 1.9 kilometers (1.2 miles), watercraft are required to proceed year-round at slow speed, while traveling within shoreline buffers extending out from the shore to a minimum distance of approximately 402 meters (1,320 feet), as marked. Watercraft are required to proceed at not more than 40 km/h (25 miles per hour) throughout the year between these buffers (including the marked navigation channel where not more restrictively designated). See map of ''Redfish Point Area'' in paragraph (12)(x) of this section.

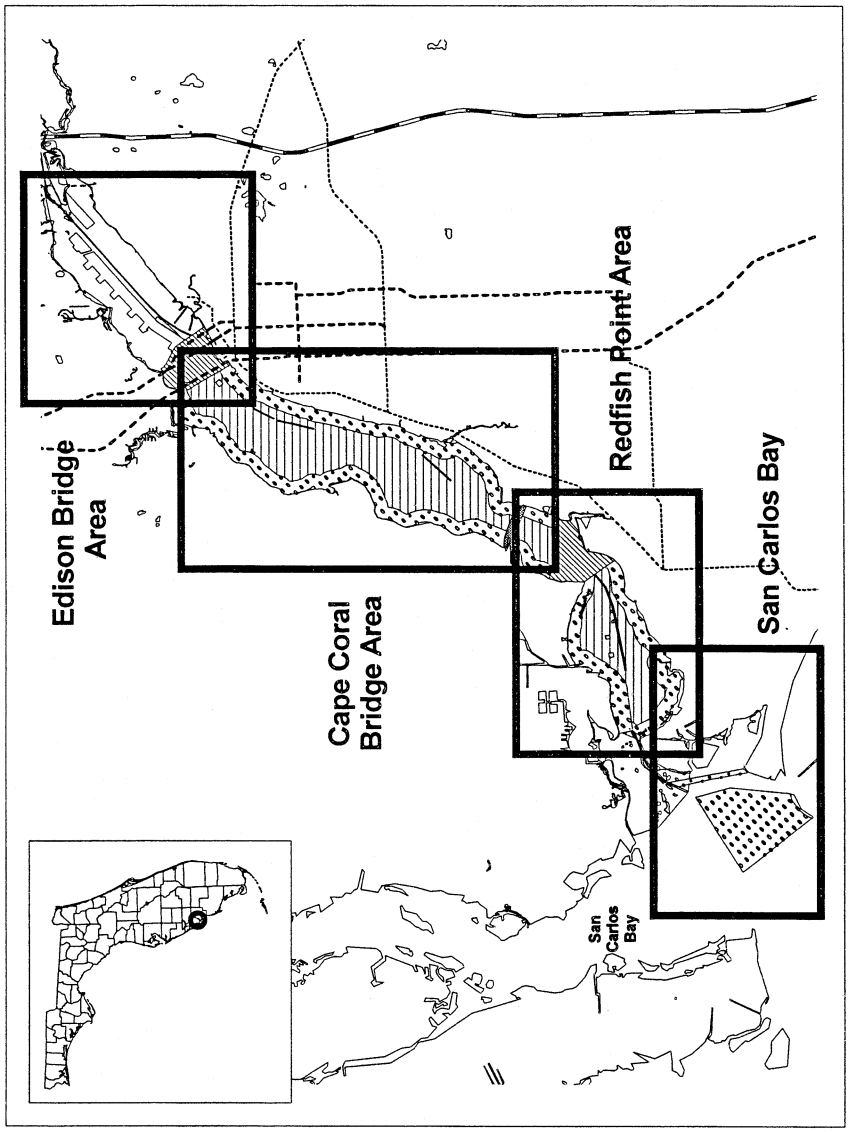
(vii) From Channel Marker ''72'' to Channel Marker ''76'' (in the vicinity of Redfish Point), for a distance of approximately 1.8 kilometers (1.1 miles) in length, shoreline-to-shoreline (including the marked navigation channel), watercraft are required to proceed at slow speed, year-round. See map of ''Redfish Point Area'' in paragraph (12)(x) of this section.

(viii) From Channel Marker ''76'' to Channel Marker ''93,'' a distance of approximately 5.2 kilometers (3.2 miles) in length, watercraft are required to proceed year-round at slow speed, while traveling within shoreline buffers extending out from the shore to a minimum distance of approximately 402 meters (1,320 feet), as marked. Watercraft are required to proceed at not more than 40 km/h (25 miles per hour) throughout the year between these buffers (including the marked navigation channel where not more restrictively designated). See map of ''Redfish Point Area'' in paragraph (12)(x) of this section.

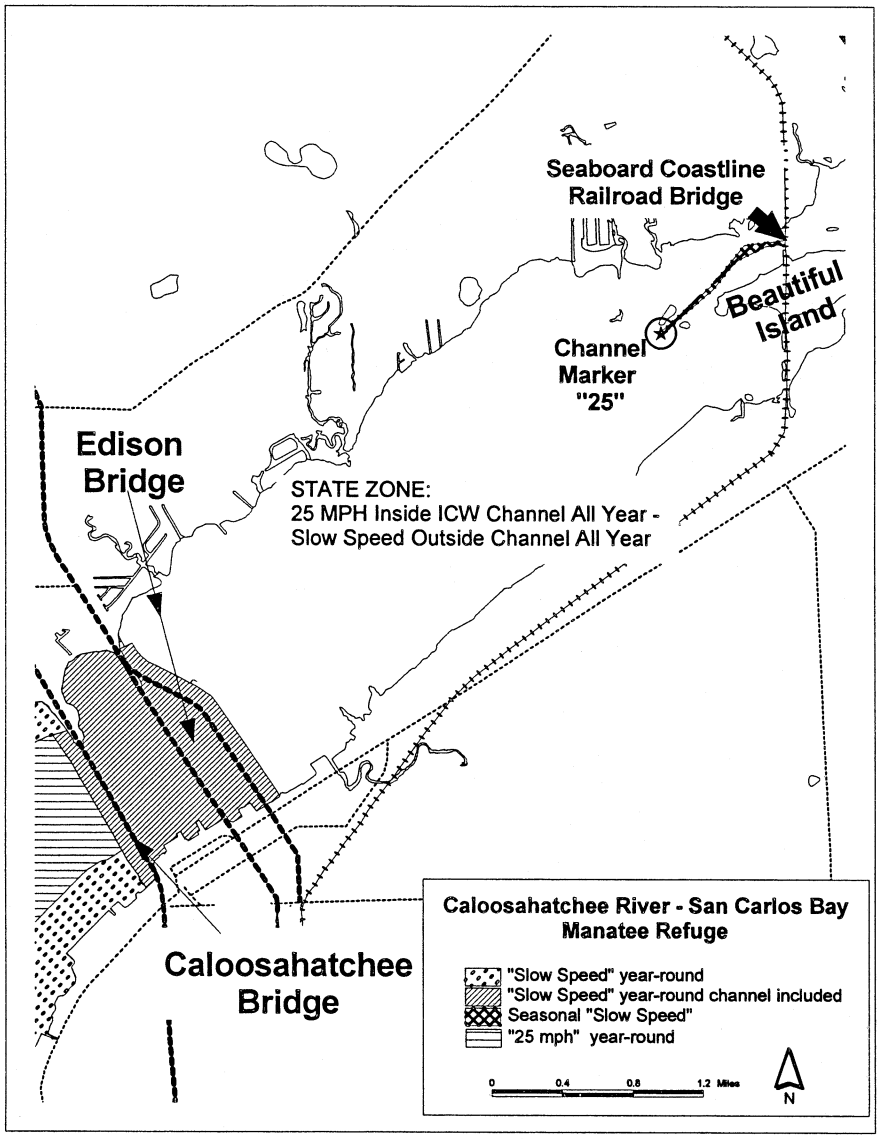
(ix) Except as described below and as marked, from Channel Marker ''99'' to the Sanibel Causeway, watercraft are required to proceed at slow speed year-round in San Carlos Bay within the following limits: A northern boundary described by the southern edge of the marked navigation channel, a line approximately 2.9 kilometers (1.8 miles) in length; a southern boundary described by the Sanibel Causeway (approximately 1.9 kilometers (1.2 miles) in length); a western boundary described by a line that connects the western end of the easternmost Sanibel Causeway island and extending northwest to Channel Marker ''7'' (approximately 2.9 kilometers (1.8 miles) in length); and the eastern boundary includes the western limit of the State-designated manatee protection area (68C–22.005) near Punta Rassa (approximately 2.9 kilometers (1.8 miles) in length). However this area excludes the marked navigation channel from Channel Marker ''99'' to the Sanibel Causeway and adjacent waters, as marked. See map of ''San Carlos Bay'' in paragraph (12)(x) of this section.

(x) Five maps of the Caloosahatchee River—San Carlos Bay Manatee Refuge follow:

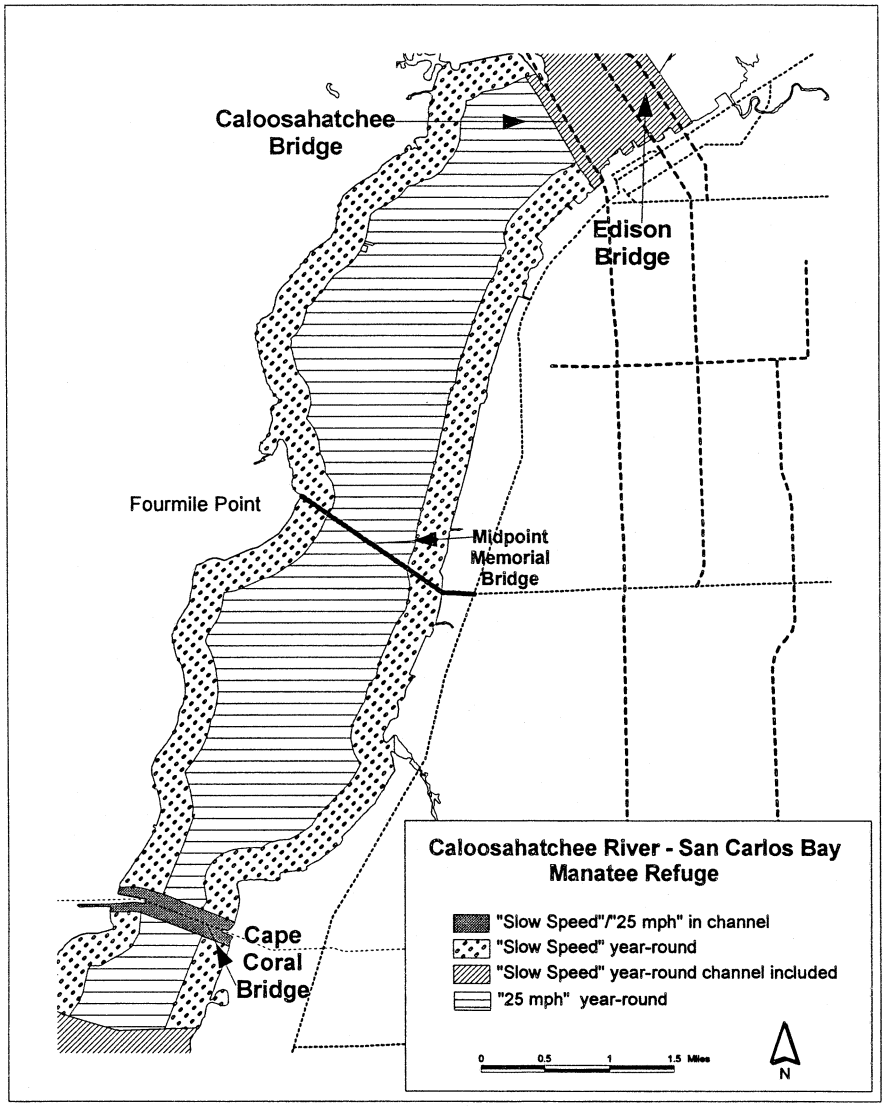
BILLING CODE 4310-55-P



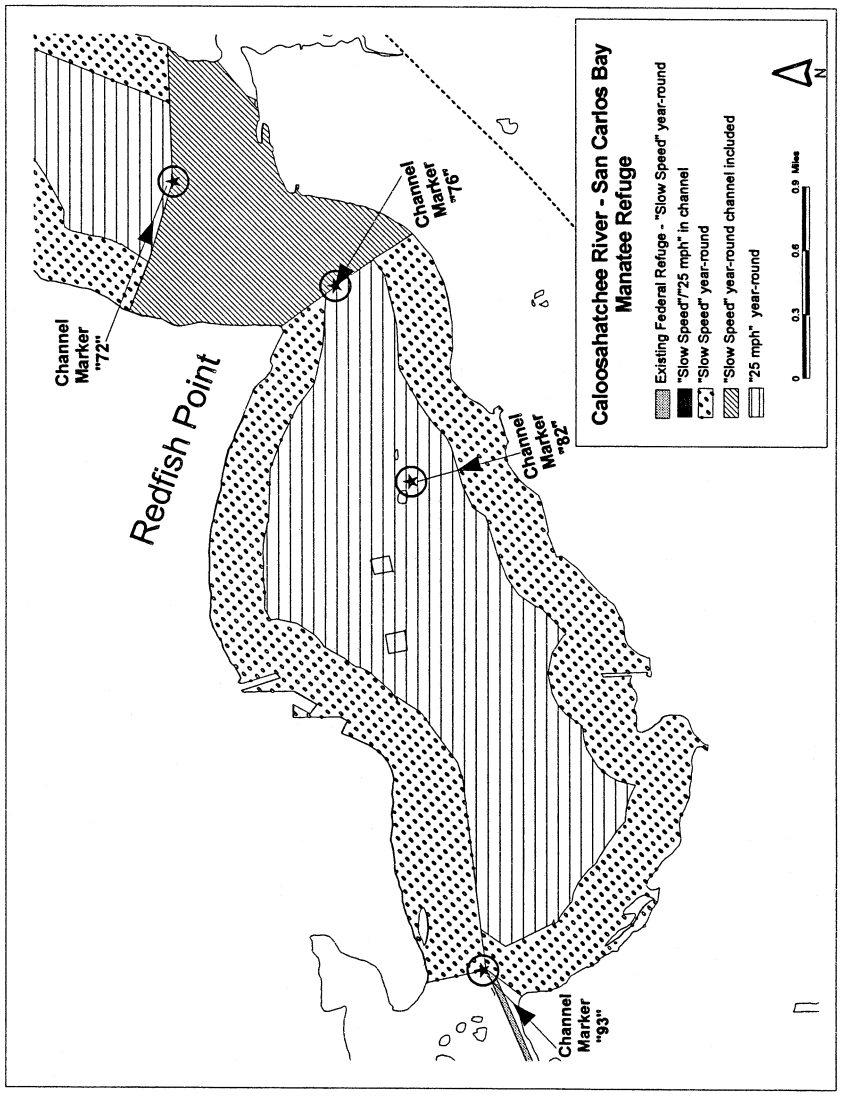
Caloosahatchee River - San Carlos Bay Manatee Refuge



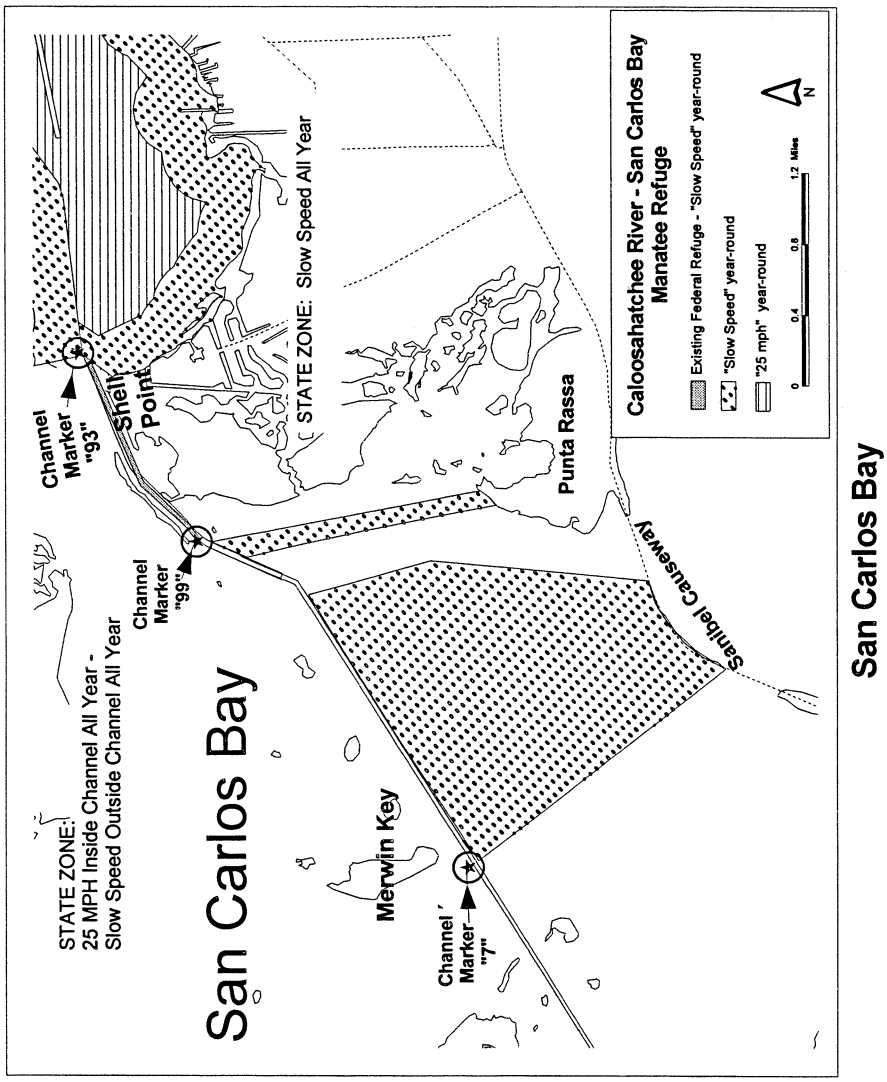
Edison Bridge Area



Cape Coral Bridge Area



Redfish Point Area



BILLING CODE 4310–55–C

(13) *The Lower St. Johns River Manatee Refuge.*

(i) The Lower St. Johns River Manatee Refuge is described as portions of the St. Johns River and adjacent waters in Duval, Clay, and St. Johns Counties from approximately Channel Marker ''73'', as marked, upstream to the mouth of Peter's Branch, including Doctors Lake, in Clay County on the western shore, and to the southern shore of the mouth of Julington Creek in St. Johns County on the eastern shore. A map showing the refuge and two maps showing specific areas of the refuge are at paragraph (13)(v) of this section.

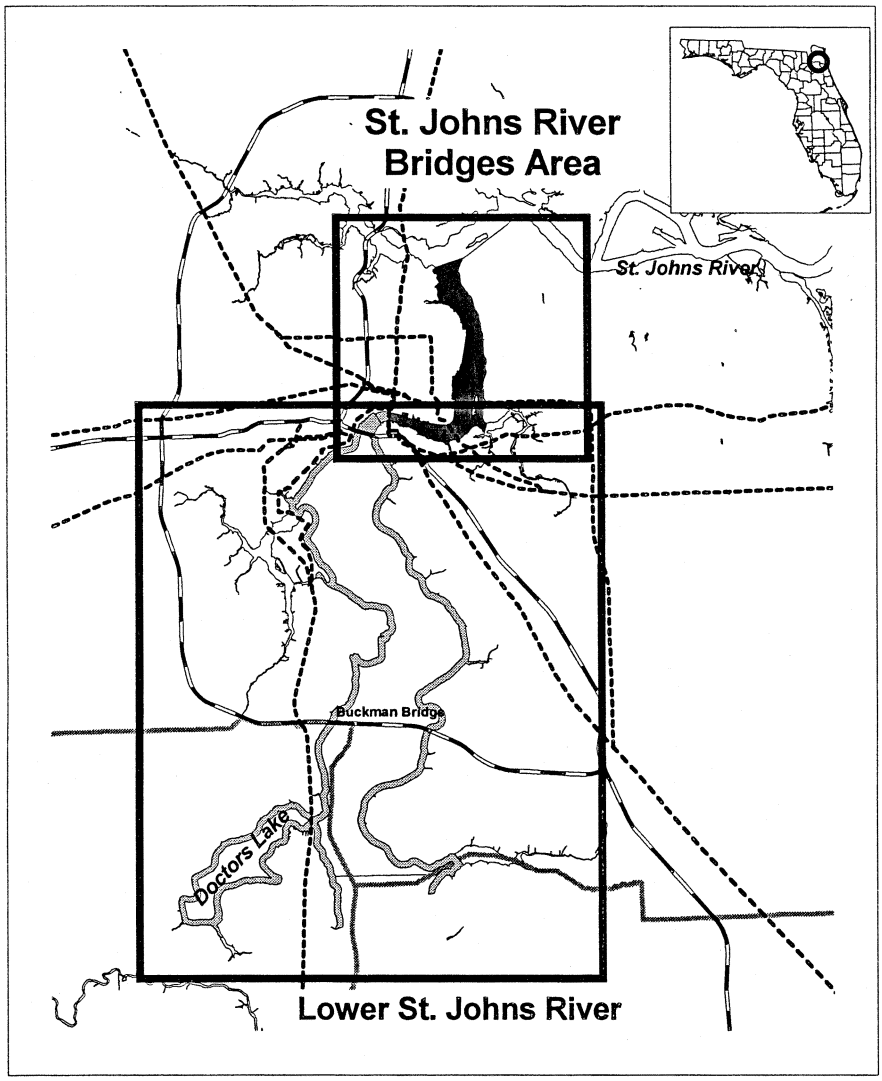
(ii) From Channel Marker ''73'' upstream to the Main Street Bridge, a distance of approximately 16.8 kilometers (or 10.4 miles), watercraft are required to proceed at slow speed, year-round, outside the marked navigation channel and at speeds of not more than 40 km/h (25 miles per hour) in the marked channel (from Channel Marker ''81'' to the Main Street Bridge, the channel is defined as the line of sight extending west from Channel Markers ''81'' and ''82'' to the fenders of the Main Street Bridge). See map of ''St. Johns River Bridges Area'' in paragraph (13)(v) of this section.

(iii) From the Main Street Bridge to the Fuller Warren Bridge, a distance of approximately 1.6 kilometers (1.0 mile), shoreline to shoreline, watercraft are required to proceed at slow speed (channel included), year-round. See map of ''St. Johns River Bridges Area'' in paragraph (13)(v) of this section.

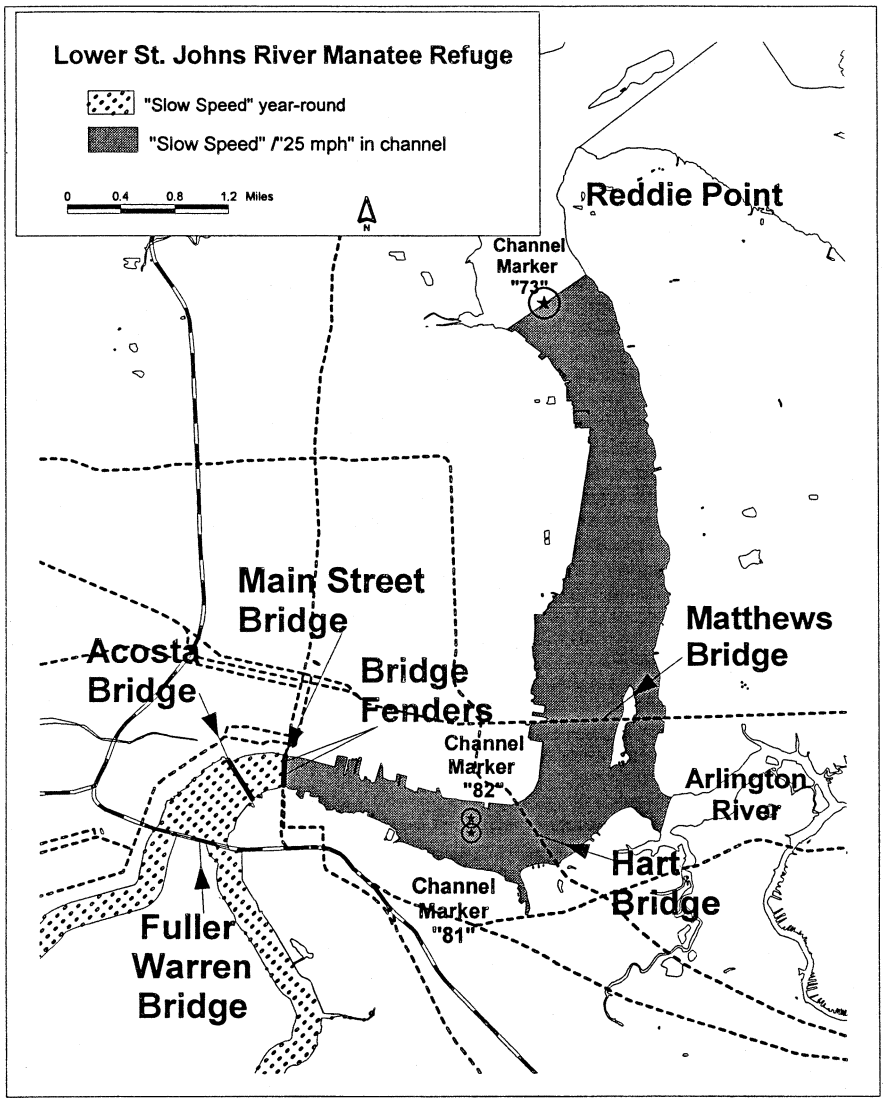
(iv) Upstream of the Fuller Warren Bridge, a 213-meter (700-foot) to 305-meter (1,000-foot) as-marked, watercraft are required to proceed at slow speed, year-round, shoreline buffer to the south bank of the mouth of Peter's Branch in Clay County along the western shore (approximately 31.1 kilometers (19.3 miles)); and in Doctors Lake in Clay County, watercraft are required to proceed at slow speed, year-round, along a 213-meter (700-foot) to 274-meter (900-foot) as-marked, shoreline buffer (approximately 20.8 kilometers (12.9 miles)); and a 213-meter (700-foot) to 305-meter (1,000-foot) as-marked, watercraft are required to proceed at slow speed, year-round, shoreline buffer to the south bank of the mouth of Julington Creek in St. Johns County along the eastern shore (approximately 32.5 kilometers (20.2 miles)) to a line north of a western extension of the Nature's Hammock Road North. See map of ''Lower St. Johns River'' in paragraph (13)(v) of this section.

(v) Three maps of the Lower St. Johns River Manatee Refuge follow:

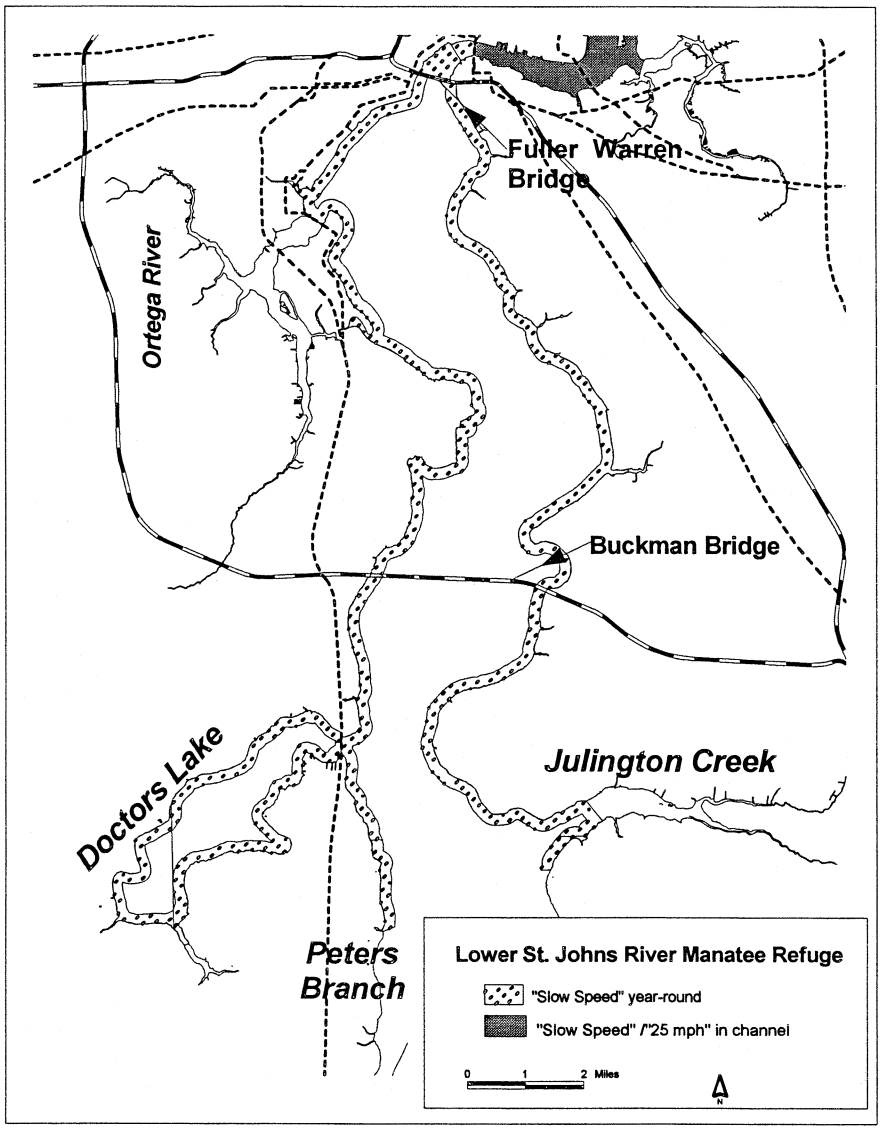
BILLING CODE 4310–55–P



Lower St. Johns River Manatee Refuge



St. Johns River Bridges Area



Lower St. Johns River

BILLING CODE 4310–55–C

(14) *The Halifax and Tomoka Rivers Manatee Refuge.*

(i) The Halifax and Tomoka Rivers Manatee Refuge is described as the Halifax River and associated waterbodies in Volusia County, from the Volusia County—Flagler County line to New Smyrna Beach. A map showing the refuge and eight maps showing specific areas in the refuge are at paragraph (14) (xii) of this section.

(ii) From the Volusia County—Flagler County line at Halifax Creek south to Channel Marker ''9,'' a distance of approximately 11.3 kilometers (7.0 miles) in length, watercraft are required to proceed at not more than 40 km/h (km/h)(25 miles per hour) in the channel. See maps of ''Halifax Creek'' and ''Tomoka River Basin'' in paragraph (14) (xii) of this section.

(iii) From Channel Marker ''9'' to a point 152 meters (500 feet) north of the Granada Bridge (State Road 40) (including the Tomoka Basin), a distance of approximately 5.0 km (3.1 miles) in length, watercraft are required to proceed at not more than 40 km/h (25 mph) in areas between the existing 91-meter (300-foot) buffers (and including the marked navigation channel). See maps of ''Tomoka River Basin'' and ''Tomoka River'' in paragraph (14) (xii) of this section.

(iv) In the Tomoka River, from the I–95 Bridge to Alligator Island, as marked, a distance of approximately 1.6 kilometers (1 mile), watercraft are required to proceed at slow speed, shoreline to shoreline, from April 1 to August 31. See map of ''Tomoka River'' in paragraph (14) (xii) of this section.

(v) From 152 meters (500 feet) north to 305 meters (1,000 feet) south of the Granada Bridge (State Road 40), a distance of approximately 0.5 kilometers (0.3 miles) in length, watercraft are required to proceed at slow speed, year-round, shoreline to shoreline. See map of ''Halifax River A'' in paragraph (14) (xii) of this section.

(vi) From a point 305 meters (1,000 feet) south of the Granada Bridge (State Road 40) to a point 152 meters (500 feet) north of the Seabreeze Bridge, a distance of approximately 6.4 km (4.0 miles) in length, watercraft are required to proceed at not more than 40 km/h (25 mph) in areas between the existing 91-meter (300-foot) buffers (and including the marked navigation channel). See map of ''Halifax River A'' in paragraph (14) (xii) of this section.

(vii) As marked, from 152 meters (500 feet) north of the Seabreeze Bridge, to 152 meters (500 feet) north of the Main Street bridge, a distance of approximately 1 kilometer (1 mile) in length, watercraft are required to proceed at slow speed (channel included), year-round. See map of ''Halifax River B'' in paragraph (14) (xii) of this section.

(viii) From Channel Marker ''40'' to a point a minimum of 152 meters (500 feet) north, as marked, of the Dunlawton Bridge, a distance of approximately 14.5 kilometers (9 miles) in length, watercraft are required to proceed at not more than 40 km/h (25 mph) in areas between the existing 91-meter (300-foot) buffers (and including the marked navigation channel). See map of ''Halifax River B'' in paragraph (14) (xii) of this section.

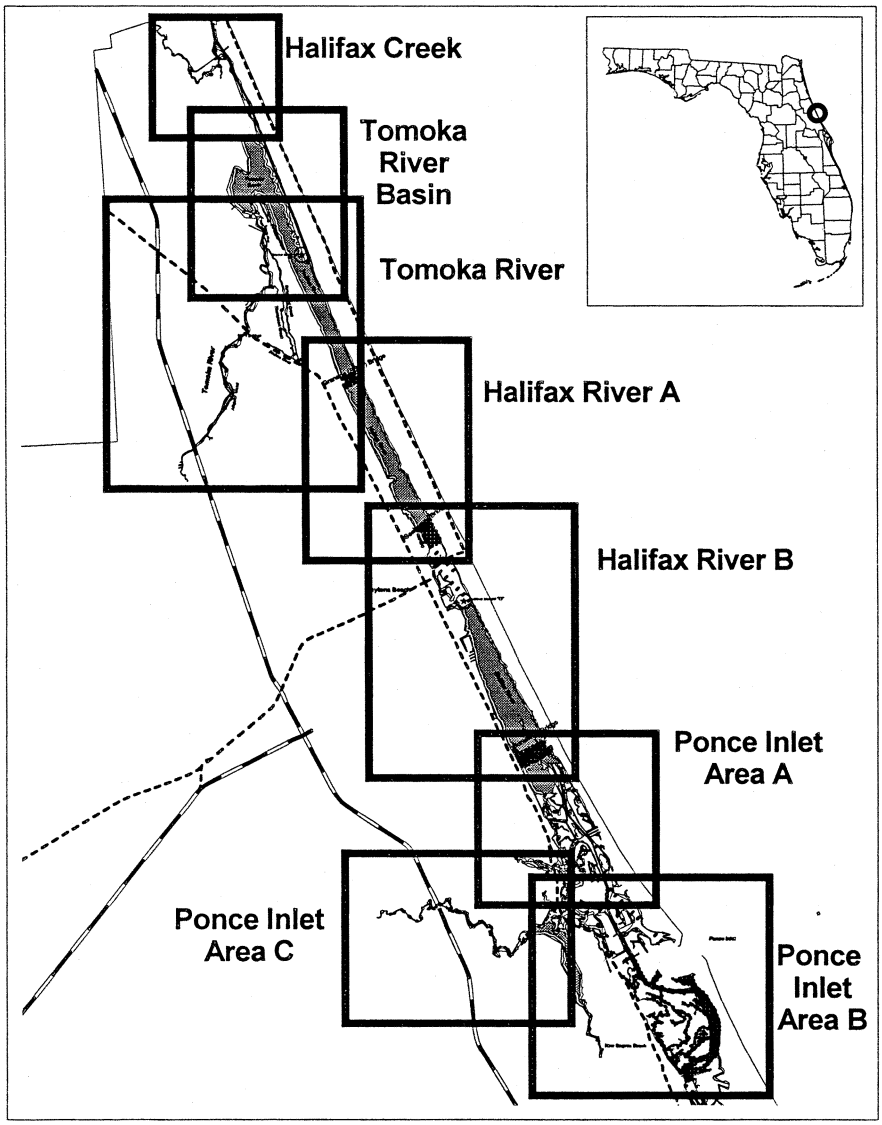
(ix) As marked, a minimum of 152 meters (500 feet) north to 152 meters (500 feet) south of the Dunlawton Bridge, a distance of approximately 0.3 kilometers (0.2 miles) in length, watercraft are required to proceed at slow speed (channel included), year-round, shoreline to shoreline; and adjacent to the western shoreline of the Halifax River north of the Dunlawton Bridge for a distance of approximately 640 meters (2,100 feet), and a minimum of 91 meters (300 feet) from shore, as marked, watercraft are required to proceed at slow speed, year-round. See map of ''Halifax River B'' in paragraph (14) (xii) of this section.

(x) As marked, from a minimum of 152 meters (500 feet) south of the Dunlawton Bridge to Redland Canal, a distance of approximately 10.5 kilometers (6.5 miles) in length, watercraft are required to proceed at not more than 40 km/h (25 mph) in waters not more restrictively designated; along the western shore of the Halifax River, a distance of approximately 3.1 km (1.95 miles), watercraft are required to proceed at not more than 40 km/h (25 mph) in the waters not more restrictively designated; in Rose Bay, a distance of approximately 2.7 km (1.7 miles), watercraft are required to proceed at not more than 40 km/h (25 mph) in waters not more restrictively designated; in Turnbull Bay, a distance of approximately 3.9 km (2.4 miles), watercraft are required to proceed at not more than 40 km/h (25 mph) in waters not more restrictively designated. See maps of ''Ponce Inlet Area A,'' ''Ponce Inlet Area B,'' and ''Ponce Inlet Area C'' in paragraph (14) (xii) of this section.

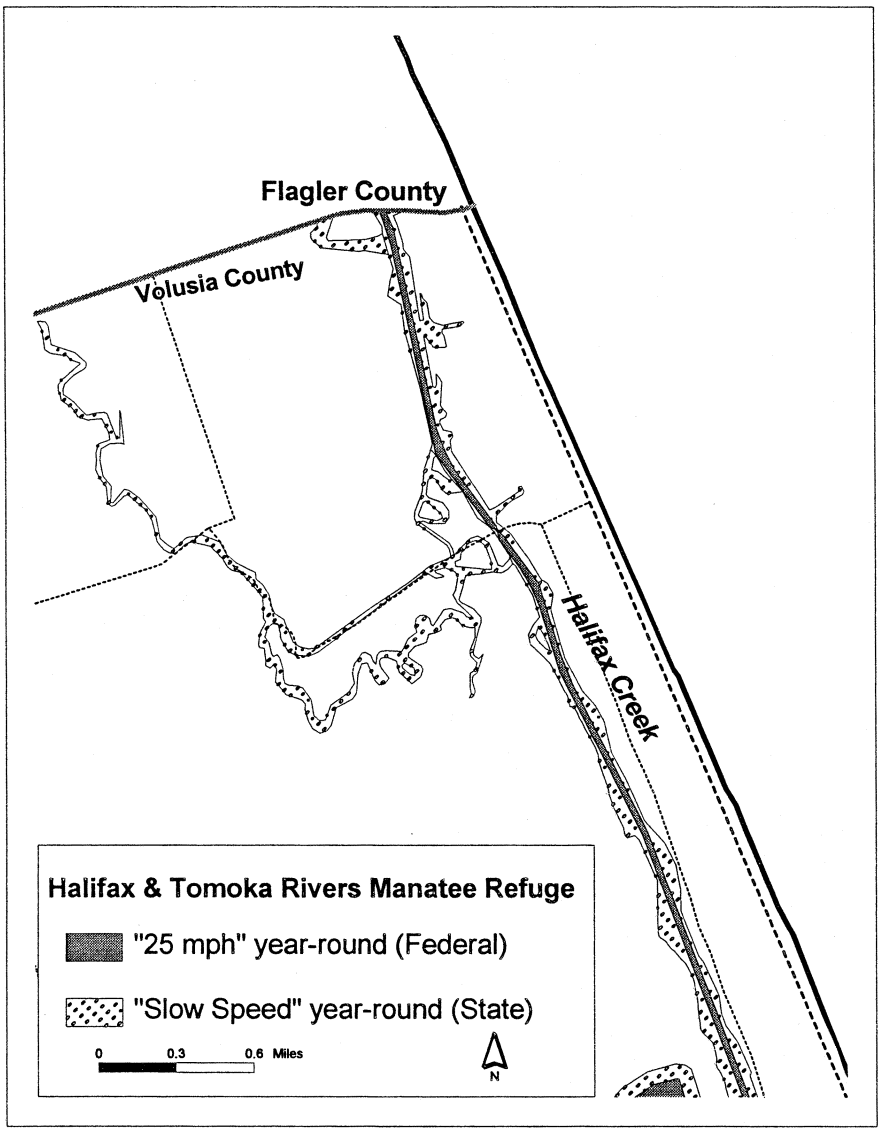
(xi) As marked, in the Intracoastal Waterway and adjacent waters from Redland Canal to the A1A Bridge (New Smyrna Beach, for a distance of approximately 5.3 kilometers (3.3 miles) in length, watercraft are required to proceed at slow speed (channel included), year-round. See map of ''Ponce Inlet Area B'' in paragraph (14) (xii) of this section.

(xii) Nine maps of the Halifax and Tomoka Rivers Manatee Refuge follow:

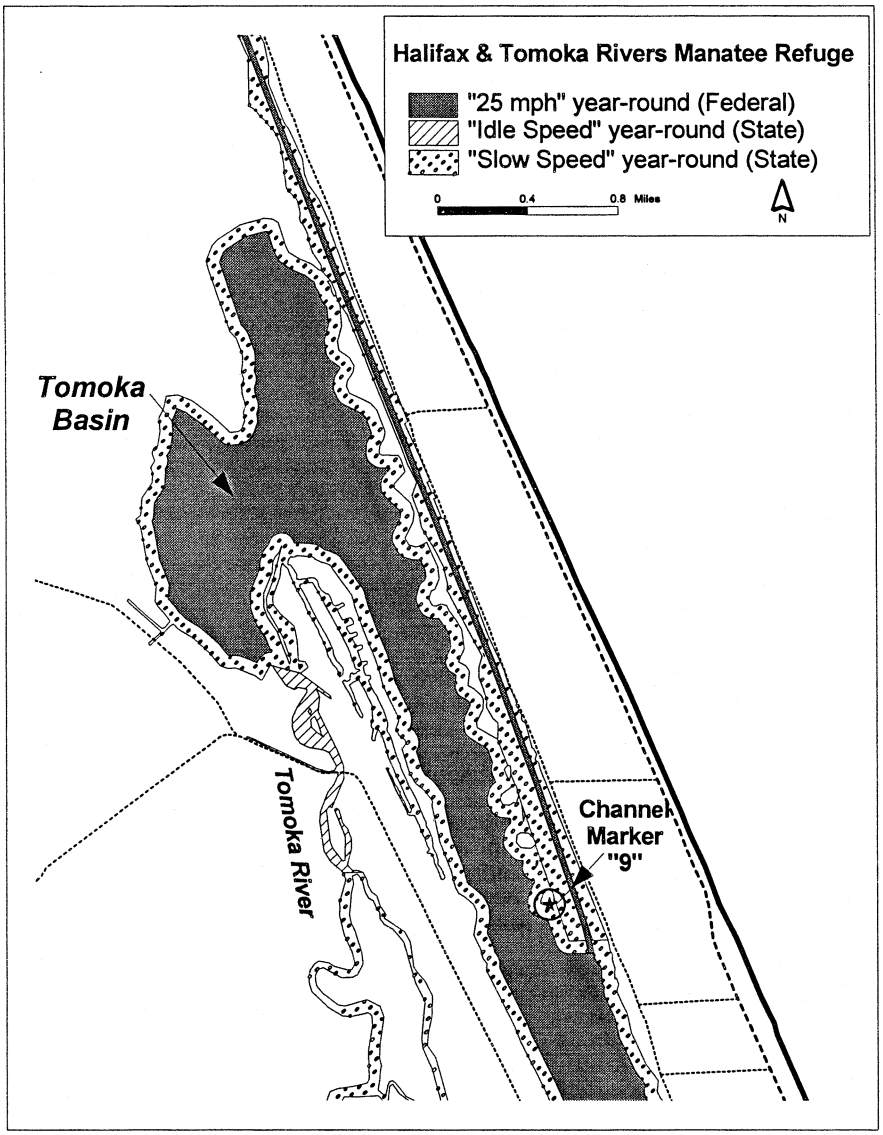
BILLING CODE 4310–55–P



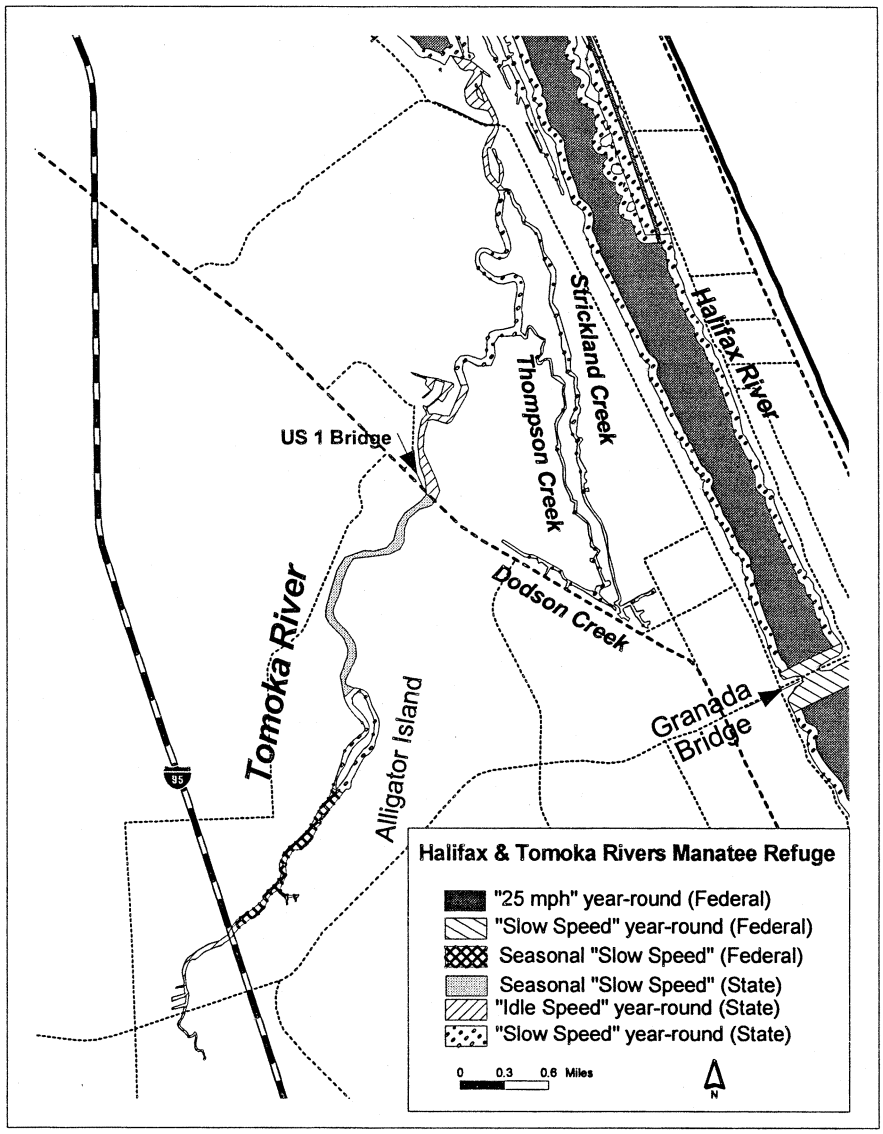
Halifax & Tomoka Rivers Manatee Refuge



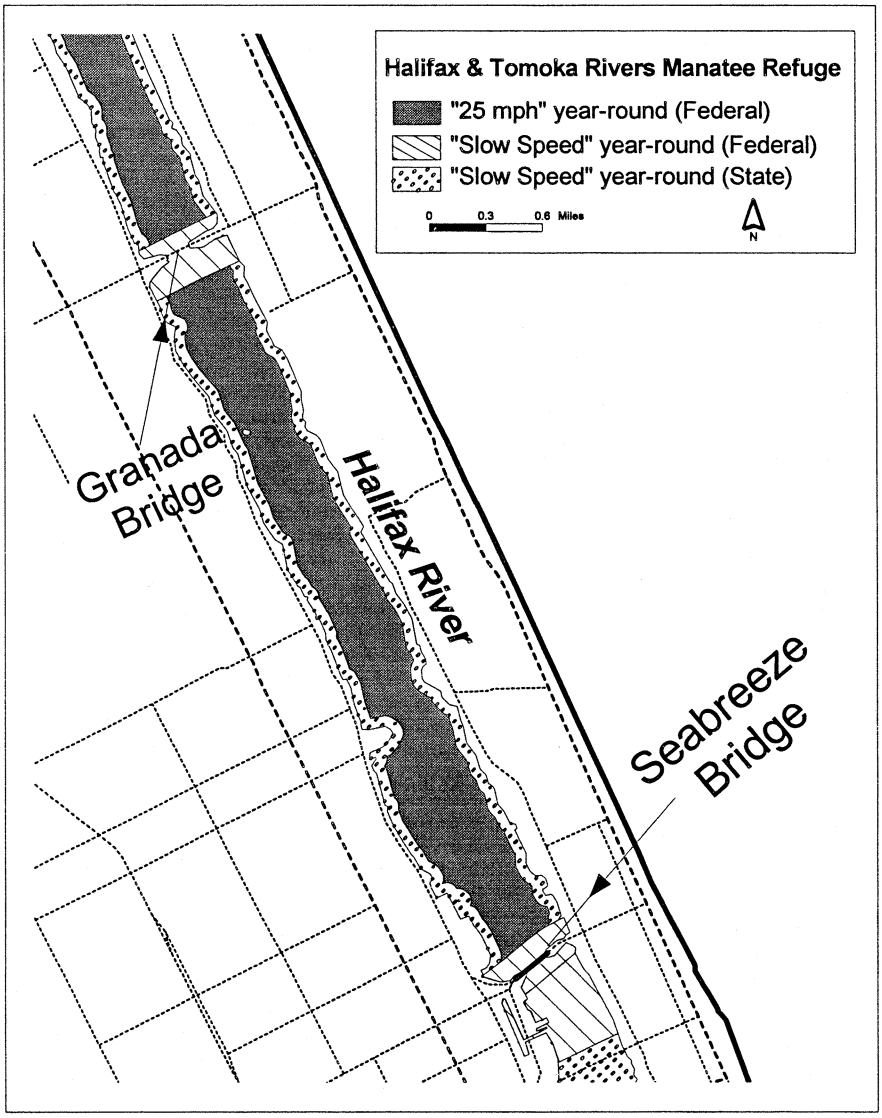
Halifax Creek



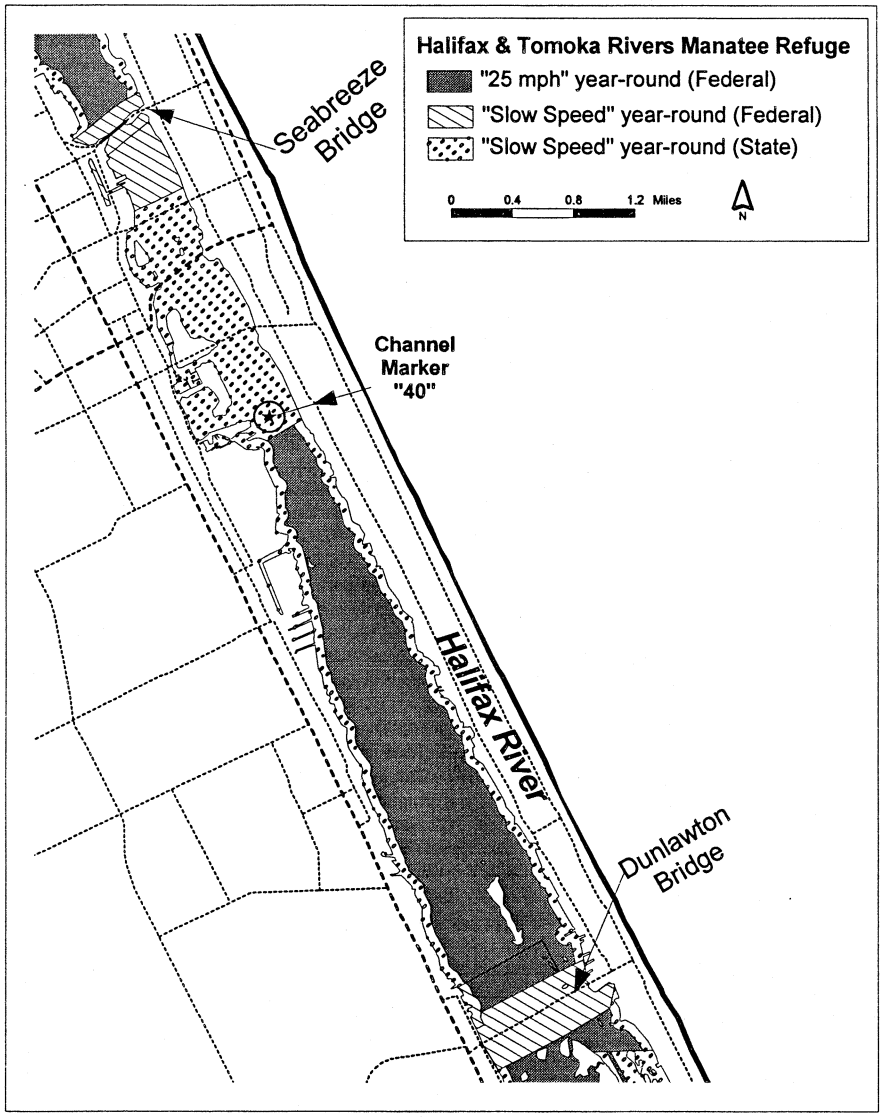
Tomoka River Basin



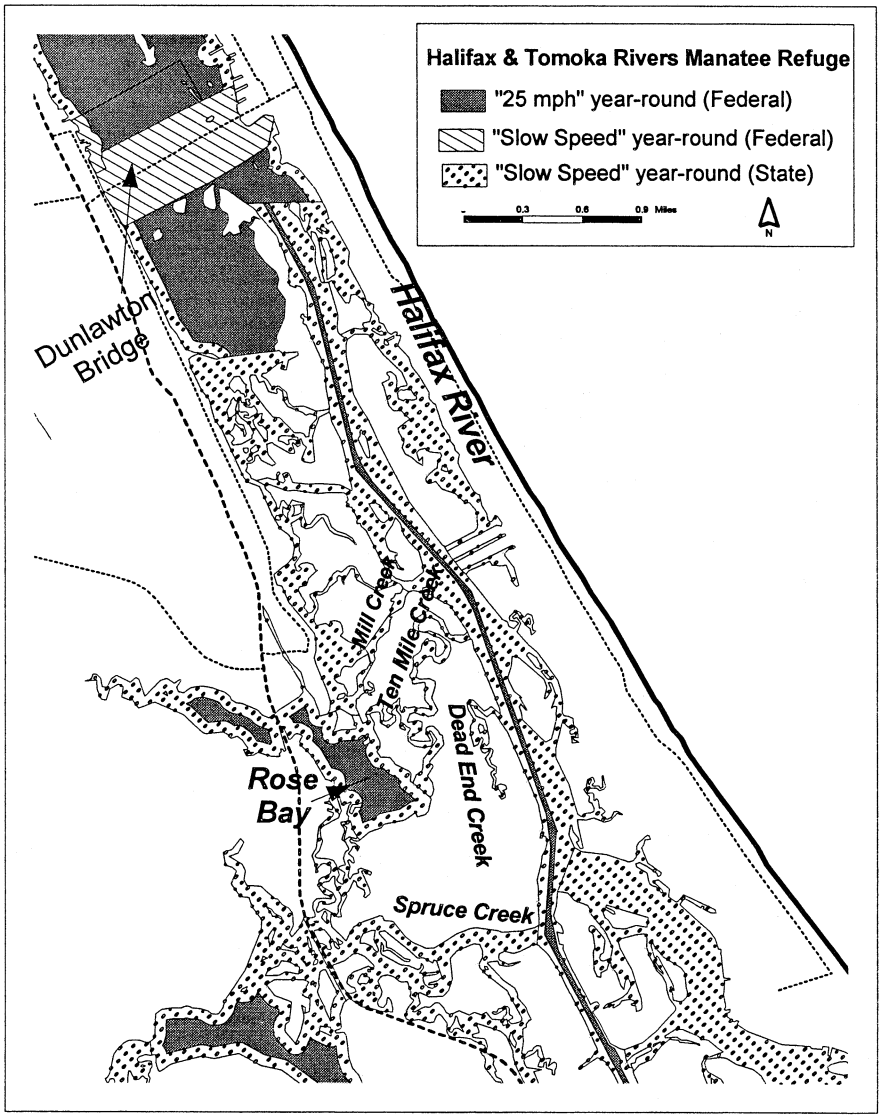
Tomoka River



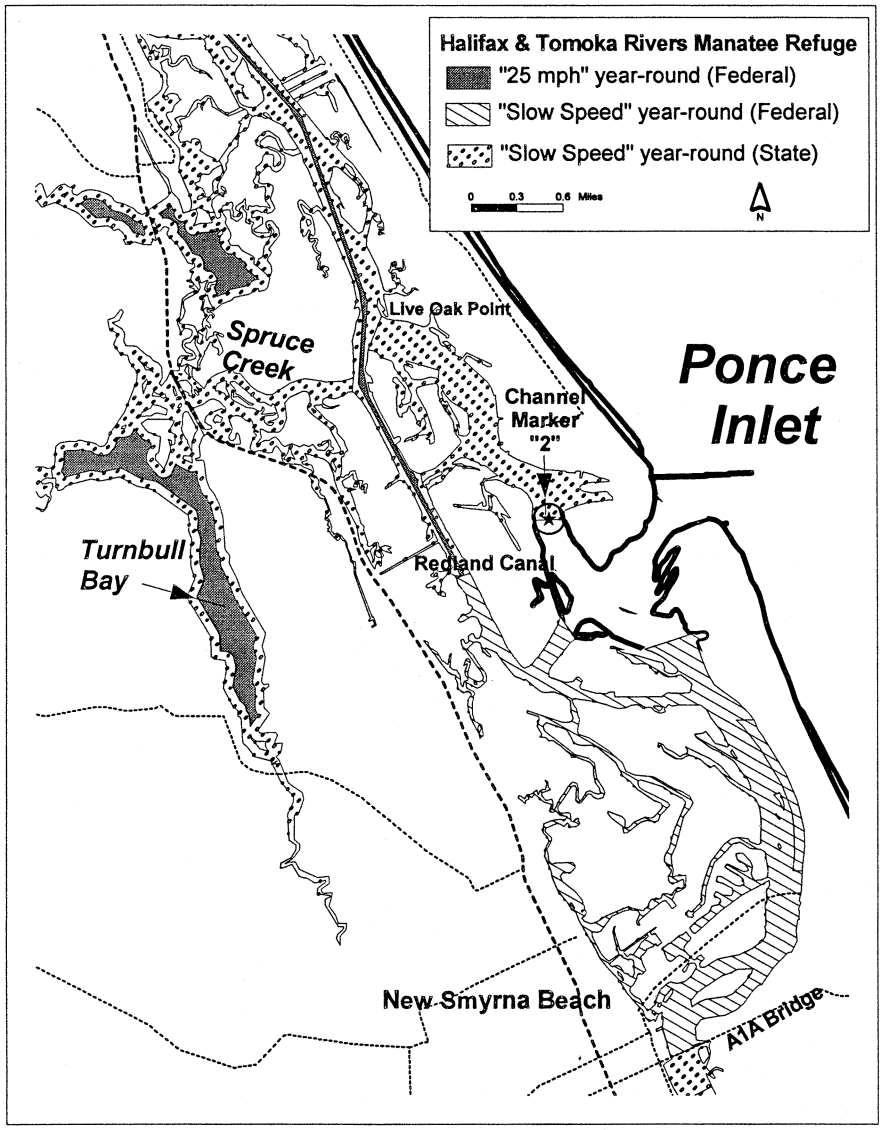
Halifax River A



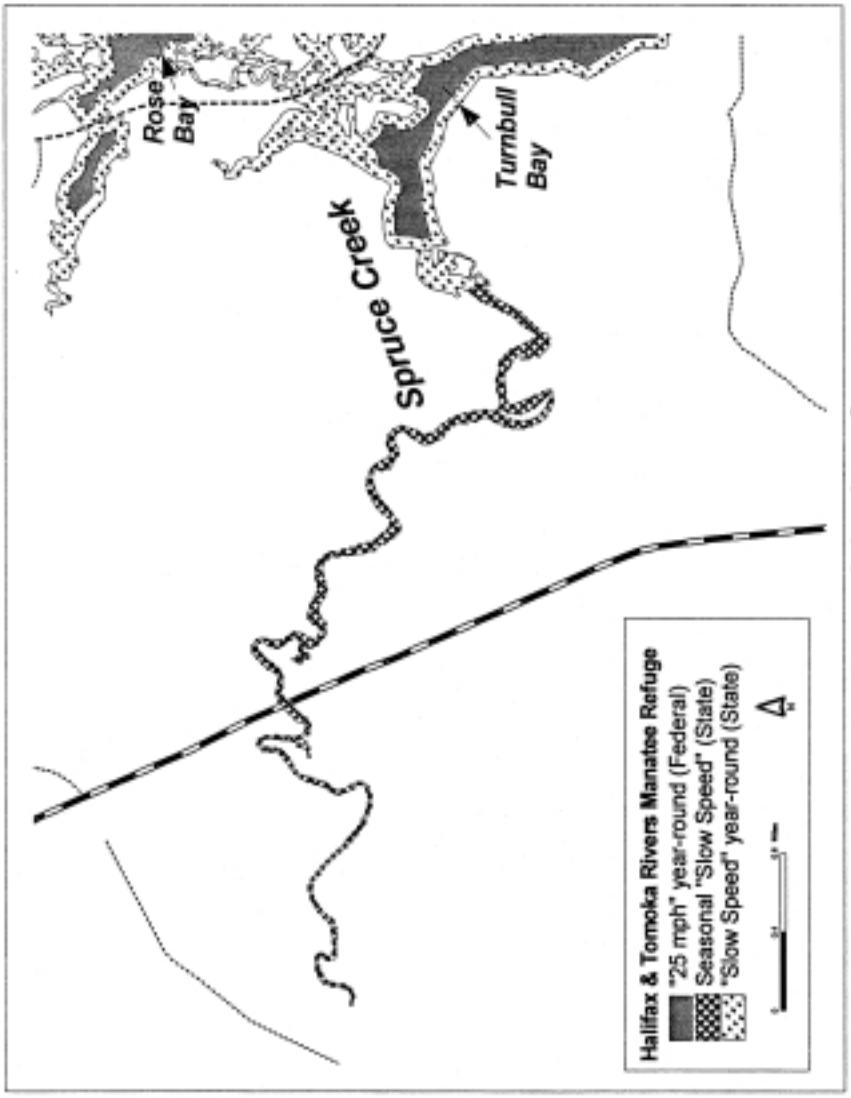
Halifax River B



Ponce Inlet Area A



Ponce Inlet Area B



Ponce Inlet Area C

Dated: July 29, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–19913 Filed 8–5–03; 8:45 am]

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H.R. 74/P.L. 108–67
To direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California. (Aug. 1, 2003; 117 Stat. 880)

S. 1280/P.L. 108–68
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